

SENATE

Tuesday, December 04, 2018

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence to Sen. Nigel De Freitas, who is out of the country and to Sen. Khadijah Ameen, who is ill.

SENATORS' APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from Her Excellency the President, Paula-Mae Weekes O.R.T.T.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By Her Excellency PAULA-MAE WEEKES,
O.R.T.T., President of the Republic of
Trinidad and Tobago and Commander-in-
Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

WHEREAS Senator Nigel De Freitas is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(a) of the Constitution of the Republic of Trinidad and Tobago, do hereby

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appoint you, NDALE YOUNG, to be temporarily a member of the Senate, with effect from 4th December, 2018 and continuing during the absence from Trinidad and Tobago of the said Senator Nigel De Freitas.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 4th day of December, 2018.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND
TOBAGO

By Her Excellency PAULA-MAE WEEKES,
O.R.T.T., President of the Republic of
Trinidad and Tobago and Commander-in-
Chief of the Armed Forces.

/s/ Paula-Mae Weekes

President.

TO: MR. BRIAN NATHANIEL BAIG

WHEREAS Senator Khadijah Ameen is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(b) and section 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, BRIAN NATHANIEL BAIG to be temporarily a member of the Senate, with effect from 4th December, 2018 and continuing during the absence of Senator Khadijah Ameen by reason of illness.

Senators' Appointment (cont'd)

2018.12.04

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 4th day of December, 2018."

OATH OF ALLEGIANCE

Senators Ndale Young and Brian Nathaniel Baig took and subscribed the Oath of Allegiance as required by law.

INCOME TAX (AMDT.) BILL, 2018

Bill to amend the Income Tax Act, brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made: That the next stage be taken later in the proceedings. [*Hon. F. Al-Rawi*]

Question put and agreed to.

PAPERS LAID

1. Annual Audited Financial Statements of the National Maintenance Training and Security Company Limited for the year ended December 31, 2017. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Trinidad and Tobago Housing Development Corporation (Vesting) (Amendment to the First Schedule) (No. 3) Order, 2018. . [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]
3. Ministerial Response of the Ministry of the Attorney General and Legal Affairs to the Eighth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Third Session (2017/2018), Eleventh Parliament on the Examination of the Perceived Inequality Faced by Single Fathers in Trinidad and Tobago with Specific Focus on Custody Matters, Policies and Access to Programmes and Services. [*Sen. The Hon. F. Khan*]

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Ministerial Response of the Ministry of Education to the Eighth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Third Session (2017/2018), Eleventh Parliament on an Examination of the Perceived Inequality Faced by Single Fathers in Trinidad and Tobago with Specific Focus on Custody Matters, Policies and Access to Programmes and Services. [*Sen. The Hon. F. Khan*]

4. Response of the Personnel Department to the Eighth Report of the Joint Select Committee on Human Rights, Equality and Diversity, Third Session (2017/2018), Eleventh Parliament on an Examination of the Perceived Inequality Faced by Single Fathers in Trinidad and Tobago with Specific Focus on Custody Matters, Policies and Access to Programmes and Services. [*Sen. The Hon. F. Khan*]

URGENT QUESTIONS

Pt. Lisas Desalination Plant

(Emergency Shutdown)

Sen. Saddam Hosein: Thank you, Madam President. To the Minister of Public Utilities: In light of yesterday's announcement that there has been an emergency shutdown of the Pt. Lisas Desalination Plant, can the Minister indicate when the plant will again be operational?

Madam President: Minister of Public Utilities, you have two minutes.

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, there was a disruption of the operations at Point Lisas Desalination Plant which occurred about 10.00 a.m. yesterday, Monday the 3rd of December, as a result of some electrical problems. The desalination staff are addressing the issue; repair works are actually ongoing. The desalination plant would start delivering water to WASA, 10 million gallons a day, by 2.00 p.m. today, with a further

increase to about 20 million gallons a day, by about noon—not noon, sorry, 11.00 p.m. tonight. The schedule is expected to ramp up to full capacity by about 10.00 p.m. tomorrow.

**Recent Fire at Drag Mall, POS
(Steps Taken to Assist)**

Sen. Wade Mark: Thank you, Madam President. To the hon. Minister of Rural Development and Local Government: Given the recent fire at the Drag Mall in POS, which has adversely affected the livelihood of scores of persons, what steps are being taken by the Government to assist these small business owners?

Madam President: Minister of Public Utilities, you have two minutes.

The Minister of Rural Development and Local Government (Sen. The Hon. Kazim Hosein): Thank you very much, Madam President, and I would like to thank Sen. Wade Mark for the question. This is the second fire for this year held at the People's Mall or the Drag Mall, as it is referred to here, and this is the third time that this mall has been burnt in recent years. Following the first fire this year, the Port of Spain City Corporation approached the People's Mall Management Company Limited, who manage this place, and asked them not to rebuild unless a clear plan for the layout was submitted as they were not using fire-safe practices or building materials.

Following the most recent fire, the Port of Spain City Corporation again met with the mall management which was in agreement that for the long term they would submit a booth and a layout proposal to ensure the safety of the vendors, patrons, and neighbours of this place. It was suggested by the corporation that, in the interim, the vendors set up tents in the parking lot of the mall in order to continue their Christmas sales with minimal interruption while the long-term plans are decided. However, individual vendors have come forward to say that the mall

Urgent Questions (cont'd)

2018.12.04

management is not an appropriate representative of their interests. Therefore at this time, the Port of Spain City Corporation is bringing all parties together for a dialogue on the “safetiness” and most coordinated way forward in the best interest of all stakeholders. Meetings were held earlier this week, and there is a follow-up meeting planned for this coming Monday. Thank you very much, Madam President.

Sen. Mark: Madam President, in light of the fact that the Government has indicated that the vendors would be allowed to conduct some trade on the compound of a burnt-out mall, could the Minister share with us whether the Government intends to allow vendors to vend on Charlotte Street?

Madam President: No, that question does not flow from the answer that was given. Sen. Mark, next supplementary question.

Sen. Mark: May I ask whether the Minister, through you, Madam President, is in support of the Mayor of Port of Spain’s position not to allow vending on the streets of Port of Spain inclusive of Charlotte Street?

Madam President: That does not arise, either, to the question posed, Sen. Mark.

Severance Payments to Former Petrotrin Workers

(Steps Taken to Address)

Sen. Wade Mark: To the Minister of Energy and Energy Industries: In light of claims made by several former Petrotrin workers that they have not yet received their severance payments, can the Minister indicate what steps are being taken to address this issue?

Madam President: Minister of Energy and Energy Industries, you have two minutes please.

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you, Madam President. Madam President, as I speak, all workers

on the Petrotrin payroll have been paid, including the 1,129 non-permanent workers who qualified for ex-gratia payment.

Sen. Mark: Madam President, through you, can the Minister inform this Senate whether the severance formula as outlined by the Prime Minister to increase from 300,000 to 500,000 is being met in this particular regard?

Sen. The Hon. F. Khan: Madam President, that matter will be addressed shortly by the Minister in the Ministry of Finance. But the Cabinet did in fact approve the 500,000 limit to be tax-free, and that would be effected later on, because the taxes were placed in an escrow account on behalf of the employees, and they have to get their clearance from the BIR.

Sen. Mark: Madam President, do I go to the next question or can I ask a supplemental?

Madam President: You have one more supplementary.

Sen. Mark: Madam President, through you, to the hon. Minister. Hon. Minister, can you advise the Senate whether legislative changes would be required to the Income Tax Act to give effect to these severance packages, given the increase from 300,000 to 500,000?

Sen. The Hon. F. Khan: I am not quite certain, but that matter would be addressed later on by the Minister in the Ministry of Finance.

Emergency Shutdown of the Desalcott Plant

(Mitigating Measures Taken)

Sen. Wade Mark: To the Minister of Public Utilities: Having regard to the emergency shutdown of the Desalcott Plant and the disruption in the water supply to residents in south and central Trinidad, can the Minister indicate whether any mitigating measures have been put in place?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, some of the affected areas for note are: Caroni, St. Helena, Charlieville, Chaguanas, Cunupia, Carapichaima, all the way to Fyzabad, San Francique, Cocoyea. In order to mitigate the effects of these supply shortfalls on operations, the authority will be redistributing supplies from Caroni and the Navet Water Treatment Plants, as well as the implementation of temporary supply schedules. This would be supplemented by the supply of truck-borne water services, and so far 50,000 gallons of water via truck-borne water supply services have already been delivered. The public has been advised of this situation and requested to conserve water. Public notices have also been put out.

BIR Documents of Former Petrotrin Workers

(Process to Expedite)

Sen. Wade Mark: To the Minister of Finance: Can the Minister indicate what, if any, additional support has been put in place at the Board of Inland Revenue to expedite the processing of BIR documents of former Petrotrin workers?

Madam President: Minister in the Ministry of Finance you have two minutes.

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, the Board of Inland Revenue has redirected additional resources—I have been advised it is 10 in number—to address the additional responsibility brought about by the Petrotrin exercise, and these employees, including the ones who are permanently assigned to this position, have been working weekends and overtime to get the exercise completed. Thank you, Madam President.

Sen. Mark: Can I ask the hon. Minister whether legislative changes to the Income Tax Act would be required to give effect to the severance payment that the workers have been promised, increasing from 300,000 to 500,000?

Sen. The Hon. A. West: Yes, Madam President. As Sen. Khan would have indicated, Cabinet has approved this adjustment. And yes, legislative amendments will be required to give effect to it, and those legislative amendments would be brought before Parliament shortly.

Hon. Al-Rawi: In the Finance Act.

Sen. The Hon. A. West: In the Finance Act.

Hon. Al-Rawi: This month.

Sen. The Hon. A. West: This month.

Sen. Mark: Madam President, through you, in those circumstances the workers would not be paid in accordance with the particular formula as outlined by the Prime Minister until legislative approval would be granted or would have been granted by the both Houses of Parliament? Can I seek clarification?

Sen. The Hon. A. West: There are a couple of issues which the Board of Inland Revenue is dealing with in terms of how much tax is to be accounted for in respect of each payment. This is what is taking a while. One of the issues is whether the payment qualifies for exemption at all, and if so, how much? So, what the company has done is paid the individuals the amount net of estimated taxes, and adjustments would be made as they get signed off from the board as to how much tax is actually due.

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, the Government is pleased to announce that we will be answering all questions, and on the Written Questions we ask for a deferral of question No. 49 for two weeks.

WRITTEN ANSWERS TO QUESTIONS

Damages Awarded by the High Court

(Re: Police Officers)

10. Sen. Gerald Ramdeen asked the hon. Attorney General:

Over the period September 2015 to September 2018, can the Attorney General advise:

- (i) what is the total amount of damages awarded by the High Court and Court of Appeal against the State in matters involving Police Officers, for claims of assault and battery, malicious prosecution and false imprisonment;
- (ii) against how many of the said officers has the State instituted disciplinary proceedings as a result of the damages awarded; and
- (iii) if no action has been taken, can the Attorney General provide the reason(s)?

Importation of Fuel**(Details of)**

60. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries:

Having regard to the impending importation of fuel and other petroleum products for use by the local market, can the Minister inform the Senate of the terms of the commercial agreements between Trinidad and Tobago and the vendors of the respective products?

Vide end of sitting for written answers.

ORAL ANSWERS TO QUESTIONS**Filing an Indictment****(Average Time Taken)**

9. Sen. Gerald Ramdeen asked the hon. Attorney General:

Over the period September 2015 to September 2018, what was the average time taken to file an indictment in a capital matter from the time that the

proceedings were received by the Magistrates' Court to the time that the indictment was filed in the High Court?

The Attorney General (Hon. Faris Al-Rawi): [*Desk thumping*] Madam President, I thank Sen. Ramdeen for the question. I am informed by the Judiciary of the Republic of Trinidad and Tobago that the average time taken to file an indictment in a capital matter from the time that the proceedings were received by the Magistrates' Court to the time that the indictment was filed in the High Court is approximately six years and two months. And with respect to the capital matters, I can confirm that is with respect to murder only, as there were none with respect to treason.

Sen. Ramdeen: Thank you, Madam President. Thank you Attorney General. Madam President, to the Attorney General, through you. Attorney General, what steps are immediately being taken to address this very prolonged period of six years plus to treat with persons who are not entitled to bail and remain incarcerated during this period of time while their indictment has to be filed in the High Court.?

Hon. F. Al-Rawi: Much obliged. Thank you again, Sen. Ramdeen, for a very important supplemental question. I am very pleased to say that the steps include a number of measures: legislate, operational and then management. On the legislative side this Parliament has, of course, contributed to the development of that by the establishment of criminal proceedings rules; by the proclamation, in fact, on the 1st of December, of a criminal division; by the "divisioning" out in the introduction of other areas of the court, including the family division, the traffic division; by the implementation of new courts; by the increase in the judicial complement of almost 77 per cent from where we first entered.

On the practical side, by the implementation of a computerized system in the magistracy, and as is now, without breaching the rule of anticipation, as is laid in

the House of Representatives, by the abolition of preliminary enquiries. So there is a managerial side to quicken the pace. There is a provision of resources to quicken that pace, which does also include improvements in the Director of Public Prosecutions, physical accommodation, manpower accommodation and their capacity of managerial input being improved by the use of computerized systems. So there is quite a lot going on.

Sen. Ramdeen: Madam President, thank you very much. To the hon. Attorney General, through you, Madam President. Attorney General, in most of these cases, the extended period of time is a result of the lack of staffing in what we call the “out courts”, like Mayaro, and Rio Claro, and Arima. Is any specific attention being given to those particular courts so that the persons who are committed for a capital matter in those courts can also have some kind of equality of justice in these kinds of matters to have their matters heard?

Hon. F. Al-Rawi: I thank the hon. Senator again for a very important question. The answer is quite simply, yes. It was the creation of the “divisioning” of the criminal division and traffic courts that really facilitates that. Specifically, with the operationalization of section 24 of the criminal division, which allows the Chief Justice to create specialist courts. The administration of justice as a whole in the judicial complements, and staffing, and managerial positions has also been materially managed.

I would point hon. Members of this Senate to the fact that we are replacing as of February the 1st the entire managerial structure of the magistracy by removing the Clerks of the Peace and introducing Registrars for the first time. And the harmonization between the jurisdiction of the High Court and the Magistrates’ Court also goes to a significant improvement, because we will now have Masters of Court treating with the management of the caseload itself.

So, there has been a well- thought-out plan which is in the course of implementation. A lot of it has actually happened. The laws have been proclaimed. The staff has been hired. And with respect to plant and machinery, that aspect too is also the subject of significant development, including as the Minister of National Security takes that charge, the development of specialist courts in other arenas including the prisons, that is, physical courts inside the prisons to treat with the caseload flow and management.

Sen. Ramdeen: Madam President, thank you. To the hon. Attorney General, through you, Madam President. Attorney General being the Minister in the Cabinet responsible for legal affairs, has the Office of Attorney General received suggestions from the Office of the Director of Public Prosecutions who is responsible for the filing of these indictments as to how the process can be speeded up at that end of the yardstick?

Hon. F. Al-Rawi: Yes. Madam President, yes, in fact we have. Some of the suggestions received from the DPP included the request for caseload software and management, the provision of case progression officers, the training behind the criminal proceedings rules, the requirement for new positions at the DPP's office to work alongside the magistrate side of it, and on the magisterial side of it, and on the High Court or Judiciary side of, obviously the equal management of the case progression through Masters of Court and other positions.

Madam President, it is material to note that with the anticipated abolition of preliminary enquiries, that in the case management structure itself there will be a rapid improvement in the structures because of the use of the Masters of Court to engage in sufficiency hearings and the initial hearings as well.

**Commutation of Death Sentences
(Privy Council's Decision)**

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11. Sen. Gerald Ramdeen asked the hon. Attorney General:

During the period September 2015 to September 2018, how many persons on death row had their death sentences commuted, pursuant to the Privy Council's decision of *Pratt and Morgan*?

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, during the period September 2015 to September 2018, no person have had their death sentences commuted pursuant to the Privy Council's decision in *Pratt and Morgan*.

Sen. Ramdeen: Thank you, Madam President. Madam President, to the hon. Attorney General: Could the Attorney General inform this Senate as to the reason why persons who would have expired the three-and-a-half-year and five-year period specified in Pratt, have not been commuted during this period, September 2015 to September 2018?

Madam President: No. I would not allow that question as asked, because you are making certain assumptions in your question. So you can ask another supplementary question.

Sen. Ramdeen: Thank you, Madam President, I am guided. Can the Attorney General tell us how many persons would have expired the five-year period specified in Pratt during this period of time?

Hon. F. Al-Rawi: Regrettably I cannot answer the question as last asked, but I could have answered to question as you have guided otherwise.

Madam President: Yes.

Hon. F. Al-Rawi: So, I do not know how I could—

Madam President: No. Well, if you cannot answer it, next question Sen. Ramdeen. [*Laughter*]

Sen. Ramdeen: Attorney General, do you accept that it is a very unsatisfactory position for persons who have expired prohibitory period in *Pratt and Morgan* to remain on death row in breach of their fundamental rights as specified by judicial committee?

Madam President: Sen. Ramdeen, I would not allow that question. Shall we move on, Sen. Ramdeen, to your next question?

Sen. Ramdeen: Much obliged.

Financial Demise of CLICO

(Details of Criminal Proceedings)

12. Sen. Gerald Ramdeen asked the hon. Attorney General:

As regards the instituting of criminal proceedings against persons deemed responsible for the 2009 financial demise of CLICO:

- (i) what is the total amount of moneys provided to the Office of the Director of Public Prosecutions in respect of this matter, for the period September 2015 to September 2018; and
- (ii) how many persons have had criminal charges preferred against them arising out of said matter?

The Attorney General (Hon. Faris Al-Rawi): Madam President, I am able to answer question 12 as follows: The total amount of moneys paid—provided to the Office of DPP in respect of this matter for the period stated above, and that is, Madam President, in respect of the Clico matter, moneys provided for the period September 2015 to September 2018. The total amount of money provided is \$125,688,798. I note, however, Madam President, that this sum is in fact a sum which will go upwards, because there is inclusion of two sets of further fees for that period that the office was not able to compute in time. So the figure is above that.

Sen. Ramdeen: I am obliged, Madam President. Thank you very much. To the hon. Attorney General. Attorney General, without asking you to specify with the specificity that you gave in relation to the answer that you gave, this particular investigation is now going into three administrations. Can you assist this Senate in any way in telling us over these three administrations what is the average period—what is the average amount of money that has been provided to the Office of Director of Public Prosecutions in this matter?

Madam President: No. Sen. Ramdeen, that question does not arise from either your question posed or the question answered. Next question.

Sen. Ramdeen: Thank you, Madam President. Attorney General, I am just enquiring, did the Attorney General answer question—part (ii) of the question?

Hon. F. Al-Rawi: I sincerely apologize, the numbers tripped me and Sen. Ramdeen is correct. Madam President, no persons have had criminal charges preferred against them arising out of these matters.

2.00 p.m.

Sen. Ramdeen: Thank you, Madam President. Hon. Attorney General, from the information provided to you as Attorney General in charge of legal affairs, can you inform the Senate as to how long it is expected that these investigations are going to continue?

Hon. F. Al-Rawi: Madam President, the data which I have demonstrates that certain investigations into the Clico matter have been proceeding in this realm—that is, the DPP's realm—in the period 2013 to today's date. And whilst it is true to say that the figures currently reflect approximately \$180 million in expenditure for fees at the DPP's Office for that period, the time frame specifically for the conclusion of the investigation is one which rests exclusively with the Office of the DPP. I have been informed and I verily believe that the office is close to its

conclusion; that is, the information which has been provided to me. Of course I am precluded by virtue of the Constitution in section 90, in particular, from having any form of direct enquiry into this matter. Suffice it to say that the Government trusts that the DPP is moving with alacrity and sincerity as he always does.

National Insurance Board

(Investment in National Investment Fund)

26. Sen. Wade Mark asked the hon. Minister of Finance:

In light of the challenges facing the National Insurance Board (NIB), can the Minister advise of the implications for the NIB fund given the board's recent decision to invest over one billion dollars in the National Investment Fund?

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, the National Insurance Board of Trinidad and Tobago invested \$585,691,000 in the National Investment Fund. The investment was allocated as follows: Series B, the 7.5 per cent fixed rate bonds that are due to mature in 2030, they invested \$397,756,000. And in Series B, the 6.6 per cent fixed rate interest bond due to mature in 2038. The fund invested \$187,935,000.

The board considered the following factors before investing in the NIF: NIF bonds are listed and traded on the Trinidad and Tobago Stock Exchange and ownership of these bonds will improve the liquidity profile of the National Insurance Board portfolios; participation in the NIF would allow the National Insurance Board to replace its maturing investments which are currently yielding 4.78 per cent with instruments that have higher rates of return of 5.7 per cent and 6.6 per cent; there are limited suitable local fixed income securities and the NIF bonds, tenures of 12 years at the rate of 5.7 per cent and 20 years in the rate of 6.6 per cent were attractive. The NIF bonds are rated investment grade and as such

qualified for the National Insurance Board investment portfolio; and finally, the last issue considered in determining the investment, the ability of the NIF Holding Company Limited to service its debt obligations is expected to remain strong and resilient.

Madam President, the challenges facing the National Insurance Board are structural in nature, such is, the ageing national population and the shrinking contributory base and are not negatively impacted whatsoever by the investment in the NIF. In contrast, investment in the NIF bonds by the NIB will result in higher returns which will be used to grow its own fund to pay benefits to all participants in this system.

The NIB is able at this time to maintain a buffer of liquid investments to meet benefit payment needs. This buffer was maintained following the NIF board's investments in the NIF, so beneficiaries of the NIF have no immediate concern in respect of that investment. The board's investment in NIF has complied with all legal requirements. I thank you, Madam President.

Sen. Mark: Madam President, can the Minister advise this honourable Senate which body or unit within the NIB took the decision to invest over \$585 million in this particular scheme? Could you share with this Senate which body within the NIB took that decision?

Sen. The Hon. A. West: Madam President, I do not have those specific details. I would assume that it would be the Investment Unit advising the Board of the NIB.

Sen. Mark: Madam President, in light of the fact that we have been advised that one of the challenges is structural in nature, dealing with the ageing population. Can the hon. Minister indicate whether there are plans by the Government to increase the retirement age for persons who are members of the NIB scheme?

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

**Accident on Priority Bus Route
(Preventative Measures)**

27. Sen. Wade Mark asked the hon. Minister of Works and Transport:

In view of the recent death of a nine--year-old student arising from an accident on the Priority Bus Route, what measures are being taken to prevent such accidents on the PBR?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Thank you, Madam President. Madam President, at this time I would like to again express my deepest condolences to the family and friends of nine-year-old Emmanuel John. In these moments of loss, words are sometimes useless, but please note that our prayers and good wishes of peace and comfort are with you.

Madam President, the Traffic Management Branch has two types of pedestrian crossing programmes: the zebra crossing and the accessible pedestrian signal. These are the ones that are used outside of the Parliament building for the visually impaired and other users. In accordance with the programme mentioned above, in this fiscal year, the TMB will be installing nine new zebra crossings and 15 new accessible pedestrian signals. Madam President, these new installations will be implemented throughout the country, some of which will be on the Priority Bus Route.

Additionally, in the last fiscal year, 15 normal pedestrian signs were replaced by the ASPs. In this fiscal year, the Traffic Management Branch will be installing throughout the country these 15 normal signs in locations where they are non-existent at this time. I thank you.

Sen. Mark: Madam President, can I ask the hon. Minister whether steps have been taken to increase the level of surveillance by his Ministry in conjunction with the police, the Transit Police, to have greater surveillance on the Priority Bus

Route. Can you tell us if any action is planned in that regard?

Sen. The Hon. R. Sinanan: Madam President, yes, the Ministry has been in touch with the Transit Police and there has been a stepping up of the activities on the Priority Bus Route. Thank you.

Sen. Ramdeen: Thank you, Madam President. To the hon. Minister of Works and Transport: hon. Minister, have you been in communication with the Trinidad and Tobago Police Service to ensure that the areas on the Priority Bus Route where these accidents are likely to occur, the popular areas, can have the kind of monitoring that we have down at Freeport, that is engaged on a daily basis by the highway?

Sen. The Hon. R. Sinanan: Madam President, I do not know what the hon. Senator is referring to—the normal on the Uriah Butler Highway—

Sen. Ramdeen: The Roti Shop.

Sen. The Hon. R. Sinanan: But what I can say is that the Priority Bus Route is policed by the Transit Police on a regular basis and unfortunately when accidents like these occur it is unfortunate. But we have been liaising with the police for enhanced patrols on the Priority Bus Route. Thank you.

Police Officers' Identification (Options Available to the Public)

28. Sen. Wade Mark asked the hon. Minister of National Security:

In light of the statement by the Commissioner of Police that police identification must be produced by all police officers when engaging with members of the public during the execution of their duties, can the Minister indicate what options are available to said members of the public if these officers refuse to so do?

The Minister of National Security and Minister of Communications and

Minister in the Office of the Prime Minister (Hon. Stuart Young): [*Desk thumping*] Thank you very much, Madam President. Madam President, the Commissioner of Police has indicated that should a situation arise where an officer refuses to identify himself or herself to a member of the public and that officer is in uniform and is driving a marked police vehicle, the member of the public is advised immediately to comply with all instructions, noting the time and place the incident occurred, as well as any other pertinent information, such as vehicle number. And as soon as possible, report this to the Police Professional Standards Bureau.

A complaint may also be made to the Police Complaints Authority. If however, the person is not in uniform or in a marked police vehicle, the member of public is advised to proceed to the nearest police station and report the incident and obtain a receipt for the report made.

Further to the above, the Trinidad and Tobago Police Service has issued tenders and received replies for the supply of badges. Gold for the first division and silver for all second division officers. These badges will contain the officer's name and regimental number which will be easily identified by the members of the public. These badges will be utilized as the TTPS' identification going forward once procured.

Sen. Mark: Could the hon. Minister indicate what time frame he anticipates for the procurement of those badges, gold and silver?

Hon. S. Young: Madam President, unfortunately, I do not have that information. That is within the purview of the Trinidad and Tobago Police Service. But the Commissioner has said that they have already begun the process, received the replies, so I assume the evaluation is taking place and then there will be the award of the contract.

Card Skimming
(Total Amount Stolen)

53 Sen. Taharqa Obika asked the hon. Minister of National Security:

As regards the reports of card skimming over the last year, can the Minister advise as to what is the total amount of money stolen from local customers as a result of this practice over the period?

The Minister of National Security and Minister of Communications and Minister in the Office of the Prime Minister (Hon. Stuart Young): Thank you very much, Madam President. Madam President, the Commissioner of Police has advised that the Trinidad and Tobago Police Service has received a total of 3,044 reports of card skimming over the period January 01, 2017 to November 15, 2018, amounting to \$27,482,292.22 being skimmed illegally.

Sen. Obika: Thank you very much, Madam President. Could the hon. Minister inform the Senate how much has been recovered in the interest of the customers.

Hon. S. Young: Madam President, I do not have that information.

Trinidad and Tobago Civil Aviation Authority
(Approval to Sunwing Airlines)

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

What steps were taken by the Trinidad and Tobago Civil Aviation Authority prior to giving approval to Sunwing Airlines to operate direct flights from Toronto to Tobago?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Madam President. Madam President, no application has been received from Sunwing Airlines Incorporated to operate direct flights between Toronto and Tobago, or Toronto/Tobago/Toronto. It follows therefore that no approval could have been given for such. Thank you.

Sen. Obika: Yeah, thank you very much, Madam President. Then could the hon. Minister indicate if reports that Sunwing is carded to start plying the route at some time in future, are these reports true or otherwise?

Sen. The Hon. R. Sinanan: Thank you. Madam President, I do not know of any report of any planned trip. However, before any airline can operate within our fly zone, permission must be granted by the Civil Aviation Authority and as I said before, there has been no application for Toronto/Tobago/Toronto, or Toronto/Tobago before them. Thank you.

Sen. Obika: Then I would like to ask a question—the final supplemental on this question, to the hon. Minister, if he is aware that the Canadian Transport Agency is investigating Sunwing Airlines in particular.

Madam President: That question does not arise. Sen. Obika, next question.

Students Arrested at UWI

(Initiation of Disciplinary Action)

55. Sen. Taharqa Obika asked the hon. Minister of Education:

Can the Minister indicate whether disciplinary action has been initiated against the students who were arrested during the protest action on October 18, 2018 at the University of the West Indies, St. Augustine Campus?

The Minister of Education (Hon. Anthony Garcia): [*Desk thumping*] Thank you very much, Madam President. The University of the West Indies (UWI) St. Augustine Campus, has advised that the campus has not initiated any disciplinary action against the students who were arrested during the protest action on October 18, 2018 at the University of the West Indies, St. Augustine Campus. The UWI maintains that student activism is central to university life and activism underpins much of the current UWI Triple A Strategic Plan. The Code of Principles and Responsibilities for Students at the University of the West Indies, St. Augustine

Campus, August 2018 acknowledged, under Appendix C13, that, and I quote.

14. “Obstructing or causing to be obstructed the lawful use of access to, or egress from, University premises or the part thereof”—is—
“misconduct in the respect of which the students may appear before a disciplinary committee.”

However, in light of the circumstances leading to the protest, the intervention of the Trinidad and Tobago Police Service, the consequent arrest of the students and the legal process that has ensued, the decision was taken by the campus not to apply any internal disciplinary measures. While the protestors transgress in the Code of Principles and the Responsibilities the subsequent events that unfolded provided a cogent learning opportunity for these future leaders in society and for a greater appreciation of the laws of the land. Thank you.

Sen. Mark: Madam President, may I ask the hon. Minister whether he can share with us information surrounding the agency or personnel involved in seeking the intervention of the police in what was otherwise a very peaceful protest organized by students on the campus.

Madam President: No. Sen. Mark I will not allow that question. Hon. Senators may I just say that written question 49 has been deferred for two weeks.

INCOME TAX (AMDT.) BILL, 2018

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 Income Tax Act, be now read a second time.

Madam President, my first order of business, recognizing the many faces opposite me now on the bench that is just above the Opposition is, with your permission, to welcome all hon. Independent Senators who are joining this

particular session of the Parliament to the work of the Parliament. I know that you are no strangers to hard work, careful consideration, good humour and strident debate and I look forward to receiving, warmly, your recommendations, listening to your fulminations and certainly finding a better path towards legislation in Trinidad and Tobago. With that said, off we go with this particular Bill, in this particular climate, for the particular reasons that we are gathered here today.
[*Crosstalk*]

Madam President, this Bill is not a complicated Bill. It is really and actually quite a simple piece of law which has had a fairly complicated history in getting here to the Parliament.

Sen. Obika: Lazy is the proper way.

Hon. F. Al-Rawi: Madam President, Sen. Obika seems to have some eruptions that he wishes to put on the floor, I will give way.

Sen. Obika: I was only seeking to correct the speech of the Attorney General, it is not a simple piece of law, but a lazy piece of law.

Hon. F. Al Rawi: I thank the hon. Senator for putting his views onto the record which I am sure to address in the wind-up. So, with hopefully that out of the way, the exuberance of my learned colleague, we can return to the serious business at hand.

Madam President, this Bill has come from the House of Representatives, and in its form now before us for debate stands at a few clauses, barely five in number, which effectively propose amendments simply to the Income Tax Act. Madam President, the Income Tax Act is no piece of legislation without serious bite. After all, there is supposed to be certainty in only death and taxation, depending upon the way that you look at it. The Income Tax Act, Chap. 75.01, is some 80 years old. It

was first brought into its form, the original form, by Act No. 34 of 1938, and it has been amended roughly 109 times now.

In particular, the last amendment to the Income Tax Act was done by Act No. 4 of 2017, most commonly known as the FATCA law. It was that Tax Information Exchange Act, Act No. 4 of 2017, which specifically amended the Income Tax Act in consequential amendments to include a new provision, section 117A, of that law. Now I say that, marking the spot to a point that I will return. So let us get back to this Bill, let me put on record first of all, in demonstrating its proportionality and purpose, what the aim of the legislation is.

This Bill is intended to achieve compliance with three particular goalposts. The first goalpost is compliance with the methodology and requirements of the Financial Action Task Force. Trinidad and Tobago is a member by virtue of its membership of a sub-body called the Caribbean Financial Action Task Force. We are a member of that larger group of countries comprising 190 States. We have signed on as a jurisdiction since 1989 to observe the United Nations' principles in countering terrorist financing and in countering money laundering as it is now associated with anti-corruption measures.

The Financial Action Task Force has 40 recommendations and 11 immediate outcomes. And essentially that Financial Action Task Force is a body which comes in by virtue of a methodology called Mutual Evaluation and Review. The countries come together, they take the FATF methodology, they do an on-site examination of your laws, they look to see if you have laws which they call technical compliance and then they look to the efficiency of your laws and they rate you against these particular standards, the 11 immediate outcomes and 40 recommendations and they come up with a report.

Trinidad and Tobago has been through first round mutual evaluation, second round mutual evaluation, third round mutual evaluation and fourth round mutual evaluation. And our fourth round mutual evaluation for the Financial Action Task Force occurred in January 2015 because we were committed as a country by virtue of the Cabinet, then sitting, to undergo the fourth round mutual evaluation as the first country in the 27 country basin that FATF comprised then to want to undergo this evaluation report. Suffice it to say, we did not do well, we were deemed to be in need of serious amendments to our laws and the Mutual Evaluation Report was published in June 2016.

In June 2016 the outcome of our report was so bad that we were put into two levels of scrutiny. On the first hand we were put into scrutiny under the Financial Action Task Force under a body which does the scrutiny. It is called the Intergovernmental Co-operation Review Group, ICRG Group and that ICRG Group sits you down over a period of several years, three years in fact, and sets out a plan of action that the country must commit to lift itself out of non-compliance. If you do not make progress in that follow-up reporting cycle you have the opportunity to be downgraded and if you do nothing at all, or if you are downgraded you suffered the consequences of the international community saying to you that you will be treated with enhanced due diligence—

Sen. S. Hosein: Attorney General, I just wanted to know if that action plan, that three-year action plan, can be made available to us, also.

Hon. F. Al Rawi: I invite my hon. colleague to the published Mutual Evaluation Report and to the published Post Observation Follow-Up Reports which are in existence and have been for many years and are available in the public domain. So you have it, hon. Senator, or you ought to have it certainly as you have come to the

debate today, because this is not the first Bill that we are treating with as law; we have done several of them over the several years here and this has been a feature of that.

So in the progress report if you do not progress, you fall to be the victim of what they call enhanced due diligence, they apply sanctions to you and that International Co-operation Review Group says to the whole world by way of a statement of non-compliance that the world should not do business with you, that the world should restrict banking, the world should ask for customer due diligence of a deeper kind or the world should consider not doing business at all. That has resulted in a phenomenon called de-risking or loss of correspondent banking which I will come to in a moment. But that is only the ICRG and FATF.

The second form of discipline that we were put into is under the Caribbean Financial Action Task Force. That is called a FATF-style regional body or an FSRB as it is referred to, and in the CFATF world we were also put into reporting requirements because we were put into what they called enhanced follow-up. So in the FATF world, on the first purpose of this legislation, we were put into two forms of review with jeopardy in two separate pots, the Financial Action Task Force pot and the Caribbean Financial Action Task Force pot. And those two pots meet twice a year each. So there are four meetings every year, two for the FATF, two for the Caribbean Financial Action Task Force. There are four plenary meetings, but in-between those meetings you have what you call face-to-face meetings and review steps. So basically you are being constantly monitored on your progression.

The second aim of this legislation is to comply with another form of supervision which is called the Global Forum supervision. The Global Forum is a

combination of 154 countries that have organized themselves under the OECD through the G20 management, and that G20 management says that their aim is to erode and move away from and to eliminate harmful tax practices, tax evasion, money laundering, financing of terrorism and corruption.

And basically, in the Global Forum environment you are being invited to submit yourselves to tax transparency, because the philosophy of the Global Forum is much like the philosophy of the FATF. The philosophy is if you can follow the money, if you have transparent purpose in money transactions you have a chance at eliminating harmful practices. After all, trillions of United States dollars per year are caught in illicit flows, in tax evasion. Right here in Trinidad and Tobago, our energy spotlight has demonstrated that our country loses approximately \$16 billion per year in transfer pricing, US; \$16 billion per year in transfer pricing. So imagine if there is that transparency in taxation what it means for the people of Trinidad and Tobago in catching the flows that ought to be subjected to the public purse collection. That is the second obligation, the Global Forum.

The Global Forum like the Financial Action Task Force has peer reviews, countries come in and assess you and look at you and see how you are going along. There is a first-phase peer review, a second-phase peer review, they look at your technical compliance, do you have laws to achieve the purposes and do you have efficiency from those laws. And what they are looking for is something called Common Reporting Standards or Automatic Exchange of Tax Information.

Now, that is not something that is new to our jurisdiction. The Exchange of Tax Information became a feature of law in 1989 when we passed the Tax Information Exchange Act. And in 1989 we saw the first Tax Information Exchange Act come, it was an umbrella created that all entities which wanted to

exchange tax would come in as an order under that umbrella law and in that first 1989 situation, which came into effect in 1990, we received the United States Inter-Governmental Agreement in 1989. If you were going to do agreements in any other jurisdiction you needed to bring another order, have the Parliament debate it, make it domestic law as opposed to international agreement and then it got parked under that.

When Trinidad and Tobago came upon last year its obligation to operationalized the Inter-Governmental Agreement for the tax exchange for FATCA, that is the second United States law, the Parliament was asked to consider amending the Income Tax Act, the Financial Institutions Act, the Tax Exchange Information Act by bringing in another order the Opposition took a different point of view, said to the Government we would no longer have these golden umbrella shapes, you must make each law specifically and so the Parliament went into a joint select committee and that law was refashioned to repeal the tax information umbrella formula and come with a single law.

We were cautioned as a Government then, but we required special majority support that we had the Global Forum obligation. And the Global Forum obligation came into Trinidad and Tobago through several key milestones. Those key milestones were in 2010, we agreed to undergo the Global Forum Peer Review under the previous Government. In 2011 Trinidad and Tobago underwent in January 2011 its peer review phase one report. That was approved by the Cabinet of the Government then sitting. In June 2011 we were informed of the conventions that required us to get there and we were told that Trinidad and Tobago needed to negotiate 13 versions of tax information exchange.

2.30 p.m.

In other words, then, 13 types of FATCAs. The Government agreed by way of two successive Cabinet Notes in 2011 and then again in 2014—the Government then sitting agreed to the policy that Trinidad and Tobago would commit itself to do that. The Government sent then Minister of Finance Larry Howai to Berlin in October 2014 and signed on to the high level commitment and committed Trinidad and Tobago to common reporting standards, automatic exchange of information on the back of 13 negotiated versions of inter-governmental agreements, FATCA-style.

And then in 2015, we had a change of government and in October 2015 the Minister of Finance was met with a statement by the Global Forum to say, “Your country is non-compliant. Show us your 13 negotiated agreements.” There were no 13 agreements to be found. We had to go into the Global Forum and ask if there was a way to remedy this situation. They said to us, “Apply to us for assistance.” We applied for assistance by way of immediate contact, high level commitment.

The Global Forum came to Trinidad and Tobago. We negotiated and worked with them, and they said to us, “You need to develop three pieces of law. On the one hand you need to have a law to dismantle your secrecy provisions, specifically found in your Income Tax Act. On the second hand, you need a law which treats with adopting a multilateral convention, because you can no longer do the 13 treaties, because you just do not have the time to negotiate 13 treaties, so take a multilateral approach. But to do that treaty you also need to have your tax information exchange laws”, which is just simply a version of what we did for FATCA. They said specifically, “Draft this and let us have a look at it.” And once drafted, they then explained to Trinidad and Tobago that, “You cannot get into the

treaty, the multilateral treaty, unless you amend your Income Tax Act.”

Now, let me put it in very simple terms. If you were to imagine that your treaty is an agreement to cook a turkey you have to have a turkey. So your multilateral convention is the turkey. That goes into one piece of law. Your Tax Information Exchange Act has to adopt the turkey and put that into law. And what the Global Forum said to the country is, “You cannot sign on to that convention until you amend your Income Tax Act because the process for signing on to the convention means you have to apply to be considered to sign on to the convention, and then you must be invited to sign on to the convention, and you can only be invited to sign on to the convention when you have amended your Income Tax Act.”

So the second purpose was Global Forum. The consequences of non-compliance are glaring, because in the report, the published documentation coming from the OECD, coming from the G-20, there is a table of eight lines. In the eight lines of publication to the world at large, the last line in black had one jurisdiction: Trinidad and Tobago; non-compliant, the only country out of 154 countries in the entire Global Forum pot that is completely non-compliant. To get to this position the Government invited the Global Forum to come in, and very specifically we invited the Global Forum to not speak to the Government alone. We said, “Please speak to our Opposition as well.” And the Global Forum went and spoke with the Opposition, as a step of good will and demonstration because these countries, as I have explained, in the FATF world, they want to see you making best efforts. You write to them, as the Government did, you said, “We will put these into our parliamentary cycle.” We were given the recommendation to pull out the Income Tax (Amdt.) Act, and so that came out into point.

The third aim of this Bill is to treat with the current criminality in Trinidad and Tobago. Madam President, the time is different between both Houses. What time do I finish, Madam President?

Madam President: You finish at one minute past three.

Hon. F. Al-Rawi: Thank you very much. The third purpose of this legislation is to treat with the home-grown situation. We need only look at the statistical information in Trinidad and Tobago. We need only look at our Financial Intelligence Unit, and we need only look at the suspicious transaction activity and the suspicious activity reports which the FIU produces to understand what we are dealing with. Nobody engages in crime unless it is a crime of passion, for vengeance, specifically, unless there is profit in it. Drug dealing is profitable; arms, profitable; kidnapping for ransom has a money value attached to it; marijuana sales, money value attached to it. Money laundering, there is a tax taken for it.

There is money in crime and Trinidad and Tobago has been witnessing a situation where our people feel a sense of helplessness. We have the mantra: "If you do the crime, you should do the time." But nobody sees the time, because our criminal justice system, in the most important case standing, by way of example of matters which are yet to be addressed is our Piarco Airport Enquiry. On the one hand, in that instance, people deserve the right to be vindicated, as accused, or justice needs to be carried out through due process, and I will say no more because it is before the courts. But what I can say is that with a construction date of 1999, we are now in 2018 and we are still in the very magistracy on that matter.

That is our system. We, as a Parliament, are trying to better that. We, as practitioners, are trying to better that. But in Trinidad and Tobago our Financial

Intelligence Unit produced a report last year saying, in the period 2011 to 2016, if you aggregated all suspicious transactions and all suspicious activity reports, that the total dollar value of that is \$4.5 billion. And they went further, having been given additional resources by this Government, they said that in the one year, 2016 to 2017, the total value of suspicious activity and transactions was \$22.5 billion. And they disaggregated that amongst transactions to show where the dollar value was: in fraud; in forgery; in attempted money-laundering. And as a result of their reporting of activities, the Government saw the FIU able to stop \$13 billion of that suspicious activity.

So this law, in the third limb, which supports the aim and purpose, is designed to tackle the criminality that is to be found with money. And it is no secret, having spent our time in the first part of our tenure addressing the criminal justice system, tightening the system, putting in rules, creating more courts, expanding judicial capacity, creating divisions, the other aspect that we went to and where this Parliament and this Senate will be very occupied is in the follow-the-money legislation, where we can say to Trinidad and Tobago, "Let us take a leaf out of the case in Al Capone who did not go down for murder or being a mobster, but who went down for tax evasion. And we genuinely believe that, as a Government, following the money brings relief.

So those are the aims and objectives of the legislation. The parliamentary journey to get us here involved us putting a Bill alongside two other hypothetical formulae. That Bill went into this Parliament on the 25th of May 2017. We were referred to a joint select committee. The Joint Select Committee engaged in activity over the period May, June, July, August, September, October, November. On the 2nd of November a report of the Joint Select Committee was produced.

That report was not a unanimous report. That report contained a minority report from the Members of the Opposition. The Members of the Opposition did, however, from the report, unanimously agree to send the report to the Parliament. The minority report focused on a few areas, in particular—if I were to summarize what I understand the submissions of the Opposition in that report to have been—they included: need for a judicial scrutiny with respect to clause 5 of the Bill where the Trinidad and Tobago Police Service is receiving taxpaying information. The second position coming from the Opposition was: take a look at the South African law for that model. The third position coming was, “Let us talk some more.”

We went to the House of Representatives. On the 2nd we debated that report. More time was requested. We adjourned that to facilitate discussions between Opposition and Government. We exchanged in communications between Opposition and Government, and on the 23rd of November, 2018 we came back to the House. On the 23rd we were told that there was need for more consultation in a committee. The reporting deadline for the Financial Action Task Force was the 30th of November, which I will explain in a moment. The reporting deadline for the Global Forum was the 30th of November. With that in mind, we could not establish a joint select committee.

Number one, there were new Independents and committees had to be populated; number two, the process of appointing a joint select committee meant we would have to have come to the Senate, appoint a committee, come back to the House, and then the committee would have sat after the 30th of November. Stick a pin; this reporting deadline.

The Financial Action Task Force request for ratings review—remember I explained that there was a process that you have to go through of being constantly

monitored—the deadline for that in the written communication coming from the Financial Action Task Force through the Caribbean Financial Action Task Force was originally November 22, 2018. We requested an extension of time to the 30th. If you do not request your re-ratings for the elements that you have done badly in—those 40 recommendations and 11 immediate outcomes—you are going to slide from the non-compliance grey list into the blacklist, and that is an immutable deadline.

We disclosed that deadline. We put it out into the public domain, and for the Global Forum, the request for peer review in January had to be communicated by the 30th. On the 23rd we therefore went into a special select committee. The Opposition said to us that they would not participate in that Special Select Committee. In the Special Select Committee we brought forward a barrage of stakeholders into the public domain. And in the public domain, I say that disaggregating the consultation, obviously, which a Bill has beforehand, we had the benefit of the National Anti-Money Laundering Committee. It is called the NAMLC committee. That committee is comprised of the DPP, the FIU, the Financial Investigation Branch, the Chief Immigration Officer, Comptroller of Customs, Ministry of Finance, the Director of Central Authority, the Ministry of the Attorney General, the Central Bank, the Securities Exchange Commission. All of them came. The Bankers Association came. The European Chamber of Commerce sent in their commentary. The individual banks came. The American Chamber of Commerce came. The Trinidad and Tobago Chamber of Commerce came, and every single person, to an honourable man and woman, said that they agreed with the provisions of the law in the clauses as they then stood, which were 10 clauses.

We came back to the House on the 30th of November, the day for deadline. We were met with the Opposition categorically stating, through its Leader of Opposition, that they would not support the legislation. The legislation, as presented in the House, involved 10 clauses. The first five clauses, which are in this Bill, were as it relates to the first four clauses, innocuous: Long Title; Short Title; “This Act shall mean the Income Tax Act;” “This Act shall come into operation on a date for proclamation.” And then the next clause, the fifth clause, was to put into effect what I call existing safe, simple, majority law. It is to be found in this Bill. The clause that related to that is to be found in this Bill and specifically is to be found at clause 5 of the Bill.

At clause 5 of the Bill we propose an amendment to section 4. Section 4 of the Income Tax Act is the section in subsections (1) and (2) to provide the secrecy provision, prohibition—prohibition of breaching secrecy. We proposed, because of the recommendations coming out of the Financial Action Task Force—specifically recommendation 40 in black and white in the Mutual Evaluation Report—in several paragraphs in black and white in that report. And associated with the immediate outcome too, we were told that we need to make sure that law enforcement has the opportunity to treat with criminality under the Income Tax legislation.

Section 4, we proposed to amend—forgive me. It is in clause 4 of this Bill. I am confusing it with that in the House. In clause 4 of this Bill we propose specifically the following: We propose to insert a new subsection (4), and we say, with respect to:

“...subsections (1) and (2) do not apply in respect of”—listen to this—
“criminal proceedings, either on indictment or on summary conviction”—

hear the words—“that have been commenced by the laying of information or the preferring of an indictment, under the Proceeds of Crime Act and the Anti-terrorism Act.”

We go on:

“(5) Notwithstanding...(1) and (2)”—which is the secrecy provisions, and I will put the emphasis—“where a written law authorizes disclosure by the Board”—and that is the Board of Inland Revenue—“of any taxpayer information to an individual or entity, the Board shall, within a reasonable time, so disclose to the”—individual or—“entity and the”—individual or—“entity shall in respect of...information so disclosed comply with subsection (6).”

Subclause (4) translates to the fact that criminal proceedings, that you can obtain taxpayer information. That is the existing law. It meets a number of requirements. For the new Senators joining us, permit me, Madam President, we often refer to the proportionality of law. Proportionality is a legal test which the Parliament is required to observe as well that says you have a legitimate aim. You are intruding on rights effectively only so far as you need to; that the intrusion is proportionate or required in a society such as ours.

There has been umpteen case law on it. In the Privy Council, the leading authority is a case called *Suratt*. We have cases like *Northern Construction*. In Trinidad and Tobago at the appellate level there are a number of other cases to treat with the concept of proportionality. And effectively, Baroness Hale is trumpeted in the *Suratt* case as saying that the golden test is that you are proportionate. And it matters not if you traverse a section 4 and 5 right of the Constitution, necessarily, that you have a three-fifths majority. Because if you are

only going so far as the existing law recognizes and it is proportionate, not every entrenched right in 4 and 5 requires necessarily a three-fifths right.

It was cutting edge law at its time. Indeed, our own Court of Appeal had a different point of view in a minority decision. But suffice it to say, that is the law in Trinidad and Tobago. But in any event, this is existing law because under the Proceeds of Crime Act—in section 32 of the Proceeds of Crime Act—you have the ability to have a production order coming out of the Proceeds of Crime Act which allows the Board of Inland Revenue to receive information.

Now, one may easily ask, “Well, why do that in this law if the Proceeds of Crime Act says that?” And the answer is, quite simply, because the international assessors have said, out of an abundance of caution and to avoid any ambiguity, or worse yet, to avoid people the opportunity to argue a case which is possibly going to take years to come out, put it in your primary law. And that is what we did.

Subclause (5) says:

“...where a written law authorizes the disclosure...”

Well, there are only two types of written law that can authorize disclosure. On the one hand, it is law which is passed with a special majority which gives the disclosure, for instance, FATCA. FATCA does that. But on the other hand, it relates to what we call saved law. Saved law is law which is pre-1962 Constitution and therefore that law is preserved, notwithstanding the passage of your Constitution, similar to our ability to hang people still, even though it may be viewed to be contrary to the Constitution as crafted by our predecessors.

Subclause (6):

“(6) Notwithstanding subsections (1) and (2), a person having an official duty or being employed in the administration of this Act shall, for the

purposes of subsection (5)”—

They shall do two things: (a), give the FIU the information. The FIU, the Financial Intelligence Act, as an Act of Parliament in 2000 in compliance with our FATF third round obligation passed by a then PNM Government has a secrecy provision. You are allowed under the FIU legislation to get that. The Opposition, under the hand of Sen. Saddam Hosein, said to us, look at the South African law, in the minority report. The South African law is exactly the same as that. Existing law; safe provision in secrecy provisions; law which is passed with a three-fifths majority; no need for special majority.

“(b) provide taxpayer information to a member of the police service...”

Now, there was an observation raised by the Members of the Opposition which was arguable. Whilst the Government held the view that the law was to be read in the round, as you always should, the Opposition put forward a point of view that it could be open to abuse. And in a little bit of political tapping, some words were traded to my learned friend, Saddam Hosein, who I have great regard for—but this is the cut-and-thrust of politics. But the simple point is that the Government’s point of view is that this law was designed for the purposes of fraud and criminality in that purpose, to be read in conjunction with the Proceeds of Crime Act and Anti-Terrorism Act.

We took on board the fact that there could be debate over it and we harmonized the legislation to treat with the law now in this Bill before us, Proceeds of Crime Act, Anti-Terrorism Act, Prevention of Corruption Act or involving fraud or dishonesty. Again, this is law which allows no need for special majority because, again, it is permitted within the realm of what our law allows right now.

We have gone a step further, in adding in a hurdle in a new clause 5A which

says that a member of the police service, if you want to go for this, if you want to access taxpaying information, do so by judicial permission. And the judicial permission that we have applied is *ex parte* without notice. For the non-lawyers amongst us, *ex parte* means one person alone can go to court without the other side, and you do not need to serve them with notice of what you are doing because what will happen is, you will blow the whistle and they are likely to run with the thing that you are looking for, or to come up with some obfuscating reason as to why it should be something other than what it potentially is.

The question arises in that whether one ought to introduce a burden of proof. We did not include a burden of proof specifically. We have sought to rely upon the common law because the observation of difficulty, coming from the international assessors with respect to our Proceeds of Crime Act, section 32, is that the reasonable grounds expressed there are complicated and time-consuming. One could argue that mere suspicion is not enough, as happens for instance in Norwich Pharmaceutical applications where financial institutions hand over information of a different standard of proof. Certainly, a balance of probabilities, which is the civil standard, is too high. A *prima facie* case is also close to an arguable case which is, again, too high, and what you are really looking for is to allow the Judiciary the opportunity to develop the law by establishing what its standard is because you need only hang your hat on the point that a judge must be satisfied with what has come before the judge in the request for production.

So we are skirting a careful line. And the careful line that we are skirting is that the assessors tell us, “Please, do not replicate the Proceeds of Crime approach.” The assessors effectively want the information *ex proprio motu*, of their own volition—

Income Tax (Amdt.) Bill, 2018 (cont'd)
Hon. F. Al-Rawi (cont'd)

2018.12.04

Sen. Mark: Madam President—

Hon. F. Al-Rawi: I have only a few minutes. I would not give way. I apologize. I normally would.

So, Madam President, the burden and standard of proof, I am sure is something that will engage this House in debate. I certainly wanted to raise it up front. It is not through lack of concentrated effort that we have not treated with it in an express fashion. We have adopted, instead, the same language recommended to us by Sen. Saddam Hosein coming out of the South African law, where there is no express standard in the law. And I think that that is a useful formula to allow the courts, from time to time, to manoeuvre.

Madam President, we go into clause 5 to put in, again, things which relate proportionality, meaning there is balance and that there is measure.

[Sen. Dr. Dillon-Remy stands.]

Hon. F. Al-Rawi: Sen. Mark is going to chastise me, but please.

Sen. Dr. Dillon-Remy: No, I just want to—on a point of clarification before you finish, hon. Minister, could you, at some point in time, indicate what the implications of the removal of the five clauses that you had to take away because you could not get the special majority—

Hon. F. Al-Rawi: Sure.

Sen. Dr. Dillon-Remy:—what would that have to do with the aim of the Bill in the first place?

Hon. R. Al-Rawi: Sure.

Sen. Dr. Dillon-Remy: Thank you.

Hon. R. Al-Rawi: Very good question, and perhaps I should dive to that now. I will just quickly traverse this. We have provided proportionality in clause 5 by

providing the fact that you have a limited purpose. You can only use it for certain things. You cannot go out with the purposes given to you. You cannot just give it to people, and importantly, that you commit an offence if you do it in the wrong way. We took the recommendation coming from Nirad Tewarie, the CEO of AMCHAM, asking us to raise the offences. We thought that Mr. Tewarie's recommendation, even though in opposition to another person's recommendation, was a good recommendation, and that is followed by an explanation in terms of definition as to what taxpayer information is and what statistical information is. Excellent question, Dr. Dillon-Remy, hon. Senator.

The five clauses that were removed were amendments to sections of the Income Tax Act, specifically sections 117A and section 93. And those were specifically to allow something which the entire Trinidad and Tobago Parliament has already agreed to. We agreed in the FATCA, the American tax reciprocal arrangement. In the FATCA Act No. 4 of 2017 this country, this Parliament, this Opposition, this Government and Independent Bench—

Madam President: Attorney General, you have five more minutes.

Hon. R. Al-Rawi: Thank you, Madam President—agreed that we would allow for the Competent Authority of the Board of Inland Revenue to exchange taxpayer information without consent with another Competent Authority. And the amendments that we proposed in clauses 6, 7, 8, 9, 10—we kept some of 6; we kept the offences, but the rest of it, even though it is illogical in the extreme to understand why we cannot agree to put in a formula exactly as FATCA, to say, “You do not need consent and you do not need the exception to the Data Protection Act”—even though we said that already and agreed it in principle, regrettably, we could not achieve the three-fifths majority support with the Opposition and it

therefore had to be excised.

The effect of that is that the Global Forum, in particular, may well come back to us, because we can only now turn a key. If this Senate passes this law, as I pray it will, we will be able to send the Act to the Global Forum, ask that we sign on to the treaty. They may very well tell us, “Well, look, you need to amend the things which we thought you had there before and which we commented on and which we approved on.” And then we will have to answer them and say, “Well, you know what I strategically believe? That it can be included in the Tax Information Exchange Bill, the other one.” Because in the American FATCA Tax Information Exchange Bill, we amended the Income Tax Act and we amended the Financial Institutions Act. So that potentially you have another bite there, but I could not get to them. The country could not get to them unless we presented them with enacted law. Only the enacted law allows you to get the agreement—the multilateral convention. Only the agreement allows you to put it into the legislation, in the Bills No. 2 and 3 which are in Joint Select Committee. So it is logical and sequential in its approach.

The clauses which mirror those clauses taken out are to be found: section 7, 8, 22, 24 et cetera, of the FATCA law. If you look in the FATCA law, you will see:

Notwithstanding section 4 of the Income Tax Act—

Notwithstanding several sections of the Data Protection Act, sections 4, 30, 31, 46, 96.

Notwithstanding the Data Protection Act and notwithstanding the Financial Institutions Act, you are reciprocally exchanging information without consent.

So that has been done already. And this law can be carved separately because there is no need to consider them. Because, we are conceptually—had we agreed to the Bill in the House as it was, we would only have been saying, if your tax information exchange laws allow you to exchange that information, you will not breach the Income Tax Act. So there was no jeopardy at all, because it was something which this Parliament would have to have approved by a three-fifths majority anyway.

For the life of me, I cannot understand the opposition to it, but this is our democracy, this is our Parliament, this is the rules of engagement. They are enshrined in the supreme law of the Republic of Trinidad and Tobago, so declared under section 2 of the Constitution, and that is the requirement pursuant to section 13(1) of the Constitution of Trinidad and Tobago, that says if you are going to trip a three-fifths right, you need the majority support.

So, Madam President, I dare say, this law is for legitimate aim in three purposes described: FATF; Global Forum; Trinidad and Tobago's crime fighting follow-the-money. This law is proportionate. It does not require any special majority. This law is intended to feed Trinidad and Tobago with the opportunity to have a fighting chance.

3.00 p.m.

I heard Prime Minister Mia Mottley, yesterday at Caricom, say, "Claim the ground you have and then move on". It was this Government's opportunity to claim the ground we have to write to the Financial Action Task Force as we did on Friday, November 30th, and God willing, if this Senate approves this Bill, to give us that fighting change to say to the Global Forum, "take us seriously", because their view of us is not as partisan politics. They will say to us, "you had 10 years,

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eight years, two years prior to 2010 of knowing that it is coming". From 2010 to 2018, eight years, Government commitments, Cabinet Notes, et cetera, you cannot come to an international body and say eight years is too much for you when you are the only person in blacklisted non-compliance. They look at you as we say proverbially, "coki-eye".

I beg to move. [*Desk thumping*]

Question proposed.

Sen. Gerald Ramdeen: Good afternoon, Madam President. Madam President, it is a privilege to join this debate on behalf of the Opposition to reply to the hon. Attorney General in a Bill entitled the Income Tax (Amdt.) Bill, 2018, a Bill which is only five clauses but which has serious implications for the citizenry of Trinidad and Tobago.

Madam President, a number of persons have spoken on the history of how this legislation has arrived to the Senate, and the hon. Attorney General will correct me if I am wrong, but on the 2nd of September, 2016, at the invitation of the Leader of the Opposition, the hon. Prime Minister and a team from the Government met with the Leader of the Opposition and a team from the Opposition and there were two very important issues that arose out of that meeting. One of those issues was in relation to this piece of legislation.

The Attorney General will recall he was sitting at the side of the Prime Minister and the parties agreed at that meeting. There was agreement that with respect to the FATCA legislation that the Attorney General foreshadowed was coming soon and the Global Forum that was coming shortly thereafter, that the approach of the Government and the Opposition to this most important matter would be one of collaboration where the Government will appoint a member and

the Opposition will appoint a member, and before the legislation actually reaches to the Parliament, all of the communication in relation to this piece of legislation would be shared by the Government with the Opposition.

Needless to say, the second most important matter that arose out of that meeting in September of 2016 was that in addition to that undertaking given by the Government, through the hon. Prime Minister, the second undertaking that was given to the Opposition was that the chairmanship of the Joint Select Committee on National Security would be put into the hands of an Independent Senator.

Madam President, I am not very pleased to be here standing in this debate and to announce to you that those two undertakings given by the Government, with respect to how we should proceed with respect to legislative matters and the business of the people in the Parliament of Trinidad and Tobago, were never kept by the Government. [*Desk thumping*] And that is the starting point of why whenever the Government comes and tells the Opposition they are going to proceed down a particular path, they are going to organize the people's business in a particular way, we always have the suspicions that the Government is not going to keep their word, and the only thing that they do keep is the fact that they do not keep their word. [*Desk thumping*]

Now, this piece of legislation, the Attorney General has made heavy weather in the other place and in the public domain about the fact that the Opposition has proposed no amendments to this piece of legislation, and in preparing for this debate I was trying to think of an apt analogy to explain why the Opposition has not proposed any amendments to this piece of legislation. Madam President, in another incarnation, you know that for those of us who are versed in the law, when you have a running down action and you get into an accident and the vehicle is

damaged too badly they call it a write-off. It has no way you could repair it. And you know, that is the analogy I want to use with respect to this piece of legislation, it is like a write-off. You cannot repair it. It does not make any sense you trying to repair it. It is beyond repair. So I want to start off by saying that.

The next thing I want to say is this, Madam President. I think with the experience that I have, I understand how important the Office of the Attorney General is in our democracy. The Attorney General, I have said more than once in this Senate, is the guardian of the public interest. Under section 76 of the Constitution, the Attorney General is in charge of the legal affairs of Trinidad and Tobago; by virtue of his Cabinet position the Attorney General is the legal advisor to the Government and to the Cabinet, but you see, Madam President, the Attorney General does not operate on his own, you know. The Attorney General is part of a Cabinet, and the Attorney General is the head of a Ministry. And as I have said before, I and the Attorney General will part ways on this one, the Attorney General will defend the legislation that he has brought to the Parliament, it is my role to examine it critically and to point out whether I think that that legislation is good law or not.

But, Madam President, I have been in the Senate and I have seen legislation brought to this Senate that has been struck down by the High Court. We recently participated in a Bill in this Senate that we passed, where if it was not for the Opposition, the Land Tribunal Bill would have allowed people to occupy lands without even the intention to possess. The drafters of the law did not include the mental element in that particular piece of legislation. Why go to that? It is very important because I will listen to the Attorney General defend his staff and the Office of the Attorney General, but there are serious implications when you bring

legislation to the Parliament that is not properly researched, that is not in accordance with the law, that is not in accordance with the Constitution.

The Attorney General said this afternoon that the reason why we must have these amendments to the Income Tax Act is because the Global Forum told us that the provisions in the Proceeds of Crime Act are not good enough. The exact words were that “they are too complicated and burdensome”. Madam President, I want to say that we make no apology in this Opposition. We are not a democracy that is based on the Global Forum, you know. [*Desk thumping*]

I understand that Trinidad and Tobago is part of a Global Forum and there are certain obligations, international and otherwise, that will affect us, but at the end of the day the supreme law of Trinidad and Tobago is the Constitution not the Global Forum. [*Desk thumping*] We depend upon the Attorney General to stand up to anybody, global, regional, or otherwise, who wants of us to undertake a process and make part of our law something that does not accord with the Constitution and the fundamental rights. We cannot subscribe to that. And if it is that that is the position, we cannot support legislation that seeks to diminish or undermine the fundamental rights that are guaranteed to each and every citizen of this country.

The Attorney General is entitled to bring legislation that requires a three-fifths majority, but that legislation is legislation that will require the support of the Opposition and it must pass the section 13 criteria in the Constitution. So I want to get down to these clauses that the Attorney General has outlined here today in these five clauses. I want to start, Madam President, with the Constitution. The Constitution by section 2 recognizes that the Constitution is the supreme law. Section 4(c) guarantees the right of the individual to respect for his private and

family life. It guarantees his freedom of thought and expression. These are the rights that are guaranteed under the Constitution, and let me get on straight into this business about Suratt because I come here today to deal with Suratt.

Madam President, every time that we have a debate in the Senate, Suratt appears. Why? No problem. Suratt is a leading authority in our jurisdiction. So let me get down to what Suratt means. Suratt is a Privy Council decision from the Judicial Committee that is cited at 2007 UKPC at 55, and let me get down to paragraph 58 which is what the Attorney General rests his case on today. This is what Lady Hale had to say about this idea of a three-fifths majority and absolute rights and qualified rights.

“...it”—cannot—“be the case that every Act of Parliament which impinged in any way upon the rights protected in sections 4 and 5 of the Constitution was for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property.” These are—“both qualified rights which might be limited, either by general legislation or in the particular case, provided that the limitation pursued”—and this is the important part.

Every time we hear about this Suratt, that the—

These are—“both qualified rights which”—are—“limited, either by general legislation or in a particular case, provided that the limitation pursued a legitimate aim and”—is—“proportionate to it. It”—is—“for Parliament in the first instance to strike the balance between individual rights and the general interest...the courts might on occasion have to decide whether Parliament”—has—“achieved the right balance...”

Madam President, to break that down for those who are not lawyers, it is

recognized that the rights that are guaranteed to the citizen under sections 4 and 5 are all qualified rights. Even the right to life is a qualified right because it can be taken away with due process. Nobody could argue otherwise.

After Suratt, they had Omar Maraj; that sealed the cake on that. But, Madam President, I listened to the Attorney General in the other place and up to yesterday I was asking Sen. Saddam Hosein if he could help me to get the *Hansard* as to what was said by the Attorney General. The Attorney General repeated it today, so I just want to—I could not believe it when I heard it the first time, so I said let me just get the *Hansard* to make sure that the Attorney General actually said what I thought he said. The Attorney General said, Madam President—I was looking at it on TV and the Attorney General was, “Listen to this. Listen to this. Listen to this one”. So—

Madam President: Sen. Ramdeen, be very specific when you are quoting because sometimes you are saying “listen to this, listen”. Is that what the Attorney General said; or are you saying listen to this, and now you are going to quote?

Sen. G. Ramdeen: I am going to quote it now, Ma’am.

Madam President: Right. So I am asking in your contribution when you are going to be quoting, lead into the quotation please, properly, so that we can all understand where you are coming from.

Sen. G. Ramdeen: I am obliged, Madam President. I am obliged. So this is what the Attorney General said:

“Hear this”—this is the quote—“Hear this, subsection (4). Subsections (1) and (2), that is the secrecy provisions, do not apply in respect of criminal proceedings, either/or on indictment or summary conviction—hear this, that have been commenced. You know what that means? No special majority

because a court has an inherent power to compel the evidence by due process—no special majority. Subsection (5)...”

Then the Attorney General said and I quote:

“Now, clauses 6, 7, 8, 9 and 10. These require special majorities. But, Madam Speaker, listen to this. Subclauses 6—and some of it can be disaggregated to be kept with no special majority. —6, 7, 8, 9 and 10 are all word for word conceptually from the FATCA Bill, which the Opposition agreed to...”

—and this is the part I want to pay a little attention to:

“So the thing which they are tripping over and complaining about, as requiring a special majority, does not require it. The big issue with the police; we need the police. If we put in the judicial authorization”—listen to this—“we satisfy proportionality within the concept of Baroness Hale...in *Suratt*.”

All right, Madam President. So the Attorney General tells us then and today, he says, “You put in dis ting call judicial scrutiny, dais proportionality”.

Madam President, the reason why I went into all of this history is because of this, the Attorney General is only as good as the team that he has; it is just like the Government. They are only as good as the team that they comprise collectively. I will tell you how great the team is just now. [*Crosstalk*]

Madam President: Sen. Hosein, please.

Sen. G. Ramdeen: So, Madam President, I sat down and just wanted to bring this home to the population.

In this Cabinet that constitutes the Government of Trinidad and Tobago, they have the hon. Attorney General, he is a lawyer; they have the Minister of

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National Security, he is a lawyer; they have the Minister of Housing and Urban Development, he is lawyer; they have the Minister of Public Administration, she is a lawyer; the Minister of Agriculture, Land and Fisheries, he is a lawyer; the Minister of Health, he says he is qualified to be a lawyer as well; the Minister of Finance, he has two LLMS; and the Minister in the Office of the Attorney General, he is also a lawyer. So in this Cabinet they have eight lawyers. Eight! Sorry—

Sen. Rambharat: Minister of Planning and Development.

Sen. G. Ramdeen:—seven and a half. Planning and Development too? Planning and Development is a lawyer too. Thank you, Minister of Agriculture, Land and Fisheries. So one-third of the Cabinet is like a law school. One-third of the Cabinet are lawyers.

Hon. Senator: Two geologists. [*Laughter*]

Sen. G. Ramdeen: “But that eh helping allyuh when it come to—dat really eh helping allyuh. [*Crosstalk*] You shouldn’t be boasting about dat.” Anyway, they have nine lawyers in the Cabinet. Madam President, you know what really bothers me about this legislation? They have nine lawyers in the Cabinet, more than one-third of the Cabinet are lawyers, but the Attorney General—and this legislation has to pass through the Cabinet before it comes to the Lower House, and before it comes to the Senate. The Attorney General, under our democracy, has to go to the Cabinet, get Cabinet approval before bringing it to Parliament.

Madam President, how anybody could say that putting in the clause that requires judicial scrutiny satisfies proportionality? Well, I do not know. I just do not know. I mean I know a little bit about law, a lil bit. So I just do a lil reading here and there and try and come up with a good idea now and then, but you know, Madam President, they had law beyond Suratt, you know. It had law beyond

Suratt. So I came across this case called *Bank Mellat v Her Majesty's Treasury*. It is a decision from the Supreme Court in 2013. The United Kingdom Supreme Court was deciding a matter, almost as serious as what was going on here, that we are asked to decide as a Parliament, and it baffles me how every single constitutional textbook, everyone who could read—this is the leading case on proportionality in the Commonwealth and “nobody eh bother to read it”? Seriously? “Nobody eh bother to read it” so that they could come here and tell us whether this piece of legislation that I agree the requirements are, it must pursue a legitimate aim and it must be proportional. If it does not do that, Madam President, then you need a special majority to pass it. [*Desk thumping*]

So, what is this thing called Bank Mellat say? You know what this case was about, Madam President? I will tell you, just give me a lil time to explain how serious this thing is. This case called Bank Mellat was about people who were financing terrorism and a nuclear programme in Iran, and you know what the United Kingdom started to do? Exactly what we are required to do here by virtue of the United Nations General Assembly. I know I have limited time, Madam President, but allow me to read just the opening of the speech of Jonathan Sumption, soon to be the ex-President of the United Kingdom Supreme Court. I want to rely on what Lord Sumption said because I think he also knows a little bit about this.

“The proliferation of nuclear weapons is an international issue of great importance to the security of the United Kingdom and the international community. For a number of years, Iran has had a major industrial programme which the United Kingdom, along with the rest of the international community...”

There were certain United Nations Security Council Resolutions, 1737 and 1747 that banned these countries from doing business with the entire international community. Madam President, let me get down to the business of this thing, eh, before I run out of time. Just to emphasize how important this case was, there were nine members of the Supreme Court sitting on this matter and let me tell you what the court had to say about this thing called proportionality. Listen to this, Madam President. When the Attorney General and the Government, in particular, tells us, “Throw in a lil judicial scrutiny, dais proportionality, no big ting”, let me tell you what the Supreme Court was saying:

“The requirements of rationality and proportionality as applied to decisions engaging the human rights of applicants, inevitably overlap.

The classic formulation of the test is to be found in the advice of the Privy Council, delivered by Lord Clyde, in”—a very important case called—“*De Freitas v Permanent Secretary of Ministry of Agriculture...*”—that is where this all started. “But this decision, although it was a milestone in the development of the law, is now more important for the way in which it has been adapted and applied in the subsequent case-law...”

And then they have a number of cases, the most important of which is a case called *Huang v Secretary of State for the Home Department*, 2007, two appeal cases at 167 and a quote from Lord Bingham. But listen to this, Madam President. When we are told just slap in a lil judicial scrutiny and you are on your way,

“Their effect can be sufficiently summarized for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure.”

That is in defence of the legislation and this is what you must satisfy.

“...whether its objective is sufficiently important to justify the limitation of a fundamental right;...whether it is rationally connected to the objective;...whether a less intrusive measure could have been used; and...whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.”

Now, Madam President, if that is the test of what is proportional in law, expounded by the United Kingdom Supreme Court, the same people who sit on the Judicial Committee of the Privy Council, how can you possibly come here and tell us we have judicial oversight, therefore, it is proportional, and we must accept that?

Madam President, in this particular matter, do you know what the court said?

“These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them.”

What this requires is that the Government must come and show us that these aims of the legislation that the Attorney General has set out, which is the requirements of FATF, the requirements of CFATF, the Global Forum and the home-grown situation, according to use the words of the Attorney General, allow us to intrude on these rights. The Attorney General says, “You doh need no special majority”. No problem.

In this Bill, clause 5, which seeks to insert new subsection 6(b), provides:

“Notwithstanding subsections (1) and (2), a person having an official duty or being employed in the administration of this Act shall, for the purposes of subsection (5)—

- (b) provide taxpayer information to a member of the police service of the rank of Superintendent or above attached to the Division or Unit of the police service responsible for financial investigations or fraud...”—where such information is required—“for the purpose of—
 - (i) investigating whether an offence...under the Proceeds of Crime...Antiterrorism”—prevention of corruption or involving fraud or dishonesty.

So, we understand proceeds of crime, anti-terrorism, prevention of corruption. Now we come down to this omnibus thing about involving fraud or dishonesty. Well, Madam President, how that could ever be the least intrusive way in which this right—because despite what the Attorney General has told us, any provision of information pursuant to this legislation by any member that is of the police service, any request by any member of the police service, breaches your right to privacy from the time the information is provided. There is no doubt about that under the legislation. The Attorney General has not come asking for a three-fifths majority. So in accordance with the law, the Attorney General must demonstrate that this law, as it stands, pursues a legitimate aim, I am not on that, but it is proportionate.

So, Madam President, how is it that we can give power under this piece of legislation for any offence involving fraud or dishonesty? I wanted to bring home how this piece of legislation can work in reality. So let me give you a real-life example of where this could apply and how it could apply. I am a lawyer, I have a land development. I am putting down foundation on my land development. A partner of mine doing a little construction for the Government on some other project, and I tell him, “Well, you know what, that extra material there, bring it on

my land development nah, and we could always put down the foundation”. So my partner takes the material, gravel, sand, overburden, brings it on my land development. And as we know, that is unlawful, but that does not have anything to do with fraud—sorry, that does not have anything to do with anti-corruption, that does not have anything—well, it might be, if you are a person in public life—proceeds of crime, terrorism, prevention of corruption. But you know, Madam President, under that factual scenario the police can go and ask the BIR for my information because it involved dishonesty or fraud.

So I want to say at the very outset, Madam President, you see this clause that this legislation has on page 2, clause 5, subsection 6(b), no matter what the Attorney General tells us, that requires a special majority. [*Desk thumping*] In the current form, I can say on the authorities, the law as it presently stands from the highest court—because the next thing somebody might come and say is “well, you know, Ramdeen citing a Supreme Court decision, that doh bind us”, and that kina thing, Madam President. So let me just tell you that in Privy Council Appeal 2016, UKPC 30, *Madhewoo v State of Mauritius*, a decision of Lord Hodge delivering the advice of the Judicial Committee, went into the same principles, the exact principles, and said exactly the same thing.

In this particular case, Madam President, you know what they were doing in this particular case? They wanted to test whether giving somebody’s fingerprint had breached the right to privacy. And in this case the same principles that were laid down in Bank Mellat, were applied by the Privy Council; that learning goes way back. The Attorney General will be very familiar with the Canadian case of Oakes. It is the locus classicus in this area and, therefore, I do not understand how the Attorney General knows Oakes, he knows Bank Mellat, he knows all of these

cases, and the people who are advising the Attorney General have not advised the Government that the legislation that they have brought here and asked the Parliament to pass is unconstitutional. [*Desk thumping*]

Madam President, I have sat in this Parliament for days with the Government, for days, fixing the legislation, and the Opposition with respect to this piece of legislation was prepared to work with the Government to get it right. This piece of legislation—you know, the Government has done something that nobody thought was actually possible by what was done in the Lower House and what is brought here today.

3.30 p.m.

And I mean, sometimes the Government really surprises us because we are actually in a more non-compliant position with the passage of this legislation than we were before without the passage of the legislation. [*Desk thumping*] So the talent of this Government and this Cabinet, Madam President, unmatched, unparalleled, really is.

But, Madam President, a very, very serious matter that the Attorney General has to take into consideration which was respectfully raised by the Attorney General is this issue about the provisions under the Proceeds of Crime Act and from the time I saw this legislation in its form—because, Madam President, you know, this Government is really breaking records. They will break the record just now for the most murders in one year, they will break the parliamentary record for providing a Bill with the most amount of amendments because this is the fifth version of this Income Tax Bill that has been presented to the Parliament, five times. And you would think that after five times, you might get it right but we still cannot get it right.

Madam President, you know, we have something in this country called the Proceeds of Crime Act. The Proceeds of Crime Act allows the police wider powers than are given to the police in this piece of legislation. It provides a mechanism under section 32 for a police officer to get information for:

- “(a) a specified offence;
- (b) whether a person has benefitted from a specified offence; or
- (c) the extent or whereabouts of the proceeds of a specified offence...”

And Madam President, let me just for completeness say, so that people will understand what a specified offence is. The Attorney General says “we doing this to go after, follow the money”. You know, Madam President, nothing is wrong with following the money you know, absolutely, but the problem is, this Government is intent on following the money but “dey eh finding no money”, that is the problem. [*Desk thumping*] They promising to keep following, following, following but “dey eh finding nothing”. So this idea of keep trumpeting the idea that “we will follow the money, “we will follow the money”, the point is, Madam President, we are going into four years and “we eh get no finding”, it is continuing about “following”.

Madam President, let me tell you, under the Proceeds of Crime, the offences that any police officer that satisfies the requirements of section 32, what are the offences that they could get information on:

- “(1) Participation in an organised criminal group and racketeering;
- (2) Terrorism, including terrorist financing;
- (3) Trafficking in human beings, body parts and migrant smuggling;
- (4) Sexual exploitation including sexual exploitation of children;
- (5) Illicit trafficking in narcotic drugs and psychotropic substances;

- (6) Illicit arms trafficking;
- (7) Illicit trafficking in stolen and other goods;”

Hear this one, Madam President:

- “(8) Corruption and bribery;
- (9) Fraud;
- (10) Counterfeiting currency;
- (11) Intellectual property offences including counterfeited and piracy of products;
- (12) Environmental crimes;
- (13) Murder, grievous bodily injury;
- (14) Kidnapping, illegal restraint and hostage-taking;
- (15) Robbery or theft;
- (16) Smuggling (including in relation to Customs and Excise duties and taxes);”

Listen to this one:

- “(17) Tax crimes...”

Tax crimes.

- “(19) Forgery;
- (20) Piracy; and
- (21) Insider trading and market manipulation.”

Madam President, the Parliament of Trinidad and Tobago, the Government and the Opposition passed the Proceeds of Crime to do exactly what the Attorney General has told us today that the Global Forum wants to do.

But you know what they do not want us to do? I will tell you what they do not want us to do. When you look at section 32, there are certain conditions that

are attached to which a police officer must satisfy. [*Interruption*] Correct. But you know the problem with that, AG, is this. When a police officer “go and breach the law”, go and get somebody information, misuse the information, you know who has to pay for it? Not the Global Forum “yuh know”, the Office of the Attorney General. You know what that means, Madam President? Not the hon. Attorney General, it means the taxpayers of Trinidad and Tobago. So they want to give us a recipe for disaster but when that disaster occurs, “we not gehing” any help from the Global Forum to fix it you know, “is the people of Trinidad and Tobago who must suffer the loss and take de lash for it”, and the Attorney General must find himself defending it.

So is anybody not concerned that this legislation we are being asked to pass in an environment where there are rampant rogue elements throughout the Trinidad and Tobago Police Service? The Government does not like to talk about that now because they are, for want of a better word—I want to be careful how I say this, but they want to take credit for the work of the Commissioner of Police. No problem with that. But the point about it is, Madam President, the murders are going to reach 500 within the next week and there is no answer for that. The FIU says that there are \$22 billion in suspicious transactions, “nobody eh gehing” prosecuted. The Attorney General tells us, today, \$128 million on Clico, “nobody eh geh” prosecuted for that either. Probably between 2010 and now, it is about \$500 million that was spent on one enquiry. The Attorney General makes reference to Piarco—

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

Sen. G. Ramdeen: Thank you, Madam President. The Attorney General makes reference to Piarco but I am sure that the money that was spent on Clico is more

than the money that was spent on Piarco between 1999 and 2018. But the problem is, Madam President, the Attorney General has set out very clearly that what this legislation requires is constant monitoring on a yearly basis. I think the Attorney General says four times a year in relation to one, two times a year in—but, Madam President, the passage of legislation without putting in place the mechanism to operationalize the legislation and bring people before the courts, prosecute people and get evidence in a form that people can be held accountable for their action is going to lead us just pushing the barrier one way, step down.

Next year, when we go to CFATF, FATF and Global Forum, the legislation is passed but nobody is prosecuted. You have another \$22 billion in suspicious transactions and the FIU is complaining, then where would we be? You think we are going to—this idea of, well, we get off the blacklist or the grey list or whichever list we on, we are not helping the situation. Because like I said in the FATCA debate, we should not be waiting on the Global Forum to tell us we need to fight white-collar crime, we need to fight money laundering.

Madam President, if you drive around this country and see the malls and the supermarkets that are being opened up everywhere, you really think you need the police and the Global Forum to “tell yuh who money laundering and who not money laundering? Is not no secret.” It is just like the drug trade. Everybody except the police and the FIU know “who money laundering and who in drugs but nobody cyah be prosecuted for it”. And we do not see anybody with that, let us pass more legislation. Let us pass more legislation and let people open more malls, “leh them open more supermarket and leh dem wash” more money through Trinidad and Tobago and then we come and complain, \$22 billion in suspicious transactions.

When are we going to go a specialized unit, like Commissioner Griffith says, to deal with white-collar crime? When are we going to train them? When are we going to put them in a form that they could be able to prosecute these offences? Nobody has thought about that. All we need to do is pass the legislation and abracadabra, “we go be able to pass the Global Forum, we go satisfy CFATF and everything hunky-dory after that”.

Well, Madam President, if that is the plan of the Government, the Government could continue to do that. They can continue to push the boundaries one step down so that they will pass January and they will reach midterm and they will push it again and push it again and like with the perfect example of all of this is when the Government came and told us that the solution to crime is the anti-gang legislation. We passed it, we gave them support and today, what is the position with the anti-gang legislation? We are no better now. Right? We are worse off with the anti-gang legislation than we were when we did not have anti-gang legislation.

So, I am not going to partake in this exercise, Madam President, to the extent of supporting this legislation and I will say exactly why. I know a little bit about law, I know a little bit about public law and I know a little bit of constitutional law and all I am waiting on is this legislation to be proclaimed, assented to and “I heading to the High Court”. [*Desk thumping*] “Because ah cyah do it now because it aint pass yet.” As soon as it is assented to, it is one place “I heading”, to the High Court because I am confident, as the law presently stands, if this legislation is passed in its current form, “is about two hearings and it struck down”. [*Desk thumping*]

So, you know, Madam President, we always tell the Government: “pause for

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ah cause, do the right thing, this is serious business". The passage of legislation that infringes somebody's fundamental rights, it is something to be taken quite seriously because the Constitution is designed to protect those rights. They are entrenched rights. You cannot come to the Parliament and abuse your power as a Government to be able to just railroad legislation through people's rights because, Madam President, the generation of today and the generation to come after us will judge us very harshly by the decisions that we make today that will affect their rights in the future, and we must be a little bit more mature about these decisions that we are taking. This is about not PNM and UNC. The Constitution is not red or yellow. The Constitution is the supreme law. The Attorney General is the guardian of the public interest. He has advisors. Go and read the cases.

Madam President: Sen. Ramdeen, your time is up.

Sen. G. Ramdeen: Thank you, Madam President. [*Desk thumping*]

Madam President: Sen. Deonarine.

Sen. Amrita Deonarine: Thank you, Madam President. Let me first begin by thanking Her Excellency for this tremendous honour of being able to serve my country and its citizenry. I look forward to working with my colleagues as we together seek to realize Trinidad and Tobago's true potential.

Madam President, I stand here today to contribute on this truncated version of the Income Tax (Amdt.) Bill that was brought to Parliament almost six months ago and I immediately reflect to the two words in my last sentence: "together" and "potential". How much has the potential of Trinidad and Tobago been stymied by partisan politics, the discontinuity in policy, a lack of transparency and accountability and white-collar crime?

Madam President, today, I would like to briefly remind my colleagues and

the people of Trinidad and Tobago that the lack of the passage of these Bills—and I speak about the three Bills, the sister Bills as well—can create a wave of de-risking and create economic implications for the economic players in Trinidad and Tobago. Without these pieces of legislation, there would be an increase in the propensity for international banks to de-risk correspondent banks.

Following the 2008 global financial crisis, global banks began this process of de-risking as they began to re-evaluate their risks and business models. As a result, international banks have been reducing activities in areas that they perceive as either profitable or detrimental to their risk tolerance. The global trend has been most evident in the reduction of correspondent banking relationships and have impacted the Caribbean region—most evidently, cases of Belize, Barbados, Bahamas and St. Lucia. Tightening these rules have proven to have adverse consequences for small, open developing economies when access to financial services are eroded. Correspondent banking relationships are critical for enabling key financial and economic transactions and without them, the Trinidad and Tobago economy can suffer as international trade, investment flows and remittances are reduced.

Madam President, what would this mean for importers and exporters? You see, Madam President, conducting cross-border transactions would now become more difficult and take longer and even cost more. This can seriously affect our trade balance and undermine economic activity in an environment where we depend on the OECD market for almost 60 per cent of our exports and 58 per cent of our imports. But how would this undermine economic activity? Once correspondent banks decide to de-risk, increase due diligence and increase transactional costs, there would be an increase in overhead cost for businesses;

there will be limited access to capital investment and raw materials; there would be delays in conducting transactions and delays in sending and receiving shipments.

As cross-border transactions become more difficult, our Ease of Doing Business ranking can fall. Furthermore, the cost of production for local businesses can increase and even crowd out new and thriving small and medium enterprises. In addition, de-risking can also constrain investment flows as foreign investors will be discouraged to invest in Trinidad and Tobago due to uncertainty attached in repatriating profits back to their home country—yet another issue that can jeopardize our business climate.

The acquisition cost for foreign exchange will further be exacerbated as the foreign exchange availability in the banking sector will reduce. Likewise, our current account balance can face another hit in the immediate short to medium term as our imports become more expensive and exporters adjust to the increased burden of excessive cost and accessibility barriers. As a consequence, our net official reserves, having already declined by 11 per cent in the last year can further suffer and neutralize the IMF predicted slope in decline.

More concerning is the possible increase in activity in the informal cash economy as well as the parallel foreign exchange markets. These metrics feed directly into the sovereign credit rating by Standard & Poor's through institutional assessment and banking industry, country risk assessments among other factors. The current S&P rating is BBB+ with a negative outlook. At this time, the country cannot afford any downward pressure on our sovereign credit rating negating the work of the Ministry of Finance over the past couple of years.

Moving on to remittances—and I would not like to dwell here because the issue of remittances have well been ventilated in the public domain and also in this

honourable House. Remittance receipts account for less than 1 per cent of GDP since 2011 but has been maintaining an upward trend until 2016. Furthermore, remittance outflows have been increasing exponentially since 2011. Although this contribution to GDP is small, the resulting socio-economic consequences cannot be considered negligible.

In summarizing, Madam President, we need to protect our correspondent banking relations as their restrictions can impose a negative impact to the economic development of this country. It can increase financial inclusion, reduce trade flows, hamper foreign direct investment inflows, reduce remittance flows, contribute to the growth of the informal financial sector, exacerbate the perception that the country is high risk due to financial crime. It can also increase the cost of production that can ultimately be transferred to the people in the form of higher prices and the list goes on and on, Madam President. All of which can compromise the country's business climate, private sector development, global competitiveness and overall economic progress.

According to our Vision 2030 strategic agenda, the private sector is expected to lead the diversification thrust of our country. Vision 2030 sees the Government playing a facilitative role towards development in terms of creating an enabling environment. To do this, we all need to place emphasis on removing constraints and creating incentives that can mobilize the private sector, not adding to them.

This Bill may not meet the Global Forum requirements but in a couple of months, this honourable House will once again have to deal with this matter. I beg to question: Are we upholding our responsibility to the citizenry of Trinidad and Tobago? I respectfully ask, Madam President: Are we working towards achieving Trinidad and Tobago's full potential? Is our country's economic and social

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stability our utmost priority? As I end my brief contribution today, I would quote our national motto: “Together we aspire, together we achieve”. Thank you, Madam President. [*Desk thumping*]

Madam President: Hon. Senators, permit me to congratulate Sen. Deonarine on her maiden contribution. [*Desk thumping*] Sen. Richards.

Sen. Paul Richards: Thank you very much, Madam President, for recognizing me and allowing me to make what will be a brief interjection. Yes, I know I always say that and go on for quite a while but it will be brief today. And before I actually go into the contribution, let me also join you in congratulating Sen. Deonarine [*Desk thumping*] for her maiden contribution which was extremely sober and one can tell that her experience and expertise are going to be well utilized in this honourable House. She was telling me before she went on that she was so nervous. You did very much better than I did, so congratulations to you.

Madam President, this is a very critical piece of document, this Income Tax (Amdt.) Bill, 2018 and I echo Sen. Obika’s sentiments in terms of his brief interjection with the hon. Attorney General, although it is just five clauses, it is extremely important as articulated by the hon. AG because of what it means for Trinidad and Tobago moving forward. Whether or not it meets Global Forum benchmarks to move us out of grey and into more of a compliant mode is left to be seen, given the amendments that seem to have had to be made, and from what I have heard and read, it may not but certainly it will go somewhere in showing the authorities that we are trying in some ways and it is better than not trying and letting it fall down because I think there will be no doubt left in their minds, at that stage, that, well, this country is very recalcitrant in that regard. So I think that needs to be mentioned.

One of the things I want to cite, the aspects I want to cite, through you, Madam President—let me turn this way before I get into trouble—is unfortunate continuation of an extremely acrimonious engagement between key stakeholders in terms of the people required to collaborate on these types of legislation and all quite frankly. And I think I have said in the past, I echo Sen. Deonarine's final comments that the only way we are going to move forward is "Together we aspire, together we achieve". I am not naive to the nuances of party politics but at some point, we need to put down the gauntlet and realize that the differences are less than the commonalities in terms of our aspirations for Trinidad and Tobago and in these sorts of situations, we really need to look at that.

Another one of the issues I have in terms of this process, Madam President, is, again, like I cited in the Petrotrin issue, the type of approach taken—and I am going to put this one on the Government because the Government is running the country—in the information outflow to the general public because, like with Petrotrin, there is a deficiency in an effective communication strategy related to these Bills, not only for stakeholders like us but for the general public to have a clear understanding because there is so much noise in the ether that very often the public is confused as to what the real issues are, what the timelines are.

One of the interesting bits of information that I have been able to get— and this comes from the Global Forum on Transparency and Exchange of Information for Tax Purposes, a roadmap for developing countries document, which is a report of the G20 which is dated the 5th of August 2014—is steps to effective implementation of these processes, particularly, or these Bills or the amendments that are required to meet the global standard benchmarks like FATCA, and they are just four simple steps but they have huge implications.

One, an “Understanding” of what is at stake and the Attorney General has outlined, through you, Madam President, that this is eight years in the going and I would imagine that in eight years, the public should have had a clearer understanding, one, from the previous Government and secondly, from the present Government on what is at stake or what was coming down the pipeline so the public has a clearer understanding of what is happening to make decisions as to whether the Government is advocating adequately or the Opposition is making a clearer point, and that, to me, is again, lacking. So the understanding of stakeholders and the public. And this is very important.

Two, “Consultation”; and this is the G20 which provides this report. Effective consultation and you know, consultation seems to be a nebulous word in Trinidad and Tobago. Consultation could mean three people in a room somewhere with some information given without real collaboration and that is lacking. Four, “Legislation and international agreements” which we are seeking to amend here to meet the benchmarks. And five, “Implementation: IT and training”.

I just want to quote, by your leave, Madam President, a part of the document and this particular clause has to do it—and these are four, really. It is corruption, tax evasion, terrorist financing and money laundering. One of the areas is “tax evasion and offshore wealth” and to underscore the importance of this—and I will say from the very start, I am not happy with all aspects of this and I will point out two particular areas that I am extremely concerned about but I will say it will be irresponsible of me not to support it given the timelines involved. So I have to support it in this instance, not that I am happy with all aspects of it because the alternative could be too damning for Trinidad and Tobago and I think we have a wider responsibility.

For those of you old enough to remember *Star Trek* and Sen. Ramdeen said it when he said the importance of proportionality on this and abrogating rights of one person for the larger population, Spock used to say “the needs of the many outweigh the needs of the one”. For those of you who remember *Star Trek* and I think in this case when it comes to terrorists or national security issues, that is applicable and in this case, the needs of the one will mean very little if the needs of the many are swatted by terrorist activity, et cetera. So we have to come together on this. So I will quote:

“Detection of tax evasion is critical for developing countries in particular: US\$8.5 trillion of household assets are held abroad. In 2012, more than 25% of all Latin American and almost 33% of all Middle East and African households wealth was held abroad compared to the worldwide average of 6%. Estimates of tax revenue and illicit financial flows lost by developing countries generally range in the hundreds of billions of US dollars per year...”

So we see the shortcomings of legislation that does not meet the benchmarks in this case.

Also, Madam President, another interesting aspect of this that I would like to cite is to underscore what Sen. Ramdeen indicated in terms of us jumping to the beat of international agencies, and we have to, we are a small country. But we are seeking here to grant automatic access to tax information and we have \$22 billion of suspicious transactions cited by the FIU. We are not using the same information effectively in our own jurisdiction but we are granting access internationally. What does that say about us in the wider scheme of things? The mechanisms have to be tightened so that we can benefit from the same information that we are

granting access to, to international agencies and we have to look at that.

Another aspect of this, through you, Madam President, is the issue of—and I know it is before a joint select committee but if we are looking at the issue of corruption, tax evasion, terrorist financing and money laundering, the issue of the importance of finally passing effective gambling and gaming legislation in Trinidad and Tobago because it is directly tied to this, because a significant percentage of the moneys that pass through an unregulated gambling and gaming industry goes toward terrorist financing. So that has to be one of the complementary bits of legislation that strengthens this if it is to be effective.

Another part of the document that I think is noteworthy of mentioning, Madam President, is the “Cost considerations in implementing the Standard”. So passing the legislation is one thing even if the legislation meets the international benchmark for Global Forum but then there are some “Government Cost Factors” and “Financial Institution Cost Factors” involved and these include:

- The existence of legal mechanisms for international exchange innovation, one.

Some of these are provided in the extent of the Bill.

- The existence of legal mechanisms to access and exchange information held by financial institutions and other relevant institutions.
- The degree of skilled personnel in tax administration.

Is that applicable for Trinidad and Tobago even if it is passed?

- The current use of information technology in tax administration.

That is also one of the underlying foundational mechanisms that is necessary for this to be effective.

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- The existence and accuracy of electronic domestic taxpayer database to enable a high degree of matching data.

And I know the Government has been advocating for the revenue authority, which should provide the framework for this. But that is not yet here.

- The scope of partner jurisdictions with which standards will be conducted.
- The current confidentiality and data protection measures (legal, information technology and human resources).

That is a big question mark in Trinidad and Tobago.

- The amount of information to be received and not received, depending on the legislation.

And also, in terms of the financial institution cost factors, and these are not only, as we realize, financial cost but social cost also.

- The connection with multinational group allowing replication of existing systems in branches/subsidiaries in developing countries.
- The extent to which customer records are already maintained in electronic form and protected.
- The extent to which customer records are centralized or fragmented within various financial institutions in a particular jurisdiction.
- The degree of sophistication of existing customer due diligence.

If the wider population, as I said with the education factor before, is understanding what is required of them as we move forward, because they are real ones who will have to be affected by this.

- The existence of information communication processes for domestic reporting to the tax administration.

As I said before, the Government is touting revenue authority as the mechanism through which that could be achieved, but these are fundamental requirements, according to this G20 document, that need to be in place even if the amendments here meet the benchmark.

- The scope of reportable accounts within a jurisdiction.

—and—

- The current confidentiality and data protection measures (legal, information technology and human resources).

That is financial institutions.

Another one of the points I want to raise, Madam President, and I, through you, discovered this through research, is a concern from Caricom countries. And this is not something that is new to smaller developing countries, and the disparity in requirements between the larger countries literally forcing smaller developing nations to comply when the playing field is not equal, and the suggestion by many experts in this field that Caricom or the region should have petitioned as a group to G20 as opposed to individual nation states being asked to supply information and different legislative agendas and amendments simply because different smaller developing states have different legislative framework statuses. They have different capabilities in terms of resources. They have different response rates because of their limitations and resources.

And when we are not able to as a grouping—and it is interesting that we had a CSME conference in Trinidad and Tobago this week—we are not seeing that we cannot—it is not as productive for us to fight these battles alone because we will always be at a disadvantage to the G8 countries and the other big groupings, the European Union, et cetera, because of the mere size that we are. And we must

understand that that is really the way forward where these types of legislation are concerned. The Caricom grouping of Attorneys General must come together and discuss these things beforehand so that we can present and petition together. That is the only way we will be able to get parity in terms of what is being requested of us because, as it is now, we are really not being given much choice in the matter. And I am sure that the larger countries have a lot more—like China and Russia—have a lot more leverage, simply because of the size of their economies. And the only way for us to be able to, even on a small scale, balance those issues, is to come together as a Caricom region.

Madam President, to go specifically to the Bill now, and the issue I have is similar to what was outlined by Sen. Ramdeen with this section 6(b) and 4 and that wide ranging, in terms of interpretation, involving fraud and dishonesty. And I just did a quick scan, and I know I am not a legally trained mind, of the meaning of—well fraud is fraud, but “dishonesty”. And the number of interpretations one can have for dishonesty. If you lie to your wife you are dishonest. If you lie to your husband you are dishonest. And when these clauses and phrases end up in law in other jurisdictions there are checks and balance to protect you under these conditions that do not necessarily exist in smaller states like Trinidad and Tobago.

We are now—we see we have a new Commissioner of Police but that will not, in an overnight time frame, weed out corrupt police officers who are apt or wont to misuse the law when it is in these kinds of vague states. And that is the concern. Because when we, as the hon. AG indicated, try to balance the proportionality of it, it must be against the backdrop of an institution that people can trust. Because at the end of the day, this is a police officer and yes, we should be able to trust the police. But in reality, the population does not. And we know

there are elements within the TT Police Service that will abuse this. I have no doubt about that. And that is of great concern and I understand the need to document it in a particular way, but it must be against the backdrop of understanding where we are and where we are not in terms of these institutions. Because this same thing, they come back to, as the old saying goes, bite somebody else who it was not originally intended to bite.

So, you know, in closing, Madam President, because I did say I would be short, you know, the AG quoted the hon. Prime Minister of Barbados, Mia Mottley, in her visit to Trinidad and Tobago. “Claim the ground on which you stand”. But I want to say, let me go further to Jamaica, and if we are going to be demanding more of citizens in terms of the abrogation of their rights we need to be able to use information to deal with corrupt elements, white-collar crime, corruption, tax evasion, terrorist financing. As the old Jamaican saying goes: “dance ah yard—dance ah home before yuh dance abroad.” It makes no sense making information available internationally if we cannot use it here, and the institutions are not looking like they are going to be able to use it here.

We had to have a North American law enforcement agency tell us we have cocaine in our backyard shipping from Trinidad and Tobago many years ago. Nothing has come out of that. Is this law going to end up being the same thing? We are giving information or granting access to information to international agencies; information that we have right here that we are not using to protect the very citizens who the law is touted to protect and the State of Trinidad and Tobago.

So I will just want us, hon. AG, to, while we are doing this, there is a saying you like to use: “Let de plane take off and bill it. But I ain see de undercarriage fixing at all. Well yuh wings are out and ting, yuh know” but there are some

fundamental elements that can cushion our landing in these instances that are not being championed in a parallel manner. And with those few words, Madam President, I thank you. [*Desk thumping*]

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West): Thank you, Madam President. Madam President, might I, on behalf of this bench, also extend my congratulations to Sen. Deonarine for her concise, clear and very lucid contribution, [*Desk thumping*] truly representative of an Independent Bench. So, I thank you.

Madam President, Sen. Ramdeen in his commentary said something to the effect about Trinidad and Tobago being a democracy and not accountable to Global Forum which, off course, we all clearly agree with. But what Sen. Ramdeen failed to comment on was the fact that the reason why we have a responsibility to Global Forum is because his Government, when they were in power, created a commitment for Trinidad and Tobago with a deadline. We cannot ignore that, Madam President.

When the Global Forum came up with the plan to deal with the issue of transparency of information they imposed obligations on the G20 which were immediate. But with respect to developing countries they had options as to when they would sign on and when they would accept these obligations. Trinidad and Tobago had that option as well, and Trinidad and Tobago signed on, which made us responsible for doing certain actions by this time. And during the period 2011, when the obligation was created, to 2015 when the UNC demitted government, they did nothing to satisfy the obligations that they themselves took responsibility for and they have squarely placed us in the position where we are today.

Among the countries that signed on to this obligation to act by 2018, from

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the Caribbean: Antigua and Barbuda, Aruba, the Bahamas, Belize, Curacao, Dominica, Grenada, St. Kitts/Nevis, St. Lucia, St. Vincent and the Grenadines, St. Maarten and, of course, Trinidad and Tobago. The countries that deferred giving a commitment to the Global Forum as to when they would satisfy these international obligations included Dominican Republic, Jamaica and Guyana. So an option existed in 2011 as to whether we would accept an obligation to comply with this deadline that this Government is now seeking to meet. And the Government at the time accepted the obligation, did nothing, left it up to us, and now are asking us: “Why are we accountable to Global Forum?” Because the country made a commitment to Global Forum. That is why are accountable. [*Desk thumping*]

So, Madam President, while I acknowledge that we do have a responsibility, and the Attorney General, as the Government’s representative for ensuring that we uphold our international obligations, his focus is on satisfying Global Forum. As a tax person myself, my focus is other than that and it is more in line with Sen. Richards’ focus, which is: How can the change in the laws that we are seeking to introduce benefit Trinidad and Tobago?

So, let us look at what Global Forum said. This is an OECD article printed in November 2017: “The Global Forum’s Plan of Action for Developing Countries Participation in the Automatic Exchange of Information Protocol”, and what the OECD said was:

“Global Forum seeks to counter tax evasion and avoidance by increasing global tax transparency, international cooperation and the transparency of corporate bodies, arrangements and financial information. Although all jurisdictions suffer from tax-related abusive practices, this problem is often particularly acute in developing countries.”

And I would add developing countries like Trinidad and Tobago. The report goes on say:

“Developing countries are disproportionately exposed to the risks of international tax evasion and avoidance and therefore their need for access to the world’s information exchange systems is proportionately greater. By not participating in the AEOI, developing countries risk losing out in the fight against abusive tax practices. Conversely, by being part of the global move towards greater tax transparency, they stand to gain the most by generating additional tax revenues which are of critical importance for delivering the most fundamental public services and fighting poverty.”

So, this is a report of the Global Forum. So, while there seems to be a focus that we need to be able to supply information to the rest of world and in particular the more developed countries so that they can improve their fight against tax evasion, this Global Forum initiative really should help Trinidad and Tobago and other developing countries in their quest to make their tax systems more efficient and to make their crime-fighting apparatus more effective. And that is the focus that I think that we need to ensure that we do not forget. It is not all about satisfying the big 20 and ignoring our own needs and obligations.

So, what will getting involved in this and satisfying our obligations under this protocol allow us to do? Yes, we will be required to provide information to external countries in respect of their citizens earning income here. But the converse of that, and to me the more important aspect of it, is that we will be entitled to receive information from foreign tax authorities in respect of information earned, one, by our nationals who earn income abroad and two, in respect of foreign companies carrying on activity in Trinidad and Tobago.

While the reach of the IRS in the US and the UK tax authority may be broad, and they may independently have some chance of securing information internationally on their citizens, and on entities carrying on business in those countries, Trinidad and Tobago does not have that broad reach. We need the assistance of these foreign tax authorities if we are to have any hope at all of ensuring that the people who operate and earn income within our shores account for the correct amount of tax that they should in the their income.

As the AG would have pointed out in his delivery, we engaged foreign consultants and they have indicated to us that the participants in the biggest sector in the economy, the energy sector, have been understating their income in Trinidad and Tobago to the tune of \$6 billion a year. This is something that Trinidad and Tobago could do with. If we had access to information from other tax authorities, we may have been in a better position to access that kind of information earlier, so we could have taken effective steps to deal with it.

Now we have Trinidad and Tobago with a tax administration, which we admit is not as efficient as it should be, which we are seeking to correct and, as Sen. Richards indicated, we are hoping to bring revenue authority legislation before the House shortly. But, let me give you examples of what this Inland Revenue is currently facing in terms of having to battle to try to ensure the collection of taxes. There are various forms of ways that people can avoid paying the correct amount of tax. They can change their place of residence, for example, because Trinidad and Tobago requires an individual to account for tax on his worldwide income if he is resident, domicile or an ordinary resident in Trinidad. So if you change your place of residence, you immediately remove that.

So a company, for example, if it is incorporated in Trinidad, if its

management is in Trinidad, it will be taxed in Trinidad. So what companies do is they move their management to St. Lucia, offshore, where the tax is maximum 1 per cent. So they are no longer resident in Trinidad and therefore no longer liable for tax in Trinidad but all their income is earned here. That is one way that we lose millions and billions of dollars.

We have—other ways that we lose it is tax havens. That is something that is very popular. We have offshore companies springing up all over. They are not only established by Trinidad companies. But more, importantly from our perspective, is we have foreign companies earning income in Trinidad, registering in offshore companies, which allows them to avoid paying withholding tax on dividends that they remit abroad; another significant source of loss of income in Trinidad and Tobago.

So we have tax shelters. We have tax planning options. We have financing options; a whole range of issues that require not only continuing knowledge and development of the local tax authority, but it requires you to secure information on what these entities are doing and what they are earning outside of Trinidad and Tobago.

Transfer pricing, or what they call transfer mispricing is a huge issue. So, they will say to us that this is what we have paid for, or this is what we have earned from the sale of oil and gas, or cement, or whatever it is we are selling. But when we look at the international market, what they do is that they take the gas that is produced here and sell it to a related party for \$3, and then that related party that is located in a tax haven, like the Bahamas, for example, or Cayman Islands, where they do not have a tax system, will then onsell that gas to China for \$10. So that \$7, which should have been earned in Trinidad and Tobago, is recorded in the

Cayman Islands, which has not really contributed to any value to that transaction, but records all the income. Trinidad loses out on that. All the income is reflected in the Cayman Islands, no tax is paid and, therefore, the company significantly gains and Trinidad and Tobago significantly loses.

When that company, however, reports its overall income to the United States, if that is where they are located, and the United States has an Exchange of Information Agreement with Trinidad, we are able to see what has been recorded here, versus what is reported there and we then have some hope of identifying the transfer pricing issues and being able to say: "Well no, because the benefit of this transaction all arose in Trinidad, Trinidad should get more of that income." Without that Exchange of Information Agreement, there is little or no hope that we will ever be able to identify that discrepancy and, therefore, little hope that we will ever be able to earn a proper rate of tax on the economic return enjoyed by these companies. And this is what, in my view, proper legislation allowing for automatic exchange of information will bring to Trinidad and Tobago. So, let us not only focus on we have an obligation, we have to send this information. It is how will this help us, and it will help us significantly.

We have countries like the United States and the UK that are significant powerhouses in the tax world. The IRS is known and feared throughout the world, but they are facing challenges with respect to their compliance. If you look at the list of companies that have been recognized globally in terms of avoiding, because evasion is illegal. I am not going to accuse them of evasion, but they avoid, certainly, billions of dollars in taxes, because they arrange their affairs in this global market, in this global world, to minimize the liability that they will pay. We are talking about companies like Google, Amazon, Starbucks, Apple; all

powerhouses in the international scene. We have all heard about each of them. We may all have contributed to the income earned by each of them. These people are known globally for understating their income.

In a report issued by Wikipedia in December 04, 2018, it was reported that 25 per cent of the company's listed on the Financial Times Stock Exchange avoided tax by locating their subsidiaries in tax havens. When the United States did a review of the definition of "tax havens" in that context, it increased the number of people evading by 98 per cent. Because, some of you may be surprised to know, that in certain context, Trinidad and Tobago may be regarded as a tax haven because we have free zone legislation, which I will deal with a little later.

So, companies like this, operating in the jurisdictions of the United States and the United Kingdom, which have robust tax systems, avoid tax. What hope does Trinidad and Tobago have of ensuring compliance by the players in our market if we do not have the assistance of the international world through the exchange of information?

I am reading an extract from the *Guardian*, not *Trinidad Guardian*, this is the UK, Tuesday the 30th of August, 2016, where they reported that Apple was ordered to pay €13 billion to Ireland because it entered into a transaction with Ireland to locate the headquarters of Apple there and arranged with them to pay taxes, the effective tax rate of Apple—imagine the kind of money that Apple is making—pay tax on the income recorded in Ireland at the rate of 0.005 per cent.

It took them years to bring Apple to account and there is still a debate between the European Union and Ireland as to whether the European Union should make Ireland accept more taxes from Apple, because they entered into a transaction with Ireland. But they did that. They were able to do that because the

European Union shared information on Apple's activity within Europe. And, therefore, they were able to ascertain the quantum of income earned and the quantum of tax that should reasonably have been paid by Apple. That was brought to account and they were able to sort it out. So that shows you the effectiveness and the importance of being able to share information among jurisdictions.

You will recognize that the world has gone global. Companies are not restrained to any one jurisdiction. They operate globally. In order to properly combat the transactions, the structures, the avoidance that is promoted by these companies we also need, as collectors of revenue on behalf of government to have a global reach. Without access to these Tax Information Agreements, we would not be able to do that, we would not be able to make my dents in the fight against tax avoidance by these international companies.

So, it is my view that apart from our international obligations, we need to consider the passage of the legislation that is before you and that will still come before you for the benefit of Trinidad and Tobago. Because we need, as Umbala, used to say: "We need the money." And so we need to ensure that we put things in place.

Hon. Senators: Max Senhouse.

Sen. The Hon. A. West: Max Senhouse, I am sorry. We need the money and we need to ensure that we put things in place to allow us to get that money.

So, Sen. Ramdeen also said that we pass the legislation but nobody is being prosecuted, where will we be? If we pass the legislation, nobody is being prosecuted, where would we be? But if we have no legislation on which we can prosecute people, where would we be? So what we are saying is, give us the opportunity to be able to get in the fight.

The police are asking us for this legislation because they have information they need to confirm, they need to strengthen, they need to support so they can bring the white-collar cases that we have all been clamouring for.

The FIU is asking for this legislation because they also have information that only takes them so far. They were successful, as the Attorney General indicated to us, in preventing \$13 billion in suspicious transactions, but we have billions more that we have to stop.

The Government is spending millions and millions of dollars every year supporting individual units within its structure that cannot talk to each other, and that makes all of them ineffective. We have to allow them to talk to each other so they can share the information, so they can become effective and give us a real chance of fighting financial crime, which we have to do. As the Attorney General says, crime is sponsored by the—

Madam President: Minister. Hon. Senators, we will now suspend for half an hour and return at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. The Hon. A. West: [*Desk thumping*] Madam President, Sen. Deonarine in her contribution asked the very relevant and poignant question: “How much has Trinidad and Tobago been stymied by partisan politics and changes in policies”? And that is a question that concerns at least those of us on this side. I would like to say for the record that when it comes to the economy of Trinidad and Tobago, the status of Trinidad and Tobago, our ability to satisfy our international obligations, this party does not work on the basis of partisan politics and changes in policies.

We are about determining what is best for the people of Trinidad and

Tobago and moving forward on that basis, which is why when we came into office recognized that this obligation had been undertaken by the previous administration, we did not sit back and say well they took on the obligation, they did nothing, let us go to the public and say well it is not our fault and throw up our hands. What we did instead is, we rolled up our sleeves, in particular the Attorney General and his team rolled up their sleeves, got to work to determine what we could do to effectively address the deficiencies in implementation of the obligations that had been undertaken, and we are still about doing that, Madam President.

Sen. Richards indicated, through you, Madam President, that we are at fault of not using the same information in T&T that we supply to others. And that we need to address that. And I agree with you completely, through you Madam President. I agree with Sen. Richards completely on that issue, and as somebody in the Ministry of Finance with a particular focus on tax, it is certainly the intention that we use both the information that we gather here and the information we receive through exchange of information for the benefit and purpose of Trinidad and Tobago.

It is actually for this very reason that we want to take advantage of the information. We have for local purposes that we have the amendments in the legislation that allow the Board of Inland Revenue to share information with the local police and with the local FIU so that they can be more effective in their quest to identify and deal with these financial crimes. So, we are about ensuring that Trinidad and Tobago benefits as well directly from its involvement in this process.

In respect of the gaming legislation that Sen. Richards as well raised, it is important that we pass this legislation, I agree with you completely. As the Members of this House know, this legislation is before a joint select committee

because it too requires a special majority to be passed. The gaming sector is one of those that need regulation. It is one of those that easily be used for money laundering and other illicit activities and we do need it to bring it under control. But to do that we have to act together because without special legislation we can only go so far.

Again Sen. Richards, Madam President, raised the issue of the questionable nature of the confidentiality of information. And although I am one of those to point out the deficiencies in the operations of the Board of Inland Revenue, I am very comfortable that they hold their oath of secrecy very dearly, and they are not wont to violate that oath. I do not know that any of us can say that we got confidential information on citizens in Trinidad and Tobago from the Board of Inland Revenue.

Sen. Richards: My concern was not the BIR, it was the TT Police Service.

Sen. The Hon. A. West: Yes, I started with the Board of Inland Revenue. This information is to be shared with the Trinidad and Tobago police force and the FIU and again although there may be questions on the operation of certainly the TT police, we have had the financial unit of that organization operating for a while and again I am not aware of any breaches of confidentiality in that unit. I may be wrong, but I am not aware of any.

Similarly, the FIU as well has held closely to their oath of secrecy. In addition to the practice that we have seen in the past you will acknowledge that the legislation seeks to enhance the level of security of information by imposing very heavy penalties on any breach by any of those officers of their confidentiality obligations. So we have tried to heighten the level of protection that citizens will enjoy if and when this legislation is passed. So we are absolutely aware of that

issue and concerned about it as well. So we are seeking to treat with it.

On the issue of whether Caricom should have petitioned the G20 as a group, while individual countries had to decide individually on when they would sign on to this obligation because they individually knew what actions they would have to take, what responsibilities accepting that obligation would bring, there has been discussion among Caricom in terms of approaching the G20 as a group. In particular the focus of that discussion is to revolve around the attempt by the G20 in its quest to limit tax avoidance, of removing special regimes within the Caribbean and the rest of the world. So, St. Lucia, Barbados, St. Kitts and Grenada all have offshore legislation that allows them to register persons to pay either no tax or a low rate of tax. And these are external companies hopefully providing external services but bringing foreign exchange to the country.

They are also seeking to have Trinidad and Tobago remove its tax-free zone legislation. And so in respect of those issues we are seeking to approach the Global Forum as a group.

Sen. Richards: Sorry to interrupt you again. But my concern with Caricom approaching this issue as a grouping is also in light of the fact that—just for conversation sake, imagine Trinidad and Tobago were blacklisted, or any island, it affects the other economies. Because there is a ripple effect if Trinidad and Tobago's economy crumbles, it affects St. Lucia, Barbados, Grenada, et cetera, and that was one of my big concerns with Caricom not addressing it as a group.

Sen. The Hon. A. West: Well, Sen. Richards, I hear you and I do understand that, but imagine the position that Trinidad and Tobago is in even in having that conversation with the rest of the Caribbean where everybody in the Caribbean who has assumed the responsibility with a 2018 obligation has satisfied those

obligations and we, because of our internal issues, have not been able to. That is a difficult conversation to have. So it is much easier from my perspective to say, okay we all have this universal problem of the special regimes, we have put in to stimulate our economy, let us go to the G20 with that. Helping me to deal with my internal politics is a lot more difficult situation, but I hear you.

So, Madam President, I have talked about the issue of tax avoidance and tax evasion which is a global problem. I have talked about the fact that even powerhouse entities, like the IRS and the UK tax authority have difficulty reining in their citizens and their corporations and ensuring that they collect all the taxes that they collect, that they are entitled to. I have talked about the leakages, and in that context we can only imagine what the leakages for Trinidad and Tobago are. I have mentioned the fact that these entities have all seen it necessary to embark on a programme of sharing of tax information so that everybody can ensure that there is effective collection of taxes from their constituents by getting information from other sources. I have talked about the fact that we have recognized that from the energy sector alone we have identified a \$6 billion leakage. Now, imagine what \$6 billion can do for Trinidad and Tobago.

Our Public Sector Investment Programme for the last three years has been around \$5 billion, imagine what we could do if we double that. Imagine the road programme we could introduce, imagine what we could do with our hospitals, we are struggling to finish building the Port of Spain central block, the Point Fortin hospital, the Sangre Grande hospital because we have to manage the money while we pay public servants and so on. Imagine what we could do if we could double our PSIP. And we would be able to do that if we had a system in place that allowed us to collect all the information we needed to minimize the leakages from

our system.

So that, Madam President, as I said, we do have international obligations and we do want to meet those international obligations because there are serious consequences of not meeting them. Sen. Deonarine pointed some of those out to the public and I am sure other speakers later on will also focus on that. But also if we fail to do this we are doing ourselves an injustice by not giving ourselves the tools to properly police the tax compliance system to give the TTPS the tools they need and give the FIU the tools it needs to pursue financial crime, all of which are very significant for our economy, for our country, for our social structure, for our peace of mind. This legislation does not go as far as we would like it go. We have things to do, but we need it to make some progress by the due date in order to report, in order to be given more time.

And in those circumstances I stand here in support of the Bill and I ask you to support it. I thank you very much Madam President.

Sen. Wade Mark: [*Desk thumping*]. Thank you very much, Madam President, for allowing me to rise at this time to make my intervention and contribution to the Income Tax (Amdt.) Bill, 2018. Madam President, let me say from the very outset that the Opposition has always been committed to passing legislation to become compliant with Global Forum and FATF/CFATF requirements. We said this from the very beginning and any governmental statements indicating anything otherwise are only unwarranted, and not only unwarranted but are also made in ignorance of the clearly stated position of the Opposition.

Madam President, you would recall that the Opposition in 2017 spent a lot of time in the JSC hammering out details of the FATCA legislation and it was eventually passed. We believe that the Bill that is before us should have been

handled differently in the JSC before being reported to us here in the Senate and in the other place.

Madam President, you would recall that when this matter went before a JSC, the notes are there to confirm because it is on the public record that the Minister of Finance, who was then Chairman, indicated that the three Bills were interrelated and they had to be dealt with conjointly. Later on we were told that only two Bills were needed to be dealt with conjointly, leaving out the Convention, the one on the treaty, the Income Tax (Amdt.) Bill and the administrative Bill on mutual assistance in taxation matters. And then we were then told, Madam President that only the Income Tax (Amdt.) Bill would be needed for us to get off what is called the non-compliant list.

So, here we are today, the Government having gone all over the place trying to convince the country that the Opposition is responsible for what has happened. But the reality is the Government is not serious and if you go through the verbatim notes, Madam President, you will see that throughout, the Government was just engaging in what I call a mamaguy exercise. [*Desk thumping*] They were just trying to give the impression to the Global Forum and to FATF that they were doing something, Madam President.

Madam President, I will just read from the *Express* of November 23rd an article by Camille Hunte and the headline is “Tax Bill must pass, or T&T faces blacklisting” and this section of the article that reads and I quote;

“When the Global Forum publishes its report and this country is not able to respond by saying ‘we have passed the Income Tax Amendment Act’, we are going to be blacklisted and the application of sanctions will be death by a thousand cuts. We have warned Trinidad and Tobago repeatedly over the

course of two full years that this requirement had to be dealt with.”

This is the Attorney General of Trinidad and Tobago in an *Express* article on the date that I have mentioned, Madam President and quoting November 23rd.

So what the Attorney General was saying to the entire country was that for two years, Madam President, the Government dilly-dallied on this very important matter, for two years, and they came at the 11th hour when they realized that certain deadlines were approaching and tried to bully the Opposition in supporting, Madam President, bad law.

Madam President, I want to remind this House that 350,000 citizens [*Desk thumping*] voted for the United National Congress. And when they voted for us, they did not vote for us to come in here and be the plaything of the PNM, or to be bullied by the PNM in getting, Madam President what they call special majority constitutional legislation through. That is not our role.

Madam President, I will show you this evening that the Bill that we have before us here is still draconian in nature and it puts too much power in the hands of the Executive, and that power can be abused as we have seen in the past. Madam President, this legislation which is supposed to deal with the exchange of information between the European Union and Trinidad and Tobago and to deal with tax transparency targets every citizen, Madam President.

I thought legislation dealing with tax transparency and the exchange of information between the European Union, represented by the Global Forum, because they are part of it and other countries, 154, I thought that was dealing with Europe and citizens of Europe who were in Trinidad and Tobago and they were evading taxes and avoiding taxes. But I did not know, Madam President that ordinary citizens of Trinidad and Tobago were going to be included in an Income

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Tax (Amdt.) Bill. This Bill is not about the European Union and Global Forum this is political legislation, this is political legislation, Madam President. And the Government has sneaked in certain provisions in the legislation to give them what they consider their upper hand in evading people's privacy. That is what the Government is attempting to do and they want us, Madam President, to support that. How can we support that?

May I remind you—I have the Income Tax Act before me, Madam President, as the hon. Attorney General reminded us earlier, there have been over 109 amendments to the Income Tax Act. It has been in existence for 69 years. It is what is call saved law, it is Act 34 of 1938. No Government since independence has sought to interfere with section 4 of this particular Income Tax Act that deals with secrecy and confidentiality. We are being told by the PNM that they have been instructed by external forces to remove that secrecy provision. So that what?—the police can have free access to every citizen's taxation information.

Madam President, the Government is not right in its mind. How for almost 69 years, we have a provision in the Income Tax Act that protects the privacy and personal data and information of every citizen who files his tax return with the Board of Inland Revenue, Madam President, that no worker within the Board of Inland Revenue can reveal that information to anybody? “You could make jail”. And that is why you have a secrecy form that you have to swear to before a magistrate; so this is sacred, it is secret, it is confidential.

And why are we being forced as a Parliament to remove that provision in order to allow the police at the rank of Superintendent and above, and Madam President, I have the greatest respect for the police service, I am a citizen of this country. But Madam President we have to face reality. There are rogue elements

in the police service, there are corrupt elements in the police service and they will use information for political purposes. We know that there are police officers who are PNM members and supporters.

So, Madam President, we have to ensure that there are proper checks and balances so that the rights and freedoms of the citizens of this country are not jeopardized, compromised or subverted. And we took an oath as Members of this Parliament that when we came in here as Senators we shall uphold the law and the Constitution. That is what we are doing today, we are upholding the law and we are upholding the Constitution and we are not going to allow the PNM in any way to persuade any one of us to do otherwise.

Madam President, I want to share with you this evening a provision in the legislation. Madam President, clause 6 page 3 and if I may be allowed Madam President, it says the following:

“Notwithstanding subsections (1) and (2), a person having an official duty or being employed in the administration of this Act”—Madam President—
“shall, for the purposes of subsection (5)”— do you follow?

“(a) provide taxpayer information”—when you say taxpayer information it means any and every taxpayer in Trinidad and Tobago—“to the Director of the Financial Intelligence Unit of Trinidad and Tobago (hereinafter referred to the ‘FIU’ for the purpose of enabling the FIU to do its analysis under the Financial Intelligence Unit of Trinidad and Tobago Act;”

Madam President, we have no problem with the FIU doing their work. There are criminal elements operating in this society and they are using all kinds of means to gather wealth. Go after them. We have no problem with that. Get the evidence, jail them. We have no problem with that. Madam President let us balance the rights

and interests of the State with that of the citizens in terms of their freedoms and there liberties. Because once you begin to remove rights you realize it is hard to replace those rights and have them returned.

Madam President, I want to ask you to join me as we go through what is called the Financial Intelligence Unit of Trinidad and Tobago Act. Madam President Section 16 says;

“(1) The FIU may, in the performance of its functions, co-operate and liaise with any person who, in the opinion of the Director is able to assist in the provision of information relevant to an analysis of a suspicious transaction or suspicious activity.”

It goes on in subsection (2);

“Notwithstanding subsection (1), the FIU”—Madam President—“may, in the performance of its functions, request information from—

(a) the Central Bank;”—from—

“(b) a public authority”

And a public authority in accordance with the definition in this Act that I have before me states:

“‘public authority’ means—

(a) a Ministry or a department or division of a Ministry;”

So right now in this piece of legislation there is a provision, Madam President, where the FIU may request information from let us say the Board of Inland Revenue. It goes on further in subsection 4, where it says:

“(4) Where a person fails to provide the requested information or fails to provide it in a reasonable time, under subsection (2) or (3), the Director may apply to a Judge for an order”—which is a production

order—“to direct that person to comply with the request made under subsection (2).”

So in the legislation before us, the Director of the FIU may request information from the Board of Inland Revenue and if they do not get the information based on request within a reasonable time, Madam President, the Act says that they may go to the court, go to a judge in Chamber to get a production order to compel the Board of Inland Revenue to provide them information.

5.30 p.m.

They are giving us the impression, Madam President, that right now the FIU has no power to get information from the Board of Inland Revenue, and under the legislation they have that power. Madam President, hear what the Government intends to do. It is a trick, but the Constitution trumps this trick, and that is why I am not a lawyer, but I will accompany my colleague, Gerald Ramdeen, as a bush lawyer. Once this becomes law and is assented to, I will accompany him to the courts of Trinidad and Tobago [*Desk thumping*] to have this struck down as unconstitutional. Madam President, hear what the Government has done, they have moved from “may” in this provision here, and, in the amendment that we have before us, hear what the Government has tricked us and has brought into the legislation:

Whereas—under 16, subsection (3), (1), (2) and (3)—they request, they may request.

The Government is now proposing in this amendment, Madam President, that:

The Board of Inland Revenue shall provide taxpayer information to the Director of the Financial Intelligence Unit of Trinidad and Tobago.

Madam President, they moved from “may” in the Act and they have now

introduced in the amendment where they are now compelling the BIR to provide information to the Director of the FIU.

Madam President, I am no lawyer, but I have good colleagues who are lawyers, and they have advised me. I want to refer you to section 6 of our Constitution. It deals with something called, “Exceptions for Existing Law”. It says, under 6(1)(c); it reads—it begins by saying:

“Nothing in sections 4 and 5 shall invalidate—

- (c) an enactment that alters an existing law but does not derogate from any fundamental right guaranteed by this Chapter in a manner in which or to an extent to which the existing law did not previously derogate from that right.”

Madam President, I enjoy a certain right under section 4 and 5 of the Constitution, the right to privacy. Under the Income Tax Act I have a right to have my data protected. It is secret and confidential. If you are now seeking to reduce that right—this is saved legislation—you are seeking to abridge my right; you are seeking to reduce my right, Madam President, you need a special constitutional majority to do so. [*Desk thumping*]

You cannot reduce my rights through trickery, and that is what the Government is trying to do here this evening. They want to invade every taxpayer private database at their whim and fancy. You can use crooked and corrupt police officers to invade the sacred spaces of the Board of Inland Revenue, get information and use that information for political purposes, and for all kinds of nefarious acts. [*Desk thumping*] Madam President, we cannot, we will not and never permit that to take place in this country. [*Desk thumping*]

So, Madam President, we are very, very, concerned. Madam President, you

know what is even more frightening? I went through what is called the Caribbean Financial Action Task Force report. It is dated June 2016, mutual evaluation report, but before I go there—my hon. colleague is not here—

Hon. Member: Who is that?

Sen. W. Mark: The hon. Attorney General. But I want to tell you, Madam President, or bring to your attention, the Attorney General in his statement today, in his presentation, said that all the stakeholders that came before the Special Select Committee, which came live and on the public channel, channel 11, *ParlView*—I looked at it, Madam President, I am a frequent looker of the *ParlView* channel, as you know. It is very close to my heart, and I looked at it and I saw the various entities that were there, and one of the entities that I paid attention to was the Board of Inland Revenue, one Mrs. Raphael. She is the Chairman of that Board of Inland Revenue. And the AG said today, Madam President, that everybody agreed. They had no objection. Well, Madam President, Mrs. Raphael had an objection. She said that right now, whenever the police wants information, they are able to provide the information for the police through a production order, and they would like us—they would like the Government to have that position retained. [*Desk thumping*] It is in the record.

The Board of Inland Revenue said they would like the status quo to retain. So if the police wants information, rather than have the carte blanche power to just invade the sacred spaces of the BIR, Madam President, they must go to a judge in chamber, go with the evidence, have a high threshold standard of evidence to prove that they have a case, and on that basis, and so on, they can be issued with a production order, and they could go to the BIR and the BIR will comply. The Chairman of the board of BIR said they want the status quo to remain. The AG

came here today and told the whole world that everybody agreed. That is not so. But, Madam President, I raise that en passant.

Madam President, may I also remind you?—the mutual evaluation report of June 2016, income tax is referred to on pages 15, 17, 27, 39, 54, 112, 117, 169, and nowhere in these pages that I looked at income tax, did the CFATF tell the Government of Trinidad and Tobago to go and change the secrecy provision in that legislation. [*Desk thumping*] Nowhere in this Act—nowhere in this report did they tell the Government that. So I challenge the Government today. They have been telling us, Madam President, FATF and CFATF have been telling them to change the secrecy provision. Where in this mutual report of 2016, and FATF reports, that provision or that demand or that proposal is made to the Government?

Madam President, I am telling this honourable Senate this evening that the Government is suffering from a credibility crisis. [*Desk thumping*] We heard from the hon. Minister of Energy and Energy Industries this evening that every Petrotrin worker was paid. I have just received information that thousands of Petrotrin workers are yet to be paid. [*Desk thumping*] There is a credibility crisis in the Government. “You cannot believe nothing what they are saying”.

So, Madam President, if you want us—Madam President, may I just give you a piece of information I got recently? In the British House of Commons the Theresa May Government gave an undertaking to the House of Commons that they will make full and frank disclosure via legal opinion on the Brexit deal. You know what they did, Madam President? The AG, like our AG, came to the House of Commons and gave the House of Commons an overview of the legal opinion. Well, six leaders in the House of Commons approached the Speaker, Bercow, to bring a Motion of contempt against the Government and to force the Government

to bring the entire legal opinion, and the debate is taking place sometime tomorrow in the House of Commons. The Government of Britain has a Motion of contempt.

So, on the one hand, Madam President, they tell us that CFATF is saying change the secrecy provision, and when we look at the report there is no such order. I want to know if FATF, this big organization, has read, what I want to refer to at this time, the Proceeds of Crime Act, because as my colleague said, in the Proceeds of Crime Act you cannot get it better. There is a provision, and, Madam President, if you will allow me, you know, I am a bush lawyer so I did my research, let me tell you what this says, which is very critical here. This is section 34 of the legislation—

Hon. Senator: That is a number you would remember.

Sen. W. Mark: Yeah, well, I must remember that because you were part of it. Madam President, it is section 34(10). Hear what it says—*[Interruption]* May I have your complete silence on this one? This is very important. Madam President, it says:

“Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.”

So, Madam President, may I read this slowly for you again?

Madam President: No, no need to.

Sen. W. Mark: Oh, no need, yeah, I think you got it. Madam President, it is clear, FATF did not read this, and the Government did not guide FATF on this matter, because already in legislation they have the power through the courts to go to the Board of Inland Revenue and get production orders to get information on tax crimes. *[Desk thumping]*

So, Madam President, the question that has to be asked: What is the aim? With is the objective? What is the mission of the Government? Madam President, you would recall some time ago we dealt with the land Bills and property tax Bills. There was something called a return form where you have to fill out how many rooms you have in your house, your telephone, your address, your location, and you have to pass that on to the Government through their bureaucrats. The Government has data on every citizen in the country. Now the Government is using this measure to get into the private affairs of every citizen who pays taxes in this country. That is what this is about. This is not about any demand being made by CFATF or FATF. This is a conditionality that the PNM has imposed on Trinidad and Tobago [*Desk thumping*] and they are using FATF as an excuse, as a front.

Madam President, I also looked at the report, 2017 Annual Report of the Financial Intelligence Unit, and 2016, and I tried to locate where this unit has been making this demand to invade the sacred grounds of the BIR to get people's data on taxation; I have not seen it. So where is this thing coming from? If it is not coming from the Government, it certainly is not in the reports that the FIU has produced, saying that they want to invade the spaces of the BIR. Because you know why, Madam President, they would not want to do that? They already have the power under section 60. If they ask for information and they do not get the information, they can go to the court and demand the information. So why do you want to get this open door to go in there?

Madam President, we cannot support bad law. This is bad law. Madam President, you know what the Government is seeking do, as you know?—well, I should not say, you know. What the Government is seeking to do, Madam

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President, is to pass this thing tonight with their majority; because they have the majority. Hitler had the majority in Parliament.

Madam President: Sen. Mark, please.

Sen. W. Mark: No, no, what I am saying, Madam President, I am not saying that to scare you.

Madam President: No. No. All right, Sen. Mark, at this stage I am trying to tell you to finesse your language, dial it back a little bit, please. Okay?

Sen. W. Mark: You know me, Madam President. [*Crosstalk*]

Hon. Senator: This Government is fascist.

Sen. W. Mark: Well, your Government is a fascist Government.

Madam President: No, Sen. Mark, please. [*Crosstalk*] Members. Members, please. Sen. Mark, please withdraw that statement and continue.

Sen. W. Mark: No, they are not a fascist yet, but they have the tendency.

Madam President: Sen. Mark, without—

Sen. W. Mark: All right, Madam President, I am guided.

Madam President: “I withdraw”.

Sen. W. Mark: I withdraw, Madam President. But I will say on the platform that this Government is what I have just said, [*Desk thumping*] and nobody would be able to stop me on the platform, nobody.

Madam President: Sen. Mark.

Sen. W. Mark: Yes, Madam.

Madam President: Please take your seat. You are not on a platform here, and I would just ask you to continue in the parliamentary tradition. Continue.

Sen. W. Mark: You know I tease you “and ting”. You know we are good friends, Madam President.

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Mrs. Baptiste-Primus: Really? [*Crosstalk*]

Sen. W. Mark: No, the President is very good with me. [*Interruption*] No, well, you are my friend too.

Mrs. Baptiste-Primus: I am not too sure about that. [*Laughter*]

Sen. W. Mark: So, Madam President, we have very grave concern about the legislation that has been brought before us. The Government, as far as we are concerned on this side, have not proven their case, and we are predicting that the Bill that we are debating today, that they will pass tonight without our support, that will be struck down in the courts of Trinidad and Tobago as being unconstitutional, will force this Government to come back, kicking and screaming, to this Parliament to bring the necessary changes and amendments.

Madam President, I want to remind you—

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

Sen. W. Mark: Thank you, Madam President. Madam President, I want to remind my colleagues, as my friend said earlier, this is not about partisan politics. I think it was Sen. Deonarine. This is parliamentary democracy, and what is at stake is our parliamentary democracy, and the Government of Trinidad and Tobago is trying use its majority to pass legislation that they know will not take this country off the non-compliant list. [*Desk thumping*] What would have taken this Government off the non-compliant list is if they had listened to the words, the wisdom of the Leader of the Opposition, the next Prime Minister of this country, the hon. Kamla Persad-Bissessar. [*Desk thumping*]

If they had listened to the hon. Leader of the Opposition and said, let us take these three Bills together, we would have completed this matter and this exercise already. They would have gotten our cooperation. The three Bills would have

been debated and passed jointly, and we would have been off the blacklist, or any threat of the blacklist, because right now we are told we are on the grey list, according to the FATF, and if we do not get this thing right we are going on the blacklist. That is FATF, Madam President.

So, as far as we are concerned, we are willing to work as we did with the Government on the FATF legislation. We would make ourselves available once the Government is willing to be open with the Opposition. Be transparent; do not hide information. Release information. There must be full disclosure.

Madam President, may I also bring to your attention, the credibility crisis, as I wind up on this matter? Madam President, I do not know if you are aware that since the Government released this memorandum of understanding involving Sandals, I looked at section (d) —8(d). I was shocked—

Madam President: No, Sen. Mark, please, as you use your last few minutes, please be relevant to the matter at hand.

Sen. W. Mark: All right, Madam President. So, Madam President, the Government, as I said, has no case. The Government has not brought any evidence to convince us that this is necessary. We are not going to be taking part and passing and supporting any legislation that we know to be weak, deficient, and will not achieve the objective. We make ourselves available, as the alternative Government, to meet with the Government of Trinidad and Tobago in a joint select committee to deal with the three pieces of legislation in a thorough way and get them passed properly and in a proportional way. We are not prepared to support the legislation in its current form in any way. It cannot be fixed, it has to be thrown out, it has to be withdrawn, and we so indicate and so advise. Madam President, as usual, I would like to thank you for giving me the opportunity to say a

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few words. Thank you very much. [*Desk thumping*]

Madam President: Sen. Thompson-Ahye. [*Desk thumping*]

Sen. Hazel Thompson-Ahye: Thank you, Madam President. In 1997 I was arguing very strenuously and vigorously against the passage of new legislation. It was the Community Service Orders Act, and during the coffee break—it was at a symposium at Mt. Hope mounted by Penal Reform International and Alternatives to Custody group, UNICEF; a number of people were there. During the coffee break, Chief Justice Rattray of Jamaica, at the time, came to me and whispered to me, “Hazel, the best is the enemy of the good”. It is something I never forget. It has not prevented me from arguing against legislation, but I always try to remember that sometimes in striving to get the “best” law, we may not get any law at all. So sometimes what we have to do is go for the incremental steps.

This is an attempt, this law, to honour some international and regional obligations, but I am more concerned with the potential of this law to change the whole paradigm of how we look at crime. I am not too worried about our being made to comply with legal obligations that are, you know, international. There is nothing wrong with that if we are looking at international standards. Complying with international standards really just shows that we are trying to do the right thing any time because it is the right thing to do.

The potential of this Bill to unearth financial wrongdoing, fraud, tax evasion, money laundering, all types of white-collar crime, and even terrorists—financing terrorist organizations—is what excites me, the potential. And when I think of what we heard today about the \$22 billion that we lose because of all of the ways that people evade taxes and do money laundering, I think about the importance of the money, and that is what resonated most with me, to do what we have to do to

fulfil the obligations of the State to those who, in Trinidad and Tobago, most need it, especially, I must say, the children of this country.

So I see this Bill as marking, in this Advent season, the coming of a new dawn of looking at crime as targeting not just the criminals who we see as cockroaches to be crushed, or people who must bite the dust because the sheriff and his essential deputies are in town, but this can actually change the thinking of the society that this is not one where the rich get richer and the poor get prison. White-collar crime plagues havoc in the society with the whole economy, and what is not always readily appreciated is that it removes from the coffers of the society, so much money, that can be used to benefit so many people who have so little.

So when we think about how we can do things differently, then we can consider, perhaps, let us put our heads together, as my colleague said, and see what we can do to change this whole paradigm of acting so that many people do not get away with what has been happening in the past, so that we are only talking about following the money and we have, perhaps, an instrument away of actually following the money.

I was in Antigua a couple of years ago, and as I was coming down to the hotel where I was to conduct some training, the taxi driver showed me a number of very elaborate buildings, and he said, you know, these ones belonged to Mr. Stanford. Mr. Stanford who was convicted in 2009 for massive fraud, and by 2012 it was all over, he had been convicted. And I thought to myself, you know, if that had been in Trinidad he would still be fighting the extradition. He would not be serving the 110 years in prison. [*Desk thumping*]

White-collar crime helps to perpetrate this structural violent that we have against the poor people who suffer as a result of the State's inability to meet their

basic needs, and especially the children. So when you look at who are the real criminals in society, it is not the people we see on television and on those programmes who are shooting and killing people who populate our prisons, because even sometimes when the crime, the corporate crime stares us in the face, we make excuses and we turn a blind eye. [*Desk thumping*]

The media focuses a lot on street crime, but what is destroying our society, to a large extent, and preventing the children from enjoying their human rights, the right to life, survival and development, to good health, especially the disability, to an education to the highest level; to enjoy all the rights is because sometimes we just cannot afford to give them what they are entitled to. And how we treat with people who commit big crimes, as against those who commit other crimes, point also to discrimination against children. So when the children look and they see that someone who has in fact brought false papers and gotten a job, and hundreds of thousands of dollars from the Treasury, and we say, “Oh, you know, he has already suffered because he has brought shame on his family”, but the child who falsifies a certificate and changes a grade from a D to a C, that child is hauled before the courts.

So maybe what we are doing here is having a new way of dealing with things, because when we do not treat with the big criminals, because corporate crime is a form of murder sometimes when you see that you cannot get good health care because the money has gone elsewhere, that is a form of murder, but we do not look at it that way. We do not view it that way because that is not how we were trained. We were trained to look at crime as what we see on the streets, those that bring fear; but the real criminals, “man”, they could be getting all kinds of awards, all kinds of big honours because we do not regard them as criminals, and it

is time we change that.

6.00 p.m.

Madam President, this Bill as I see it, is giving us another weapon in our arsenal to try to fight crime in another way. So let us use what we have. Again I quote off blessed memory, Chief Justice Rattray his words to me, “The best is the enemy of the good.” So that we have to recognize that corporate crime is widespread; few are held responsible. Let us see what we can do to make those who got a bligh or who got a free pass in the past actually come before the court. Sometimes we have to take some medicine that does not taste so good. We all know what we went through as children. Sometimes we have to make sacrifices of the things that are dear to us, but if it is for the greater good, can we not do it? If it is for the next generation, can we not make that sacrifice?

“...the chief problem...”

—W.E.B. Du Bois said:

“...in any community cursed with crime is not Punishment of the criminals,”—you know—“but the preventing of the young from being trained to crime.”

So the young are looking on, they are watching and they are learning from us. Children do not come out of the womb committing crimes, you know. We teach them, and then we condemn them.

Another thing that Du Bois said is:

We must be conscious of how we view ourselves and how the world views us.

How does the world view us, Trinidad and Tobago? We were the leaders in the Caribbean once upon a time. We think we still are, but we are not. We are behind

in many ways, but I still have hope, as I said last week. I still have hope. I have hope that we are going to do the right thing. I have hope that we are going to obey the international obligations and the regional obligations, even one that seems so simple to me, but we cannot get it done yet, Mr. Attorney General, Madam President, to change the age of criminal responsibility. The law is in the Caribbean, I am ashamed, and also I have hope that at the end of the day, we are capable of turning this country around.

So, we look at who are the biggest criminals. We focus on crime in the corporate context, and we must not restrict it to the localized street version of crime. And if I may, I want to quote Jim Consedine, the Catholic Priest from New Zealand who introduced me to restorative justice in 1999, and in 2001 trained me to how to conduct a conference. He said:

What is real crime and who are the biggest criminals? Until we start to focus on crime in its global corporate context and not restrict ourselves merely to the localized street version, we will never learn to identify and grapple with some of the biggest criminals in our society, and we will never create a society where the common good is achieved, where people are truly respected for who they are, where true justice prevails.

And that is all I want. That is all we should all want—justice. Thank you, Madam President. [*Desk thumping*]

Sen. Saddam Hosein: Thank you very much, Madam President, for giving me this opportunity to contribute to this debate on the Income Tax (Amdt.) Bill, 2018. When we look at this Bill that was laid in this Parliament since the 25th of May 2018, it has come a long way from then. A joint select committee was appointed to consider this Bill together with two other Bills, which is the Convention and the

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Tax Information Exchange Agreement Bill. I will not touch on those because of the Standing Orders with regard to anticipation, Madam President. And these Bills were laid in this Parliament in order for Trinidad and Tobago to attempt to become compliant with our international obligations for two different organizations, the first being that of the Global Forum and the second the Financial Action Task Force requirements. I will focus on the Global Forum requirements first.

Now, Global Forum assesses countries on two phases, and the reason that we have to be compliant is so that we can share tax information so that persons cannot avoid paying taxes in various jurisdictions. So they conduct assessments on two phases. The first phase deals with an examination of the legal and the regulatory framework of a country, and then the second phase deals with looking into the implementation of that framework, and it will now rate countries as compliant, as largely compliant, partially compliant or non-compliant.

Madam President, many persons did not speak of this, but Trinidad and Tobago underwent the phase one evaluation on the 1st of March, 2010, and I get this information from the Peer Review Report of Trinidad and Tobago - Phase 1, OECD 2011 at page 9. It was a PNM Government who was in power at that time, and Global Forum sent a questionnaire for that Government to complete. That questionnaire was due on the 29th of March 2010, and that Government failed to complete the questionnaire so that Trinidad and Tobago could be evaluated.

It took a People's Partnership Government to respond to the questionnaire on the 27th of July, 2010, probably one to two months after gaining power in Trinidad and Tobago. Trinidad and Tobago, at that point in time, was not a member of the Global Forum when the phase 1 evaluation was completed. In

2011, yes, a Cabinet decision was taken for Trinidad and Tobago to join the Global Forum, but it was not until 2014 when then Minister of Finance, Larry Howai, would have committed Trinidad and Tobago to the Global Forum for increased tax transparency and, Madam President, he gave a timeline. He did not say that it was going to happen in 2015. He did not say it was going to happen in 2016. He said it would happen by 2017, giving Trinidad and Tobago enough time to put the various legal and regulatory framework in place so that information could be shared at that point in time, which was June 2017.

We fast-forward. So we were deemed to be non-compliant, Madam President, since the 28th of June, 2017. So that is the first part. We were deemed non-compliant since then. It was almost as a blacklist by the OECD. Then Trinidad and Tobago, under this PNM Government, underwent something called a “fast-track review” in 2016. Now this fast-track review, what is it? Countries who want to sign the convention they will ask the Global Forum before the stated deadline. You can do a fast-track before that, Madam President, so that they could look at the legal framework you would have put in place so that you can be deemed somewhat compliant before you sign the convention. [*Interruption*] Yes, I can. The Global Forum at its plenary on the 2nd to the 4th of November 2016 agreed to adopt the fast-track. That was the plenary agreement, and then Trinidad and Tobago also underwent fast-track.

We underwent fast-track, Madam Presidents, without putting a single law in place. We underwent fast-track without putting a single law in place. Not a single law. The Attorney General is saying that we did not participate in the fast-track, but there are reports coming out of the OECD that suggest that Trinidad and Tobago underwent fast-track evaluation without a single law. [*Desk*

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thumping] The Minister of Finance said, in the other place, that Trinidad and Tobago underwent fast track in an attempt to sign the convention on the Tax Matters Bill. So I cannot understand now that the story is changing, just like the deadline. Just like deadline.

Hon. Al-Rawi: Quote one reference.

Sen. S. Hosein: Madam President, when you look at this Bill when it was first laid on the 25th of May, 2018, the Bill has morphed. The Bill had probably some good intentions then and when it came out of the JSC based on the recommendations by the Opposition. But you know what this Bill morphed into, Madam President? A political tool—a political tool for political witch-hunt. You know why, Madam President? [*Desk thumping*] This is an election year. This is an election year, so you are putting your arsenal in place—

Madam President: Sen. Hosein, your contribution is now morphing into what has been said by two previous Members of the Opposition Bench. So there is something called “tedious repetition”, and I am going to ask you in making your contribution to really not go over that again; to make new points. Okay?

Sen. S. Hosein: Thank you very much for your guidance, Madam President, and I will be so guided.

When you look at some of the comments that were made during the crosstalk, my colleague Sen. Mark would have indicated that had the Government listened to the proposition or the comments or the advice given by the hon. Leader of the Opposition, Trinidad and Tobago would have been out of the blacklist. I want to endorse that statement, because from 2010 to 2015 Trinidad and Tobago was never blacklisted. You know why, Madam President? There was proper leadership. [*Desk thumping*] There was proper leadership in the governance in

that last Government.

Let us look at some deadlines, because there is a shifting of the deadline, and as the Prime Minister called it, it is a moving pavement—a moving pavement. So let us look at some deadlines. So we heard the first deadline, September 2018. We heard the next deadline, November 2018, but then we have letters where the deadline for Global Forum is December 2018. There is a letter here from Brussels dated the 23rd of October, 2017, and this letter was signed Fabrizia Lapecorella, and she said in this letter and I will quote:

“The Code of Conduct Group...”

—which is the EU group, the OECD group—

“...will not recommend to the Council of the EU to include in the list of non-cooperative jurisdictions for tax purposes any country or jurisdictions which commit to correct the identified deficiencies by 31 December 2018 at the latest.

That letter that came from Brussels, the Minister of Finance responded to that letter, and by letter dated 21 November 2017, under the hand of the Minister of Finance, the hon. Colm Imbert, to the Chair of the Code of Conduct Group, he said, if you allow me to quote:

“I acknowledge that the Code of Conduct Group will not recommend Trinidad and Tobago to be listed as a non-cooperative tax jurisdiction by the Council of the EU, provided that Trinidad and Tobago commits to address its deficiencies by December 31, 2018.”

The Minister of Finance committed—committed to ensure that the deficiencies are taken care of, are met by 31 December, 2018. So where this September/November deadline came from?

The sky will fall, we heard it. “Well de deadline gone. Friday was de deadline dat this Government gave.” Today is the 4th of December. The time has gone. Has the sky fallen? Did we lose correspondent banking? No. Again this Government is only engaged in mamaguying; mamaguying the Parliament and mamaguying the population. [*Desk thumping*]

To show how lax this Government is, Minister Imbert in his letter also proposed a timeline for the passage of certain pieces of legislation, and he committed that Trinidad and Tobago—this is under his hand—would have passed the Income Tax (Amdt.) Bill, 2017 by June 30, 2018. Six months have gone. Six months have gone and you have not properly addressed the issues in this Bill. And what do you bring to this Parliament? A truncated, chopped up, slaughtered, butchered version of the Bill. Just like Petrotrin. Just like Petrotrin.

But then you look at what the Ambassador had to say about this matter regarding the deadline. When you listen to the Special Select Committee, he said—

Madam President: I have to caution you, Sen. Hosein. We have a Bill before this Chamber. Okay? So Special Select Committee of the other place, go cautiously because a lot of that is not going to be relevant to what we are dealing with today. Okay?

Sen. S. Hosein: I am guided, Madam President, but I took copious notes, I looked at the Special Select Committee while I was home. On ParlView I looked at it, then I was listening too on the radio. The Ambassador had this to say, that there are no specific deadlines. So who is really telling the truth? Who is really telling the truth? Who is telling the truth in this place? It clearly cannot be the Government because there are utterances to prove that the Government is not being

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truthful with the population with regard to the deadline for our compliance with Global Forum.

Then we must look at how we ended up on this blacklist, because Trinidad and Tobago is blacklisted and we have been so since June last year.

Hon. Al-Rawi: Did you not say we were not?

Sen. S. Hosein: Come again in the EU, December 5th last year, you know what we were? Blacklisted again by the EU. So there are two areas in which Trinidad and Tobago was blacklisted, first OECD June, then you come EU, December 2017, all under this Government. The embarrassment that they have placed Trinidad and Tobago in, and now forcing the Opposition, forcing a Bill down our throat, an unconstitutional piece of law for us to support. We will not support such legislation. We will not support it. [*Desk thumping*]

But then the AG spoke about a grey list, and that Trinidad and Tobago is on a grey list. Some grey list he is speaking about with regard to FATF. Well, Madam President, I have this article from the *Newsday* dated 7th of November, 2017. And you know what it says, Madam President?

“AG: TT not grey-listed by FATF”

And, Madam President, when you read this article, you know what the AG said?

“There is no concept of grey-listing in the fourth round of FATF evaluation.”

Trinidad and Tobago is in fourth round.

“Being in enhanced follow-up is not grey-listing because grey-listing applies to the third round of mutual evaluation not the fourth round.”

So what list are we on? Because if we are in fourth round evaluation, then how can we be on a grey list? That simply cannot be true. These are the words of the

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Attorney General. This is what the Attorney General has been quoted as saying in a press briefing at his own Ministry building in Port of Spain. These are the kinds of inconsistencies, this is the misinformation that comes out of the Government and creates confusion—confusion in the population. But we as the Opposition, we have to distil that confusion and present the facts to the population, so that they will actually know what is happening with the affairs of this country under the leadership of this Prime Minister and this Attorney General.

Then we move on to sanctions, because this is a next area that they spoke of, sanctions. If we do not pass this Bill, we will lose correspondent banking, the sky will fall, we will not have any transfers with Western Union. I even heard the Minister of Finance talk about you “cyar buy nothing from JCPenney with yuh credit card”; all of these things.

Madam President: Sen. Hosein, you are starting to repeat yourself in your contribution. A little while before, you spoke about sanctions and correspondent banking. You mentioned all of that before. Are you taking a different angle now?

Sen. S. Hosein: Yes, Madam President.

Madam President: You are sure? Because it does not sound so to me, and I just want to caution you on tedious repetition.

Sen. S. Hosein: Madam President, if you will just allow me.

Madam President: I have been allowing you, eh, Sen. Hosein.

Sen. S. Hosein: Thank you very much, I agree. Madam President, when you look at some of the functions of the Global Forum, do you know that the Global Forum has no power to sanction any country? That is the point I want to make. It is the individual EU countries that makes that decision in order to sanction countries. You know where I go this information from? Not Wikipedia, I got it from the

OECD website. These are council decisions taken by the European Union in order for individual Member States for defensive measures to be applied to non-compliant States. So it is not that Global Forum is imposing any sanctions on any country.

I am hearing the sighs on that side. I am hearing the sighs, because I have documents to prove what I say, not utterances. [*Desk thumping and laughter*]

A lot has been said with respect to the production orders, and I do not want to go too much into it because again you warned me of issues of tedious repetition, and I take your guidance very seriously, Madam President, I really do. But I want to say that when you, Madam President, look at the stakeholders, let us examine how this judicial oversight provision came into the Bill. It was based on the Minority Report that was filed and appended to the draft final report of the JSC. The Government, they looked at the recommendations made by the Opposition, and I must say that they included the provisions for judicial oversight, not satisfactorily, but they did. When you look at the comments coming out from BATT, AMCHAM, all of the stakeholders, they agreed that this level of protection must be included. So it shows that it was a very noble and valid amendment made to the Bill.

The BIR even went a step further, because when you examine the Bill, Madam President, it is an inspector, a police officer above the rank of inspector, who would be the one making the application to the court in order to get certain persons' taxpayers information. What the BIR had to say, they said that, yes they have the production orders, it works well, but if you want to include this provision you should even raise the rank higher to let the Commissioner of Police be the one making the application. Now, I would have heard that the Attorney General would

have spoken of the practicality of putting the Commissioner of Police as the applicant in these production orders.

So those are the issues I raised with respect to the amendment in terms of the powers of the police. But when you look at the CFATF report, the Mutual Evaluation Report, the Fourth Round Mutual Evaluation Report, they gave some figures, this was the 2016 report, and they said that there are 69 applications for production orders which were granted by the court already. The application consisted of 115 orders that were served on financial institutions and listed businesses.

So the BIR also admitted that the production orders work well. The police have been able to access taxpayers' information from the BIR. The BIR also admitted the same, police admitted the same. So then what is the purpose of this amendment? It is otiose. Again, a mamaguy, mamaguying the population, trying to probably mamaguy who we have to satisfy in terms of our international obligations. But that is just one of the improvements that came out of the Bill; that is just one.

So can you imagine if the Bill was referred back in the JSC as we had asked for it to be? We would have had three comprehensive pieces of legislation to lay before this Parliament so that Trinidad and Tobago would have really stood a fighting chance of coming out of the blacklist. What is the fear? What is the issue of putting back the Bill before the JSC? There is none. There is none. Why are you afraid? Why is the Government so afraid of doing that? Now, they have to come next year with some more amendments to the Income Tax Bill, increase Parliament time, increase resources, for us to pass the Bill so that Trinidad and Tobago can come out of the blacklist.

Madam President, when you look at the JSC again, at the work that was done by the JSC, if you have a fear that the work would not be done, the JSC met three times.

Madam President: Sen. Hosein, I have spoken to you about this reference to the JSC. I spoke to you before about the Special Select Committee. It still applies. What we here now is a Bill, and so deal with the Bill that is before us. Do not talk about the Joint Select Committee or the Special Select Committee. You need to be a little more specific. Okay?

Sen. S. Hosein: Thank you very much, Madam President.

When you look at the Bill directly, there are certain provisions that were deleted from the Bill in its original form.

Madam President: Now therefore, what is not in the Bill is therefore not relevant to the debate. So you cannot introduce what is not in the Bill here. That will not make it relevant. It is not relevant.

Sen. S. Hosein: Madam President, I am just only responding to the comments that were made by the Attorney General, because he had an opportunity during the piloting of the Bill to let this Senate know what was removed from what was retained in the Bill. So I would ask you to allow me.

Madam President: Sen. Hosein, I have given you some guidance. You can choose it. You can choose to accept the guidance. You know what you have to do and I know what to do. So continue.

Sen. S. Hosein: Thank you very much. I will move on, Madam President, because I would not get into that issue.

But, Madam President, let us look at the Bill in terms of the additional offences, apart from the Proceeds of Crime Act and the Anti-Terrorism Act. You

look at offences of fraud and offences of dishonesty, Madam President. Now these offences are very wide, and no definition with respect to “dishonesty” was given, none with “fraud”, but there are common law definitions. Recently there was a case *Ivey v Genting Casinos, 2017 UK Supreme Court 67*. That is the citation of the case. It is a landmark case from the UK Supreme Court that clarifies the test of what would qualify as dishonesty under criminal law. There was a case before called *R v Ghosh*, and that case would have laid out the test of what would amount to dishonesty.

When you look at the test, Madam President, if you allow me to quote from the Ghosh case, the test would have been:

The conduct in question of a person must be dishonest by the standards of an ordinary and honest individual.

Now, that is an objective limb. But then the test went on to give a subjective limb. The accused must have realized that their personal conduct was dishonest by those standards.

What the UK Supreme Court tried to do is that they modified the test. So they modified the test of dishonesty, and they modified it to create two objective limbs. The first objective limb remains the same: Was the accused dishonest by the standards of an ordinary, reasonable individual? And the second limb now is whether or not the accused viewed their action as dishonest by those standards. The reason I raise this point is because how wide this definition is in terms of the extent that the common law can drag offences of dishonesty and fraud.

If we really want to pass, sure, certain proportional legislation, I think a definition should have been added for what amounts to dishonesty and what would have also amounted to fraud cases, because it is extremely wide, very, very wide

and broad. It can lead to a lot of ambiguity, and it will waste a lot of court time to determine whether or not an offence qualifies under fraud or dishonesty in the court because there will be arguments from the prosecution and the defence which will take up a lot of judicial time. So why not just make the legislation as certain as possible at this stage in time?

If you would permit me also, Madam President, I listened to the Minister in the Ministry of Finance when she gave her contribution. Her contribution, in my respectful view, was not relevant to the Bill before this Senate. The reason I say that is because the Minister went on to talk about base erosion and shifting of profits. That is the subject of another Bill, a Bill that has not seen this Parliament as yet, but Trinidad and Tobago has committed to pass this Bill. [*Desk thumping*]

Sen. Obika: They have failed to bring this to the Parliament.

Sen. S. Hosein: She spoke of the police wanting this legislation. She spoke of, I believe the BIR—well it is not the BIR, because they had a different view—but the police want the legislation. You know what the police also wanted, Madam President? Anti-gang. And look at how that ended up. I do not expect much because if the Minister's contribution came from Wikipedia that will be the standard in which the contribution will be; Wikipedia. [*Desk thumping*] You have all the state resources at your disposal but you are quoting from Wikipedia.

Madam President: Sen. Hosein.

Sen. S. Hosein: Yes, Madam President.

And the Attorney General would have raised some other points in his contribution.

Hon. Al-Rawi: Not “would have”. “Did”.

Sen. S. Hosein: The Attorney General said that we agreed to take out one Bill

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from the JSC. Well, that is misleading the Senate because we have never—myself, MP Charles, MP Karim—

Madam President: You know when you say, Sen. Hosein, that someone, a Minister or a Member of Parliament is misleading the Senate, you do know that is imputing improper motives. So please find a different way, apologize, withdraw that statement and present your argument a different way please.

6.30 p.m.

Sen. S. Hosein: I withdraw, Madam President, but the Attorney General would have misrepresented the views of the Opposition.

Madam President: Sen. Hosein, please, please.

Sen. S. Hosein: Well, Madam President, I withdraw, but we never—the three Opposition Members, according to the hon. Attorney General—we never agreed to take out one Bill from the JSC. [*Desk thumping*] What we agreed to, Madam President, is the fact that if you can provide us with the evidence that the passage of the Income Tax (Amdt.) Bill alone will take us off from the blacklist, we will agree. Do you know, Madam President, that was—

Madam President: Sen. Hosein, please take your seat. I have cautioned you repeatedly on your contribution and during your contribution, and you are still ignoring what I have pointed you to, so I am now going to call on the next speaker. Minister of Agriculture, Land and Fisheries. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Madam President, I thank you for giving me the opportunity to join the debate on this very important Bill.

Madam President, I understand the problem my friends on the other side face. They wish to debate a Bill that is not before us, relying in that debate on

material that is not relevant to us, and supporting their debate on arguments that are not necessary, and I apologise to you, Madam President, on the distress that has been caused.

I found my contribution in a contribution from the former Attorney General, Anand Ramlogan, and I hope my friends find comfort in it. There is no better contribution to go and read to understand the importance of this Bill, than Ramlogan's contribution, Friday, August 17, 2012. And the then Attorney General was contributing to the FIU of Trinidad and Tobago and the Anti-Terrorism Bill, 2012.

And these are the magical words for my friends, put it in your vocabulary. Ramlogan spoke of the non-restrictive nature of the legislation that he had been putting forward, the overreach. Because if you are going to fight a global problem you are going to overreach, and that is what every piece of legislation—my friend Sen. Ramdeen was talking about we have to come back next year. We have to come back before the end of—before Christmas we have to come back with legislation dealing with the FIU and so on, because this is not something that is cast in stone. Our commitments to the global community are commitments that are evolving, with every evaluation of a country other than Trinidad and Tobago, we will be called upon to make changes.

And as I have said in previous debates on this issue of sovereignty, you could hold on to your red, white and black sovereignty, but if this country must function in the global financial system, we better find ourselves falling in line. And Sen. Ramlogan, as he was then, talked about overreach. He talked about expansion, he talked about reciprocity, because we have had legislation here, we have had Bills here dealing with compliance, with what is required of us to

function in the global community, for example, FATCA, and we have had to fight on the issue of reciprocity.

He used the word “collaboration”, because you could stand in defence of your section 4 and section 5 and you could stand in defence of your constitutional rights, but we have to cede ground. And every piece of legislation that comes requires some level of interference, because if we are going to fight together we have to share information, and we have to cede ground.

And the last one is this issue of compliance, and I have listened to—creating confusion in the public mind, that is something I kept hearing for the contributions so far. The confusion is being created in the mind of the Opposition; the public is on board. The public knows what has to be done, and there is no confusion in their mind. We have to do certain things if we must comply and if we must continue to be allowed to play, and that is what this Bill is about, this Bill is just another step, it is not—nothing new.

Sen. Ramlogan, as he was then, traced—he was talking and he talked about all the amendments made to the FIU and anti-terrorism and so on. And notwithstanding all those amendments, we still had to come back to this House with brand-new anti-terrorism legislation and meet the same level of opposition and disinterest and lack of knowledge and so on.

So this is about furthering work that you were part of, and for you to come now and change your tone and bring the most frivolous arguments I have heard, and irrelevant arguments are frustrating; [*Desk thumping*] the most frustrating set of arguments. And the JSC, I was part of the JSC, Madam President—

Madam President: Minister, please.

Sen. The Hon. C. Rambharat: I am not going into the JSC.

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Madam President: Okay.

Sen. The Hon. C. Rambharat: I am not going into the JSC, but this Bill is a product of the collaboration between ourselves and the Opposition and the Independents, and there is no question in my mind that we took a decision to advance the work on one Bill, it is there in the Minutes, it is there in the Minutes of the meeting. This Bill is a product of the work of people on both sides here, and it is not to come here and quarrel and try to rewrite the Minutes of the JSC. That decision was taken to advance one.

Because, Madam President, I keep hearing about “the three Bills, the three Bills and I want to bring the three”. My mother still has a preschool, it is in the 40-something year and she was my first school teacher, and we learnt to count one, two, three. So, to get to the three Bills you want, we have to start with one and I think the country understands that. That if we are getting to three, we will get to one, and this is the one. This is the one and it is here before you, so deal with it. [*Crosstalk*] It is here before you, this is one, and you will get to two, and then you will get to three. [*Desk thumping*] Yeah. Deal with it.

I have listened about this JSC, I was there, I understood. I listened to Sen. Ramdeen very carefully, I was very pleased that he listed me among the lawyers in the Cabinet—[*Interruption*]—always.

Hon. Al-Rawi: And the chairman of the LRC.

Sen. The Hon. C. Rambharat: I was listed and I listened very carefully, and I was waiting for the point and it never came. What is the value of that? All the documents, the documentation in support of this legislation, I do not want to use the word “JSC” and offend you again, Madam President, but the report that was tendered to the House—

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Hon. Senator: That does not offend Madam President, that is guidance.

Sen. The Hon. C. Rambharat: —includes all the material relating to the Bill, and the Minutes properly record the Minutes contained in that report laid in the other place, properly record—

Madam President: Minister, please, please. Let me try and get this debate on track. Okay? We have a Bill here. Yes, reference was made to the JSC but I do not want the focus to be on the JSC. Okay? Please, let the focus be on the Bill at hand.

Sen. The Hon. C. Rambharat: Thank you, Madam President. And this Bill, as I recall, involved the work of the technocrats who normally support the Office of the Attorney General.

Sen. Ramdeen: “Dais de problem, dais de problem.”

Sen. The Hon. C. Rambharat: So, I do not know that I want to attack the work of the technocrats because I cannot believe that when Sen. Ramlogan stood up on April 17, 2012, he presented the work of different technocrats. The Bill is not the product of lawyers sitting—the lawyers who sit in the Cabinet sit as Members of the Cabinet, but the documents record, Madam President—it is there available for perusal—that substantial work is done by technocrats, and I do not want to leave on the record any stain or any question mark over their work. If we as politicians cannot make use of their work, I do not think that we should be questioning the quality of their work.

And I listened to Sen. Ramdeen in the usual way, because today we have had Petrotrin, we have had “all kinda ting”, so they have been sifting, worse than “macafouchette”, sifting to find. And Sen. Ramdeen talks about—this is 2012 legislation that I referred to, 2012. How many prosecutions came out of the

previous work? The work of the former Attorney General Anand Ramlogan, how many prosecutions?—because today I heard about prosecution. How many arrests came out of that? We talked about money laundering and crime and all of that. How many big fish we got between '10 and '15, or even, how many small fish? I know we had a state of emergency with hundreds and hundreds of people. Right? But how much?

I mean, I have always said, even on the anti-gang I said, our work, the work of the legislators will only go so far. It is work, important work that we have to do, we have to give them the tools to work with. Unfortunately, not many of us or any of us in here could force them to work, or manage their work, or oversee their work, but we have to give them the tools. And continuously, administrations have been coming to the Parliament to improve the tools that we give them, but from 2010 to 2015, you had no prosecutions of—none. I do not even need to put a condition of big ones or small ones, there were none. But we would like to continue to give law enforcement the tools that they have to work with, and that is what we are doing in this Bill.

And this Bill is not complicated, Madam President. I listened to my friends talking about starting off with—to the extent that the Bill is a waste of time. But when you look to the provisions of the Bill, for example, section 4 of the Bill, when you look to provisions of the Bill, you understand that the Government continues to strengthen the legislation, and you cannot criticize us for not doing exactly what we wanted to do; we set out to. The Bill we presented in the other place set out to do much more than we have before us now. And I do not need to tell you what happened there, but we have brought to this House a Bill that would do some of the things we would like it to do.

For example, I listened to the contributions. You want to take ownership of the Bill and you want to discard the Bill; so we are not arguing. The decision to make the amendment to include the coverage of the person of the rank of superintendent and so on and the judicial oversight, we included that on account of the contribution of the Opposition, that is not in debate, but you cannot rubbish the Bill and then lay claim for part of the Bill. Make up your mind because I am dizzy trying to follow your argument.

And we accept that, we accept your argument, that maybe it was not the appropriate thing to have any police officer have the opportunity to access that type of information. Sen. Hosein is not here, so I would not go into the “any doubles vendor” story, that is—but we are grateful. And the Bill contains the provision for a taxpayer to provide information to a police—member of the— police officer of the rank of superintendent or above and so on and so forth.

The Bill also provides that:

“Where the taxpayer information disclosed under this section...the information may be used as evidence in any proceedings in respect of the offence.”—For which the information was accessed.

The Bill introduces at clause 5, restrictions on the use of taxpayer information. So the Bill introduces section 4A:

“Where taxpayer information has been provided”—it could only be used for—“the information...for which it was provided;”—it could only be retained—“for as long as is necessary for the purpose”—it was—“collected; and”—the information must not be disclosed “for purposes other than the purpose”—for which it was collected—“without the prior consent of the”—
BIR.

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And 4B is introduced, creating offences for breaches of the section. So anybody who receives taxpayer information under section 4—

Madam President: Minister, I think everyone here has a copy of the Bill before them. So you can talk about the clause and just expand on what you think would be the effect, but you do not need to read out the entire clause.

Sen. The Hon. C. Rambharat: Madam President, thank you. I laboured under the view that the Opposition had not read the Bill. [*Laughter and desk thumping*] And reinforced by your assurance, [*Crosstalk*] Madam President, that they have in fact read the Bill, I will continue.

But it is very important that in accessing information, that we also ensure that the appropriate protection is in place, and this Bill is not a waste of time. It creates offences for which there are significant penalties, including a fine of \$300,000 and a fine of \$500,000 if there is a breach of that protection.

Madam President, I heard the word “abracadabra” from Sen. Ramdeen, and I want to say, going back to Sen. Ramlogan as he then was in 2012, that this legislation fits into a very complex global requirement. [*Interruption*] Yes. I told you that from the start, I am founding my—I am rooting my contribution in the contribution of Ramlogan.

And, Madam President, this is important work for Trinidad and Tobago to continue in the global financial environment. It is not exactly what we would have liked to have, but it will go towards strengthening our ability and giving law enforcement more tools, and we are very happy to bring it here. We look forward to the support of our friends on the other side. And I thank you very much. [*Desk thumping*]

Madam President: Sen. Vieira. [*Desk thumping*]

Sen. Anthony Vieira: Thank you, Madam President. First of all I would like to apologize to Sen. Richards and my colleagues on the Independent Bench because after indicating that I would not speak, after hearing the contributions I felt compelled to say a few words. As George Bernard Shaw said, “Progress is impossible without change, and those who cannot change their minds cannot change anything”. Anyway, these are some of the thoughts and questions that are running through my mind in respect of this Bill.

Where are we as a country? And where do we as a country need to be internally and externally? What is the purpose of this legislation? Is it necessary? Does it pose a risk to citizens? What happens if it is not passed? So, I will try to deal with each of these in turn. Now, where are we as a country?

Madam President, we are a country ravaged by crime and the effects of criminal activity. And while efforts have been made at getting certain perpetrators, by and large our success has been limited and really at a low level, not getting at the big fish. The big fish always seem able to distance themselves from the hands-on activities of crime: the transporting of the drugs and illicit goods, the violent acts. But tracking the money, the commercial aspects of crime, the profits of crime, that is how you go behind the big fish, that is how you catch the big fish, [*Desk thumping*] and that is one of the objects of the Bill.

Now, where do we need to be as a country? Internally, we need to clamp down on all criminal activity, not only those who carry out the criminal conduct, but those who benefit from criminal conduct and engage in criminal business. As Sen. Rambharat pointed out—

Sen. Obika: Minister Rambharat.

Sen. A. Vieira:—this is not a Bill in isolation, it forms a package, an omnibus set of related laws: Proceeds of Crime Act, Anti-Terrorism Act, Financial Obligations

Regulations.

So this Bill is targeting those who engage in criminal business for gain and profit, organized crime, white-collar crime, unexplained wealth. How is it that the money launderers and money laundering takes place hidden in plain view and nobody is held to account?

So, I think I will support this legislation because this is one of the tools in the tool kit that will go behind that type of activity. And externally, why do we need to look at—why do we need to support this Bill? As we have heard, this, if we do not do something about it, it will compromise our country's business climate.

There is a perception that this country is high risk, there is a real risk of de-risking banks. Let us not forget that in 1990 we were the first country in this hemisphere to suffer from a terrorist act, the attempted coup. We also have been put on the radar internationally because of the high numbers of Trinidadians who have signed up with ISIS; so anti-terrorism is a real issue for us.

Now, years ago I practised in an off-shore jurisdiction, and I saw first-hand what can happen if your country is grey or blacklisted. What does blacklisting mean? Blacklisting means you are a country to be avoided, you are a country to be distrusted, you are not acceptable in the club of nations. You are a country that refuses to cooperate with the international community.

Well, Madam President, as a proud Trinidadian, that is not a designation that I can accept. [*Desk thumping*] To be blacklisted is anathema. So with that experience, for many years I have been lending my voice, lending my support whether it is to the Law Association, whether to the FIU, other stakeholders, the chambers, in alerting them about the need to upgrade our laws and to get

compliant, to get compliant with international best practice.

And I also would like to say, I participated in the 2015 assessment. I was a member of the Law Association's team, and that took place when the Opposition was in Government. And I want to tell you, that was a very searching, very thorough examination by a panel of experts and neutrals, and they were drilling down, it was not superficial, they wanted to know what you had in place, whether you had the right systems. They really were examining in depth, your legal and regulatory framework.

So this is not something that is going to be vaille-que-vaille. This is not happenstance and something that we could get by on old talk. We have to pass a test. It is going to be a rigorous examination, and we need to get our laws and regulations up to speed; end of story.

Hon. Al-Rawi: Exactly.

Sen. A. Vieira: And it is true, we were really—notwithstanding all the best efforts of the director of the Financial Intelligence Unit. And I mean, they were looking at all the listed business activities, the real estate agents, the jewellers, the automobile sellers, attorneys-at-law, accountants. Some sectors were stronger than others, but as a whole we were not up to speed, and that needs to change.

So what is the purpose of this legislation? Well, the clear answer is, to allow law enforcement to share and exchange information about taxes; so this is geared towards unexplained wealth. And, a person having official duty shares with the director of the Financial Intelligence Unit of Trinidad and Tobago or with a very senior officer of the police service—now, what is he sharing?—information required for the purpose of investigating whether an offence has been committed, and the identity of the person who may have conducted the offence.

Well, I would like to say, law-abiding citizens should have no fear of this legislation. I can only think of one person who refuses to disclose his tax returns, and he is in a different jurisdiction—

Sen. Obika: “Doh call he name.”

Sen. A. Vieira:—and he does not in any way seem typical of the person taking the Priority Bus Route. And what are the offences that we are talking about?—
Proceeds of crime:

“criminal conduct”...constitutes an offence in Trinidad and Tobago; or”—
conduct which—“occurs outside of Trinidad and Tobago and would constitute an offence if it occurred in Trinidad and Tobago;”

Anti-terrorism: Well, as I said, terrorism is nothing to scoff at. We have had serious instances of terrorist activities. We are on the international community’s radar as a terrorist-watched jurisdiction.

Prevention of Corruption Act: nothing invidious or sinister there. And then, of course, offences involving fraud or dishonesty. Now, I too was troubled by offences involving fraud or dishonesty because it seemed vague, but then I thought about it.

When you look at these sections, there are situations where the offences will not be captured. So this phrase “involving fraud or dishonesty” is an attempt, I think, to capture those aspects outside of the Proceeds of Crime Act, the Anti-Terrorism Act and the Prevention of Corruption Act, fraud is pretty straightforward. What does dishonesty mean? Dishonesty means—involves conscious and deliberate wrongdoing, and aspects or instances of dishonesty that I can see falling here: the financial sector misconduct, making false or misleading statements, failing to disclose required documents or statements, or providing

documents containing false information, misleading statements or glaring omissions.

7.00 p.m.

These are dishonest acts and practices that I think are trying to be picked up here by this legislation. And, as I said, there are dishonest practices, it can have real impact on citizens, things like counterfeiting. When you start to counterfeit pharmaceuticals, you counterfeit things like batteries and things that could cause harm to life and limb. The people who are making profit out of these unlawful activities have to be gone after.

Now, I turn to the matter of privacy, and this really, I want to thank Sen. Ramdeen about, because I think it is an important consideration. And it is really, again, the balance between rights of privacy and the need for proper law enforcement. Privacy is one of the fundamental human rights guaranteed under the Constitution. It is the right of the individual to respect for his private life and family life. I think it is section 4(c). Now, we do not have a privacy law in Trinidad and Tobago per se, and so, activities that may seem like breach of privacy between the individuals and the private sector, there is no real law capturing that, you will have to tackle that under different aspects of the law. But certainly in the public sphere, citizens are assured of respect for their privacy against unauthorized intrusions by the State. And so, where privacy is concerned, no law can change without the requisite majority.

Now, I did not come here to debate this Bill, and I really did not look at the privacy law aspect. I have not looked at the authorities. I have not looked at the point in depth, but it is a worry, and it may well be challenged in court, and it may fall to a court to decide whether the AG and those that are advising him are correct,

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or whether the Opposition are right that this is falling short of the constitutional requirements. But I take a page out of Sen. Thompson-Ahye's book: the enemy of the good is the best. We cannot strive for perfection. There is a guillotine coming down, time is of the essence, we have to act. So I prefer to take the chance rather than not do anything. [*Desk thumping*]

It is incumbent on us to support this legislation. Because I also want to point out, this law will also impact those in Government. They too will run the risk of having their taxes disclosed to authorities and others. They are not looking to shield themselves, or to “breaks” for themselves. And so, do we need to support this legislation? Are we compromising our country's business climate? As Sen. Deonarine asked, are we upholding our responsibility to the citizenry?

I would like to think, we in this House will want to tackle the scourge of crime, white-collar and corrupt politicians, corrupt administrators. We want to take our place in the international community as a compliant jurisdiction. I think not passing this legislation allows organized crime and the corrupt a certain leeway. And, of course, the very real risk, the possibility of being blacklisted and sanctions being imposed.

I think, if we drop the ball here we would be irresponsible. And with that, Madam President, I thank you. [*Desk thumping*]

Sen. Taharqa Obika: Thank you very much, Madam President. I will begin my contribution today by quoting, paraphrasing the sometimes Attorney General—I believe he acts in the stead of the substantive Attorney General, that is the Member of Parliament for Laventille West—where he said that:

What the Government was seeking to do by this Bill is to—and he used the word—water down the secrecy provisions in the legislation.

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So here we have it. The Government, by virtue of the words of one who has acted recently as the Attorney General, has sought to water down—

Hon. Al-Rawi: Madam President, would the hon. Member just give us the source of that quotation please, because I do not recall that?

Sen. T. Obika: For the benefit of the Attorney General, I would have thought he would have conferred with his subordinate prior to going to the radio station—

Hon. Al-Rawi: 46(8).

Madam President: Please. Sen. Obika, when you are making reference to Members of Parliament you do it in a certain way in this Chamber. So, I would ask you to abide by that, please, and you have attributed a saying—something to a Member of Parliament, can you just say where you heard that or from—

Sen. T. Obika: I am coming to that.

Madam President: Yes. No, no, when you rise, yes, you will say what is the source of that.

Sen. T. Obika: Power 102. So, to prevent the Attorney General from getting “gigiree” and jumping up before I arrive at it, the Member of Parliament for Laventille West was on a morning programme on a radio station in Trinidad and Tobago, and the radio station’s name is Power 102 FM, and he was on the morning programme that ends around 9.00 a.m. So, I would invite the Attorney General to confer with his subordinate to confirm or deny.

Madam President: I have just spoken to you about how you speak about Members of Parliament.

Sen. T. Obika: The Member of Parliament for Laventille West.

Madam President: Please, take your seat. When you rise I would like you to follow the guidance that I am giving you, please. Okay?

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Sen. T. Obika: The Member of Parliament for Laventille West. And I want to just tell the Government that when they laugh at contributions from Members of the Opposition—

Hon. Al-Rawi: Standing Order—

Sen. T. Obika:—the population is not laughing with them.

Madam President: The Attorney General is invoking a Standing Order.

Hon. Al-Rawi: I rise on Standing Order 46(4) and 46(6).

Sen. T. Obika: I want to submit that the Attorney General is abusing the Standing Orders, Madam President.

Hon. Senator: You sit.

Sen. T. Obika: You cannot tell me to sit. You cannot tell me to sit.

Madam President: Well, I—excuse me! Sen. Obika, I—*[Interruption]* Sen. Obika, the Attorney General, as I just pointed out to you, was invoking a Standing Order, he was not asking you to give way. The practice is when someone invokes a Standing Order you have to sit. Okay? Attorney General, I will allow Sen. Obika to continue, and I will—so, continue Sen. Obika.

Sen. T. Obika: I think, Madam President—

Madam President: Sen. Obika, just continue—

Sen. T. Obika: Yes, I am continuing, and I am saying that the temporary Sen. Young needs to apologize for the comment he just made about school. And once he apologizes I can continue. Do you wish me to resume my seat before you pronounce, Madam President? *[Laughter]* So I continue. We are accustomed to the PNM badgering the population, so it is okay.

Sen. Baptiste-Primus: This is not the House of Representatives.

Sen. T. Obika: So therefore let me continue, Madam President. I am waiting for

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the AG as he has the Standing Orders at the handy. Now, as I began, the Government has brought this Bill to the Parliament, and in the words of the Member of Parliament for Laventille West, they have watered down the secrecy provisions in the Bill.

Hon. Al-Rawi: I rise on Standing Order 46(6), it is that very point that I raised that Standing Order on, for the imputation associated with it.

Madam President: Sen. Obika, continue please.

Sen. T. Obika: Thank you very much, Madam President, for your protection, because we do not want to promote any abuses of the Standing Orders here. [*Desk thumping*] So now, what one must also pay attention to, when we understand that in the words of that Member of Parliament, to water down the secrecy provisions, if we turn to the Bill before us, Madam President—

Hon. Al-Rawi: Finally.

Sen. T. Obika:—and we go to clause 4 of the Bill—I am not here at your pleasure Attorney General, so it is not about “finally”.

Madam President: Sen. Obika, please address me.

Sen. T. Obika: Madam President, I am not here—

Madam President: Please! Members please, there is a little crosstalk that can be allowed, and when it is done with good humour. But when it is starting now to distract from the business of the Chamber, I would ask all Members to desist. Continue, Sen. Obika.

Sen. T. Obika: Thank you very much, Madam President. Addressing you, I am saying I am not here at the pleasure of the Attorney General.

Madam President: Sen. Obika, please! Please! I am here and I am the one who will say when Members are not conforming with the Standing Orders, not you! So

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please just continue with your contribution, address me, and be focused on the matter at hand.

Sen. T. Obika: Yes, so if one turns to that section of the Bill that I mentioned, we see where the secrecy rights, the rights to privacy of our citizens are being trespassed, and we ask the question, why? Why is this being done in this way?

I have in my possession, Madam President, an article dated the 9th of May 2018, headline, it is from Deloitte, and the title is “Luxembourg Tax Alert, Defensive measures for EU list of non-cooperative countries”. Now, there is a particular part of this that I want to get to, and I will explain why. In piloting this Bill, Madam President, the Attorney General solicited a question from one of our distinguished Independent Senators. I believe it is Dr. Remy. And, Dr. Remy’s question, I am not sure if the answer was sufficient to her liking. The question basically was: Should we fail to meet the requirements of the Global Forum, of EU countries in particular, what would be the outcome? And she raised this regarding the clauses of the Bill that were removed before coming to this place.

The Attorney General’s response may have shed some light, but I want to sharpen the focus by virtue of this article, and then from there I will use that as a teaching moment to educate Members opposite and the population at large as to what this is about. So, Madam President, I take this contribution very seriously, and just if I were to take 10 seconds to say why, my background in finance, in particular, coming from an economics background, speaks to the importance of interrelationships in international trade and ease of doing business. So if we were to turn to the third paragraph of this article, there are only five, Madam President. There are only five lines and I wish to read it verbatim, and I thank you. “On May 8th”—on 8th May, sorry, 2018—I quote:

“On 8 May 2018, the Luxembourg direct tax authorities published through a circular the defensive measures”—and I will explain what defensive measures are after—“in connection with the European list. They intend to examine very closely the transactions of Luxembourg companies with related entities situated in the listed jurisdictions.”

I want to stick a pin, in the words of the Attorney General, at this point and explain that word “listed”. So, we are listed in Trinidad and Tobago—the word “black” may not be part of it. But we are listed in terms of being non-compliant.

“Consequently,”—I continue—“the Luxembourg direct tax authorities will carry out an enhanced monitoring of such transactions.”

So, this may seem to be very esoteric to persons listening, because the actionable words, Madam President, may escape most persons who are not au courant, familiar with compliance from the perspective of banking. The words are: defensive measures, tax authorities, direct tax authorities and their defensive measures. So “defensive measures” being the first, followed closely, “transactions” is the second action, and the third is “enhanced monitoring”. Now, when one uses the words, “enhanced monitoring” it brings another word, which is “enhanced due diligence”. And that is a word that has been trending, if I were to use that phrase, over the past four weeks. Why is it trending? What is enhanced due diligence? What does that mean for business in Trinidad and Tobago? I wish to illustrate by virtue of an example. Let us take a very simple example, Madam President. We have a potential investor attracted to Trinidad and Tobago at some trade symposium or some informational video they noticed online, and they decide affordable power, skilled labour force, fair business environment, stable political environment—

Sen. Le Hunte: Good governance.

Sen. T. Obika: —good governance, at times. They would ask the question, “okay, let me go to my banker”. “Let me invest, let us say, in one of the pillars that the Government is promoting.” So let us say, tourism. And they wish to come and invest in Trinidad and Tobago. Before they do so they go to their banker and their banker says, “Oh, this looks like a nice country, let me check”. And when that banker goes to their compliance department, their compliance department before they were to engage Trinidad and Tobago directly, they would look to the listed countries, the countries that are compliant versus those that are non-compliant. And they would see, if they were to be in the case of someone from Luxembourg, they would see among the list of jurisdictions, American Samoa, Barbados, Guam, Namibia, Palau, St. Kitts and Nevis, US Virgin Islands; Trinidad and Tobago is listed among them, and it is to be updated annually. But in this particular year Trinidad and Tobago is listed.

And that banker comes back to the client who wishes to invest in Trinidad, and tells them that “there are some defensive measures we must engage in if you are to do business with Trinidad and Tobago”. And that banker would, Madam President, turn to a document, and I wish to state the title for the record, it is dated the 5th of December, 2017, from Brussels, Council of the European Union, “Outcome of Proceedings from the General Secretariat of the Council”. The subject being, “The EU list of non-cooperative jurisdictions for tax purposes, Council conclusions (adopted on 5/12/2017)”. Just one year ago, Madam President. And when they turn to a particular page in this document, that is page 18, there are many defensive measures, so I will not bore us with all. I will point to just three. And that banker would see that it says:

“To ensure co-ordinated action, Member States should apply at least one of the following administrative measures in tax era:

- (a) Reinforced monitoring of certain transactions;
- (b) Increased audit risks for taxpayers benefiting from regimes at stake;
- (c) Increased audit risks for taxpayers using structures or arrangements involving these jurisdictions.”

Then the banker would tell the client, you would be subjected to enhanced due diligence. Because the European Union cannot trust that the subsidiary or the operations that you may engage in in that country may be shared sufficiently with us to our liking regarding your revenue, your top line and your bottom line, and your tax payments to the point where we are not comfortable; so what we would be doing is we would be checking every transaction. So you want to invest \$100 million in that country, we will ask you questions that would take you probably two months to answer, whereas if you were investing in a country that is not listed you probably may get through that process within a week. That alone may become such a significant deterrent to that investor in Luxemburg that they may choose not to invest in Trinidad and Tobago.

So, I hope that clears the air a little bit for Sen. Dr. Remy. It becomes a disincentive to invest. That is enough to negatively affect the work of the hon. Minister of Trade and Industry who seeks to attract investment, inward investment to Trinidad and Tobago. And why is this important, Madam President? In December 2017, in this same document, if one were to turn to page 11—the same document from the European Union, it states, and I just want to state here:

Trinidad and Tobago has been attributed a rating of “Non Compliant” by the Global Forum...has not signed and ratified the OECD Multilateral

Convention”—and—“...has a harmful preferential tax regime and did not commit to addressing these issues by 31 December 2018.”

Now, this document is December last year. The Government has been on the record blaming the Opposition, but they had two years, two years since they assumed office. Two years and some months to address this. They did not. So, when we hear Madam Francois from the FIU lamenting that this same enhanced due diligence that I spoke of, that may arise—sorry for displaying—from the Luxemburg jurisdiction to inward investment and continuing investment in Trinidad and Tobago, this same enhanced due diligence is as a result, not of the failure of the Government to pass this Bill before us, but because of the failure of the Government to meet their requirements with Global Forum before and up to December the 5th 2017, or whichever date they would have listed us as non-compliant.

The bottom line, Madam President, is this Government must accept the blame for us being non-compliant, and also accept the blame for any enhanced due diligence that the Bankers Association is complaining that they are facing today.
[*Desk thumping*]

So, I want the—and there was also a comment, Madam President, because I listened attentively. You know, we can laugh and so on, but today is serious business. Today is serious business. I listened attentively and I was very disappointed that the Minister in the Ministry of Finance, in my country, could cite Wikipedia as a source. I think that should be removed, and the hon. Minister should correct that for the *Hansard*, if Wikipedia is the final source. Possibly, going to find what is the real source, but Wikipedia should not be upheld. Because if you were to look at some of the things that Wikipedia has, Madam President, on

institutions that you may be familiar with, you would want to know which organizations there they are talking about. Wikipedia must not be referenced as a source.

Now, I just want to address, Madam President, something I heard across the floor. The reference was not on Power 102, the reference was the Minister who spoke on Power 102. That is a difference. [*Desk thumping*] So, I just want to—I like to educate. I believe education is important. So, I am happy that I got an opportunity to teach the Government Senator.

So, Madam President, the hon. Minister, I listened very attentively. I listened very attentively. The hon. Minister stated that, because the past Government committed to Global Forum, that Trinidad and Tobago is blacklisted. Madam President, that is totally false. So, is it that the Minister is saying that the past Government should not have committed to Global Forum so that Trinidad and Tobago could become a pariah state? Is that what the hon. Minister—I know that is not what the hon. Minister was hoping to be the thrust of her contribution.

So, I really hope that the Minister owns up to her Government's failure. Because the Minister of Finance has been trumpeting the fact that we belong to a global village, it is being increasingly interconnected. So I know the Minister would have expected, regardless of which government is in power, whichever initials they have at the beginning of their name, A, B, C; C, N, D; it does not matter, once you are in Government and you are faced with a responsible decision, the responsible decision was to commit your country. So, that deals with that point there.

Now, Madam President, enhanced due diligence and this Bill. This Bill speaks specifically to that, and there is something that I want to thank the Bankers

Association for. Because when you look at the media reports you would think that the Bankers Association was actually against the Opposition. But if you listened to one particular person, and he is the chair of the legal authority, the legal committee, I think, in the Bankers Association. The Bankers Association basically has said that they want the judicial oversight. They want it. And I think this country owes a debt of gratitude to the Leader of the Opposition, Mrs. Kamla Persad-Bissessar, and all the members of the United National Congress [*Desk thumping*] for ensuring that that becomes part of this Bill. The only sad part, though, is that the FIU remains without the requirement for this judicial oversight. So that is a sad part there. But, I know that there may be persons who would challenge that in the course of our nation.

Now, Madam President, I want to leave with this final point, and this point has to do with where we are as a nation. It must not be—I want to start back that sentence. If it were that because of geopolitics you were making this decision, I would have made that the centrepiece of my contribution today. But it is not. Because if we were to take the dictates or the requirements of Global Forum, we would see that, really and truly, what this Bill calls for is not consistent with what they have requested. We would see they are totally at sea from each other.

So, I want to leave with this point, when the Government wants to get particular actions in play, they should just come out and say so. Just come and say so. And we in the Opposition will consider your position. We would consider it from a point of the rights of the citizens of Trinidad and Tobago. And if we believe that it does not sit with the rights of the people of Trinidad and Tobago, we would not accept you. We would help you to create good law.

But this Bill, as it stands, does not meet the objectives of the Global Forum

in the fullest extent that they wish to do. And I do not believe necessarily that it may be expedient to say that the enemy in this case, the enemy of—this is the enemy of the best. I am not sure that this is good in the first case. If it were good then we can say that it is opposed to being the best. So, the enemy of the best is good and that kind of thing, but if, however, this Bill was well intentioned, if this Bill was well crafted, and if this Bill met the requirements of the Global Forum.

I just want to assure the people of Trinidad and Tobago that correspondent banking transactions are not going to change at the snap of a finger. The European Union member countries are not required to follow directly with the defensive measures. They can cherry-pick. They can decide which measures they are going to institute. All of that is in the document that I cited from the European Union, Madam President. They can pick based on their perception of how upfront, how transparent, and how efficient your financial markets are. And they are not going to take decisions just like that, to end the correspondent banking transaction relationships of a nation such as Trinidad and Tobago. All right?

And I want to leave with these last words. The Ambassador stated that correspondent banking transactions, when we met with them on this particular issue, at the Opposition office—this has nothing to do with the Joint Select Committee. When we met with them and we asked the specific question, when, or if correspondent banking transactions will be affected, and when? To the first question, if? They said that is a question for the member countries. And regard to when? The first answer covers that. So it becomes very difficult, knowing that information, to hear the Government saying that correspondent banking relationships will collapse overnight. Because, they could not have gotten that from the same source as we, and the only source they could have gotten it from is

the same source as we.

So therefore, I want to correct the record, and I want to tell the Bankers Association that we are on their side, as they have seen. We understand the importance and negative potential impact of enhanced due diligence, but we want to say that their accusations are pointed in the wrong direction. It should be at the Government, because it is under their mismanagement of the situation, failure to bring the correct legislation in front the Parliament, in the appointed time, that we have become non-compliant, and that they are facing this enhanced due diligence. With that, I thank you. [*Desk thumping*]

7.30 p.m.

Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to have an input on the Income Tax (Amdt.) Bill, 2018. I would like to thank the Attorney General for giving us a little history behind the Bill, bringing it forward, how it has reached to this stage. And I must say I have two concerns with this Bill, the potential for abuse by police, because we have to look at the situation that exists in Trinidad and Tobago, the reality.

Sen. Mark mentioned about the cause of probably political interference and I guess, we also have to factor in that that is a reality that may exist in our country and we would have to see if somehow we could get safeguards that can come into place, probably the Minister of National Security, the Commissioner of Police could give some sort of confidence or some sort of safeguards that the individual person may not have that fear that they would be victims of some sort of police interference. So safeguards, levels of confidence have to come into this place.

The other factor I looked at is the dilemma I now face after hearing about the amount of legal minds on the Government side and also on the Opposition side.

Income Tax (Amdt.) Bill, 2018 (cont'd)
Sen. Dr. Deyalsingh (cont'd)

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Hearing about the two authorities, the legal authority, Suratt or even Bank Mellat, which one do we believe in? Do we believe in Suratt that the AG seemed to have benefited from in his discourse trying to get, you know, the three-fifths, the Bill coming into play without the three-fifths majority being required, or do we believe Bank Mellat as Sen. Ramdeen suggested. So if the AG saw the need to go with Suratt probably it was due to the desire to fulfil the timeline of the Global Forum. But the dilemma I face is that if we support this, would we be accused of putting in bad law into the legislation. So this is the little dilemma I face. But again the courts may eventually, may be asked to decide on this matter as the Opposition mentioned.

Now, this Bill has—it is eight years in coming. It is long overdue and I think it is really an indictment on all in Parliament that, you know, for not pushing this Bill faster, because we have seen the economic repercussions that can occur. We have seen that, you know, even Trinidad and Tobago we have been blacklisted by certain travel advisory, one in persons—citizens from Europe, America, coming into Trinidad, you know, they have blacklisted us already saying that we have crime, we have a great degree of crime in our country, to be careful.

So I think it is unfair now that we are now being blacklisted again in the economic stage where it looks like, you know, that people may want to invest here, we may want to go abroad and we may not be able to invest in such a manner. So being on this economic blacklist or grey list as some people say—again that brings into the effect that, you know, it is coming into play that it is a lot for us to bear as ordinary citizens; what is going to happen.

So they are looking at what is happening in Parliament, what are we doing here? What are we doing here to help the economic burden, to help Trinidad and

Tobago as a nation to be able to, on the world stage to be better geared. We already have the crime, let us not look at that economic fallout that may occur with this Bill not being able to pass.

What would happen if students who cannot afford to pay their university fees if it reaches that stage where banks abroad may not want to accept money from Trinidad? What will happen to patients who have been already seeking medical attention abroad, having to pay for medical attention abroad if suddenly the banks there, say, hey, we are not going to be taking moneys from certain countries who have been blacklisted. So all these are factors that we have to look, see how it will come in, how it will affect the ordinary citizen.

Then we look at the fact that even in terms of terrorism, I was fortunate to be involved in certain talks with the Ministry of National Security and with two embassies and we looked at the whole idea about terrorism. We were trying to figure what is in the mind of a terrorist. Why would a citizen leave Trinidad, go get training to become a member of ISIS and when we look at all these factors the economic gain, how money is transferred from one country to another, how it is funded, all these are important factors.

Trinidad, according to the United States Department of State, in *Refworld*, they looked at the country reports on terrorism, 2016 in an article, 19th of July, 2017. And in that article on terrorism we were listed as the highest country in the Western Hemisphere that could have members joining ISIS. So we already have that label on us. We have that label of crime, we have that label on terrorism and this Bill will help us along that line. This Bill will actually help us look at any sort of funding activities, any sort of funding or financing of any sort of terrorists and terrorist acts. So again, this Bill is very important not only in the economic climate

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but in our whole concept of how people look at us in Trinidad and Tobago as a terrorist state. It will show that as a country we are serious in trying to curb that image that we have.

Now, this Bill also speaks to the money laundering effect that we were trying to look at. But this money laundering effect of the Bill, since 1986 after Scott Drug Report we knew about certain big players. We knew about the need to follow that money. Then the procedure of crime Act in 2000 brought upon by the Basdeo Panday administration, again we were looking, the country looked on to see what was Parliament doing to go after, to follow the money, to go after the money laundering. So from 1986 to 2000 we looked at the Proceeds of Crime Act. Then in 2009 the Financial Intelligence Unit was set up by the Patrick Manning administration, the FIU, and then following on that we were reminded by Minister Howai in 2014 under the previous Government of Kamla Persad-Bissessar, further pushing for the laws to be implemented in looking at money laundering.

So it seems, it was an effort right through from successive Governments handing over the baton and it is a long process. So it is not just eight years ago, it is since 1986 we knew there was a need to do something about money laundering. So it seems that if we are reaching this stage and this Government seems to be now having that baton and willing to at least carry it to another level, I am looking at this process that we have to continue this process. It is necessary, it is needed for the economic sense, for the image of terrorism, it is needed for our citizens to be able to go abroad to study, medical. So it is needed, it is needed. And I see there is need of it.

I have also seen the effects of the ills of drugs in society. I mean it is there, our clinics are being filled with persons on drugs and we have also heard Sen.

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Vieira speak about the fact that certain persons are untouchable. So you go after the small man but the big fish they are getting away. So the crime fallout from the drug trade, you know, all this we have to show that we are now serious about money laundering.

The Attorney General mentioned about \$22 billion in suspected financial transactions taking place and there was an article in the *Express*—April 11, 2018, article where they said there was a 500 per cent increase in the value that we see with suspected financial transaction between 2016 and 2017. That is a 500 per cent increase. That is a lot. So a lot of money, \$22.2 billion in suspected financial transactions. So we have to stop it. We have to get some way of saying that this is a serious Government, this is a serious Parliament, we are serious people here and we need to do something about it. All of us need to do something about it to stop this financial impropriety that is occurring. We have to put some measures to restrict it.

And the AG had mentioned that Al Capone was not—

Sen. Khan: Senator, if you could just give way.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, in accordance with Standing Order 14(5), I beg to move that the Senate continue to sit until the completion of the business at hand.

Question put.

Sen. Mark: Madam President, may I before—

Sen. The Hon. F. Khan: Just out of abundance, including the two matters on the adjournment.

Sen. Mark: Yes, out of abundance of opportunity—

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Question put and agreed to.

INCOME TAX (AMDT.) BILL, 2018

Sen. V. Deyalsingh: Thank you, Madam President. I will be very, very, quick, I am almost to the end. The Attorney General had mentioned that Al Capone was not brought down by any sort of the criminal activities per se, but he was actually brought down by the suspected financial transactions. And with this point we have to say, you know—now in closing I would like to say in supporting this Bill, if supporting this Bill, it would allow us to bring down our local Al Capones, our local Mr. Big. And you know, I would welcome this Bill in the sense that if somehow we see we can get the big fish, the untouchables, if this Bill could provide the net to capture the big fish then I would be happy see the Government, hopefully, go fishing soon. Thank you. [*Laughter*]

Sen. Charrise Seepersad: Thank you, Madam President, for allowing me to make a contribution tonight. As usual, I am going to be short. Madam President, while I understand that the Bill being debated is mandatory for meeting the international standards, the question I have is whether this version of the tax amendment Bill satisfies some or all of the requirements of FATF, Global Forum, et cetera.

Given that we are on a grey or blacklist, I am not sure what we are on, will Trinidad and Tobago be removed from the negative status as a result of the passage of this Bill? Looking ahead, Madam President, come January 2019, when Trinidad and Tobago will be reviewed by FATF, will we be able to meet the requirements of these international financial and tax bodies or will we fall over the edge into financial hardships and economic ruin?

Madam President, I look forward to clarity and assurances by the hon. Attorney General that the strategies and tactics employed in this House today will

Income Tax (Amdt.) Bill, 2018 (cont'd)
Sen. Seepersad (cont'd)

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ensure that the stated requirements of the various international bodies are met.
Thank you, Madam President. [*Desk thumping*]

Sen. Anita Haynes: [*Desk thumping*] Thank you, Madam President. Thank you for allowing me to join the debate on this Income Tax (Amdt.) Bill. I would just seek to contextualize my contribution very quickly as I begin. So I would like to respond to some utterances that were made in this House because I think that they were deliberately placed on the record to create an inaccurate picture and I will just address those as part of my contribution. I will seek to explain concisely why we as an Opposition cannot support this Bill and why we cannot support this approach to legislation. I will itemize the pains we took as a responsible Opposition to ensure that we had good legislation before us which is not what is before us today. And in doing so, I will address some concerns on collaboration and a need for collaboration in the passage of legislation.

So, I will begin with what was put on the record today. We heard from three Government speakers, all of whom stated, “this is a simple Bill”. It began with the Attorney General, repeated by the Minister in the Ministry of Finance and repeated by the Minister of Agriculture, Land and Fisheries, “this is a simple Bill”. And this refrain, Madam President, we have heard time and time again, and I was not in any way shocked to hear it on this Income Tax (Amdt.) Bill, because the process by which this Bill came here was something we have seen before, which is a Government that sought to manufacture chaos around legislation and create a lot of noise and create a sense of urgency so that we as Parliament seem forced to—

Hon. Al-Rawi: 46(6), Madam President.

Madam President: Continue Sen. Haynes.

Sen. A. Haynes: Thank you, Madam President. [*Desk thumping*]

Sen. Mark: “Ooh, what happen to the AG, boy?”

Sen. A. Haynes: And I think that this being the fourth year of this administration we have seen this with the different pieces of legislation. We saw it with FATCA, we saw it with anti-gang, this idea of taking us down to the wire and saying it has to be now, it has to be now, and the deadline. So, this takes me to the, “this is a simple Bill” response. You see, I would just like to translate that because we have a number of new Senators here on the Independent Bench and those who were here before would, I think, would support me on this that, “this is a simple Bill”, can be interpreted as we are accepting no amendments, “doh” bother to come with your concerns, this is what you are getting, this is what you are leaving with. This is a simple Bill, means this is a simple majority, we do not need you, we do not need your vote, we do not need your voices and do not waste your time basically. [*Desk thumping*]

And starting with the point of emphasizing simplicity, of always emphasizing the simplicity of the Bill—is getting frustrating for me as a student of political science, simply, because, what are you asking us to do as parliamentarians? Are you asking us to be derelict in our duty?—because this is a simple Bill, do not read it, just pass it. Are you asking us to abscond on our role to scrutinize? Because this House is meant to scrutinize legislation and ensure that good legislation is passed. Are you asking us to ignore our oath to uphold the Constitution? Is that what this simple Bill means? [*Crosstalk*]

The Attorney General said, “this is a simple Bill” which had a complicated process to get here—that is his direct word. And, Madam President, through you I would just like to say to the Attorney General, the process is complicated, legislative process is complicated by design. It is meant to be difficult. If you are bringing legislation, you are creating laws. It is not supposed to be this easy, we

come, we talk, we laugh a little bit and everybody vote, yes and go home. It cannot work like that. At the beginning of this and the reason the Opposition had to take a lot of flak, because initially it was meant to be a three-fifths and the Bill was intended to—in some ways infringed on the rights of citizens, and by design that process has to be complicated. It has to be a complex process.

And I heard, not in here today and perhaps in the wind-up, because it usually comes up, this idea of obstructionist politics. The Opposition is obstructionist and that phrase amuses me because it is borrowing from the American system where they have borrowed “fake news”, another pedestrian term they like to throw around all the time and it is done. If you take, if you whittle that down, obstructionist politics to the lowest common denominator, it really talks about a Government who has failed as policymakers. So what you are meeting is not an obstruction, you failed to bring the proper legislation and I want to endorse the questions that Sen. Seepersad had, because I can guarantee the answers to those questions will not be satisfactory. [*Desk thumping*] There will be a lot of words, a lot of words, [*Desk thumping*] but there will be no answer, no direct answer to those questions. A lot of words.

And so, in response to “simple Bill”, I would just like to state going forward, the legislative process is meant to be gruelling, it is meant to be rigorous, it is meant to be thorough and we make no apologies for that. And no Government, and I mean no Government, should feel like it is simple and easy to do away with constitutional rights. And I think it is important as well, that—I listened to the Attorney General as he began his presentation and we began the discussion on this Bill. And my mind went back to when Sen. Mark asked a question in April of this year, about whether or not we were on the European Union blacklist. And that

stood out to me, because the day Sen. Mark asked that question, the Attorney General stood up and said, “No”. But I had done the research and I knew the answer to be yes. So I found it on my computer and I passed the computer to Sen. Mark, and the Attorney General got up and said, “Well I cannot accept anything that Sen. Mark has to say, you have to cite your source”.

And so the Opposition is put in an unenviable position of always trying to disprove an untruth. So it is a convoluted process of having to say, but, here it is, this is it, it is in black and white and you are being told, well, that is not true and you do not have to defend your position, you just say it. And so I picked up this *Hansard* from April 26, 2018 where—and I pointed to two things, because people are asking why we are here now, we need to pass this legislation, it is important. And I want to just note the timelines here.

April 26th: the Attorney General noted that the Government of Trinidad and Tobago have provided high-level political commitment to the EU on November 21, 2017 and another commitment on March 14, 2018, to ensure that Trinidad and Tobago is in full compliance with the Council of the European Union criteria. Why then are we in this breakneck speed, rushed process, if you made these commitments, you spoke about it and Sen. Rambharat asked the question and gave us an accounting lesson, you know, one, two and three, but they have always referred to the legislation as a package. This whole idea of one, two and three appeared out of nowhere, but it has always been understood that this was a package of legislation meant to cure a particular ill.

And again, going back to Sen. Seepersad’s question, what are we doing here today? Are we curing any of those ills? Highly unlikely. So therefore, this flurry of activity was carefully orchestrated. The timing should not be lost on any of us,

at all. When this conversation took its heat, when there were three press conferences in one day, Petrotrin was closing down, that same day. So let us not be naive as to why this happened in the manner in which it did.

Now, I turn to comments made by Sen. West, touched on by Sen. Obika, but I just want to take a slightly different angle here, which is the comment that we committed but we did nothing. You see this is a fundamental misunderstanding of what the problem is. The problem is not the commitment, the problem is not our international obligations. The problem is not having an agreement which we are obligated to pass certain pieces of legislation. Sen. Ramdeen made the point that the law in and of itself is flawed, and we are also prosecuting that the process by which this is done was also a flawed process. [*Desk thumping*]

And, again, we have to ask today, what happens if this Bill is passed? Nothing. What happen if it is not passed? What are we actually doing here today? And I have had to say it before on other pieces of legislation, I do not understand why we put the time and effort to do things in a halfway manner. We keep hearing we have to start somewhere, start somewhere, you have to start somewhere. One of these, try to get it right, any one, pick one, get one right, and then I will say, all right, we have to start somewhere. But you keep saying start somewhere and keep giving us flawed legislation and making our task more difficult. And so when you look at the five clauses that we have before us, do any of them contain a solution to the problems that the Government has itemized.

And, Madam President, the last comment that I had to raise was on this idea of collaboration and working together. The Opposition has maintained from the very beginning that we are willing to work with this Government to the passage of good legislation. We have demonstrated that, time and time again, even though

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they are conveniently blind to the fact that when we help, the legislation gets better. And instead of being genuinely collaborative, Madam President, and the *Hansard* of April 26th is important too, because the Attorney General presupposed that we would not be supporting the Bill. And I get the sense that they were hoping for this kind of situation to play out because it gives them a very comfortable space. The only comfortable space that they can work in which is, we are trying but they do not want to help us. It is not true, do the right thing and we will help you, we will assist. [*Desk thumping*]

Madam President: Sen. Haynes, you have been speaking for a little while now and I have given you that leeway, but you need to get a little more specific to the issues at hand.

Sen. A. Haynes: Thank you, Madam President. I was at the end of the contribution. I was just making the final three points because I said that I was dealing with three things and I am on the collaborative effort and that is the end. The Opposition raised certain issues that were not addressed. The Government via the Prime Minister asked to meet with the Leader of the Opposition to iron out these issues and that meeting was due to take place on Friday morning. We, as a team—because that is how we work—were diligently prepping because we assumed that we were coming to do the work necessary to give Trinidad and Tobago the best possible piece of legislation last Friday. As we were working and prepping, the TV was on in the background, and the PNM meeting is going on, we heard the meeting that we were preparing to go to—taking very seriously, any one, pick one, right, a sham— [*Crosstalk*]

Sen. Gopee-Scoon: But it is not a joke.

Sen. A. Haynes: I agree, I agree, calling the meeting with the Opposition Leader a

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sham and then telling us that we ought to be collaborative. We were preparing for the meeting, very seriously, very seriously—[*Desk thumping*]

Sen. Obika: But they called it a sham.

Sen. A. Haynes: And so, Madam President, when persons ask [*Crosstalk*] “Oh gosh, doh get antsy, doh get antsy.” [*Crosstalk*]

Madam President: I do not know why everybody wants to speak at the same time, please, let us listen to Sen. Haynes in silence. Sen. Haynes. [*Desk thumping*]

Sen. A. Haynes: Thank you, Madam President. And at the end of the day when you come here and you say, we can work together, we could pass good legislation and then that is your subsequent behaviour, as Sen. Mark noted, we simply cannot trust anything the Government has to say. [*Desk thumping*] And so when you are willing to do the right thing, when you are willing to do the right thing, to take us off the blacklist, we are here and we are willing to help. Until then, I guess you would have to take passing inconsequential pieces of legislation. Thank you Madam President. [*Desk thumping*]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. [*Desk thumping*] Madam President, I rise to—

Madam President: Attorney General, Attorney General, yes. Hon. Senators, I will now suspend the sitting for 15 minutes.

7.58 p.m.: *Sitting suspended.*

8.15 p.m.: *Sitting resumed.*

Madam President: Attorney General.

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I had not expected to rise as quickly as you called me, and I do confess that I had my Standing Orders crisp and ready for Sen. Baig in case he decided to speak. So, that

notwithstanding, it gives me great pleasure to wrap up this debate and to address the very important observations made by hon. Senators. I wish to compliment the hon. Senators on the Independent Bench, many of whom I have heard for the first time on this bench.

Of course, that is not to say that I have not heard them elsewhere in their very strong advocacy as leading personalities in their own right. I reflect very warmly upon the fact that at Hugh Wooding Law School, it was Sen. Hazel Thompson-Ahye who first took me into the legal aid clinic and put me on the straight and narrow, and I thank her publicly for that exercise that she put me through.

Madam President, we have effectively had a few different arguments this evening. On the Opposition Bench there was approbation and reprobation at the same time. There was a lot of song, dance, rhythm and decibels around why scorn should not be poured. The exhortation coming from Sen. Mark, in particular, involved the usual application of Opposition positions: this Bill is not ready; we need to talk some more; the process was bad; we need to take some more time; the Opposition is being forced to agree with something. The positions coming from Sen. Haynes sort of mirrored that position.

Sen. Hosein made some rather interesting submissions, if I put it that way, on the one hand talking about matters such as the history of the UNC's march towards getting us here, acknowledging in full form that in March 2010, when the first peer one formula had not filled out the form. And that is true. We of form went out that the PNM did not fill out the form because had we filled out the form we would have been complying to a process that we were not ready for yet. And then Sen. Hosein went further to say, "Thank the Lord that the UNC filled out the

form in June”, even though they were not a member of the Global Forum. But by that very act of self-congratulations and filling out the form, the die was cast in 2010, more than eight years ago, putting Trinidad and Tobago onto a trajectory for the passage of this law.

The fact is—Sen. Hosein went even further to say something which is the opposite of what has been said. And what was rather curious about Sen. Hosein’s contribution is that his own colleague sitting on the same bench referred to the fact—and Sen. Mark, the leader of his bench, said that the Attorney General was quoted as saying, “This would be death by a thousand cuts”. And then Sen. Hosein stands up and goes, “The sky is going to fall, the Government says”. I mean, which is it? Did they, as Sen. Haynes says, caucus diligently and prepare? Because if a mere one person away from Sen. Mark, the submission that comes is that the sky will fall and that the clock turned on the 30th of November, and the sky did not fall, well, then, how does that reconcile with the Leader of the Bench saying that the Government’s position is that this will be death by a thousand cuts?

It goes further. Sen. Obika then went into the understanding of what the application of enhanced due diligence looks like. And for the record, Sen. Hosein’s submission that somehow the Government has portrayed that the Global Forum will blacklist us and apply sanctions, most respectfully, that is not the case. We have never said, nor can we say, that the Financial Action Task Force or the Global Forum are the ones who can blacklist you. They will rate you, state you and then they may recommend for correspondent banks and for financial institutions that they apply a host of remedies. So it betrays any form of analysis of the genuine position, and regrettably it falls within the argument offered by Sen. Haynes, and that is the chaos theory.

Now, most respectfully, let us for one moment say—forget the “he say, she say”; forget the “you had eight years warning.” The steps were taken. The legislation is supposed to be done. Forget the “who started and who did not.” If I try to distil the arguments coming from the UNC bench, most respectfully, the only argument that I have heard is an allegation that it is unconstitutional. That is it. The reference that my learned colleague, Sen. Ramdeen, for whom I have a great deal of respect—and I will tell you why I have a lot of respect for Sen. Ramdeen. He is a good advocate. He is a compelling speaker. The gravitas of his tone can sometimes mask how thin the substance of his argument may be. And I do not mean that pejoratively. I mean that in the best way possible. I compliment my learned colleague for making a case sound good.

So let us address the one argument raised by the one Senator from whom I have found some substantive issue on the Opposition Bench before I get to the Independent Bench. I thought Sen. Ramdeen did a good job in raising the arguments of the Constitution. Indeed, his statement that section 2 of the Constitution, which describes the Constitution as the supreme law of Trinidad and Tobago, is true. He sensibly recognized that there is no absolute right in the context of sections 4 and section 5 of the Constitution, and it is true we have qualified rights. But most respectfully, Sen. Ramdeen, I was very, very careful, through you, Madam President, to not want to treat this Parliament as a court of law. Because, respectfully, I am not speaking to lawyers. The view and role of the Legislature is to make laws for the peace, order and good governance of Trinidad and Tobago. That is not something made up. That is something which is specified at section 53 of the Constitution, under Part II:

“Powers, Privileges and Procedure of Parliament.

53. Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so however, that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence 1962 Act”

—UK et cetera—

“may not be altered except in accordance with...section 54”

—which tell you what your majorities are to alter things.

And in this discussion where we are not speaking to lawyers, my role is not to impress hon. Members opposite with a “ring man” of cases. That is for the court. My role is to set on the parliamentary record the principles for interpretation of the laws which a court will do. Because there is a separation of powers in the model of our Constitution where you have the Executive—section 76, 79, et cetera; you have the Judiciary when you deal with the chapter on the Judiciary, and you have the Legislature.

And those three limbs, which are interconnected, there are rules and boundaries, such that Parliament makes the law; it is the supreme law, and the Judiciary’s job in considering whether law is vires, whether it is constitutional, has two purposes. And the purposes are not complicated purposes. On the one hand it is to interpret the law and on the other hand it is to interpret it against the Constitution. And, yes, there is a concept of proportionality. That is why I started off on describing the three legitimate aims of the Bill.

And, yes, I, constantly, as Attorney General, bearing in mind that the courts may be invited, as Sen. Ramdeen has threatened, to consider the constitutionality of law, my obligation is to put on the parliamentary record a description of proportionality. But to do that I need only, (a) state the aims of the Bill. And those

aims I have stated: FATF; Global Forum; and Trinidad and Tobago's situation of who we are, as Sen. Vieira so eloquently described.

Secondly, in describing proportionality, I need only look to describe whether the measures of the Bill are rationally connected to the prescriptions for the legitimate aims. And thirdly, and quite simply, all that I need to do is to set out whether the means go effectively no more than necessary. And, yes, one could recite the history of the development of the argument of proportionality. *R. v. Oaks*, *De Freitas*; *Suratt*; *Maraj*, *Northern Construction*. Because I do not say it does not mean I do not know it. This is not a court of law. This is speaking to the people of the Republic of Trinidad and Tobago in the Parliament of Trinidad and Tobago: And, therefore, that is where I characterized my learned colleague, Sen. Ramdeen's advocacy as good advocacy, but on a slim submission. And I mean that in the best way possible.

I want to draw a reference to section 53 of the Constitution because Sen. Deyalsingh expressed concern about who is right. First of all, I will return to the statement of Prime Minister Mia Mottley yesterday in claiming the land you have. If not now, when? If not us, who? And in coming to this submission, I want to go back to section 53 of the Constitution. It is trite law. It is simple law that there is an axiomatic connection between national security and the development of law and due process. You see, our Constitution permits laws to be made and due process is often the counterbalance to an allegation of a lack of constitutionality. It is not, as simply put, that we just slapped on the label of having a judge offer the consideration for the granting of taxpaying information. It is not that.

There is a body of law, and I found as I looked quickly across—I found the dicta of Justice Saunders in *Belize vs Zuniga*, and in that, the statement coming out

of that court, in particular, was the national security component of due process; and due process is found in our Constitution. And the submission coming out of that case, in effect, which I hang my hat on, which the Government hangs its hat on, is that there can be construed to be a live abdication of constitutional responsibility as lawmakers if we do not treat with the issues that plague our society, and, therefore, the level of intrusion that we are going to have on enshrined rights, which are qualified rights. So this right of private life, family life, must be counterbalanced against the other competing section 4 right, which is the right of the individual to the safety, to property. Take the other whole section 4 rights. We have the opportunity, not only to consider right to private life, right to privacy and family life, but we must consider the safety of the individual, the safety of our society, where runaway crime is taking us and factor it in the formula of due process.

And, therefore, I respectfully argue, I respectfully urge hon. Members to not be tripped up on the fact of a bare allegation that this Bill is unconstitutional. And for the record, the courts are there to test that. We have no fear of that. And sometimes, as happened in one case, for instance in this Parliament's life, this 11th Republican Parliament, we did an order for the appointment of a Commissioner of Police. We said this country deserves a Commissioner of Police. Let us amend the order for the appointment of a Commissioner of Police. It was challenged by the Opposition, and the court, at first instance, made some minor amendments to the wording of the order. We could have appealed it and proved the point right, but we said, "You know what? This country deserves a Commissioner of Police." And, therefore, we elected not to disturb the High Court Judge's decision. We could have gone to the Court of Appeal. We did not, because it would have delayed the appointment of a Commissioner of Police. And I think Trinidad and

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Tobago today is agreeing in round measure that Commissioner Griffith was a very good choice for this country. [*Desk thumping*]

But had we gone after the High Court to the Court of Appeal to then the Privy Council to be referred back to the Judge, in 2022 we would have been still working with the same system. So sometimes you allow your opponents to feign a victory and let them celebrate. Our celebration is quite simple. We got a Commissioner of Police. And that is where the balancing of rights and the choice to be made comes into context.

So after we have addressed constitutionality, pick one issue from the entire Opposition Bench. There is no issue to be found. If you remove the fancy footwork; “let us talk some more; let us dance some more; it is not good law; we said we would meet but we did not meet and we wanted a joint select, and we had a special select, but we did not turn up and we sorry we did not turn up, and we were working diligently”—

Sen. S. Hosein: We are never sorry about that. We are not sorry about that.

Hon. F. Al-Rawi: And not sorry they did not turn up. The truth falls from the mouth of babes, most respectfully; the honest truth. Hon Senators confess now, “We are happy we did not turn up.” You see, that is almost Freudian, I dare say, because the truth is that the Global Forum mechanisms are a part of the legitimate aims of this Bill. We have quite simply been told that in order to sign on to the multilateral convention we have to amend the income tax law.

Madam President, I sat in this Senate somewhere in front of Sen. Vieira where he sits now, on the Opposition Bench, and for that time debated several pieces of law to treat with the Financial Intelligence Unit, the proceeds of crime, the Anti-terrorism Act, all FATF-driven special majority laws. There were

times—and Sen. Vieira, who sat in that Parliament with me can testify, when the entire Independent Bench voted against the Government's Bill, as happened with the Children Act, for instance. Every single Member on the Independent Bench, as I recall, failed to give an affirmative vote, and it was the Opposition that voted with the Government after I personally introduced 224 amendments that night on the floor, to deal with that legislation. But we never once asked, "Let me see the letter. Ah doh trust yuh. Ah want tuh come back to that. Let us have a joint select committee. Let us not turn up." So where are we in terms of this blame-game position? It really does not take us far.

Madam President, Sen. Rambharat said something that I would like to underscore. We are going to have to come back to Parliament in the month of December to debate more FATF work. Why? This is not a static position. When Minister Imbert, in the letter read out by Sen. Hosein, referred to certain deadline dates and referred to the concept of making best efforts by drafting laws, having the Global Forum work on it with us, having the EU, the OECD work on it; give their comments; share it with the Opposition; share it with Sen. Richards as he participated as an Independent Senator with their marked-up comments on the Bills, the position changed.

Introduced into another piece of law is this whole concept of the elimination of free zones. That is no simple issue for a developing country like Trinidad and Tobago. And when they throw that bogie at you, Madam President, you have to hold strain and watch what your position is, because Panama and other jurisdictions have significant exceptions and you cannot be applying a standard to the developing Caribbean market, our micro economies, and you have inconsistencies in the OECD and G20 countries.

And that makes reason to pause. The Minister of Trade is wrestling with the issue on a day-by-day basis. And the hon. Members opposite, some of them—Sen. Mark in particular—they have sat in Government. This is not a static position. The FATF, in its four plenaries per year, have amended their recommendation and analytical tools. In fact, in Paris in this October season, they amended the regulations again and they told you, “The amended regulations that we have gone out, you have to apply to be re-rated on that basis.” Because they constantly change the goalpost on you.

So this is not a *carte blanche*, this is the milestone, that is the milestone approach. This is a trotting developing democracy. Last night my daughter, in doing an essay on terrorism, asked me for some guidance, and I said, “Pull up the United Nations website. Have a look at the treaties. Have a look at the UN Resolutions issued over time.” And I was able to suggest to her, after she read it, I said to her—I said, “What have you seen? What was terrorism in 1962? What was the big thing in 1970s? Hijacking planes. Then it was invading embassies. Then it was hostage taking until we had planes flying in the air crashing into towers, threat of nuclear sanctions. And I said to my daughter, through you, Madam President, that terrorism mutates.

Similarly, financial obligations mutate. Financial regulation mutates. And in this world the big fish eat the little fish. There was a suggestion that Caricom should have a unified voice. I wish to say that that issue has been discussed at Caricom level. But I can say as a past chairman of the Caribbean Financial Action Task Force myself, that under Trinidad and Tobago’s chairmanship we unified the Caribbean Financial Action Task Force. We improved its output by hundreds of per cents, and the Attorneys General for all of the Caricom countries have written

in collective purpose to the Financial Action Tack Force and to other agencies to move as one.

We are not sleeping. Taking the advocacy, be it at CSME, at Caricom, at CFATF, the work is being done. Trinidad and Tobago's anti-terrorism law is now the model law for the whole of the CFATF. How did that happen? Because we operationalized the law. When I came in as Attorney General in 2015, we did not have a single listing for terrorist financing. We crossed 360 ages ago, and we have done the work.

Now, there was a very serious recommendation made by hon. Senators on the Independent Bench: How are we going to operationalize this law? Hon. Senators opposite asked, how many—Sen. Ramdeen, I think it was. How many big fishes have we caught? How many prosecutions have we had? Hon. Senator, through you, Madam President, this Government has dedicated its first three years not to just simply adding more laws to the books.

Past governments, and in particular the last Government, spent time raising firearms offences; more jail time; no bail; state of emergency. But none of their laws were dedicated to improving the criminal justice system. Because if you have laws they must go somewhere. And the question asked opposite is—Sen. Richards asked how are we going to get this done? And in utilizing one of my two favourite expressions, which is, “let us just start and work our way forward”, which is analogous to, “best is the enemy of good”, Sen. Richards used the other expression that I like to use, which is what my Jamaican counterparts have said when I asked them how they do certain things. They tell me it is like flying a plane except we are building the plane while we are flying it.

And I want to put on—in answer right now, to that incredible situation of

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just trying to move along, how we are going to get it done. The hon. Senators, in particular the new ones on the Independent Bench, ought to take notice of the fact, because it is going to become very relevant very shortly, the criminal justice system, in operationalizing this law, this Bill, has many moving parts. What are the moving parts? You need a judge; you need a court; you need rules of court; you need a prosecutor; you need a defence lawyer; you need a witness. And in treating with that, this Government has made sure that your court has been cleaned. Take a criminal division, marry it up with the magistrates division; take out 102 traffic offences every year from the courts, year on year; move them into Violations. Introduce—

Sen. Ramdeen: One hundred and two thousand.

Hon. F. Al-Rawi: One hundred and two thousand.

Sen. Ramdeen: You said 102.

Hon. F. Al-Rawi: Forgive me, 102,000. Thank you—102 000 per year. We have said, “Increase the judicial complement”. When we came into office the judicial complement was 36. The statutory complement is now 64. That is a 77 per cent increase. We legislated for the family and children division. We opened the family and children division criminal courts. Thousands of cases are pouring in there. We took—in preparation for the proclamation of plea bargaining, which is imminent, we went into a maximum sentence indicator exercise in the prisons, where, now, 500 prisoners have passed through that loop. There are 4,008 prisoners incarcerated; 500 of them in two months alone have been processed out.

We did the data analysis. We created—and Cabinet has passed—a public defender system. So if your lawyer is not available as a defence attorney and your trial is going to be delayed, you will soon have a competent attorney, paid for by

the State, representing you. We implemented criminal proceedings rules since 2016. We implemented children's rules in the children's courts. And all of these things go to operationalizing these laws, this Bill.

The next stage to hit this honourable Senate and this Parliament is the follow-the-money package. What is that? Civil asset forfeiture; explain your wealth legislation, drafted, before Cabinet. Removal of beneficial ownership so you could see who the real owners in companies are; already in Parliament. Abolition of preliminary enquiries, in the House of Representatives after having had several versions of consultation on it. Registration of deeds amendments—because where do you hide your wealth? In a company or a business, in land or in cash. Cash is dealt with by this, because in relation to cash, there are disclosures from the banking sector and from the Board of Inland Revenue.

We went on an exercise of developing all the registries. Every bit of motor vehicle registration; driver's permits and registration for vehicles, digitized. Eleven million land records from the land registry moved across to the new registry, millions, digitized. Creation of a non-profit organization sector to track the money that passes unchecked, already in gear. So there is a whole comprehensive package of work. Electronic payments in the courts for the first time up and running, and in the Registrar General's Division, next month, God willing, up and running. So we are taking the society cashless so you can track the transactions. This Bill, obviously, fits within that purpose.

So on the 30th, Madam President, of November, we were able to write to the Financial Action Task Force; letter went to the deputy executive director of the CFATF. We asked to be re-rated on 22 of our 40 recommendations. In other words then, we said to them, bump us up on 22 items. We did that, specifically, so

that we could be seen as a nation that is continuing to evolve in the right direction of growth. We will have a face-to-face meeting with our assessors in January. After the face-to-face meeting with our assessors, they will consider our material in February in the Financial Action Task Force and in the March or May for the Caribbean Financial Action Task Force.

The deadline for the Global Forum is in the context of the Global Forum saying to us, “If you had passed your Income Tax (Amdt.) Act in December, we will consider doing your peer review in January—by the 31st of December. And if we do your peer review in January, we will invite you to sign on to the multilateral convention”, which will allow us to do Bill number two and Bill number three.

So it is not that the dates are being changed, or that it is confusing, it is just simply that the Opposition is confused. Because this is in the public domain on the websites, on the methodologies. It is easy to create confusion, but if you take aside all of the “he say, she say”, the only argument that comes from the Opposition today, distilled by hon. Members on the Opposition Bench is, “Your law is unconstitutional and we are going to court.” I think that it will speak leaps and bounds for Trinidad and Tobago to see the Opposition challenge in a court of law this piece of legislation to stop the police and the Financial Intelligence Unit from getting taxpayer information.

8.45 p.m.

I think that that is a wonderful summary of what frightens hon. Members opposite on the Opposition Bench. Sen. Vieira said it, we on this side are subjecting ourselves to the law without whimper, without complaint, and without bacchanal. The only voices opposite in the country are 18 people in the House of Representatives and 6 in the Senate, and dare I say 1.3 million people say yes, 18

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in the House say no, and 6 in the Senate say no. I could live with those odds.

Sen. Mark: Three hundred and fifty thousand people. [*Crosstalk*]

Hon. F. Al-Rawi: So, Madam President, it is quite interesting that the Shakespearean reference and reflection upon protesting too much seems to have some validity in this very House.

Sen. Mark: Three hundred and fifty thousand people voted for the UNC.

Hon. F. Al-Rawi: Madam President, the fact is that this law is proportional. The Standing Orders of the House of Representatives, the Standing Orders of the Senate, set our procedure. They say if you have an amendment to make, put it in writing. May, June, July, August, September, October, November, 4th of December we stand now, not a line of amendment can come from 18 plus 6 people who are receiving the benefit of taxpayers' money to do work in the Parliament.

Sen. Mark: We will meet you in court, boy. We will meet you in court.

Madam President: Sen. Mark.

Sen. Mark: Sorry.

Hon. F. Al-Rawi: Eight, seven, going on eight calendar months, not a soul, as Sen. Haynes puts it in her diligent work, could bother to write one line on one clause. So let us go to the Bill.

Clause 1: This Act may be cited as the Income Tax (Amendment) Act, the name of the Act. Clause 2: the act means the Income Tax Act. Clause 3: amend the long title. Clause 4: put the FIU and the Trinidad and Tobago Police Service to collect tax paying information within the parameters of the existing law. Clause 5: if you use it for the wrong purpose take a penalty and take some jail. Six pages, if you take the certification clause. If you put it on single point, single line, you probably cannot cross two pages of a Bill, and eight months later the diligent hard-

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working Members of the Opposition find it funny and humorous that we cannot have one line of written amendments to come from an entire Opposition Bench.

[Interruption]

Mind you, their position coming from Sen. Baig—first contribution I get by crosstalk—“better we do your work”. I am sure it is more than the work you did when you were at the AG’s Office. *[Continuous crosstalk]* And, Madam President—

Madam President: Attorney General, please. Attorney General, that was unnecessary and you should withdraw it and your time, use the rest of your time to deal with the matter.

Hon. F. Al-Rawi: I happily withdraw it even though it may not be unparliamentary. I take your guidance.

Madam President: Attorney—

Hon. F. Al-Rawi: I have withdrawn.

Madam President: Yes, thank you.

Hon. F. Al-Rawi: It is on the record. I withdraw. I withdraw. I withdraw. So, Madam President, I say that because the records demonstrate what is work or not. The record is simply circulate your submissions.

If hon. Members look on their tables right now, tell me if you see a scrap of paper coming from the Opposition, circulated amendments under the hand of Sen. Wade Mark, Sen. Haynes, Sen. Hosein, Sen. Obika, Sen. Ramdeen, and the talented Sen. Baig. *[Desk thumping]* Not one scrap of paper, and I say that to demonstrate where we are. This is why we made the submission on the back of the UNC’s work that this was a simple Bill for an important purpose, for a legitimate aim, in proportionate circumstances. The allegation that this is simple is

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demonstrated by the fact that there are no recommendations for amendment and that is just the end of the story.

So, Madam President, we have to report to the FATF, we have to meet a January deadline, we have another piece of law which we hope the Cabinet will approve for introduction into this Senate to treat with amendments to several pieces of law, again for regulatory purposes, we are not trading our sovereignty in doing this because you can maintain your sovereignty and stay by yourself. Just cut off your correspondent banking, cut off your international transactions, forget about your food importation bill of nearly \$3 billion, do not worry with your foreign exchange, crash your securities and exchange market, ensure that your children cannot go to school, ensure that schools cannot have supplies and hospitals cannot have supplies, ensure that people cannot even eat doubles. And I say that again because that is the most typical Trinidad and Tobago dish that we all love, but the channa is bought from abroad, the oil, the curry, the salt and the paper—

Hon. Senator: Flour.

Hon. F. Al-Rawi:—and the flour, and I say that to tell you that this is not “sky will fall” material. This is a slow boil and I think that the nation understands the purpose here. We look forward to any amendments that may be volunteered in the course of the committee’s discussion.

Madam President, I think it safe to say that the case has been answered and we hope that the hon. Members opposite will have meaningful support given to this Bill and I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Clauses 1 to 5 ordered to stand part of the Bill.

Question put and agreed to: That the Bill be reported to the Senate.

Senate resumed.

Hon. F. Al-Rawi: Madam President, I wish to report that a Bill entitled an Act to amend the Income Tax Act was considered in committee of the whole and approved without amendments. I now beg to move that the Senate agree with the committee's report.

Question put: That the Senate agree with the committee's report.

Sen. Mark: Division.

The Senate divided: Ayes 24 Noes 6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D.

Simonette, G.

Young, N.

Richards, P.

Chote SC, Ms. S.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms, C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

NOES

Mark, W.

Haynes, Ms. A.

Hosein, S.

Obika, T.

Ramdeen, G.

Baig, B.

Question agreed to.

Question put: That the Bill be now read a third time.

Sen. Mark: Division. No, we want a division.

The Senate divided: Ayes 24 Noes 6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Moses, Hon. D.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D.

Simonette, G.

Young, N.

Richards, P.

Chote SC, Ms. S.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms, C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

NOES

Mark, W.

Haynes, Ms. A.

Hosein, S.

Obika, T.

Ramdeen, G.

Baig, B.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you, Madam President. Madam President, I beg to move that this Senate do now adjourn to Tuesday, 11 December, 2018 at 1:30 p.m. During that sitting we will be debating the Bill entitled, an Act to amend the Magistrates Protection Act.

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

GATE Programme

(Government's Need to Review Policy)

Sen. Taharqa Obika: Thank you very much, Madam President. The issue is the need for the Government to urgently review its policy regarding the GATE Programme in relation to privately-owned higher learning institutions. Now, I wish to demonstrate the urgency of this matter using two professions. One is the accounting profession and the other is the hospitality and tourism industry.

Now, Madam President, under the PNM Government, led by Dr. Keith Rowley, the field of accountancy is under attack. This is so because based on the new criteria set out, the main institutions that offer the ACCA qualification, have stopped receiving GATE funding for new entrants. So this disturbing parallel is increased when you look at the fact that the University of the West Indies has long since discontinued its master's in accountancy at the university in St. Augustine.

So therefore, if you are required to attain education up to the chartered level to be a chartered accountant in Trinidad and Tobago, where the main provider that we are familiar with is the ACCA qualification, you will be prevented from accessing GATE funding. This, Madam President, is a sinister act meted out to the students of Trinidad and Tobago by this Government. I want to show two schools that this has affected significantly: the Students Accountancy Centre with branches in St. James, Chaguanas, and San Fernando, and Omardeen School of Accounting. Those from San Fernando will be very familiar with that prominent building on Ciperro Street in San Fernando.

Now, Madam President, the Government will always speak to leaner times and the fact that they support state-owned institutions such as UWI, UTT, COSTAATT, et cetera, but when you examine the fact that the main qualification in the accounting profession is that of ACCA, it means that either the Government's action was sinister against the profession of accounting or they fumbled the ball of graduate assistance for tertiary education expenses so badly that they surreptitiously cut out accountancy, the profession of accountancy almost entirely from government funding.

Now this, however, is very pertinent in particular when the Government is singing a mantra of following—albeit, not finding any money—following the money. We saw a case in Westmoorings earlier today—we do not know if they are going to find any money there—where there are allegations of someone related to a Government Minister. But the professions of forensic auditing, actuarial science and the skilled accountancy profession that the banking sector depends on so much to engage in their practices of compliance, adherence and stuff, Madam President, will be negatively affected by this, and I am hearing the grumblings of

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the Minister of Public Utilities, himself trained in accounting. He should be the first person agreeing with me.

Madam President, there is a quote from George Orwell stating:

“During times of universal deceit, telling the truth becomes a revolutionary act.”

—from his book *1984*. [*Desk thumping*]

So I have raised this point today to let the truth be revealed. So the Government may call me what they may for raising this matter, that is okay, but I am sure the hundreds of new entrants to the field of accounting will be happy to know that there is an Opposition Senator, and there is a party by the name of the United National Congress, that will raise their issues in Parliament despite Government opposition. [*Desk thumping*]

Now, Madam President, I am sure you would agree with me that when you look at the other profession, that of hospitality and tourism, and the fact that this Government is committing billions of our taxpaying dollars to build a plant in Tobago for Sandals, but the tourism institute in Trinidad, that is the only institute charged with the responsibility for training professionals in the hospitality and tourism industry in Trinidad—because there is one in Tobago—is not receiving GATE funding.

In fact, Madam President, you would be disturbed to know that if you were to turn to the—because I know the last time I presented figures someone opposite said it was fake news. So if you were to turn to the Estimates, *Details of Estimates of Recurrent Expenditure for the Financial Year 2018*, and you look on page 183, line Item 18, you have the TTHTI (Trinidad and Tobago Hospitality and Tourism Institute) and the estimate for the fiscal year gone was \$6 million.

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When you speak, Madam President, to the administrators at the institute, you know how much they got from this allocation, which is separate from GATE funding? Zero. Zero. Then if you turn now to the newspaper, there is an article of the 22nd of June, 2018, in the *Newsday* titled, "Dad cries foul over TTHTI fees". There is a father, he was lamenting. He said spontaneously, the ending of last year, they approached the children for a meeting and only then told them the Government is removing GATE subsidies and the children have to pay TTHTI over \$12,000 per student. Madam President, moving from less than \$1,000, to \$12,000. Do you know that the student population at the TTHTI has declined by 500 students, down from over 700 to just about 250? Only an irresponsible Government would continue with the situation as is. Only an irresponsible Government.

Madam President, could I ask how much more time I have?

Madam President: Two more minutes.

Sen. T. Obika: Thank you very much. So only an irresponsible Government would continue with that. So we have an institution where they were owed \$5 million last year September. They had to take the Government to court, they sent them pre-action protocol letters and then they got back that \$5 million, but they have not been getting GATE funding since. Therefore, the students have to pay and this Government is committing to spend billions of dollars behind Sandals and they cannot spend a few millions per annum behind the students who are to be the industry professionals, who are to work in Sandals. So we have given up our entire tourism sector to one company, Sandals, at the expense of what we have in Trinidad and Tobago, TTHTI.

Madam President, on behalf of the accounting profession, and the hospitality

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and tourism profession, I say the Government must rescind this action and provide GATE funding and government subventions to these institutions.

I thank you very much. [*Desk thumping*]

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you. Madam President, I have to apologize for Sen. Obika arguing a completely different Motion. His Motion deals with the need for the Government to urgently review its policy regarding the GATE Programme in relation to privately-owned higher learning institutions. He has argued a case in respect of the TTHTI, which is—

Sen. Obika: Owned by?

Sen. The Hon. C. Rambharat:—as he acknowledges, owned by the State—

Madam President: Sen. Obika, you have presented your Motion, the Minister is responding. Please listen in silence.

Sen. Obika: Madam President—

Madam President: Please listen in silence. Sen. Obika, you know very well that a Minister is entitled to answer the Motion however the Minister wishes to. Okay? Continue, Minister.

Sen. The Hon. C. Rambharat: Madam President, thanks for your protection even in the House. As I was saying, I have been forced to deal with a Motion other than the Motion, and I understand why Sen. Obika changed his whole approach.

The fact is, Madam President, who can argue against an administration that in 2004 created GATE? This GATE currently supports 2,608 accredited programmes at both public and private institutions [*Desk thumping*] including— Madam President, you will be happy to know—the BSc Accounting Programme at the University of the Southern Caribbean—my friend continues to argue his own

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Motion—and also the MBA in Finance and Accounting at the University of the Southern Caribbean, and I could go on and on but I know I would not do that to my colleagues. So that is accounting.

The TTHTI continues to function among the programmes being funded at the Bachelor of Administration in Hospitality and Tourism Management among other things. I am not going to regale you with all the hospitality and accounting. I am just putting an end to your assertion that we have not dealt with accounting and hospitality, and you know in the hospitality industry you have IT, we have IT programmes; you have administration, we have administration; you have human resources.

Madam President, if you wish I can take you through the 2,608 accredited programmes in public and private institutions, but I do not think you want me to do that. I will close by saying, my friend also abandoned his Motion because he knows that after creating GATE in 2004, in 2016 the Government conducted a comprehensive review of GATE. A task force was appointed. I would not read the two pages of the members. Based on the task force work, a report was tendered in July 2016.

9.15 p.m.

In August 2016, the Cabinet approved some specific changes to GATE and on account of the review and the changes in GATE, some institutions—and his original Motion addressed private institutions—remained in the programme and other institutions, particularly private institutions, are no longer in GATE because they are not accredited by a completely different body, the Accreditation Council of Trinidad and Tobago. The Government puts no obstruction in the way of any institution, public or private, wishing to pursue accreditation through the ACTT

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and thereafter qualify to have their programmes sponsored by GATE, and that is the position; 2,608 accredited programmes including accounting and hospitality. I thank you. [*Desk thumping*]

**Lack of Safety and Security at University Campus
(Status Report)**

Sen. Wade Mark: Thank you very much, Madam President. Approximately, two months ago, there was a major protest by students at the university campus, St. Augustine, where they engaged in activities aimed at highlighting the lack of safety and security on the campus.

Madam President, as you are aware, this protest arose out of a report that a criminal element attempted to rape, rob and assault a female student at the university's female locker room on the campus. The matter came on the heels of a string of reports, both official and unofficial, of robberies, assaults, against students on the campus. At the time, the campus administration was a bit insensitive to the cries and pleas of the students, describing the attempted rape as attempted robbery. That angered the students even further and it led to, as I said, major protest. In that particular activity engaged by students, we had the Trinidad and Tobago Police Service being invited—the question is by whom—on the campus and several students would have received injuries, two were arrested and charged and they are before the courts at this time.

On the heels of that development, Madam President, came the news of a 26-year-old manager employed at UWI. I would not call the name of individual who was abducted and kidnapped in broad daylight at three o'clock in the evening as she attempted to leave the campus to collect her six-year-old daughter. She has since then been released safely into the hands of her family. But, Madam

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President, the question is that something is amiss at UWI.

We know that this nation is engulfed, inundated with criminality and violence. We are rushing towards 500 murders in the country in the coming days and, Madam President, we know of the brutality that citizens are faced with. But students who are attending the university ought to be guaranteed some degree of safety and security as they pursue their studies. So I have raised this matter this evening to get from the Government a perspective on measures that have been taken.

My information, as I speak, Madam President, is that the TTPS has some patrols on the campus and they have a partnership with the UWI Estate Police. I do not know if that is sufficient. I know that the Student Guild, based on what I have read in the newspaper reports that they have called for the installation of security cameras. They have also called for the establishment of some system of identification card to be scanned to gain entry on the campus. I do not know what the current situation is as it concerns that. What I do know, Madam President, is that the administration of UWI experienced a 5 per cent cut in their budget as many other institutions and this resulted in a cut, I would suspect, in their security budget, even though I read somewhere where the principal indicated that they had increased the budgetary allocation to, I think, 8 per cent or some amount to that effect.

So, Madam President, I want to emphasize that peaceful protest is a right that citizens enjoy in this country and I was a bit taken aback at the excessive use of force by the police. With the greatest respect to the new Commissioner of Police and his style, I believe, Madam President, that students were brutalized on that day on the campus and I think really an investigation ought to have been triggered by

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the university's administration to get the bottom of this, Madam President, to determine exactly who called in the police at the time when the police were called in and whether the local estate police located on campus were not able to control the protest at the time and, therefore, we require some clarification, some direction and some information as to this entire matter.

So, Madam President, I have raised this matter because I think that there is need for us in this Parliament to get a report from the Government through the university as to the measures that would have been taken to bring about a greater level of security and safety for the UWI population at the campus, and I would like to get from the Government, a current status report on what has been done since that incident two months ago to provide that kind of safety and security for the students of the University of the West Indies. Thank you, Madam President.

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Thank you, Madam President. I thank my colleague, Sen. Mark, for raising this very important issue on the steps taken or what has been done at the university to deal with security concerns. Of course, Sen. Mark knows that the Government is not directly involved at UWI but we do in fact have a responsibility to provide support particularly on the issue of security.

Madam President, in the 2017/2018 period, the university did four things in relation to improving security and let me say right away, Madam President, Sen. Mark is absolutely correct—something I do not say very often. There was in fact, 8 per cent—7.6 per cent increase in the allocation to security in the fiscal year. In the last fiscal year 2017/2018, the university did the following:

- Developed a campus risk profile to identify risks and threats and to define what needed to be done with specific emphasis on the Faculty

of Engineering, Science and Technology, Medical Science and the School of Education.

- Secondly, the university engaged in the training and development of staff in the areas of: conflict resolution, customer service, first aid and CPR, surveillance and counter surveillance, dealing with extremism on campus, supervisory management leadership, firearm training including active shooter response, road safety, addressing workplace bullying and finally, mental illness and disabilities and their impact on campus safety.

I am sure Sen. Deyalsingh is taking note of that one.

- Thirdly, Madam President, the University has signed an MOU with the International Association of Campus Law Enforcement Administrators so that it can further its work in relation to the security concerns on the campus.
- And fourthly, the university has been engaged in the systematic gathering, assessing and processing of information relating to security intelligence and evidence so that it can improve its output in relation to security management and those were the things done in the last fiscal year.

Madam President, Sen. Mark has asked for a report on what is happening in relation to security in general. The first thing the University of the West Indies would like to make in relation—the first point is that because of the open nature of the university, it presents particular risks in relation to security management, the access that the public has. So over the years, it has been continuously improving its security systems to deal with the open nature.

Secondly, the university has placed paramount importance on the safety of students and where there are issues, as you have pointed out, Sen Mark, in relation to what happened last week and some weeks ago which gave rise to the students' protest, the university places the victims at the heart of its response to security issues.

The third is that, as you know, the university maintains a 24-hour security detail campus-wide using manpower, technology and continuous training. And Sen. Mark, you would be happy to know that the manpower strength at the university was increased in the last fiscal year and the university intends to increase it in this fiscal year, again, using a combination of its own security personnel and contracted security. I have spoken already about the budget increase.

And the university also provides some specific services and facilities for students to deal with potential security concerns. One is campus security escort service is available from 6.00 p.m. to 6.00 a.m. There are designated secure study areas. There is a student shuttle service. There are 24-hour patrolled walkways which are well lit and there are emergency phone units, 17 of them, strategically placed in locations in central parts of the campus and, when activated, it puts the caller in direct contact with the security services charge room.

The university, Madam President, has also embarked on a project called RESQ, R-E-S-Q, which is the development of an app. The app was launched on September 18, 2018 as a pilot project to allow students to use an alert system on their smartphones, and the pilot has targeted 1,200 students to undergo training in the proper use. And the university believes that when RESQ becomes fully operational, it can be activated by students using the app and it would put them in

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direct contact with relief.

Madam President, we all understand the need to continuously improve the security of our students at the university and elsewhere. The Government is committed insofar as it could do so to continue to support the University of the West Indies, particularly at our campus in St. Augustine.

I thank you. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.31 p.m.