

SENATE

Wednesday, December 19, 2018

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

PAPERS LAID

1. Report on the Operations of the National Insurance Board of Trinidad and Tobago for the financial year ended June 30, 2018. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
2. Special Purpose Audited Financial Statements of the National Insurance Board of Trinidad and Tobago for the financial year ended June 30, 2018. [*Sen. The Hon. A. West*]
3. Financial (Amendment) Regulations, 2018. [*Sen. The Hon. A. West*]

**JOINT SELECT COMMITTEE REPORTS
(Presentation)****Public Administration and Appropriations Committee
Examination into the Administration of
Disaster Relief in Trinidad and Tobago**

Sen. Wade Mark: Thank you. Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

Twelfth Report of the Public Administration and Appropriations Committee, Third Session (2017/2018), Eleventh Parliament on the Examination into the Administration of Disaster Relief in Trinidad and Tobago.

Constitution (Amendment) (Tobago Self-Government) Bill, 2018

Sen. Nigel De Freitas: Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

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

Trinidad and Tobago Revenue Authority Bill, 2018

The Minister in the Ministry of Finance (Sen. The Hon. Allyson West):

Madam President, I have the honour to present the following report as listed on the Order Paper in my name:

Interim Report of the Joint Select Committee appointed to consider and report on the Trinidad and Tobago Revenue Authority Bill, 2018 in the Fourth Session of the Eleventh Parliament.

ORAL ANSWERS TO QUESTIONS

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

Khan): Thank you very much, Madam President. Madam President, the Government is pleased to announce that it will be answering questions No. 35, No. 71 and No. 72. We ask for a two-week deferral of questions 36, 37 and 73.

The following questions stood on the Order Paper:

**Missing Keys at POS Prison
(Locks Remain Unchanged)**

- 36.** In the aftermath of the events of 2015 whereby the keys at the Port of Spain prison went missing for almost twenty-four hours, can the Minister indicate why the locks at said prison have remained unchanged? [*Sen. W. Mark*]

**Abuse at Geriatric Homes
(Measures Taken to Address)**

- 37.** In light of reports that over a recent six (6) month period, approximately seventy-two (72) senior citizens at privately owned geriatric homes were

victims of abuse, can the Minister state what measures are being taken to protect this group of citizens? [*Sen. W. Mark*]

**Cattle from South America Entering T&T
(Health Concerns Arising)**

73. Having regard to recent reports of a number of cattle from South America being brought into the country via the south-western peninsula, can the Minister indicate:

- i) whether the necessary approvals were sought and obtained; and
- ii) if yes, whether any health and safety concerns that may arise were taken into account? [*Sen. T. Obika*]

Questions, by leave, deferred.

**NGC Increase in Gas Prices
(Consequences of)**

35. Sen. Wade Mark asked the hon. Minister of Energy and Energy Industries: In light of a report that higher natural gas prices from the NGC may lead to the loss of jobs and the possible shutdown of plants at the Point Lisas Industrial Estate, what action, if any, does the Government intend to take to address this potential problem?

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, as a consequence of higher gas prices contracted with the upstream oil and gas companies, the gas prices negotiated by the NGC with the downstream companies have been higher.

However, the number of downstream companies have already signed new gas sales, gas purchase agreements based on a new gas price. At this time there is no indication that these higher prices will lead to a loss of jobs or to a shutdown of plants at the Point Lisas Industrial Estate.

Madam President: Sen. Wade Mark.

Sen. Mark: Yeah. Madam President, can the hon. Minister indicate how many contracts with the NGC have been signed by these downstream producers?

Madam President: Minister.

Sen. The Hon. F. Khan: To date, the NGC has signed new contracts with CNC, with Nutrien. Nutrien is by far the largest ammonia producer at Point Lisas. CNC is also a large ammonia and methanol producer. CNC, Nutrien and N2000 have also signed contracts with PLNL, Point Lisas Nitrogen Limited.

Madam President: Sen. Mark.

Sen. Mark: Madam President, through you, can the Minister indicate how many outstanding contracts with downstream producers are still to be signed?

Madam President: Minister.

Sen. The Hon. F. Khan: I am not sure the exact amount, but only one of the big players still to be signed is MHTL and they are currently in negotiations. But everything seems to be pointing that settlement will be arrived at shortly.

Madam President: Sen. Mark.

Sen. Mark: Madam President, can the hon. Minister indicate to us what role, if any, did the Prime Minister have to play in these negotiations for new gas prices along with NGC?

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

Sen. Mark: Madam President, can I?

Madam President: You have one more.

Sen. Mark: Can I ask the hon. Minister if he can share with us any information as it relates to the new gas prices for producers in the downstream sector?

Madam President: Minister.

Sen. The Hon. F. Khan: Madam President, Sen. Mark knows the answer to that,

but I will repeat it. There are confidentiality clauses on these commercial gas price arrangements which forbid us to disclose the actual price in which the gas is sold and/or bought.

Madam President: Next question, Sen. Mark.

Sen. Mark: I think you have postponed two for me.

Madam President: Oh, I apologize. Sen. Obika.

**Tourism Sector
(Increase in Personnel)**

71. Sen. Taharqa Obika asked the Minister of Tourism:

Can the Minister advise as to what plans are in place for increasing skilled personnel for the tourism sector?

The Minister of Tourism (Hon. Randall Mitchell): Thank you very much, Madam President. Madam President, PNM administrations including this one have a proven track record on a legacy of investing in our citizens through education and training to ensure equal opportunities for all, as well as alignment with the workforce needs.

Government has long provided subsidized tertiary education through GATE which was established under a PNM administration, and Trinidad and Tobago boasts of having several educational institutions dedicated to providing hospitality and tourism training to specifically meet the needs of the sector.

These include the Trinidad and Tobago Hospitality and Tourism Institute which offers and provides a number of programmes ranging from short courses and certificate programmes to associate degrees and bachelor of science programmes such as a Bachelor of Science Degree in Culinary Management, associate degrees in Culinary Management and Food and Beverage Management, Hospitality Management, Tourism Management and Sport Tourism Management, industry-specific training which meets the operational needs of the sector including

food and beverage service, quality customer service, tourism awareness, tour guiding, supervisory skills and housekeeping.

The Tobago Hospitality and Tourism Institute offers both short courses and associate degree programmes in tourism studies, culinary arts, food and beverage operations and hospitality studies.

COSTAATT offers a certificate in tour guiding which is widely accepted in particular by the Trinidad and Tobago Tour Guides Association.

In addition, the University of the West Indies offers a Bachelor of Science degree in international tourism management, a postgraduate diploma and a master of science in tourism development and management.

And the University of the Southern Caribbean, a private tertiary level institution, offers a bachelor of business administration in hospitality and tourism management. There are plans to offer a certificate programme in 2019.

It should be noted that in addition to the specific institutions and programmes which I have just highlighted, the tourism sector employs persons drawn from a wide range of disciplines and training including marketing, management, languages, communications and other technical areas. Therefore, in light of what is presently offered, there are no plans to increase the offerings of the educational institutions at this time.

Madam President: Sen. Obika.

Sen. Obika: Thank you, Madam President. I thank the hon. Minister for the submission. I wish to ask: How many students in quantum have accessed the courses at the institutions in general that he has referenced?

Madam President: Minister.

Hon. R. Mitchell: Yeah. I do not have the specific figures, but over the past few years I know a figure of 1,500 persons would have passed out of these

programmes. But I do not have it specifically.

Madam President: Sen. Obika.

Sen. Obika: Could the hon. Minister indicate if all these institutions are GATE approved and have been receiving GATE funding for this fiscal year?

Madam President: Minister.

Hon. R. Mitchell: Many of the programmes are GATE approved, but I do not know which programmes. I know the associate degree and the Bachelor of Science degrees are GATE approved, Madam President, but I cannot tell for all, because there are many other programmes being offered.

Madam President: Sen. Obika.

Sen. Obika: And then, could the hon. Minister indicate, even though it is not under his Ministry directly, why TTHTI has not been receiving GATE funding as at this fiscal year and the last?

Madam President: No. That question does not arise.

Sen. Obika: Then could I restate, ask a supplemental?

Madam President: You have one more question that you can ask.

Sen. Obika: Could the hon. Minister, in light of the scenario painted, explain why TTHTI has resulted—they have declined the student enrolment by hundreds. The figure I have received is 500 less students being enrolled. Could the Minister reconcile that?

Hon. R. Mitchell: Madam President, TTHTI is under the Ministry of Education, so I cannot answer to that.

Madam President: Next question, Sen. Obika.

**T&T High Commissioner to Nigeria
(Details of)**

72. Sen. Taharqa Obika asked the Minister of Foreign and Caricom Affairs:
Can the Minister advise:

- (i) Whether a T&T High Commissioner has been fully accredited to Nigeria; and
- (ii) The date that the High Commissioner presented credentials to the Nigerian President?

Madam President: Minister of Foreign and Caricom Affairs. [*Desk thumping*]

The Minister of Foreign and Caricom Affairs (Sen. The Hon. Dennis Moses):

Thank you, Madam President. A commissioner has been fully accredited to the Federal Republic of Nigeria. The High Commissioner now serves as head of mission of Trinidad and Tobago's High Commission based in Abuja, Nigeria.

Relevant to the second part of the question, Madam President, I am pleased to further advise that the High Commissioner presented his letter of credence to His Excellency Muhammadu Buhari, President of the Federal Republic of Nigeria on September 13th of this year 2018. Madam President, I thank you. [*Desk thumping*]

Madam President: Sen. Obika.

Sen. Obika: Thank you very much, Madam President. I thank the hon. Minister for the submission. We will be grateful for that information. The question I have is: Given that the Ugandan Mission was collapsed into Nigeria, can the hon. Minister indicate if the High Commissioner to Abuja has been able to be accredited in East Africa?

Madam President: Minister.

Sen. The Hon. D. Moses: Thank you, Madam President. The countries and organizations which were accredited to the High Commission in Uganda are now covered by the High Commission in Nigeria relative to the countries of Uganda, Kenya, Tanzania and the African Union. The High Commission in Uganda was also accredited to Egypt and Saudi Arabia, but these countries were not reassigned

to an existing mission when the High Commission in Uganda was closed. Thank you, Madam President.

Madam President: Sen. Obika.

Sen. Obika: Thank you very much, Madam President. Could I then ask pointedly if Our Excellency at Abuja has been able to present his credentials to the President of Uganda?

Madam President: No. That question does not arise. Any other supplementary?

Sen. Obika: Could the hon. Minister indicate any reason as to why it took the Government three years to get the accreditation sorted at Abuja?

Madam President: That question does not arise. Any other questions?

Sen. Obika: Could the hon. Minister indicate what fallout took place arising from this inordinate time to be accredited?

Madam President: Sen. Obika, you are not even asking a question, you are presuming certain facts, and I will not allow that question either.

ARRANGEMENT OF BUSINESS

Madam President: Hon. Senators, I will seek your leave to revert to this item later in the proceedings. There is some housekeeping to be done with respect to this item.

MISCELLANEOUS PROVISIONS (PROCEEDS OF CRIME, ANTI-TERRORISM AND FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO) BILL, 2018

Order for second reading read.

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

That a Bill entitled an Act to amend the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap.12:07 and the Financial Intelligence Unit of Trinidad and Tobago Act Chap. 72:01, be now read a second time.

Madam President, it seems as if we were here just not a minute ago. I am very pleased to be back in the Senate to spend time with hon. Members of this Chamber in facilitating the business of the people of Trinidad and Tobago.

Madam President, the Bill before us appears to be simple. It is just a few pages long. It is exactly four clauses long. The first clause is the short title. The second clause treats with amendments proposed to the Proceeds of Crime Act. The third clause proposes amendments to the Anti-Terrorism Act, and the fourth clause proposes amendments to the Financial Intelligence Unit of Trinidad and Tobago Act.

Permit me to give a little bit of background and framework, in particular to people who may not be familiar with the articulation of these laws, and the origin of the obligations that these laws require from time to time to be improved.

Trinidad and Tobago is a member of the international community very importantly in the United Nations. We joined the United Nations a very long time ago. We signed on to their conventions and we were required specifically to treat with our obligations under the United Nations Security Council Resolutions in particular.

The UNSCR regulations that really bite into the business of Trinidad and Tobago's obligations are UNSCR 1267, which was our obligation in 1999; UNSCR 1989 which came about in 2011; UNSCR 2253 which came about in 2015; UNSCR 2368 which came about in 2017; UNSCR 1988 which is of 2011 vintage; UNSCR 1373 which is of 2001 vintage.

Now, the one thing that we know, Madam President, is that the international community and Trinidad and Tobago share a similar passion. The international

community in organizing itself tends to take the very best and even the most esoteric and then again, even the most basic human obligations into a neat perspective.

The United Nations has said to the world—and Trinidad and Tobago as a member of that subscribes and ascribes to the principles—that we must stamp out the scourge of terrorism, we must frown upon and limit and completely block, as best as we can, the financing of terrorism. We must ensure that corruption and money laundering and the proceeds of crime are managed to the disadvantage of those that commit crime. And in those basic obligations, Trinidad and Tobago finds itself in the position where, beginning in the year 2000, then in the year 2005, then in the year 2009, we made some revolutionary improvements to our laws.

Firstly, we made sure that we brought about our Proceeds of Crime Act, our Anti-Terrorism Act, and our Financial Intelligence Unit Act. The Proceeds of Crime Act is Act No. 55 of the year 2000. The Anti-Terrorism Act is an Act of Parliament No. 26 of the year 2005. The Financial Intelligence Unit Act is Act No. 11 of 2009.

Those three pieces of law coordinate with a subsidiary piece of legislation called the Financial Obligations Regulations which come about as subsidiary laws under the Proceeds of Crime Act. Those four pieces of law, three primary, one subsidiary, are what comply with our standards for international regulation and international supervision.

The four entities that operate these laws are primarily found, firstly, in the Central Bank as a major supervisor of elements. They are to be found in the Director of Public Prosecutions in the work that is set out for the DPP in the

Proceeds of Crime Act. They are to be found in the Office of the Attorney General, Minister of National Security and the Minister of Finance as to one part of the Anti-Terrorism Act, and also the DPP as to another part of that.

1.50 p.m.

And then they are to be found in the mixed basket of regulations, where we have entities that coordinate alongside with other regulation entities. I mean specifically the SEC, the Stock Exchange, those entities work alongside with the supervisor of insurances, the Central Bank, et cetera. So we have got this matrix of laws that work together, we have this understanding of positions, and what we have now is our international obligation coinciding with our local obligation. I am literally finding it hard to find a focal point in the Senate today, because everybody seems so busy I feel as if I am talking to myself, quite frankly. [*Laughter*] But, let me proceed. I am searching for one face, and I mean that genuinely. [*Laughter*]

So, it is important, Madam President, to understand what we are doing from an international and local perspective. In the international environment we have two major regulators; we have the Financial Action Task Force and we have the Global Forum. In the Financial Action Task Force methodology, the Caribbean Financial Action Task Force is something called an FSRB, a FATF-style regional body, which asks you to go and regulate your pot of countries.

In Trinidad and Tobago's case, we are a member of 25 countries in the Caribbean Financial Action Task Force. In the Financial Action Task Force, we are obliged to look at 40 recommendations and 11 immediate outcomes. Those recommendations and immediate outcomes are assessed against two categories: one, your technical compliance, do you have a law to treat with the thing that they

are asking you to treat with, and secondly, your effectiveness, are your laws being applied and do you have any results to show for it. That is FATF world. The Global Forum world is more pointed. It treats with our obligations for taxation and tax transparency. It treats with our making sure that we do not have favoured tax regimes, in how we balance special economic zones or trade zones, et cetera, and we deal with reciprocity of income tax relief from bilateral arrangements or multilateral arrangements. So that is the global environment there.

On the local arrangement, this Government's focus in the battle against crime is largely centred around improvements to our systems to ensure that you can follow the money. The following the money required institutional improvements, and it also required tweaking with our laws. On the institutional improvement side, they include improvements to the criminal justice system, to make sure that your cases actually get to court, they can be tried in court, you have rules of court, you have courts, you have judges, you have defence attorneys, you have a computerized environment, your files move with alacrity as they currently do not, between the magistracy and the High Court, or the DPP's office and the respective domains where you are actually doing the filings pursuant to orders of the court. When we come now to the international obligations before us—let me state—the international obligations are constantly moving, Trinidad and Tobago in the FATF underwent four mutual evaluations. Groups of experts came to our country on four successive occasions, looked at us in first round evaluation, second round evaluation, then they looked at us in third round evaluation. We were not quite complete with third round evaluation. They said roll up your third round evaluation and go into your fourth round evaluation at the same time.

Now, Trinidad and Tobago was put into this cycle by way of a commitment of the Government of Trinidad and Tobago sitting then in January 2015. In 2014, the then Government said to Trinidad and Tobago, “We will be the first country amongst countries of the world to undergo fourth round mutual evaluation”. And the fourth round mutual evaluation is really your very big-ticket item. Because after your fourth round mutual evaluation, that is when the dance is serious. So committed to fourth round evaluation, not having finished our third round evaluation, the experts came to Trinidad and Tobago in January 2015 and they assessed us against the 40 recommendations and the 11 immediate outcomes, and basically speaking, we did not do well. The level of not doing well required us to go into two forms of supervision. We went into the Financial Action Task Force cycle of review. It is under a body called the International Corporation Review Group, the ICRG. In that ICRG they treat with you in two ways depending upon your size. If your GDP is over US \$5 billion, you are treated individually. Your country is named individually. If you are less than US \$5 billion you fall into a pool, so you are not really named or singled out for treatment.

Trinidad and Tobago, being above US \$5 billion in GDP, find ourselves being named in the publications of the Financial Action Task Force. The Financial Action Task Force sits three times a year, and in that they set to you the requirement that you give your high-level commitment, political commitment, in which case I have done that, they ask you to develop an action plan for items, you are not permitted to publish that action plan, because it is a confidential arrangement with the assessors. That action plan requires that you agree to achieve certain targets by certain timelines. This Senate will remember well on a previous

Bill, that we indicated that November 30th was a deadline date for us to treat with the Income Tax (Amdt.) Bill because we needed to tell the FATF that we had done certain things. We in fact did that by way of passage in this House, and on the same day, November 30th, we reported that we wanted to seek re-ratings to improve our status in 22 of the recommendations. Now, that is a big haul.

Having given our recommendations, we are required on January the 4th to undergo a mutual evaluation joint group sort of approach, where the assessors come to Trinidad and say, “Okay, you are required to make progress because you are not allowed to just sit still and do nothing”. “You must achieve compliance in progressive steps.” And on the 4th of January we are going to have to report as to what we have done against our milestones. The Income Tax (Amdt.) Act is now part of that, and these matters before us here today are part of that. And I will explain them when I get to the context of the clauses themselves.

So, on the 4th of January we have to do this assessment which is why we warned that we would be sitting again in respect of this Bill, and so very graciously the Senate has made no complaint in working back to back, and I wish to thank hon. Senators sincerely. I know you have busy lives and busy practices. This time of year is also one which is occupied in doing a lot of charitable work, et cetera, and I really do wish to thank the hon. Senators for making themselves available so graciously. And very importantly, I thank the staff of Parliament, and the Hansard in particular [*Desk thumping*] for the yeoman service that they continue to do, Madam President, in making sure that our work is as efficient as it is. I invite every Senator to take a trip up to the administrative floors in this Parliament, and go and meet the people that really run our business, in particular, the Hansard

members.

Madam President, the international obligations that centre upon us today now, across these three substantive clauses are as follows: First of all, clause 2 amends the Proceeds of Crime Act. Now, I genuinely recommend to all Senators who are not lawyers, if you have not read the Proceeds of Crime Act, read it from cover to cover. I apologize immediately that the laws of Trinidad and Tobago are not published in revised form. We have as a Cabinet taken the massive amount of amendments that we have done in the period 2015—2018, and we are in the course of confirming the revised laws of Trinidad and Tobago which will be published very shortly. But, the Proceeds of Crime Act, hon. Senators, is a masterpiece that is waiting to be properly implemented in this country. The Proceeds of Crime Act is divided into several parts. Part 1 deals with the confiscation of proceeds of a specified offence. Largely all the DPP's work. Part 2 deals with money laundering, and Part 3 is miscellaneous provisions, where you set up a seized asset committee. This piece of law has been working, but it has not been working fast enough. And this piece of law really required us to do the amendments which we as a Senate have spent a lot of time prior to the change in the Senate bench, the previous Independent bench, and now this bench, we have been engaged in the criminal justice reform, because this Proceeds of Crime Act sits largely in the criminal arena.

Importantly, we have been improving the move away from just pure indictable offences, which must go through preliminary enquiry until we abolish it shortly, and we have been moving to Summary Courts. We have been moving to increase the capacity of courts, et cetera, et cetera. But the Proceeds of Crime Act

is a linchpin in treating with follow the money, and in the battle against terrorism. What we propose in this Bill is to amend the Proceeds of Crime Act effectively. We are going to firstly amend the definition of “financial institutions”. Secondly, we are going to amend—so there are basically 10 amendments in the Proceeds of Crime Act, depending upon the way you count it.

The first one is where we treat with the definitional aspects of “financial institution”, then we treat effectively with an important element called “tipping off”, and I will come to that. Then we treat with the removal of certain cross-reference inaccuracies, et cetera, and we also treat with the penalties, and we deal with something called “inchoate offences”, which I will come to shortly. So clause 2(a) amends section 2, which is the interpretation section of the Proceeds of Crime Act, where in the definition of “financial institution” we are deleting the word “agent”. An agent is being removed in respect of an insurance agent. And the obvious question comes about, well, why do you want to remove an agent? Surely an agent as a frontline person can be somebody who can spot a suspicious transaction or suspicious activity. But we are removing the concept of an agent specifically because the cost of money laundering enforcement, the cost of AML/CFT as they call it, Anti-Money Laundering and Countering Financing of Terrorism. For every dollar that you regulate it costs you about \$5 to do it, to regulate it.

So it is very expensive. Because insurance is done through a system where the placement or underwriting of insurance is done by the broker or the insurance company itself, we felt it prudent in keeping with the blessings from the FATF that we would remove the agent, because the agent is effectively going to be supervised

by the inspector under the Central Bank arrangements and the Insurance Act arrangements, both in the present law and in the law which is soon to be proclaimed, which is the new Insurance Act.

We are also proposing that the risk, because the first Recommendation 1, your risk assessment, that risk assessment having been conducted in Trinidad and Tobago shows that the placement of life insurance policies are not really a risky factor, and the Central Bank has confirmed, and the FATF has blessed that life insurance is a low risk investment which can be excluded out of this position, again, because of the regulatory supervision which the CBTT has in its capacity under the Insurance Act. Clause 2(b)—Madam President, may I ask what time I must end? Half past?

Madam President: You end at 29 minutes past two.

Hon. F. Al-Rawi: Thank you, Madam President. Clause 2(b) amends section 51 of POCA, Proceed of Crime Act. Section 51 of the Proceeds of Crime Act is a massively important section. It deals with tipping off. In the tipping off arrangements presently the law is, that if you believe a police officer is dealing with a suspicious activity report or a suspicious transaction report, and if you tell or warn someone, or tip them off that the policeman is doing his job, you commit an offence.

Now, let us explain how the policeman gets there: The financial Intelligence Unit has people that report to it. Those people come from listed businesses or from supervised entities. The supervised entities are banks, insurance agents, the SEC, whomever it may be. The listed businesses include attorneys-at-law, real estate agents, jewellers, pawn brokers, value for money, money transfer services, et

cetera. All of them report suspicious transactions and activities to the FIU. When the FIU does its analysis, it reports it to the Financial Investigation branch, which is the division of the Trinidad and Tobago Police Service, which deals with it.

But tipping off right now in that circumstance where it only gets to the police is limited, and in going for the risk-based approach it is prudent, and the direct recommendation came in our mutual evaluation report, that we should include the offence of tipping off if you are aware that the supervised entity, or the listed business is in the course of considering an STR or an SAR. So, we are taking it down the ladder to the person. So, for instance, an attorney-at-law sees a suspicious transaction, wants to report the transaction, the clerk in the attorney's office calls up the client and says "Aye boy, it looks suspicious, the attorney is about to make a report on you". That is tipping off. So, we have taken it a step away from the police and the FIU, and we have put an obligation upon those who operationalize the law to ensure that tipping off is not a feature of warning people about crime.

Madam President, we then go, of course, in the tipping off, to comply with Recommendations 21 and 18, and those recommendations were revised as recently as February of this year, and so we had to do some fine-tuning, which is why this Bill has come at this hour. It is not as if we could have done it sooner, but with the moving goalpost from the international assessors we have only got the information and are only now able to comply with it.

Madam President, clause 2(c) treats with an amendment to section 53. This is the penalties. Now, I want to confess right now, the obvious. Yes, the Accessories and Abettors Act, Chap. 10:02, yes the common law, yes section 66 of

the Interpretation Act all deal with accessories, aiders and abettors. That is a given. So if that is a given why am I asking that we put in clause 1(a) into section 53 of the POCA Act. Because we have hit the traditional road block. The assessors come largely from civil law jurisdictions. The European base. They have said to us specifically that they want to be comforted that our law, the Proceeds of Crime Act treats with what we have argued, the law already provides. Section 66 of the Interpretation Act, Accessories and Abettors Act, and the common law, all provide that accessories to the offence are to be caught that way.

We argued it out in 2015. January 2015, my predecessor Attorney General argued that out, and we failed. So, we are engaging in something that is properly superfluous. We are adding something into our law, but insofar as it is superfluous, I do not need to be worried, because it just codifies what the existing law is anyway. So that is what clause 2(c) does. In terms of amendment we are adding in that:

“A person who knowingly attempts, aids, abets, conspires, procures or otherwise facilitates the commission of an offence under section 45”—and section 45 is the money laundering section—“commits an offence...”

We are also going a little bit further to deal with a very important subsection, subsection 4 in section 53. Section 54 of the Proceeds of Crime Act required that the Minister with responsibility for public administration should have made regulations to put the State under an obligation to obey the Proceeds of Crime Act. Those regulations were never done, full stop. But it is was an easier fix for us to repeal section 54 and bring into section 53 a direct obligation that says:

“Notwithstanding subsections (2) and (3), where a person employed in

the service of the State as a public officer or on contract”—you—
 “commits an offence...”

—for tipping off summary in the manner that we say, and in section 52 where are you treating with it as well. Those are the tipping off provisions put in there.

So what we have done is we have cured the obligation and the untidiness of having a Minister of Public Administration go off and make subsidiary law, and instead we are putting it into the parent law, that public officers, contract officers, working for the State are to be obliged to not tip off people. Why? The State is the largest generator of revenue. It is the largest employer. It is the largest recipient of potentially suspicious transactions or suspicious activities. Valuations Division, stamp duty, Inland Revenue, Ministry of Finance, Attorney General, all of these agencies, state bodies, all of them have the potential to see money which is improperly utilized or which it looks, or sounds, or smells like money laundering, and therefore we make sure that if the State is engaged in an SAR or STR, that we put the obligation upon the public servants to not tip off people.

Sen Ramdeen: Attorney General.

Hon. F. Al-Rawi: Yes, please.

Sen Ramdeen: Madam President, I am grateful to the Attorney General. Attorney General, thank you for providing the material that you just—that the office just provided. But before you move on from the issue of tipping off, I was just looking at the amended version to section 53, and is it, am I correct in saying that what you propose in new subsection (4), the new section 51, in relation to public officers, that the fine that you propose to be imposed on the public officers is half of what would be imposed on an ordinary person? And before you move on from that

point, could you just provide the justification for that particular policy of it being half instead of an ordinary person or a public officer?

Hon. F. Al-Rawi: Sure.

Sen Ramdeen: Thank you very much.

Hon. F. Al-Rawi: Yes, Sen. Ramdeen, and again, I apologize that I only just provided the marked version of the Consolidated Act. I really should have thought of doing that, but we came quickly. And secondly, yes Sen. Ramdeen, you are correct, it is half, and we have gone for half of the offence because we are taking it in a phased approach.

Hon. Members will note that the Public Services Association under Watson Duke, made significant cry about the level of the offence at half, saying that public servants had a significant climb, and that this was something which would be unduly onerous, so we have sought to take it in a phased approach, which is why we went for half of the offence at present. And the idea and rationale for it is that once we apply it and we look at the indices, that we can then adjust it over time as we go forward.

Madam President, I have dealt with clause 2(d), which is to repeal section 54 for the reasons of putting it in section 53(4). Clause 2(e) amends section 55(3C). There was a cross-reference error. It should not have been a reference to 55(3C). Sorry, it should not have been subsection (1), it should have been subsection (2)(a)(ii), and that came about by way of the observation of the FIU, CBTT and the SEC, in saying that it was an incorrect cross reference. Clause 2(f) amends section 55B, which is the exemption from liability. And what we are doing here is we are inserting the following words, “whether or not the underlying criminal activity was

known or any illegal activity occurred.” And this again ties in with the tipping off provision. It was argued in the mutual evaluation report that a smart lawyer could come in and seek to take advantage of the current construction of the law, and what we wanted to do is to improve the level of protection so that we could actually have the position where the underlying criminal activity is treated with regardless of whether the illegal activity occurred or not.

So it encourages the fact of reporting, it encourages the suspicious activities. We did not want to make it such that only if the activity actually occur, because at the point of suspicion you do not really know if it is real or not. It is just merely a suspicion. Clause 2(g) amends section 55D. This is where—that specific section in the Act is where you have the power of entry, the supervised authority. Now, under our law you can only enter with consent. If you do not get consent you have to go and get a warrant. That is something that the assessors complain about. The assessors are asking this country, we do not do it here, but I am just letting you know, for us to go and amend the law so that a supervised entity can have the automatic power to walk in with or without a warrant. A lawyer’s office, a bank, et cetera, it is something that we have fought against, because we believe in our society that the warranting is the proper approach to go for, because it is quite easily obtained.

What we do in clause 2(g), however, is we are removing the National Insurance Board and the UTC, and the question obviously asks, why? The question to be asked is, why? Now, we are removing the NIB, because the NIB’s inclusion was superfluous. The FATF told us, “we do not actually need you to look at the NIB, the nature of their products and services, their investments—

because they are largely investment in orientation—they are not required to be supervised. You are unnecessarily burdening the weight of AML/CFT costing, and therefore it is safe for you to remove it. We checked it with them. The UTC is being removed, again, because of the nature of the UTC services, and very importantly because the UTC is actually supervised by the Central Bank under the UTC legislation. I believe it is section 32 of the UTC Act itself which says that the CBTT can cause the UTC to comply with any written law which obviously includes these laws here.

So, we were given that recommendation, again, on the risk-based approach that those two entities could be removed specifically because the UTC in the nature of their products is supervised by the SEC. So there is already a regulatory figure there, CBTT and SEC, in the UTC legislation. That also fits in with the fact of the definition of a financial institution from FATF, because the FATF does not include those two entities in its definition. Clause 2(h) amends section 57(2) of the POCA. That treats with offences and punishment. And what we are looking at is the mutual evaluation report.

Again, we are adding a level of protection. The mutual evaluation report told us that we had gone too far, and what we are doing is we are ensuring that we improve the level of protection there. Clause 2(i) inserts something called the National Anti-Money Laundering and Counter Financing of Terrorism Committee, NAMLC. NAMLC was born in the year 2006 by way of a Cabinet Minute. NAMLC was centred into its current version as this law now prescribes, by the UNC Government in 2011, the Cabinet came up with an improved, more expanded version of the NAMLC. The assessors said to us, “you need to put the NAMLC

into law.” We agree with that, because you would be improving the systems of governance in this country, so we have put the NAMLC into law, and we have mirrored the 2011 Cabinet Note which is the current structure. Yes, it is true that all of these things are basically executive appointees. Yes, it is true that the Minister’s representation is there, but that is the current system. It satisfies comparison elsewhere, Barbados, Jamaica Cayman Islands, they all have the same approach. They are all done the same way, the United States of America, et cetera.

Madam President, if I turn next to clause 2(i), here is where we are giving NAMLC the ability to govern its own procedure. This is in keeping with elsewhere in the Proceeds of Crime Act, section 58(i), for instance, where the seized asset committee regulates its own procedure, the Environmental Management Act, et cetera, there are umpteen precedents in law in our local provision, and so we have mirrored that for consistency in terms of architectural set-out of the law. Clause 3 treats with amendments to the Anti-Terrorism Act. The Anti-Terrorism Act here, Madam President, what we are effectively doing here, is we are putting in a unit called the Anti-Terrorism Unit. Why? The Attorney General has—pursuant to the Constitution, section 76, the Attorney General has responsibility for the civil law and for the criminal law in certain defined ways, and under the Anti-Terrorism Act there are three players; the DPP, the Commissioner of Police and the Attorney General. The Attorney General is responsible for the amendments, sorry, the management of listings. The Attorney General goes to court under section 22 in its several iterations, 22AA, 22BB, 22B, et cetera.

The Attorney General goes to the court and seeks to tell the court, listen, we

need to list an individual or an entity, they come from the UN SCR recommendations, or they come locally, and the listing allows the Attorney General to go to court, ask a court to list these people, and effectively then freeze their assets or freeze their accounts. Once the order is made, the FIU receives it, publishes it widely, and then all banks and supervised entities, et cetera, get the message, X entity is to be cautioned not to do business with Y entity. So whenever you see that red flag pop up, you know not to do it.

Now, this is a very important tool to protect and also punish. On the punishing side, obviously you do not want to have the financing of terrorism happen. But on the protecting side many of our Islamic entities, in particular, engage in zakat, engage in supporting international agencies which are properly supervised, but there are vagaries in the world, the United States may blacklist someone, the United Kingdom may not, and our citizens have found themselves complaining that they are victims of blacklisting, because they have provided zakat quite legitimately to certain entities, which are approved by the United Kingdom but not by the United States.

So having our courts have the listings allows us to tell our citizens when they are blacklisted, we get to make representations on their behalf, to say, listen to the international agency, you got it wrong, these people are complying, they are known, these entities are supervised, they are listed or not. The model that we have used here in amending the Anti-Terrorism Act to put in this desk, is to take advantage of the work which I have had the great pleasure of leading at the AG's office in the period 2010—2015, effectively the Anti-Terrorism Act lay as a virgin Bill, there was no activity at all, not a single listing. Since then we have engaged

in 506 listings, and we have brought it to life. It would be a tragedy if that were to allow itself to continue on the passion or will of Attorney General to Attorney General. I am in a revolving door, the next Attorney General in Trinidad and Tobago ought to have the benefit of an established desk in the same passion that we have a central authority to operate the Mutual Assistance in Criminal Matters Act, extraditions, et cetera. We have modelled this from the extradition bases, et cetera, for the central authority, and that is the hat on the peg that we have chosen.

Madam President, we asked specifically that the AG produce a report, and this is to be found in clause 3(c). We are asking that the Attorney General produce a report, because the Minister of National Security already produces a report in section 43 of the Act. But there is nothing to require the Attorney General to speak to the statistics that the anti-terrorism desk will perform, so we have thought by way of transparency and by way of reporting that we should cause the Attorney General to produce a report and lay it in Parliament in the usual fashion.

2.20 p.m.

Madam President, the provisions of clause 4 are really just cross-reference checking. Clause 4 we propose, in clause 4(1), that we amend section 8(3)(d) of the Financial Intelligence Unit Act. There were cross-reference errors. It should not be 55(3), it should be 55A and we sought to correct that. Clause 4(1), we amend section 19 of the FIU Act. We are deleting the words “section 55(7)”. Again, this was due because we had done certain amendments which rendered it otiose and it was therefore required to be removed to make sense of the law. And in clause 4(2), we amend Regulation 2 in correcting a cross-reference, moving away from 55(3) to 55A.

So, Madam President, in the round we have a deadline, I apologize that we are sitting in the Senate today, the 19th of December. We could not have come sooner. It has come about by way of the constant operations of the Attorney General's Office with the assessors. Once they were rendered certain, we came with immediacy. We are proposing amendments:

1. To treat with our mutual evaluation report recommendations and improvements.
2. Our high-level commitment and goalpost markers that we have subscribed to.
3. Having reported on November 30th as I cautioned we would have, we have an occasion to be ready on January 4th to treat with this law and to report to our assessors that we have done what we have.

We are seeking to systemically improve the Proceeds of Crime operationality by having a national anti-money laundering and financing of terrorism committee in operation in law. We are improving the Anti-Terrorism Act by having the office of the Attorney General replicate the work of the Central Authority in a specialized division. We are correcting cross-reference errors. We are improving fines and penalties. We are easing up suspicious transaction management to make sure that you do not find yourself tripping things unduly, worrying about whether you must prove that a crime existed or not. We are improving group consolidation, because there was a lacuna in the law where you could probably argue in a consolidated group, a financial group: Let us take Republic Bank Holdings versus Republic Bank itself.

If Republic Bank itself was talking to its legal officer in Republic Holdings

about a matter, that could be viewed as tipping off. So we had to make sure that we dealt with the vertical arrangements in group consolidated management to allow for no tipping off if you are doing it in good faith and in the lawful circumstances of STR/SAR management.

This world of the FATF is filled with anachronisms. It is filled with obligations, it is filled with inconsistencies, you are fighting civil law versus common law, it is filled with abbreviations. You have to learn up the technology and be technologically speak-proficient as fast as you can. When you get to the FATF world you have to know what an FSRB is; ICRG is; PDG is; WGFI is; I mean, the terminology alone is a lexicon in itself.

So what I can say to the hon. Senators is, the country has been diligently performing its work. We have come in for recommended praise by our international assessors; we are on the right track; the international obligations and complying with them is not trading our sovereignty. We in the Government of Trinidad and Tobago and we the citizens of Trinidad and Tobago, I am sure, all agree that following the money, stamping out corruption, moving money laundering, improving our courts, making sure that the financing of terrorism does not happen, we all agree that those are local goals that we must ascribe to and apply for ourselves.

So, Madam President, I look forward to the contributions of my learned colleagues. I do hope that if there are some immovable fixtures in their minds that we can discuss it through, because it is definitely a difficult task to manage this affair and I look forward to contributions. I beg to move. [*Desk thumping*]

Question proposed.

Miscellaneous Provisions (Proceeds of
Crime, Anti-Terrorism and Financial Intelligence Unit
Of Trinidad and Tobago) Bill, 2018
Hon. F. Al-Rawi (cont'd)

2018.12.18

Madam President: Before I call on Sen. Ramdeen, I will now revert, as I indicated before, to Item 14 on the Order Paper. Leader of Government Business.

**JOINT SELECT COMMITTEE REPORTS
(Extension of Time)**

Constitution (Amendment) (Tobago Self-Government) Bill, 2018

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, having regard to the Interim Report of the Joint Select Committee appointed to consider and report on the Constitution (Amendment) (Tobago Self-Government) Bill, 2018, I beg to move that the committee be granted an extension to May 27, 2019 to complete its work and submit a final report.

Question put and agreed to.

Trinidad and Tobago Revenue Authority Bill, 2018

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Madam President, having regard to the Interim Report of the Joint Select Committee appointed to consider and report on the Trinidad and Tobago Revenue Authority Bill, 2018, I beg to move that the committee be granted an extension to February 28, 2019 to complete its work and submit a final report.

Question put and agreed to.

**MISCELLANEOUS PROVISIONS (PROCEEDS OF CRIME, ANTI-
TERRORISM AND FINANCIAL INTELLIGENCE UNIT OF TRINIDAD
AND TOBAGO) BILL, 2018**

Sen. Gerald Ramdeen: [*Desk thumping*] Madam President, good afternoon and thank you for the opportunity to contribute to this debate on:

“An Act to amend the Proceeds of Crime Act, Chap. 11:27, the

Anti-Terrorism Act, Chap. 12:07 and the Financial Intelligence Unit of
Trinidad and Tobago Act, Chap. 72:01.”

Madam President, we are here again this afternoon to debate a piece of legislation, that like the Attorney General has said, has twin aims in terms of the satisfaction of our international obligations and the strengthening of our domestic legislation in order to fight the scourge as the Attorney General says of financing of terrorism and anti-money laundering. And I want to say at the outset, Madam President, the Attorney General made much of the principal piece of legislation that we are asked to amend today, which is the Proceeds of Crime Act. And I want to give the assurance to the Attorney General that the aims that have been set out in the Proceeds of Crime Act, which was Act No. 55 of 2000, since the year 2000 we are in the year 2018, this piece of legislation is 18 years old. But that piece of legislation was passed at a time when the world was moving towards fighting financial crime on a different basis. Legislation was brought to the Parliament of Trinidad and Tobago which we subscribed to, that piece of legislation was amended in—by Act No. 10 of 2009; Act No. 17 of 2012 and Act No. 15 of 2014.

Madam President, every administration, whether it be the People's Partnership, the People's National Movement, United National Congress, shares the view and shares the noble aims of fighting money laundering, corruption and the fight against terrorism and the financing of terrorism. And when one looks at all of the—we have come here time and time again and the Attorney General has brought piece of legislation after piece of legislation, because as he had said, the Global Forum, CFATF and FAFT and the 40 recommendations that we are required to comply with. Those are part of our international obligations.

But I want to set one thing straight here this afternoon, Madam President, on this, what might be a short Bill but has very far-reaching consequences, to say that it has been said time and time again that we were put into this position of finding ourselves where we are at now with these recommendations for fourth-round evaluation by the People's Partnership Government between 2010 and 2015. And I know that the Attorney General will agree with me in saying that it did not matter who was the administration in power between 2010 and 2015, because these requirements, these international requirements that we signed on to at that point in time, the Attorney General said we are not sacrificing our sovereignty. But it matters not which administration was in power then. We were required to meet these global standards, we signed on to them as a country, we are part of an international community. That international community, that international village is becoming smaller and smaller on a daily basis and we have to comply with our international obligations.

At the same time, Madam President, the moving target that the Attorney General speaks about and we are being brought here, I mean, I myself confess that—I am sorry that the new Members on the Independent Bench have to now grapple with preparing for this debate today. The Attorney General was kind enough to indicate that he apologizes for the shortness of time. But, Madam President, these amendments for lawyers who are versed with legislation every day, it is difficult for us, much more so for persons who are not legally trained to be able to contribute in a meaningful manner for the benefit of not the Independent Bench or the Opposition or the Government, but for the people of Trinidad and Tobago. Because we are here to perform a task, not on a partisan basis, we are

here to perform a task on behalf of the people of Trinidad and Tobago. [*Desk thumping*]

And I too, not that it is my duty, but I too feel for the new Members on the Independent Bench having received this Bill last night as amended in the House of Representatives and being asked here—and it is not a criticism of anybody, Madam President, not being said in a pejorative way, but at the end of the day, in order for us to meaningfully contribute to what we all want as the best product out of this legislative law making process it takes a little bit of time. And we all left here at the wee hours of the morning last night, reaching home at the wee hours of the morning. We all—and this is not complaining, Madam President, this is just understanding that we are here to do the people's business and what we are here to do is very serious.

I asked the Attorney General before the debate started today in relation to one of the amendments and we were graciously provided with the material of what is the consolidated version of the Proceeds of Crime. And it is very difficult to understand, Madam President, because these pieces of legislation have gone through amendment after amendment after amendment and when we come here and we are asked to amend, again, another piece of legislation, one has to have a holistic understanding of the different pieces of legislation and how they mend and mesh with each other in order for us to understand the legislative aim at the end of the day that we are being asked to perform and to carry out.

But, Madam President, I have heard the Attorney General indicate what our international obligations are. And in every single debate that come before this Parliament, this Senate that we contribute to, it must be, it cannot be otherwise that

our aim has to be to fight these scourges of corruption, money laundering and the financing of terrorism, not simply by passing legislation. Passing legislation is one good step to be made in the right direction. No one can doubt that. But where do we go after we pass the legislation. The Attorney General importantly has said that one of the ways in which the present Government's policy is, is to drill down and to make some of these offences summary offences, so that the Magistrates' Court will be able to deal with some of the offences.

But, I want to take this in a step-by-step approach, Madam President. The reason why we find ourselves in a position of non-compliance is because FATF and CFATF, it cannot be that they are simply giving us these 40 recommendations, saying change your laws, comply with these 40 recommendations and that is the end of the story. It does not work like that. Because if that is the end of the story, on an international basis it serves no benefit to Trinidad and Tobago if we have legislation that was passed in the year 2000—this legislation that we are asked to amend today, Madam President, this Proceeds of Crime, which is the heart and soul of the fighting of corruption and anti-money laundering, was passed by the UNC administration in 2000. So it does not matter which administration is in power. This is a theme that has gone on for the last 18 years.

But you know what is disturbing?—the Attorney General will come and he tells us, the wheels of justice are not moving fast enough. When we were in the last session, every piece of legislation that comes forward there would be a hue and a cry by the Independent Bench saying, in respect to white-collar crime nothing is happening. White-collar crime is committed but it is really not a crime in Trinidad because nobody is prosecuted.

I asked a question of the Attorney General, two weeks, two sittings ago and the Attorney General confirmed, we have an investigation that centres around this piece of legislation, ongoing, in this country for 11 years now. This year will make 11 years. This country has spent over \$500million on an enquiry and after 11 years and over \$500 million not a single person has been charged. And that is the problem.

And the question that we must ask ourselves is, are we going to continue amending our laws, strengthening our legislative framework and then we still get no results? Because as the Attorney General says, with these moving targets, when you pass the test on the 4th of January, 2019 and they say, okay, you have gone past one hurdle, there is going to be a point in time when you will, as an administration and as a country, we would have carried out the 40 recommendations of CFATF, you know, and then we would be asked well, what next? Are you all prosecuting anybody for money laundering, for the financing of terrorism?

And that takes me, Madam President, to the report, the very important report that is produced by Financial Intelligence Unit of Trinidad and Tobago, the 2017 Annual Report. And I just want to start, I want to examine a few things in this report. But you know the Attorney General has said that between 2010 and 2015 these laws were stagnant, nothing was done. But I found an interesting part of this report at page 48 of the FIU report for 2017. And because I have been hearing this over and over about the stagnant—nothing was done between 2010 and 2015, I just want to put on the *Hansard* that between 2010—let me be more specific—between the 13th of November 2012 and the 8th of July 2015 there were 16 memorandums of understanding that were signed on by the FIU with our international partners to

fight exactly what we are engaged in today.

And let me just, for the record deal with that. We signed on with Jamaica, St. Vincent and the Grenadines, Guyana, Montserrat, St. Martin, Suriname, Bermuda, Canada, Bangladesh, Taiwan, Grenada, Dominica, the Dominican Republic, Antigua and Barbuda, Turks and Caicos, South Africa. Sixteen MOUs were signed. So that, let it not be said, Madam President, perhaps we did not do it fast enough. Perhaps more could have been done. I do not think any administration could say that there was a perfect job done with respect to the legislative agenda to fight these things. It cannot be.

But, Madam President, there is one troubling thing about this entire affair, it is this. That despite all the laws that we are being asked to pass, despite all the amendments to the legislation that deals with the fight against money laundering, financing of terrorism, Proceeds of Crime, there is a gaping hole in relation to prosecutions. And we have to ask ourselves, well why? It cannot be that the Attorney General is satisfied with the position that we find ourselves in, which is, we have the strongest laws, we are improving our courts, we are giving all the financing that is needed to the FIU, the FIB, the Trinidad and Tobago Police Service and then when we ask ourselves, what have the people of Trinidad and Tobago gotten as the product for this? The answer is absolutely nothing.

And I am disappointed that that is the position. And that is not the fault, Madam President, I want to make it clear at the outset, that we are going to find ourselves in a position of whether they want to call it being on the gray list, or the blacklist or whether we are in a position of non-compliance, we are going to continually find ourselves in that position until we understand that the goal that we

must set ourselves is not passing legislation alone. It is not simply improving the criminal justice system, but it is bringing to justice the people who are in breach of these laws. [*Desk thumping*]

And I know that the Office of the Director of Public Prosecutions is one that is insulated under section 90. Nobody could tell the DPP what to do, when to do it, how to do it, but I am telling you, Madam President, the time is coming in this country where the Office of the Director of Public Prosecutions has to be accountable to the people of Trinidad and Tobago. [*Desk thumping*] And it is because, as they say, Madam President, we who are lawyers understand, with rights go responsibilities. We as a country took a decision to have an office that is in charge of the prosecution of all criminal offences in this country. Because of the differences that we had at independence and when we became a Republic, we decided to totally insulate that office for totally rational, reasonable and understandable reasons. That is an office that should be independent from any administration, it should have absolutely no political interference.

But what we did not consider, Madam President, is that while we were focusing on insulating that office we never as a country put in place a mechanism for accountability for that most important office. And that is why, today, when we find ourselves in these positions we are being put as a nation in this position, why, because it is just like the fight against drugs and crime. We have legislation that deals with dangerous drugs. Every village you go into, every town that you go into, every part of Trinidad, the ordinary citizens could tell you, who running the drugs, who is in the drug blocs, who are the drug dealers, but the only people who do not have that information is the police. [*Crosstalk*] Thankfully, Madam

President, there are some of us in this Parliament that understand that the fight against crime is not about PNM and UNC. [*Desk thumping*] When somebody goes into your house to rob and shoot and kill you, they “doh” check and see if you are wearing yellow or if you are wearing red or if you are in green. It does not matter, right? It is a scourge that affects all of us.

So, it is not about, why this one did not lock up this one or that one did not lock up that one, because before 2010, right, the PNM was in power as well. So the same question that is being asked now, why you did not lock them up when you was in power. I could ask the same question too. Why you did not lock them up when you were in power. That is not what we are here for. [*Crosstalk*] What we are here for—and I want to raise this frontally with the Attorney General—is this. The only way we will improve the fight against all of these things that we are asked to improve here today is for us to have prosecutions of people who are in breach of the law. The Attorney General has told us that the Government is taking a whole-of-government approach and therefore the de-siloing is taking place and information is being shared, but, Madam President—[*Crosstalk*]—I will tell you what is not good, hold on.

What is not good is this. At the Office of the Director of Public Prosecutions, who is on the NAMLC, who is the heart and soul of the Proceeds of Crime, there is a whole section that all the powers belong to the Director of Public Prosecutions. The Anti-Terrorism Act the Attorney General correctly said, he is one of three agencies that is in charge of operationalization of that piece of legislation. Let us see what the position is at the Office of the Director of Public Prosecutions. As of the 15th of August, 2018, the position at the Office of the

Director of Public Prosecutions is this. There are two vacant positions for deputy DPP; there are four vacant positions of assistant DPP; there are 13 vacant positions for Senior State Counsel; there are 12 vacant positions of State Counsel III; there are 38 vacant positions of State Counsel II and there are five vacant positions of State Counsel I.

So, the total in relation to the staff complement at the Office of the Director of Public Prosecutions, Madam President, is this. There are a total of 128 positions there, in that office, that are in charge of prosecution of all crime in Trinidad and Tobago. And as we speak today and we are asked to improve the criminal justice system, out of 128, 55 are filled, 55 out of 128. So you have 73 positions; 73 that are vacant. Well, Madam President, it does not take a lawyer, it does not take an Attorney General, it does not take a Senator to tell you that if you have 73 positions out of 128 not being filled then you obviously have a problem. And the problem that you have is, we will pass all of this legislation and we will get absolutely no results for the people of Trinidad and Tobago for it, because the people who are in charge—we already have a problem with detection, we already have a problem with prosecution, but in the realm of prosecution the people who are independent and charged with the ability to prosecute all of these offences that we are creating by the Proceeds of Crime and the amendments here to today, we have 73 positions that are vacant.

Well, Madam President, let us not put the cart before the horse. The position is this, unless we resource the offices that are to operationalize these pieces of legislation, colloquially as they say, “we spinning top in mud”. We are doing absolutely nothing. And if we think that by the passage of these pieces of

legislation, the satisfaction of our international obligations are going to bring any relief to the ordinary citizen of Trinidad and Tobago then we are fooling ourselves.

[Desk thumping]

And so, Madam President, let me say at the outset that I want to call on the Government to do all in its power to resource the Office of the Director of Public Prosecutions and to forthwith do all that we can to fill the 73 positions that are vacant there. *[Desk thumping]* Because, Madam President, we come here in every debate and talk about the criminal justice system. We are opening more courts, we are putting more staff there, everything in the criminal—we are passing legislation, everything that is being said, all of that is good, but at the end of the day if we do not resource the most important office that is in charge of doing the work and bringing results from these pieces of legislation we are not going anywhere. We are in an exercise of total futility. And while we can say, fine, we satisfy CFATF and we satisfy Global Forum and we satisfy the 40 recommendations, like I said again, that is not going to bring any relief to the people of Trinidad and Tobago. And let me explain, Madam President, how that position has morphed itself in this country.

In this same report the 2017 Annual Report of the Financial Intelligence Unit, which is the unit that has to operationalize all these amendments that we are speaking about here today, you know. In 2017 the report says, and I am reading from page 12 of the report:

“In this reporting period”—that is 2017—“the FIUTT received 877 STRs/SARs, a record number of disclosures, reflecting a significant increase of 19%, from the 739 received in the previous reporting year. Consistently,

the Banking and Money Value Transfer Services sectors were the most active Reporting Entities, accounting for 81% of the total STRs/ SARs.”

And this is the important part, Madam President:

“The record number of 877 disclosures showed an unprecedented monetary value of over TT\$ 22 billion in suspected proceeds of criminal conduct. This is an unprecedented increase because the cumulative monetary value of suspicious transactions reported for the previous five years...was only TT\$ 4.5 billion.”

2.50 p.m.

So, obviously, the FIU is doing their job and picking up all of these suspicious transactions, but the question that we ask again, Madam President, is this, and I will get to that now: Since you are picking up all of these suspected transactions—these suspicious transactions—one would expect that with all that evidence—or let me put it another way, more correctly, with all of that information, somehow that information will turn itself into some form of evidence that somebody is going to be prosecuted. But, Madam President, when you come to the prosecutions of people for all of this \$22 billion, the entire arm of the State with the Trinidad and Tobago Police Service working hand in hand with the FIU and the FIB, the persons prosecuted for offences over this period of time is less than 1 per cent—less than 1 per cent of the value.

So, Madam President, does it not tell us that something is not right? Does it not tell us that, why is there this gap between the gathering of the information and the prosecution of persons? Madam President, just as how difficult it is for us to accumulate all of the amendments in these different pieces of legislation, I want to

ask the Attorney General today, when all of these summary offences are created and the magistracy is charged with carrying out the adjudication as to the guilt and innocence of these people, and the laws are being transformed on a daily basis, Madam President, what is the State doing about the continuing judicial education of magistrates with respect to the implementation and the adjudication upon all these charges that we are creating by these offences? Are we going to just wake up one morning and realize that the magistrates themselves have understood all the amendments to the different pieces of legislation; they have been versed in all of the provisions with respect to financial crime; all of the sentences that are available and, like I said before, abracadabra, everything will be fine? That cannot be the solution.

Madam President, I want to get down now to the actual clauses in this particular piece of legislation and the amendments to the proceeds of crime. And one of the things that strikes very early when one understands the way in which these different pieces of legislation incorporate themselves, is that when you go to the Proceeds of Crime Act itself, the Attorney General is proposing that these offences for—let us take the tipping off with respect to the amendment to section 51, which is clause 2 of the Bill, and the provision that:

“A person commits an offence if-

- (a) he knows or suspects that a financial institution or listed business is reviewing information to determine whether to file or is otherwise in the process of filing a suspicious transaction report or suspicious activity report...”

Madam President, when you go to the Proceeds of Crime Act, and just to

demonstrate for those who are non-lawyers and for the people of Trinidad and Tobago, under this piece of legislation the definition of “financial institution” is:

“A bank licensed”—

And this is under section 2 of the Proceeds of Crime Act, Chap. 11:27. The definition of a “financial institution” is:

- “(a) A bank licensed under the Banking Act;
- (b) a financial institutions licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company”—we are now taking out ‘agent or broker’—
 “registered under the Insurance Act;
- (f) a person licensed under the Exchange Control Act to operate an exchange bureau;
- (g) a person licensed under the Securities Act as a broker-dealer, underwriter or investment adviser;
- (h) a person who carries on money or value transfer services;
- (i) a person or entity managing a collective investment scheme under the Securities Act;
- (k) development banks, trust companies, mortgage companies; or
- (l) any other person declared by the Minister by Order, subject to negative resolution of Parliament to be a financial institution for the purposes of this Act”

Madam President, through you to the Attorney General, there has to be a great concern that the persons who are directly affected by the amendment to this

legislation understand, number one, what we are doing here as a Parliament; understand the direction within which the laws are being amended and understand the impact that the laws are going to have on their day-to-day activity. And when this legislation is passed, Madam President, I think that a special effort has to be made to educate all of the persons who belong to the financial institutions that are affected by the offences that are being created by these different pieces of legislation.

And why that is important, Madam President, is because the purpose of the criminal law, as I understand it, is to regulate your conduct as a society. And at the end of the day you can only effectively do that if the persons who are prohibited from doing certain acts by virtue of these pieces of legislation, a central part of which, Madam President, rests upon the element of knowledge and intent, know as to what transgresses the law and what does not transgress the law. And I have heard—not as though it is a criticism, but I have heard very little from the Government as to what are the steps that are being undertaken to educate those persons who are affected by these different pieces of legislation.

Madam President, I then go to clause 2(c) which is the amendment to section 53. And, Attorney General, while we have heard—though you, Madam President, to the Attorney General. While we have heard the admission that what is provided there in the proposed new 1A to section 53, already represents what the common law is, and what the Accessories and Abettors Act provides for. There is one particular definition that is not covered by the Accessories and Abettors Act and neither is it covered by the common law, and it is the element that is included in this definition of “facilitates”. And when one looks at the Accessories and

Abettors Act and one looks at what the common law position is, the common law position may cover the “conspires”. The “attempts, aids, abets, procures”, is all covered by the Accessories and Abettors Act, but I do not—perhaps it is my failing—know that the word, or the element—let me put it this way—of the offence of “facilitates” is one that is known to the criminal law and it is one that is not defined by the Act.

And therefore I want I urge the Attorney General to consider whether, having regard to what is contained in “attempt” and to “aid and abet, conspire, procure”, and then you have the omnibus “or otherwise facilitates”, whether you do need that actual provision when you have already found yourself in a position that the common law provides for these positions. As well as, Attorney General, perhaps I can indicate that in addition to all of these ways in which a criminal offence can be committed, you also have the concept of joint enterprise, which is something that you may want to consider in determining whether you think it is effective to continue with that particular provision.

Madam President, before my time runs out, I want to deal with this issue about clause 3 and the amendments to the Anti-Terrorism Act, and more particularly, the Anti-Terrorism Unit. Madam President, we are told by this Bill that:

“There is established in the Office of the Attorney General, a unit to be known as the ‘Anti-Terrorism Unit’ ...”

And as I understand it, Madam President, there are many different units in the office of the Attorney General. There is human rights unit; there is a central authority, and we are being asked today to approve an Anti-Terrorism Unit.

And when one studies carefully the provisions of the Anti-Terrorism Act, one understands the very detailed task and duties that are vested in the office of the Attorney General with respect to that particular piece of legislation and perhaps the need for an Anti-Terrorism Unit. But the concern that I have is this, we are asked to establish an Anti-Terrorism Unit and we are told by subsection (2) of section 38B that:

“The functions of the Attorney General under this Act may exercised by the Attorney General in person or through a public officer or legal officer who is

—

- (a) employed in the Unit;
- (b) authorised by the Attorney General in writing; and
- (c) acting under and in accordance with the general or special directions of the Attorney General.”

Now, I looked at the Mutual Legal Assistance Act and I see that under that piece of legislation, the first part of section 38B(2) is covered in a similar provision. But what I have a difficulty with is this, Madam President. While we are setting up this creature of statute, which is to be the Anti-Terrorism Unit, we are nowhere told what the functions of this unit are to be. And I have a serious concern about that, because while the unit can be an administrative unit in the office of the Attorney General, that the Attorney General can exercise powers over and delegate powers to, when you place this unit by statute onto the law books, you circumscribe the unit by being only able to exercise the powers that are given to it by statute.

And, therefore, we have a concern that unless you put in the legislation what

the powers of this unit are to be, well, respectfully, Madam President, this unit can do nothing else but be a group of people from whom the Attorney General can delegate power to, to exercise the powers of the Attorney General—

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

Sen. G. Ramdeen: Thank you, Madam President. This can only be a group of persons that can exercise the powers that section 38B(2) allows the Attorney General to delegate under the Act. But apart from that, on my reading of what this provision provides, this unit, and whoever is comprised in this unit—and there must be people comprised in the unit, because the provision says:

“The functions of the Attorney General under this Act may be exercised by the Attorney General in person or through a public or legal officer who is –
(a) employed in the Unit.”

So it assumes that you are going to have public officers there and legal officers there. But, Madam President, unless we flesh out in the legislation what are the powers of the persons who are going to be employed in this unit are to do, then those people have no power, and the unit will really be useless, save and except to exercise delegated powers of the Attorney General.

So, Madam President, I want to caution and I want to ask the Attorney General if it would not be better for us to flesh out in a subsection (4) what are the powers that this unit is going to be exercising. It is already a unit of an arm of the Executive and therefore we want to be sure that whatever powers the unit is exercising does not transgress the powers of any other office or entity of State. And I think that is a caution that we must pay heed to.

Madam President, we will come time and time again to the Parliament to

satisfy this moving target of the Global Forum, the FATF and the CFATF requirements, and the only way that we would be able, as a country, to effectively reap the benefits of the work as a Parliament, as the Legislature, that we are required to do, is if we allow—we resource the entities that are supposed to carry out the functions of these particular pieces of legislation.

The Attorney General—when I read his contribution in the other place—read out what are the resources that are being given to the FIU; how the financial resources given to the FIU have increased over the period of time, and one expects that in this report that the FIU has done in 2017, there are a number of shortcomings that have been identified and one hopes that this Government will resource the FIU to be able to come up to speed and to meet all the aims. There is a special section that deals with all the aims for 2018 and 2019, moving forward. So one hopes that that will be done.

But more importantly, Madam President, I want to end my contribution on this piece of legislation by saying that we will reach nowhere as a country, passing laws time and time again, amending the Anti-Terrorism Act, amending the Proceeds of Crime Act, bringing new pieces of legislation to better the criminal justice system, amending the Bail Act, building more buildings, renting more buildings, bringing more courts, putting more CAT reporters in the courts, when at the end of the day when you ask yourself what has passed the equal sign to all of this, the answer is zero, because the country is still waiting to see who is going to be prosecuted and who is going to be charged, and the people who are benefiting from criminal activity in Trinidad and Tobago to the extent of \$22billion are as free as the birds and all we are being asked to do is pass piece of legislation after

piece of legislation.

The time has come, Madam President, for us to not only, as a country, resource these entities, the time has come for those people who have responsibility for carrying out the State's function of prosecuting people for the commission of criminal offences in this country, to account to the people of Trinidad and Tobago. [*Desk thumping*] And when that office is accountable—whether it be to the Parliament—to the people of Trinidad and Tobago, then we will be able to see the results of all of these pieces of legislation. And it may well be, as I have said before, when people start being prosecuted, we will meet our international and domestic obligations with flying colours. We would not be on any green list, blue list, grey list or blacklist. We might be in the white list and we might be an example for others to follow.

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

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

Sen. Deeroop Teemal: Thank you, Madam President, for the opportunity to contribute to this debate. Madam President, I had a small bit of trepidation about entering this debate for two particular reasons. One, I think Sen. Ramdeen mentioned the very short time we have had to review the proposed Bill and prepare for the debate. But probably the other reason is that the Bill would suggest heavy input from legal minds, from the lawyers, and I am from the profession of engineering. But, of course, engineers being exposed to contract administration and some bits of contract law, we fancy ourselves a lot of times as lawyers. And although when matters do get complicated and it goes to arbitration and court, engineers are often chided by judges and legal minds for being a bit too

adventurous, in terms of knowing the law. So to borrow some terminology from Sen. Mark, my contribution really is given in the context of what we would call “bush lawyer”.

Hon. Al-Rawi: Good place to be. No liability.

Sen. D. Teemal: Yes, good and safe. Madam President, on page 2 of the proposed Bill, clause 2(b)”

“(i) by inserting after subsection (1) of the following new subsection:

(1A) A persons commits an offence if—

(a) he knows or suspects that a financial institution or listed business is reviewing information to determine whether to file or is otherwise in the process of filing a suspicious transaction report or a suspicious activity report.”

An in terms of the use of the word “suspects”, the question is—because most of my contribution will be seeking clarifications and asking questions which, hopefully, would be addressed by contributions from the Government Bench and wrap-up by the Attorney General—is by “suspects”, whether suspicion is indeed a sound basis and whether just suspicion leaves the room for mischief against, you know, those who are intent on bringing into disrepute businesses and other persons.

Other than that, if we look in NAMLC, the National Anti-Money Laundering and Counter Financing of Terrorism Committee, of what is proposed here, you know, going through this and looking at it, particularly in terms of an amendment to the Proceeds of Crime Act, and seeing that it really comes primarily from the need to fulfil the compliance requirements of the FATF that we are have to comply with

according to what was explained to us at the beginning by the Attorney General, and looking at the purpose that is outlined on page 5, Item (a):

“making recommendations to the Minister in relation to the development;
and

(ii) coordinating the implementation of National anti-money laundering, counter financing of terrorism and proliferation financing policies.”

And then particularly (b):

“for collecting and compiling statistics with respect to anti-money laundering, counter financing of terrorism and proliferation financing...”

Madam President, in clause 9 of the Financial Intelligence Unit of Trinidad and Tobago Act, particularly section (b) of clause 9, it appears to me that there is a large extent of duplication here in terms of the responsibilities of the FIU and what is being proposed here on NAMLC, in terms of the collecting and compiling statistics, because section (b) of clause 9 speaks about maintaining comprehensive statistics—this is for the FIU—regarding money laundering and financing of terrorism.

So there seems to be significant overlap in terms of the purpose of the NAMLC and the direct responsibility or purpose of the FIU under the FIU Act. And, of course, point (c) of the purpose—clause (c):

“For coordinating the conduct of national risk assessments and mutual evaluations—”

Which seems to me to be the major purpose, really of the NAMLC in terms of risk assessments and mutual evaluations, distinct from the responsibilities of the FIU.

Another point I would like to raise is under the FIU being established

primarily for implementation of the recommendations of FATF and CFATF on money laundering and financing of terrorism, is an explanation—I would ask the question as to why this amendment, this particular NAMLC amendment, is being proposed under the Proceeds of Crime Act rather than the Financial Intelligence Unit of Trinidad and Tobago Act.

I am sure a lot of thought would have gone into it as to why, and probably in the wrap-up we could probably get some of the insights and the reasons as to why. Because the Minister directly responsible for the Financial Intelligence Unit Act, the line Minister there, is, of course, the Minister of Finance, and under the Proceeds of Crime Act what we have here, the Minister is, of course, the Minister of National Security. So in terms of the necessary coordination amongst the various ministries and the respective agencies that have been established for compliance, particularly under the FATF and the CFATF, I am just asking further clarification as to why this is being positioned under the Proceeds of Crime Act.

Another thing is that under NAMLC, clause 2, the composition of the committee is laid out there, and although I acknowledge under item (b) of clause 2, where it says:

“Such other persons as the Minister thinks fit.”

That is in terms of who the members would comprise. There is no distinct mention in the composition of the committee. I do not know if it is an omission or there are specific reasons for it, of the Comptroller of Customs in terms of the membership being proposed here. And, of course, I think we would agree it is a key and strategic agency within the whole framework of what we are looking at.

In terms of clause 4, we are on page 7, where it says:

“The Minister shall appoint the Chairman and Deputy Chairman...from among the members of the NAMLC...”

Again, if in terms of this NAMLC being established primarily for the implementation of the recommendations of the FATF, would it be most appropriate that the chairman or the deputy chairman, rather than leaving it a bit open like that, that we be a bit more specific and for the chairman and vice-chairman to be nominated for one of the more relevant agencies listed above in terms of comprising the membership, maybe the FIU or some directly related agency amongst all those that are listed here?

One other thing, Madam President, is the question of reporting. I see no provisions here in terms of the reports to be generated by NAMLC, like who has the direct responsibility and who the reporting is to be done to. The reason I raise it is particularly in terms of item (c) of the responsibilities, which I mentioned before:

“For coordinating the conduct of national risk assessments and mutual evaluations.”

And if NAMLC, one of the major purposes is really risk assessment—and risk assessment of all of the agencies and the entities that are connected with this particular Act, of course any risk assessment is going to give the results as to where the respective agencies are in terms of compliance. And seeing that this Bill is particularly about ensuring compliance, then I think that the reporting should be clearly defined; the frequency of the reporting; the party responsible for the reporting and to whom the reporting should be done. And it should be defined within the amendment that we are considering.

Madam President, I would like to move on to the proposed amendment, the Anti-Terrorism Unit on page 8, and my first impression when I saw it, my first take on it, coincides with that of Sen. Ramdeen in terms of what he was expressing, in terms of what is the proposed mandate of the Anti-Terrorism Unit? What is its distinct purpose? Because under the Anti-Terrorism Act, the powers of the Attorney General are very clearly spelt out, particularly under clause 22(b), in terms of the powers of the Attorney General under this Act. And what I would like to ask is that, seeing that we have an anti-terrorism desk in operation at the office of the Attorney General since 2015, I believe it is, doing wonderful work—I think the Attorney General mentioned the number of listings that has been done thus far by the anti-terrorism desk at that particular office—is that what is driving the need to legislate an anti-terrorism unit when there is an anti-terrorism desk within the office of the Attorney General, fulfilling the mandate under the Anti-Terrorism Act?

I thought for a moment that when the Attorney General was giving his brief when he was introducing the Bill, he mentioned about bringing it into legislation because of continuity.

Now if that is one of the objectives, I would support that because we all know one of the major problems that we have in our country is continuity. Because when Governments change a lot of things that are put in motion by the previous Government for some reason or other they are scuttled and it is not continued, and that lack of continuity with particular projects, with particular legislation and everything, has telling effects and very costly effects on our nation.

3.20 p.m.

So if it ties in with continuity I would want to support that aspect of it, but in that support as well I think clarity in terms of the definitive purpose of the Anti-Terrorism Unit should also be considered for inclusion in the amendment. Madam President, this is my contribution to this debate and I thank you very much. [*Desk thumping*]

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): Madam President, I stand and join this debate on this Bill, a Miscellaneous Provisions Bill, which represents the continued implementations of this administration's action plan to meet with its international obligations relative to corruption, terrorism and money laundering, whilst improving and laying the foundation for better dealing with white-collar crime. This Bill, in its form as was previously said, seeks to amend the legislative framework upon which this country has sought to treat with corruption, terrorism, money laundering, namely the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:7, and Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 27:01.

Now, before delving into the Bill itself and its different clauses, I must say that I want to stand and congratulate the contribution of my learned colleague, Sen. Ramdeen. You know, I really was very heartened by some of the realization that he has come to and what was actually being said by him, and I join in supporting a lot of what he was saying, in that, one of points that was clearly being articulated is the need for us to get to the endgame and to produce the type of results which is prosecution. Now, like everything else, there is no one single approach or no one single answer, and I do not think we are being fooled in anyway believing that legislation by itself is going to be the do all and end all. That we agree it is not

what is. In fixing a problem there is no one particular solution.

We here today, however, are called upon to deal with the legislative framework which—it needs to be done in conjunction with a number of other things that also need to be put in place. But you are right. Part of the problem that we have is an institutional problem and is glad to see us in this legislature talking about things like that, because we move from one administration to the other administration and we recognized that at the end of the day we have to service the people, and there are some fundamental problems. He spoke about the DPP's Office and the need for it to be held accountable. Well, that is just one institution that needs to be held accountable. There are all the service commissions that are around, and those things that we set up way back in our Constitution when it was drafted. Because of the fear that we had for our own selves and our lack of confidence in ourselves to really govern ourselves, we put these things in place, and like we all know, if you have a marriage or you are building a country and you have husband and wife taking two positions all the time, the people who end up losing out are the kids that fall through the cracks.

We have been a country, as a nation, for over 56 years, and if you look back at us we will recognize that over that 56 years because of those commissions that we have had, productivity is not what it used to be before, how we approach our work, how we approach the disciplining of our staff, of the people. When you look at what has happened in the service commissions, and what is happening in our police service—I mean we looked at a particular report done by the Deosaran Report on the Human Resource Committee, and a lot of the information that was being shared by Sen. Ramdeen about the DPP's Office came out of discussions

that we had at the joint select committee, where a lot of those information came out, but it is no different. During those discussions in that committee, we found out that a lot of what was happening in the police service came about as a result of a lack of oversight and a lack of quick decisions being taken in that particular area. So all our structures need to be looked at.

The DPP Office, we found out in our conversation—yes, there are a lot of vacancies in DPP Office, but we also found out if you ask the question about the amount of annual appraisals that are outstanding, that needs to be done, the lack of recommendations for promotions that are not coming forward. So there was a myriad of reasons that came and was brought before us and our system as we have it is not producing the type of the results that we want in critical areas of our operations as a country, and we need to find a way among ourselves, as legislators, as leaders, of how we are going to come together to fix that particular problem.

So I look forward to when the necessary legislative change comes forward, or discussions about what is the constitutional change that we need to do, not only to hold the DPP accountable, but how do we fix all the service commissions, the Teaching Service Commission, the Public Service Commission, the Police Service Commission. Are we really happy, 56 years thereafter, with what we are, where we are as a country having being governed in this particular way? So there is a lot of work to be done and, as I said, I really congratulate and I look forward to us continuing that type of conversation in this noble House.

As the Attorney General mentioned before, we are basically on a plan, we are governed by a number of these international—we have responsibility to a number of these international legislations that are out there. I mean what is close

to us would be two major ones that are the focus in the Caribbean region, of course, is the FATF and the Global Forum, and the CFATF. And basically, as much as we want to say we are an independent country we share some of the ideals by signing up to these organizations, and not everything that they have put forward is bad, but the reality is we have to find ourselves to be part and aligned to it otherwise you face the consequences of being delisted. As was said, in the case of FATF, we know and we heard about the 40 recommendations that were put forward for us to look at, and as I said, FAFT did a risk based assessment of the country and they came up with 40 recommendations.

A little bit more information on that—I mean, based on my reading of the document, that evaluation done in 2015, of the 40 recommendations, we were fully compliant with 12 of the 40 recommendations. We were largely compliant with 13, we were partially compliant with 13, and we were non-compliant with two of those recommendations. Basically for my contribution here, I looked at this Bill and I identified five objectives of this particular Bill and I tried as much as possible to see how then are these objectives being met by the different changes that we are proposing in the Bill before us. And the main objectives were:

- To correct deficiencies in the legislative framework governing corruption, terrorism, anti-money laundering, thereby bringing Trinidad and Tobago in full compliance with certain FATF recommendation objective one;
- Objective two: to facilitate efficiency in the systems and the strengthening of the existing protections for stakeholders in the system;
- Objective three: to provide a statutory mechanism for ongoing policy

- development for measures to treat with terrorism, anti-money laundering and the monitoring and the evaluation of the implementation of FATF;
- Objective four: to strengthen the capacity of the Office of the Attorney General to fulfil its statutory mandate relative to anti-terrorism; and
 - Objective five: to strengthen the national legislative framework as part of the crime fighting mechanisms in Trinidad and Tobago.

So how does this Bill go about achieving these five objectives as stated? The first objective of this Bill was, and I repeat, to correct deficiencies in the legislative framework governing corruption, terrorism and anti-money laundering thereby bringing Trinidad and Tobago in full compliance with certain FATF recommendations. When FATF did their evaluations, some of the recommendations that came forward from them, and the ratings that we got, and the factors that they saw causing the rating were as follows: one of them related to money laundering offences, and in that particular category we got a rating of largely compliant, LC—largely compliant—and the reasons why we got that particular rating were as follows: one, there were no specific provisions in the law for facilitating as an auxiliary offence to money laundering and, secondly, there were no specific penalties for a legal entity. So those were two of the reasons why FATF gave us an LC in that particular area.

In the area of—one of the recommendations were, recommendation 21, tipping off and confidentiality and, again, one of the—again we were LC in that particular area and, again, the reasons or the factor was the offence of tipping off is only applicable where suspicious transactions report (STRs) and suspicious activity report (SARs) is being filed. Those were the recommendations and those were the

implications of what they saw. So basically, if you look at what we are doing with regard to fulfilling those objectives, recommendation No. 3, section 53 of the Proceeds of Crime Act, POCA going forward, is amended by clause 2(c)(i) of the Bill which creates the

“...offence of facilitating money laundering...”

—under Sections 44 and 45 of the PCA. And:

“Section 57(2) of POCA”

—is amended by clause 2(h)(i) and (ii) of the Bill which removes all doubt—

“that a company and its officers, directors, and agents are liable to be prosecuted and convicted for an offence committed by the company.”

Again, what it is, is allowing for us to fulfil the objectives.

Recommendation 21, section 51 of the POCA, is amended by clause 2(b)(i) of the Bill

“...to extend the”—ambit of the—“offence of tipping off to”—include—

“disclosure of information that is likely to prejudice the filing of”

—the STR and SAR with the EIU.

You see, Madam President, again, as we would recognize. the offence of tipping off as it presently applies only to, as was explained by the Attorney General, to if you—it comes to a police officer. If a police officer is doing an investigation and the person is tipped off, the present form or the present Bill that is where tipping off applies. However, we do recognize that you need to get closer to the source because before the information reaches the police there is a wide gap. We saw the broad span as to where people get information off—in filing those STRs and SARs and, therefore, in a bank—having worked there for a number of

years—you see a lot of things and what you want to hold people accountable, because there are other people around, you want to make sure that is it an offence for you if you are—when the information is being gathered because the case could fall down at that particular point.

So again, that is a very useful thing for us, it is a very useful thing for the country, but again it brings us that step closer in being compliant as was mentioned where they said the offence of tipping off is only applicable when suspicious transactions are being filed. Another one of the objectives of the Bill, as I outlined earlier, was to facilitate efficiency in the system and strengthening of existing protections for stakeholders in the system. Again, that another objective of the Bill. And, therefore, when you look at some of the clauses in this particular Bill, clause 2(b)(ii) of the Bill amends section 51 of POCA by exempting

“...the disclosure of information within a financial group from criminal liabilities.”

And therefore, as again, as the Attorney General mentioned, you are, with the expansion of how, you will now have into a lot of financial institutions holding companies and, therefore, you have to put structures in place to fill that loophole because the person—even within the bank, you have a compliance department that is normally headed by someone at the holding companies level and you want to ensure that someone who is working in one of the subsidiaries, that when they get information they could freely pass that information upwards without any fear that they might be in any way breaking the law.

Clause 2(f) of the Bill amends section 55B of the POCA by expanding the exemption from liability clause for financial institutions and listed businesses who

file STRs and SARs with the FIU in good faith by stipulating that they exempt from liabilities whether or not any criminal or legal activities occur. So you want to free up people's ability to be able to give information because that is where—these are the people that are interacting, and these are people up front that could get information and you want to make that as easy as possible.

Again, when you look at the five objectives, objective three of the Bill was to provide a statutory mechanism for ongoing policy development for measures to treat with terrorism and anti-money laundering, and monitoring and evaluation of the implementation of FATF recommendations.

So that again, the objective, that is one of the clear objectives that we are setting, and if you go through the Bill and what it is that we are actually doing, clause 2(i) of the Bill inserts a new Part of the POCA which establishes the National Anti-Money Laundering and Counter Financing of Terrorism Committee. This committee is the foundation upon which the Trinidad and Tobago continued success in compliance with FATF, and other international obligations related to these areas lie as it is responsible for making recommendations to the Minister in relation to the development, coordination and implementation of policies in the area of anti-money laundering, counter financing of terrorism and the proliferation of arms; it is also responsible for the collecting and compliance of statistics in these areas and coordinating; and three, also coordinating the conduct of the national risk assessment.

Objective four of the Bill was to strengthen the capacity of the Office of the Attorney General to fulfil its statutory mandate relative to the anti-terrorism. And again, under of the Anti-Terrorism Act, the Office of the Attorney General is

responsible for applications for the listing of terrorist entities, certain applications with respect to the exchange of information between countries for persons with links to terrorism groups and certain applications in respect to the seizures of forfeiture of property. So clause 3 of the Bill establishes a unit to perform the administrative functions relative to the AG's role, re: anti-terrorism activities. So again we are fulfilling our objectives as set out.

The fifth objective of this Bill really was about strengthening the national legislative framework as part of the crime-fighting mechanism in Trinidad and Tobago. You know, Madam President, we are all aware, whether we like it or not, we live in a society where we are surrounded by a lot of criminal activities, and a lot of white-collar criminal activities. I just read on the newspaper recently, in the *Trinidad Guardian* of April 6, 2017, a "\$75,000 bail for a lawyer on fraud charges". The *Newsday* of the 22 of February, 2018, 27 charges for money laundering. This article details that since the setting up of the FIU in 2001, 27 persons have been charged with money laundering offences. Again, not enough based on the amount of money that is outside there, but it is taking us somewhere and we are surrounded by activities that we all need to start to fix.

The Caribbean Financial Action Task Force. I mean, there is a particular report here and if you read this particular report in pages 22 to 25, again you are seeing where in there they have identified white-collar crime activities that they have identified here among us in Trinidad and Tobago. If you just look, as what Sen. Ramdeen went through, and we looked at the Financial Intelligence Unit Act or the report and we saw \$22 billion in suspicious transactions, that is the type of the money and that is the type of environment under which we are presently being

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surrounded by and, therefore, this Bill, one of the things that was very important in this particular Bill was the whole idea of increasing the penalties that are associated with money laundering. For example, the office for facilitating money laundering attracts now a fine of \$25 million and imprisonment for 15 years; where a public officer or persons employed by the State commits the offence of tipping off, the offence attracts a fine of \$10 million and imprisonment for 10 years; where a public officer or person employed by the State commits the offence of failure to disclose money laundering, this offence attracts a fine of \$500,000 and imprisonment for five years. So we are also increasing—some of the amendments is, yes, we recognized that crime is around us and we are in this particular legislation also moving to increase the fines in those particular areas.

Madam President, at the end of the day this Bill is also critical to Trinidad and Tobago, because as I mentioned before, we want to create laws as a country, but we are also part of a financial global village and, therefore, we have to put on the forefront—there are serious implications associated with us not complying with these regulations, and as far as possible we therefore have to put them in place. We have heard before a lot of what could be said about if we do not comply—I mean, last time I sat in this House there were lots of conversations about delisting and one of the implications of delisting, and a lot of the financial institutions complaining about their losing of their corresponding banking relationships, and that is key when you do not comply.

You know, sometimes for us in Trinidad, because we have large financial institutions and some of them are getting even larger, we do not understand that implication and how real it is. But I could tell you 45 per cent—right in the

Caribbean—In the Caribbean, based on the March 27th 2017 statistics from the Caribbean Association of Banks, 45 per cent of the correspondent banks exited the market entirely. Forty-five per cent of them exited the market entirely. The remaining correspondent banks withdrew their services from some countries, and some banks, resulting in 55 per cent of the 41 members experiences complete or partial de-risking. That meant that in some cases even with interventions, and begging, and pleading, people—and there are countries who are operating among their neighbourhoods who do not have correspondent banking relationships and which is a clear—what could happen if you do not go along with someone of these recommendations.

And when you not have correspondent banking relationships—what is correspondence banking relationships? A lot of us think about our lives today, things about what we have a gotten accustomed to, about our lives, about having a bank account. We all have to have a bank account. As much as we hate banks—whether we want to have a bank account, or we want to have a bank account in the credit union, but we need to have one. It is part of what we need. Correspondent banking relationships is very simply a bank also need to have a bank account. A bank needs a bank account especially to facilitate trade. You need a bank account to facilitate you paying your bills and buying things, et cetera, a bank needs a bank account to facilitate international trade.

Other than that, you are asking a bank to have euros, US dollars, Chinese money.

All the types of currencies, and when people are going or have to pay for something, you hire a boat or a plane and you send it up to pay, and then you pay and then—it kind of sounds crazy, but that is the life that will happen if you do not

have a bank that has correspondent banking relationships and, therefore, the implications of that is very serious. So we need to put these things in place once so we that could preserve this whole idea of being part of the global financial system.

Another implication, of course, if you are not—when our country continued to be blacklisted, blacklisting like anything else, if I tell you are blacklisted or somebody is blacklisted, people look at you with “coki-eye” as the saying will go. They look at you differently. We do that ourselves and, therefore, if we want to compete globally, we want to talk about diversification of the economy, we want to talk about people making investments in our country—and people have choices. Why would I want to make an investment in a country that is blacklisted when I could make one that is not? It is as simple.

3.50 p.m.

I mean, we all believe “God is ah Trini”. Yes, I agree, and we have the finest place in the world but people make those choices. And if doing business with you is a little bit more difficult, we have to do whatever it can within the confines of our being a country but we have to try to facilitate business. So we cannot talk on one hand about diversification and trying to attract foreign investment to our country, and when we talk about the things that are required to allow us to get there we say “No, no, no, we cannot do that”. We cannot have our cake and eat it too. And therefore, it is important that we pass these legislations.

I want to just sidetrack a little bit and also recognize as we saw and that is why we have to increase the laws—not the laws, the penalties, as regards to money laundering. Money laundering is something that is very dangerous to an economy. You know why? Because money laundering also—one of the side effects of

money laundering is that it actually puts out of business, legitimate businesses. So it creates in a society, it creates in a society the legitimate businesses, the people who are trying to do the right thing and if you are working for a company that is trying to do the right thing, you could find yourself being out of business because of money laundering activities. And any society that allows bad people to survive and good people to go out of business, one day, you will recognize that that gets to the core of our society, of what type of country we want to live in. And therefore, for all of this and other reasons, money laundering will lead to unemployment and money laundering could also lead in the creation of a society under which we do not want to be part.

So as we talk about fixing this country once and for all as legislators, we have to play our role by putting the required levels of legislation in place and I agree that that is not going to be the do-all and end-all of what is required. What is required is a lot more but we have to do our part. But we have to continue to push others to create the type of society. We all know if it is not measured, it is not done. If there are no consequences for your actions, then there is nothing that will happen, and if it is that the difference between reward and punishment, the time frame is so far apart then those are the things that we operate in, in our public service, in our teaching service, and therefore those are the things that we operate in, in our public service, in our teaching service. And therefore, those are the things, the absence of those structures is what is causing the problems that we have as a country.

So I stand to support this Bill 100 per cent because it moves us along the path. Like Sen. Ramdeen, do I believe that this will solve the problem? No. Do I

believe that this alone is what is required? No. There is a lot more that needs to be done but it moves us along the path. And I look forward to the national debate when we could start to deal with the other things. The other things that we need to fix. The serious things that we need to fix and how we could come together to be able to fix those problems, not for this generation, but for the generations to come and all of Trinidad and Tobago. Madam President, I thank you. [*Desk thumping*]

Sen. Saddam Hosein: Thank you very much, Madam President, for recognizing me and allowing me to join this debate on a Bill: “An Act to amend the Proceeds of Crime Act, Chap. 11:27, the Anti-Terrorism Act, Chap. 12:07 and the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01”. And, Madam President, this is a very short Bill, just being four clauses but the importance of this Bill is underscored by our present situation that Trinidad and Tobago find ourselves in.

Because so far, all of the persons who have contributed to this Bill would have looked at the FIU’s Eighth Annual Report for the period October 01, 2016 to September 30, 2017. And, Madam President, the FIU would have found that there was \$22 billion in suspected proceeds of criminal conduct over the last year and that would have been due to 877 disclosures. So if we do the math, this would work out to, on average, each transaction over \$25 million. So this shows that the persons who are involved in the money laundering, persons who are involved in terrorist financing, suspicious activity reports, suspicious transaction reports, they are “big fishes”, it is not the small man who is involved. Because if one transaction can cost almost over \$25 million and that is just the STRs and the SARs that have been detected. What about those that have gone undetected?

Let us look also at how law enforcement has dealt with it because there were 176 money laundering charges laid against seven individuals for \$7.2 million. So one transaction, \$25 million, seven persons charged, \$7.2 million only; a drop in the bucket. And these charges were related to illegal gambling, fraud, larceny and drug trafficking. So that is the situation in which Trinidad and Tobago finds itself in. So that we have a problem.

We admit that we have a problem with respect to white-collar crime. Time and time, again, we come to this Parliament to make the relevant amendments based on our international obligations, so that we would not be on the grey list or the blacklist with respect to FATF and CFATF. But the Bill should not only be passed to satisfy these conditions, we must also address the root causes of the problems in terms of white-collar crime, because, at the end of the day, we must admit that the white-collar crime in Trinidad and Tobago is that which fuels the street crimes and therefore, we must nip where the resources come from in order to deal with serious crimes in Trinidad and Tobago.

And, Madam President, in criminology, there is a theory of deterrence by Beccaria, and he would have stated that there are three elements of deterrence: one being severity; the second being certainty; and the third being celerity. So therefore, when we look at the Bill, we see that there have been increased fines. So we have satisfied one condition in terms of severity. We look at certainty. Madam President, Trinidad and Tobago, we are failing in terms of the certainty in terms of conviction of these offences, and the third is celerity which is really how quickly we deal with the prosecution and convictions of these matters. And this Bill before us would not, in any way, attempt to address the problems of prosecution but rather

to satisfy our international obligations.

I know, last night, the Attorney General, I may have got him a bit upset and he may have criticized the manner in which I debate and how well I articulate the points. But, Madam President, I want to say that I try my best, I took an oath of office in this Parliament. [*Desk thumping*] I try my best in order to advocate the issues, and I will not be swayed, I will not be dismayed by the comments made by the Attorney General, and I will continue to do the best that I can do in this Parliament as a Senator. [*Desk thumping*]

So, Madam President, I want to start off directly in going into the clauses of the Bill because I know it is the Christmas season, I do not wish to detain this Upper House, this Senate very long. I know certain of my colleagues opposite will want to go home and play with their grandchildren, [*Laughter*] so I also take you into consideration, Minister of Trade and Industry.

Madam President, let me start off with clause 2 of the Bill, and clause 2 of the Bill is an amendment to the Proceeds of Crime Act. And the Proceeds of Crime, the first amendment deals with the removal—or sorry, the amendment to the definition of the “financial institution” at section 2 of the Act. The amendment is to remove from the definition an insurance “agent”, in a nutshell. So an insurance agent will not be subjected to the Proceeds of Crime Act under the definition of a financial institution.

Now, the Attorney General gave the explanation in terms of the reason for this removal in terms of the cost factor with the one-dollar investment as opposed to that it will cost \$5 for every dollar. Now, Madam President, while I accept that argument and I also looked at some of the articles that dealt with this from FATF

which would have indicated that insurance agents will be lower risk in the industry, I still believe that they pose a risk and therefore, I do not fully support the Attorney General's argument with respect to the removable of the insurance agents from the definition of "financial institution".

Now, when we look at the rest of the definition that was included, if you would allow me to read, that the words to be inserted are that an insurance company or broker would be:

...involved in the underwriting and placement of life insurance, other than term life insurance, and other investment related insurance;

So there is an exception created in the insurance industry for those that carry out term life insurance. Now, I had to go back to look at what FATF would have defined a financial institution as and the definition given by FATF in their glossary states that a:

Financial institutions means any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer.

...underwriting and placement of life insurance, and other investment related insurance;

So FATF did not create an exception for term life insurance, they actually included it. So I ask the Attorney General: Why did we just borrow from the definition of the glossary of FATF? And also, they indicated that the definition applies both to insurance undertakings and to insurance intermediaries, which are agents and brokers. So FATF does, in their glossary, apply to both agents and brokers but in our case, the amendment removes agents. It keeps the brokers but it removes

agents. So I am asking if FATF has included in their definition insurance agents, I believe that we should probably follow suit. *Desk thumping*]

Because we must look at some of the implications when we remove “agents” from the definition of a “financial institution” because, as the Attorney General would have indicated in the piloting, a supervisory authority has the power to request from financial institutions records in terms of SARs and STRs. Now, if some insurance agent probably is involved in some sort of activities contrary to the Proceeds of Crime Act, they may not be subjected to those conditions under the regulatory and supervisory framework of the POCA Act, and those are the concerns that I would like to raise with respect to clause 2(a) of the Proceeds of Crime.

But also—sorry, I just forgot this point—is that I looked at Canada and in Canada, a life insurance company, a broker and an agent falls under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act of Canada, and in that framework, there are certain obligations in which those agents, the brokers and the companies have in order for compliance with respect to the Proceeds of Crime Regulations. And it says that if you are a life insurance agent, an employee of a life insurance company or broker, there is a responsibility of the life insurance agent/company, except with respect to reporting suspicious transactions and terrorist property which is applicable. So therefore, if there are any transactions with respect to terrorist financing or suspected terrorist financing or money laundering, they have an obligation to report that. And they have to complete know-your-client forms to verify the identity of their clients for certain activities and transactions. They have certain reporting requirements in terms of

terrorist property, again, large cash transactions, suspicious transactions and these must be reported to a body known as the Financial Transactions and Reports Analysis Centre of Canada. And these are very important regulatory frameworks that are put in place for insurance agents because as I mentioned earlier, while they may be lower risk in terms of money laundering and terrorist financing, it still poses a risk, and I do not think that because of financial considerations, they should be the ones escaping the framework under which we are now going to detect money laundering offences and terrorist financing offences.

Now, I want to look at the other amendment which is clause 2(b) with respect to the offence that is created of tipping off for persons in financial institutions. Now, Madam President, the section reads at (1A):

“A person commits an offence if –

(a) he knows...”

—which is okay.

“or suspects that a financial institution or listed business is reviewing information and to determine whether to file or is otherwise in the process of filing a suspicious transaction report or suspicious activity report; and

(b) he discloses to any other person information or any other matter which is likely to prejudice the filing of the suspicious transaction report or suspicious activity report.”

So where a person contravenes this section, when you look at the fine that he is liable to on summary conviction is to a fine of \$5 million and to imprisonment of five years, and this is that if a person just suspects. Now when I looked at the Proceeds of Crime Act at section—I will find the relevant section but, Madam

President, the point is that I think the element of suspect is too low. It should be a bit higher in terms of that there must be a reasonable suspicion—or it is at section 55A:

“Where a financial institution or listed business knows or has reasonable grounds to suspect that funds being used for the purpose of a transaction to which subsection (2) refers are the proceeds of criminal conduct...”

So I think it is too low for a person to be convicted of tipping off by just him suspecting, it should be reasonable grounds to suspect. We should raise the standard a bit because the fines here are extremely high, \$5 million and to imprisonment for five years.

So I think that the Attorney General, I ask whether or not we can look at changing or qualifying suspect. I know the other provisions, the other sections, the Attorney General may answer me that with respect to offences of tipping off with police officers, the standard is suspect and also with respect to failure to disclose knowledge or suspicion of money laundering offences. Those, the standards are also that of suspect. But I think the fines are very high in order to just convict a person on bare suspicion.

The other issue that I would like to flag is that of clause 2(g) of the Bill and clause 2(g) of the Bill, what it does is removes from the Supervisory Authority’s jurisdiction:

“...‘the National Insurance Board established under the National Insurance Act’ and”—also—“the Unit Trust Corporation of Trinidad and Tobago...”

And I listened to the Attorney General and he would have indicated that the NIB

would have been removed and also the—well, the Unit Trust, in particular, would have been removed but they would now be supervised under the Securities Exchange Commission.

But, Madam President, let us look at what this amendment will do. At section 55D of the Proceeds of Crime Act, let us examine the powers of the Supervisory Authority. The Supervisory Authority can first:

“(a) inspect any business transaction record or client information record kept by the financial institution...”

So now, Unit Trust, NIB, the Supervisory Authority does not have that power to inspect their transaction business record or client information. They do not have the jurisdiction anymore to determine whether compliance programme has been implemented and also determine whether or not there is compliance with the Proceeds of Crime Act, any rules or regulations made under it. This causes concern, Madam President, because recently we have heard and it has been reported widely in the media with respect to \$3 million scam in terms of the maternity benefits at the NIB. So those are issues that I wish to flag with respect to the removal of the Unit Trust and the NIB from the jurisdiction of supervisory authority.

Now, I want to move on to the other amendment which deals with the establishment of the National Anti-Money Laundering and Counter Financing of Terrorism Committee, the NAMLC, as everyone has been calling it. And yes, the Attorney General was right when he said that this was a Cabinet committee that was established in March 2006 and the TOR or the terms of reference, Madam President, at that time were for: developing strategies to rectify deficiencies

identified in the Mutual Evaluation Reports; recommending policies on legislative and institutional reform; reviewing draft legislation concerning AML, Anti-Money Laundering, and CFT, Counter Financing of Terrorism environment, and to engage and consult with stakeholders to strengthen T&T's AML and CFT regime.

And, Madam President, these are some of the mandates that are being given here in this Bill that were originally given through the terms of reference by Cabinet in 2006, but there were further mandates now being given to the NAMLC under this Bill that were not present in the terms of reference and that is collecting and compiling statistics with respect to anti-money laundering, counter financing of terrorism and proliferation financing.

Now, recently we would have concluded the debate on the Income Tax (Amdt.) Bill and I know while this may be restricted to statistics, I do not want that the committee—because in that committee, you have the BIR, you have the Commissioner of Police, you have the AG, DPP, FIU, Central Bank. I do not want it to be a situation where information is being shared freely amongst these bodies because we must take note that in the Income Tax amendments, even the police has to apply for a court order in order to obtain someone's taxpayer information. But I understand that it is restricted to that of statistical information but I just want to put that point on the record in terms of my concern with regards to that additional mandate being given by the NAMLC.

Another concern that I have is that whether or not these statistics that are compiled by the NAMLC will be available to the public and I think that is an important point because it is very difficult for us to get information with regards to statistics in terms of prosecution and convictions of these crimes of money

laundering and terrorist financing. Through you, Madam President, Attorney General, can you also give me some indication of whether or not these persons who sit on NAMLC will be receiving additional remuneration for the services that they would be offering to the NAMLC?

Now, let me move on to the other issue that I have in the Bill which is clause 3, the “Establishment of the Anti-Terrorism Unit”. Now, the Anti-Terrorism Unit, the establishment of this is not a FATF recommendation. I have looked at the 2016 Fourth Round Mutual Evaluation Report and I have not seen that they have asked Trinidad and Tobago to establish an Anti-Terrorism Unit. I saw that they would have given an indication with respect to the establishment or including the NAMLC into law, into statute, but not the Anti-Terrorism Unit.

Under the Anti-Terrorism Act, Madam President, the Attorney General has very wide, very draconian powers under the Act. Under that Act, the Attorney General can do listings of persons and deem them to be terrorists or terrorist entities. The Attorney General can, in fact, designate areas—not the Attorney General, the Minister of National Security, sorry, can declare geographical areas as terrorist zones. You have the Attorney General can file for the seizure of assets of persons who are deemed to be terrorists, powers of search, proposing names to the United Nation’s Security Council, detection monitoring orders. And these are very draconian powers that can be exercised by the Attorney General.

So I want to ask the Attorney General: What is the reason—because I did not get a clear indication from him—What is the reason for the establishment of the Anti-Terrorism Unit? Because I looked and I went back to a debate on the establishment of the Central Authority and then Sen. Gillian Lucky—which has an

identical provision to what we are doing here, Madam President, in terms of the Attorney General delegating powers to public officers and legal officers. And in that debate, Sen. Gillian Lucky, now Justice Lucky, would have indicated that the reason for the delegation of the powers under the Mutual Assistance in Criminal Matters Act was because the Attorney General's Office is very busy. The Attorney General himself may not be able to conduct all of the matters under the Act.

So I ask the Attorney General: Is there a lack of resources? What is it in terms of what is the rationale? Because I did not get a clear rationale. I looked at your contribution in the other place in terms of the establishment of the Anti-Terrorism Unit. And then Sen. Gillian Lucky made it very clear what is the reason for the delegation of the powers under the Mutual Assistance in Criminal Matters Act.

Madam President, I do not wish to bring you into this debate at all but I looked at the *Hansard* also and there was a debate on the Mutual Assistance in Criminal Matters Act in which Sen. Christine Kangaloo would have made certain comments and I think those comments are very pertinent to this debate because they are vital and very important questions that I would like to ask the Attorney General based on the concerns raised by the hon. Senator. And the hon. Senator would have asked in terms of public officers are defined in the Constitution but legal officers are not defined. What are the terms and conditions of these legal officers? Are we dealing with legal officers who are on contract? What really are their terms and conditions of these officers? Should there not be some degree of permanence in these legal officers who are now going to be delegated these functions? Are consultants going to be given the same powers as the Attorney

General?

And it went on to say, Madam President, that we will not want temporary officers to be exercising such draconian powers because there is an issue of confidentiality in terms of the transactions under the Anti-Terrorism Act and we would not want unsuitable persons, we would want a degree of permanence, and we would not want someone on contract who will be attending to these matters.

And Madam President, those matters are very pertinent to this current structure in terms of the creation of the Anti-Terrorism Unit. Because we must be certain that the public officers who are given these powers of delegation by the Attorney General, they should be well protected, they should have some level of experience and qualification in anti-money laundering and counter financing of terrorism in listing applications, in delisting applications so that you do not have Tom, Dick and Harry being given these draconian powers of the Attorney General under the Anti-Terrorism Act. And we can probably prescribe in this legislation because that was all the way in 2001, we are now in 2018, 17 years later.

4.20 p.m.

Can we then prescribe whether or not these persons should have some level of qualifications in terms of 5 years legal training, 10 years legal training? They must have some experience in terms of prosecution, some experience in terms of dealing with anti-terrorism matters, in terms of dealing with proceeds of crime matters because they both are related. We cannot just be giving these powers, because when we look at the public officers, those public officers are not legally trained but they may be given powers of delegation by the Attorney General. And these are issues that I wish to place on the record, because they may be issues of

concern that I think that the Government should take into consideration.

There is one point, Madam President, I also wish to raise with respect to the delegation of powers. In the United Kingdom, there is someone called the independent reviewer in the UK, because in the UK their powers under their anti-terrorism laws are also very draconian, very serious powers being exercised. And the independent reviewer he would normally look at the prosecutions, he would look at the investigations and also he would propose amendments to the legislation.

And his was one of the matters raised at the Joint Select Committee when we were deliberating on the Anti-Terrorist Bill of 2018 and those were considerations brought to us by the stakeholders. And I think it is relevant now, because if you are giving persons outside of the Attorney General these wide powers, I think there must be some check and balance in terms of the exercise of these powers.

Attorney General with respect to the annual report at the new 38D, there is a typographical error, I think it should be 38C not 38D. That is the first point and the second point is that, when you look at the Anti-Terrorism Act 12:07 at the very last section, there was the creation of a new section earlier this year, which is section 43;

“The Minister shall cause to be prepared and laid in Parliament, an annual report on the number of prosecutions, convictions, listed entities and Orders made pursuant to this Act.”

Now, you are including here now, a new annual under section 38D, which should be 38C. Now the first annual report, I believe that will be the Minister of National

Security would be laying that report. Attorney General would it not be wise that we also include in this section, amend 43 instead of including a new section here in terms of the creation of an annual report? Or can we not give the Minister of National Security, or add to these powers here—so that there will be one annual report instead of two annual reports being brought under the Anti-Terrorism Act? Because there will be two reports, one by the AG and one by the Minister. Can we not consolidate all under one annual report for ease of consolidation and reference in terms of the accountability of the exercise of the powers under the legislation?

There is one point with respect to NAMLC again, I would like to raise. I looked at the Proceeds of Crime Act in Bermuda and Bermuda did legislate a NAMLC in their legislation. And one of the powers being given by NAMLC is that the Minister who is empowered to make regulations under the Proceeds of Crime Act. The NAMLC will consult the Minister before those regulations are made. So that you give some sort of authority towards the NAMLC in this case, the NAMLC is just being set up for the purposes of advising on legislation. But when there is a statutory requirement to be consulted I think that would add to the effectiveness, it will add to the efficiency in terms of the type of legislation and regulations that are being drafted in order to regulate the offences and behaviours under the Proceeds of Crime Act.

There are some other issues I wish to raise with respect to the listing applications. I know the Attorney General would have made approximately—it was 502 applications and then there were de-listings, so it is 258 individuals and entities listed. Three persons being Guyanese and two persons being Trinidadian, Kareem Ibrahim and Shane Crawford. Now, Madam President, what this exercise

really is, is in terms of these listing applications will now be done by the anti-terrorism unit by the way. Most of these persons who are listed here are dead in terms of Shane Crawford.

What really happens is that an application—the United Nations Security Council under their relevant resolutions will deem a person a terrorist or deem a company a terrorist entity and that list will now be made available publicly and what happens is that an application is made to the court and the court will be the one to list that individual domestically in our local jurisdiction. And when a listing application is made, an order is also made for the seizure of that person's assets. So I would just like to ask the Attorney General, how many assets have been seized by these listing applications? What is the value of those assets and how many of those applications that were made domestically were made based on investigations locally by the law enforcement officers of Trinidad and Tobago? So, those are some matters I wish to raise with respect to the listing applications.

And, Madam President, this Bill comes at a time where again the Attorney General tells us that we have a deadline and we have always tried our best as an Opposition to assist the Government in terms of putting Trinidad and Tobago in the best place possible. But I just want to register my disappointment with respect to these deadlines. This is very important legislation that we have been passing and time and time again we come at the 11th hour in order to pass these important pieces of legislation. [*Desk thumping*] I want to ask by some mechanism that the Government can employ in terms of bringing these pieces of legislation earlier, Madam President, so that we can have better, we can have more efficient, we could have fulsome contributions with regard to the pieces of legislation being amended,

Madam President.

Before I close, I probably have three minutes before we go to tea. But before I close, Madam President, I will try to see if I can get extra tea for everyone today being our last sitting for the year. But before I close, I would just like to wish everyone season's greetings and a bright and prosperous 2019 ahead of us. *[Desk thumping]* Thank you very much, Madam President.

Madam President: Hon. Senators, Sen. Hosein is giving you three extra minutes—*[Laughter]* for tea. So we will suspend and return at 5.00 p.m.

4.27 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

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

Sen. Josh Drayton: Thank you Mr. Vice-President for allowing me the honour and privilege to contribute on the Miscellaneous Provisions (Proceeds of Crime Anti-terrorism and Financial Intelligence Unit of Trinidad and Tobago) Bill, 2018. Mr. Vice-President, corruption, terrorism and money laundering have increasingly been important issues in the global policy space. At the centre of these are sovereign countries who can either facilitate terrorism and money laundering and those who cooperate with other international players to combat this problem. But, first, Mr. Vice-President, permit me to expand a bit more on the issue of money laundering and give a bit of my perception on this.

Quite often we see money laundering as the end, the outcome but in fact money laundering is in fact the medium through which certain things are done. Money laundering is the converting of ill-gotten wealth, essentially, into what we consider to be legitimate business. And this is important because while this Bill

seeks to amend several clauses relating to anti-terrorism and the proceeds of crime, corruption is at the centre of this. Throughout the morning and earlier on this afternoon several references were made to corruption without touching directly on it and this is really the focus of my contribution in this debate.

Now, when we think about money laundering, corruption, proceeds of crime, we can think about it in the context of what is called illicit financial flows. The problem of illicit financial flows is in fact a global problem. The Global Financial Integrity which is an international NGO that looks at illicit financial flows estimated that in 2013 an estimate of US \$1.1trillion left the developing world for the same period, illicit financial outflows from Trinidad and Tobago were in fact US \$3.6 billion and over a six-year period US \$3.663billion.

Permit me to give some examples of illicit financial flows and what they may include. These include and I quote:

- “A drug cartel using trade-based money laundering techniques to mix legal money from the sale of used cars with illegal money from drug sales;
- An importer using trade mis invoicing to evade customs duties, VAT, or income taxes;
- A corrupt public official using an anonymous shell company to transfer dirty money to a bank account in the United States;”—or elsewhere—
- A human trafficker carrying a briefcase of cash across a border and depositing it in a foreign bank; or
- A terrorist wiring money from”—a—“Middle”—Eastern country or any other country—“to an operative in another country.”

Mr. Vice-President these are some of the outcomes of illicit financial flows. And it is in that context that is Bill is extremely important, not only in fulfilling international requirements, which I think has been exhausted throughout the debate so far. But rather recognizing that we have a duty and a responsibility to guard against illegal and facilitating illegal actions within Trinidad and Tobago. And, of course, at the centre of that is the use of money.

There are some policy recommendations that the Global Financial Integrity Group suggested. These include: the ability to detect and deter cross-border tax evasion, eliminate anonymous shell companies, strengthen anti-money laundering laws and practices, work to curtail trade misinvoicing and to improve transparency of multinational corporations.

Mr. Vice-President, there is a very clear connection between money laundering, corruption, and terrorist financing. And while this Bill does not seek to go into issues of corruption. I must say that when we look at some of the regulations under the FIU, Financial Intelligence Unit, we see terms such as PEPs being used; politically exposed persons. We do recognize that political actors, senior bureaucrats are also at the helm of facilitating corruption as well as at the demand side of corruption.

This morning the Attorney General was able to give an outline of the need for the Bill as well as focusing much of the discussion on private companies and the same was done by Sen. Le Hunte. But I want to say that it is important for us to see this within a larger context. And it is a bit disappointing to some extent that while we come here to examine these issues, we have to be forced to do so by international commitments and the harmonization of or laws with international

norms. And this is very disappointing. It is disappointing because it in fact takes international requirements in order to create the necessary laws and adopt the necessary domestic laws in order to address these problems.

Mr. Vice-President, I do hope that in the future we can have a wider discussion concerning perhaps a corruption policy or looking specifically at an initiative that comes not from international requirements but may in fact come from public consultant on this issue. So permit me, Mr. Vice-President, to go a bit deeper into this Bill at hand.

Looking at tipping off as one of the key areas. I found it interesting that that is a phrase used here because in the Integrity in Public Life (Amdt.) Bill that was drafted by the Integrity Commission in 2014 that too is a term that has been used, and they seemed to be very similar and I wonder whether the Attorney General can give a bit more detail in terms of how these two may be connected.

In terms of section 53 on the increase of fines to public officials, there seems to be an unevenness between fines to public officials rather than those agents or financial institutions in instances of failing to disclose. Now, perhaps you may want to look at some of the other issues related to disclosure which has to be couched within a greater and broader context such as whistle-blowing.

Mr. Vice-President, it is well known within Trinidad and Tobago that it is difficult to get persons to provide information on particular things related to crimes. And I am looking at this not from a legal perspective because that is not my discipline, but rather the issue of fear, and this fear perhaps by another agent in terms of disclosing and perhaps we may need to look carefully within the context of crimes within Trinidad and Tobago to ask whether this provision while useful,

in terms of instituting fines whether it may be an effective measure in being able to facilitate persons to disclose.

I recognize, Mr. Vice-President, that section 53(2) speaks of persons who are employed in the service of the State and a public officer. And I wonder why the Attorney General did not use some of the other well-known definitions such as in the United Nations Convention Against Corruption of public officials and I will just quote from article 2 of the UNCAC; article 2

“(a) ‘Public Official’ shall mean: (i) any person holding legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, where paid or unpaid, irrespective of that person’s seniority; (ii) any person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law within that State... and as applied to that pertinent area of law”—and—“(iii) any...person defined as a ‘public official’ in domestic law for a State Party.”

And it goes on to reference it;

“...may mean any person who performs a public function or provides a public service as defined in domestic law...”

So, quite often we see the term “public official” being used but there are different definitions, and I am wondering well there is a need to harmonize especially in the area of AML as well as, and I assume in the future we may look at some of the issues related to corruption. So that may be something that may be useful.

I want to refer to a document produced by the UNODC and it is titled “Model

Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime”, this is for common law legal systems, April2009; and this may be useful because even the tipping off provision as captured in section 51 speaks of disclosure, I would read section 25(2) of this model law, which is very important as well as the note for this subsection.

“A disclosure may be made to carry out a function that a person has related to the enforcement of any provision of this Act or any other enactment, or, in the case of a lawyer, notary, other independent legal profession, or accountant when seeking to dissuade a client from engaging in illegal activity.”

The note here, Mr. Vice-President, is that it is made clear that if an accountant acting as an independent legal professional seeks to dissuade a client from engaging in illegal activity so you are now talking about a third party which is not represented here and perhaps, as I said I am not an attorney so the hon. Attorney General may be able to shed some light on that. So that person is not seen to be tipping off if they are giving legal to say to dissuade a client from engaging in corrupt activity.

The language is set forth as an option for drafters and we may be able to determine whether it is applicable in our jurisdiction but what is important about this particular subclause, Mr. Vice-President, is that an employee may disclose to a third party, and that third party in this instance may in fact be an attorney, an accountant, an independent person and what such actions in existing Bill what that constitute tipping off and perhaps the hon. Attorney General could shed light on that.

I was actually very interested by the establishment of a coordinating body from the Ministry of the Attorney General in this Bill, NAMLC, for several reasons. When we think about money laundering, when we think about the movement of ill-gotten gains. Creative attorneys understand that it is in fact silos that create gaps and facilitate individuals who are engaged in such activities by either delaying the process or perhaps not being called before the courts.

And there is a specific reference that was made in the country site visit by the committee of experts on the Inter-American Convention against Corruption in 2012 when they visited and interviewed staff of the office of the DPP. And what was noted was that the DPP in addition to stating that it had resource challenges, they also faced significant coordinating issues. And these include a lack of cooperation between the BIR, Board of Inland Revenue, and we know that infamous section 4 of the Act, secrecy clause, the Financial Intelligence Unit, Customs and Excise and the police.

So what you could have in some instance is that Customs and Excise is working on something, BIR may be working on something, the police may be investigating another matter all related to that individual or company but because of a lack of sharing of information and coordination you may find that individuals may not be successfully prosecuted or they may be able to navigate the system in such a way that there are significant delays.

So this is something that you have to note and I am quite happy that there is a coordinating body but when we look at the mandate of this coordinating body it is specific for the generation of reports and risk management perhaps the hon. Attorney General through you, Mr. Vice-President, may want to consider adding

some bit about sharing of information regarding prosecution or investigations or—I do not know what is the legal term to use, Mr. Vice-President, but that might be interesting because it allows that committee to not only coordinate things at a policy level which is important but also to share sufficient enough information that would facilitate the successful prosecution of such a case.

5.20 p.m.

There are several other things that I wanted to say but I was given—I was able to get a bit more information from some of the other contributors, Mr. Vice-President, so I would take this opportunity to end here. But before I complete my contribution I want to ask something that is very interesting in this context, and this is important for the listening public, but it is also important for us to consider. There are five countries within the Organization of Eastern Caribbean States that have a citizenship by investment programme, a very useful tool to attract investors. There was one such country recently that appeared in the media simply because Interpol, through the country of origin of that individual that was hosted in one of these countries, requested that individual to return, but that individual is in fact a citizen now through the Citizenship by Investment programme, a member of a Caribbean state.

In the context of the freedom of movement that we now have, and of course if you are involved in business, legitimate or otherwise, you are a businessman, you are allowed freedom of movement. And I wonder what are the measures, or whether there is any kind of thinking behind the level of due diligence exercised by the Government of Trinidad and Tobago in the context that you may have individuals, and we know of some very, very infamous ones, Stanford, et cetera.

We know about the purchase of a bank in one of these countries that was used in a 16-country bribery case from Brazil, and I just wonder whether there is any kind of consideration being given to how perhaps we may address these issues related to persons who have gained citizenship by investment and the impact that they may have within our domestic space, especially within the context of both terrorist financing, as well as AML, anti-money laundering, but also in the context of banking with some of our banks which may then create reputational damage in correspondent banking issues.

So it may sound like a roundabout way of addressing a number of things, but I just wanted to put that on the radar, Mr. Vice-President, for consideration. Mr. Vice-President, I have nothing else to say. I thank you for this opportunity, and I will like to take this time to wish all Members a merry Christmas and a bright and successful 2019. It was indeed a privilege to serve for the last two days, and I look forward to seeing you in the future. Thank you. [*Desk thumping*]

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

Sen. Garvin Simonette: Mr. Vice-President, I do thank you for giving me the opportunity for making a contribution to this important legislation, entitled an Act to amend the Proceeds of Crime Act, Chap. 11:27.

Hon. Al-Rawi: Check you microphone.

Sen. G. Simonette: Mr. Vice-President, I thank you for having giving me the opportunity to make a short contribution to this very important Bill under discussion, “An Act to amend the Proceeds of Crime Act, Chap 11:27; the Anti-Terrorism Act, Chap. 12:07, and the Finance Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01”. Mr. Vice-President, it is no secret that this legislation

comes on the back of what has been for many, many years now, an internationally driven initiative to bring the financing of terrorism and overall financing of criminal activity and money laundering under regulatory review, vigilance and eventual elimination via the prosecution of the wrongdoers involved in these activities. So that for quite some time, whether Government has been constituted by the People's Partnership or by the People's National Movement, both leading institutions have been aware of Trinidad's obligations pursuant to its international membership of the various clubs that permit for international regulation of banking, finance, and the like.

What we have witnessed since 2015 and the election of the People's National Movement, and this hon. Attorney General's elevation to office, has been a focused and energetic approach to bringing us into compliance with our international obligations. And those obligations are not mere obligations that entitle you to a colour-coded badge of compliance or non-compliance, but as we witnessed with the Income Tax (Amdt.) Bill, obligations that could go to the root of how legitimate business is transacted across borders in what today is really the village of the world. So that we must recognize, and I think it is important to recognize the tremendous work being done by the Attorney General and his office, and the public servants involved in bringing us into compliance, and in bringing into this Parliament the relevant items of legislation that require to be passed in order that we may not just comply with our international obligations, but also that we may benefit from the improved legal environment and framework for the vigilance in the area of money laundering and terrorist financing.

So having said that in terms of the background to where we are today, this

short Bill seeks to amend certain items of legislation, the Proceeds of Crime Act and the Anti-Terrorism Act, as well as the Financial Intelligence Unit Act. It is not a complex Bill and so I take a little bit of a different view to that expressed by my learned legal colleagues on the other side who consider that the Attorney General has been oppressive in bringing legislation which they consider to be complex, and which they consider insufficient time has been given by the Attorney General for review. The training that we have obtained as lawyers, the training that we have experienced by the practice of the law on both sides easily permits us to digest this Bill and its content, and to make representation on it without hindrance, without the requirement for there to be any protracted period of delay or review. So I think that we need to visit our duty and task perhaps with a little more adherence to getting the work done, and we have been asked to participate in this Chamber here in order to get work done.

I would implore that, come 2019, my colleagues on the other side apply their energies to us getting things done, differing obviously where there is legitimate reason to differ, but desisting from procrastination and delay for the sake of politicking. It is just simply not in the national interest, and not when the world at large is going through so much dynamic change, change in trade relations, change in how the developed countries treat with the underdeveloped and undeveloped countries, and the requirement that we in this region club together in a more meaningful way in our mutual best interests. So I urge my colleagues on the other side to swallow a little bit of the pressure of hard work and let us try and get more done in 2019 than we have been able to have achieved in a bipartisan manner in 2018.

So that turning to the Act itself, Mr. Vice-President, we see that what the Bill is intending to address with regard to the Proceeds of Crime Act amendments is the creation of the offence of tipping off and expanding that offence to cover public servants, as well as those not in the public service. This of course arising, as the Attorney General has shared with us, from the reviews and comments of the committee, the FATF committee, and can find no legitimate reason to oppose or to reject the proposed amendments to section 51.

The exclusion of inter-financial group disclosures that is created by the amendment proposed at clause 4A of section 2 of the Bill is of course non-objectionable as no one would want to create an offence or to have compliance with the Act and disclosure obligations bring employees or agents of financial institutions, or officers of financial institutions, who in one company or one group company of a single institution has given a disclosure or made a disclosure, and that is only sensible.

Section 53 is amended to create the offence of facilitating the commission of an offence of money laundering, and I am not sure that I fully understand Sen. Ramdeen's objection to the use of the word "facilitate", but I think that the word "facilitate", in its ordinary and plain meaning is understood there to cover the activity of assisting and abetting, and attempting to assist and/or abet once it is done with knowledge. I think that it falls to be determined in like manner.

Mr. Vice-President, the other amendment seeks to apply the obligations to refrain from such activity to public officers, and the Attorney General made clear in another place that the standards being imposed on the private sector ought to be no different for the public sector functionaries. So that the amendment being

proposed to section 51, making a public officer, or someone employed in the service of the State as a public officer, or on contract, open to and liable for committing an offence is a salutary amendment and addition in my respectful view. The same standards that we seek to impose on the private sector, I think equally should be imposed on those who work for the State or the public officer.

There is no need to add, I can add nothing, no further comment to the exclusion of the National Insurance Board and the Unit Trust Corporation from the ambit of the definition of Supervisory Authority. I think that they come under appropriate regulatory regimes and are correctly excluded. We then come to the establishment of the NAMLC committee, the National Anti-Money Laundering and Counter Financing of Terrorism Committee, and again the Attorney General must be given credit. This committee was agreed to be created since 2006, I believe, by Cabinet Minute and it has not, or was not created or addressed. I do not consider that the committee's constitution renders it to be dismissed as just some other committee established for a mere compliance obligation sake. This is a very complex and rigid category in body of laws and regulations, and it is required, in my respectful view, that all the stakeholder public authorities, the Ministries and the relevant regulatory authorities find themselves coordinated on the issue in a committee that would have as its mandate the overview of the various elements of the fight against money laundering and terrorism financing. I adopt Sen. Drayton's view that at the foundation of it is the question of corruption.

So that the establishment of NAMLC, with membership from the Ministry responsible for Finance, National Security, the Office of the Attorney General, Director of Public Prosecutions, the Commissioner of Police, Financial intelligence

Unit, the Central Bank and the Trinidad and Tobago Securities and Exchange Commission has every likelihood of pulling together the various governmental agencies required to deploy the regulatory vigilance and, dare I say, prosecutorial requirements of getting this law to bite and to work in the interest of all citizens of Trinidad and Tobago.

The establishment of the committee of NAMLC is to be welcomed. I think that NAMLC will address, no doubt, certain concerns, such as continuing education and sensitization of the general public, as well as members of the magistracy in relation to the educative element of bringing those who have to administer the law and to adjudicate upon it into the knowledge zone of what the Attorney General has been sharing with us is a living, changing complex body of international concepts of principles that are developing on an annual basis. And no doubt, the words of caution in that regard coming from the other side are welcome, but I am sure that the membership of the committee will consider seriously their duty in that regard. That is the educative and sensitizing duty of bringing the regulatory environment into the knowledge zone of all those required to administer the law and to ensure that the laws that we are passing here to keep at bay and to eliminate illicit activity actually lives as opposed to otherwise.

The amendment that moves for the establishment of the Anti-Terrorism Unit in the Office of the Attorney General is also a welcome development in furtherance of assisting the Attorney General in his duty to continue to administer, regulate and to improve the delivery of the legal remedies in this very complex area. The fact that the functions of Attorney General may be delegated by him to a public officer or a legal officer, I do not see as creating or having the potential to create any form

of abuse. The Office of the Attorney General is created under the Constitution. The Attorney General has demonstrated, certainly this Attorney General, that he takes his duties and his obligations extremely seriously, and I would expect that he would be as on top of the work of any unit under his direction, as he has demonstrated he is on top of the overall administration of his office and function to date. Again, the unit is, and ought not to be considered a duplication in any respect, the areas of potential administration in terms of management of matters and files is extensive and potentially burdensome in relation to the offences created, not just by the legislation we are reviewing, but by related items of legislation as well.

The last thing I would like to say is this: We are here to legislate and to ensure that the laws that we are bringing to being are properly constituted. The observations made—and there is no doubt that those laws require to be implemented. In relation to prosecution, the specific and expressed Office of the Director of Public Prosecutions is the office that under the Constitution with the powers and the authority to institute and continue prosecutions are doubtless. The DPP's office requires to be strengthened, but that does not mean that we can delay or divert, or postpone, having to bring the legislative framework into being.

So we do accept, and we hear that the shortcomings and the staff deficiencies of the DPP require to be addressed, but that does not translate into us having to prioritize or delimit what we do here instead of doing something else elsewhere. But we do hear the words of caution that we need to ensure and to assist that the provisioning of the prosecutorial arm of Government is sufficiently strengthened so as to give life to the laws that we are bringing to being in

Miscellaneous Provisions (Proceeds of
Crime, Anti-Terrorism and Financial Intelligence Unit
Of Trinidad and Tobago) Bill, 2018
Sen. Simonette (cont'd)

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protection of the society as a whole and in this important area.

Mr. Vice-President, having said that, I wish to join my colleagues in extending to all, a very heartfelt and God-filled happy holiday season, and may we come back in the new year reinvigorated to attend to the people's business with conviction. I thank you. [*Desk thumping*]

5.50 p.m.

Sen. Wade Mark: Thank you very much, Mr. Vice-President. I rise to make my limited intervention to a Bill entitled the Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and Financial Intelligence Unit of Trinidad and Tobago) Bill, 2018.

Let me say from the outset in response to my colleague Sen. Garvin Simonette that we have provided what I consider to be the fullest possible cooperation to this Government. We have had three Bills that were foisted on us, and we did not have the opportunity to properly study these Bills but we did our best. But I want to serve notice on this Government that in 2019, put your House in order, because you will not be getting the kind of cooperation that you received thus far. Put your house in order.

Hon. Al-Rawi: You are welcome.

Sen. W. Mark: Put your house in order; I say no more. A word to the wise is enough.

Mr. Vice-President, I want to begin by telling you and this honourable House that when Bills are brought to this House they represent Executive policy, and they are brought to this House so that they can get legislative clothing, and with the appropriate changes, amendments, passed. But I want to tell Sen.

Simonette that the United National Congress is not here to simply facilitate legislation. [*Desk thumping*] We are not the private sector. We are here to ensure that good law is passed in this place.

Mr. Vice-President, when we look at what we have before us today coming from the Executive arm of the State, there seems to be a disconnect between reality and what the Government is proposing. We have always argued that legislation ought to reflect—and particularly, the element of penalty and sanction, ought to reflect the crime or the offence that is being committed. If there is a disproportionate element then there is trouble. [*Desk thumping*] Therefore, we cannot support arbitrary legislation. We cannot support legislation that is not properly thought out.

What we have here today, I have been doing my research on this matter and I can tell you, I have seen some provisions in this legislation that have me very disturbed. I do not understand this dichotomous situation that is before us. We are being told and we agree that the fight against terrorism, we have to join. Money laundering, we have to join and deal with. Corruption, we have to oppose vigorously and vehemently. There is another element that we have not spoken to thus far and that has to do with weapons of mass destruction which FATF is now speaking to, but so far the AG has not introduced as yet, maybe that is coming, because I understand the Russians are about to establish a military base just 10 miles from us. So we have to talk weapons of mass destruction, so that is an area we cannot escape.

I also want to tell you from the outset that we on this side, we see crime-fighting measures in a holistic manner. We see prevention, we see detection, we

see conviction and we see rehabilitation, all being combined holistically if we have to tackle crime in our country. What we see is a consistent approach by this administration: lock up, more fines, lock up, more fines, as if that will solve the problem.

Mr. Vice-President, I just want to quote a piece from Albert Maynard, and he says:

Poorly drafted statutes are a burden on the entire State. Judges struggle to interpret and apply them. Attorneys find it difficult to find any sure advice and the common people are confused.

Mr. Vice-President, we have legislation today dealing with FATF standards and recommendations, which we are asked, under three pieces of legislation, to address. We are asked to address the matter of proceeds of crime, anti-terrorism and the Financial Intelligence Unit.

Mr. Vice-President, I want to let you know and I want to put on record that FATF standards and recommendations that we keep hearing and we keep being told that we have to implement, we have to accept, we just have to close our eyes because “FATF say so, and CFATF say so”. FATF standards and recommendations are a complex system of voluntary, codified requirements to combat money laundering and terrorism activities and offences.

I was examining recently a piece from the Asian Development Bank, and they made reference to anti-money laundering in the context of international law—international law and standards. They talked about the key instruments that govern anti-money laundering and combating financing of terrorism. Here are the key instruments: the United Nations Convention Against Illicit Traffic in Narcotic

Drugs and Psychotropic Substances; International Convention for the Suppression of Financing of Terrorism; Convention Against Transnational Organized Crime; Convention on Corruption; FATF 40 Recommendations on money laundering, FATF 40 Recommendations or Nine Special Recommendations on Terrorist Financing.

But what was important I think to note here, is that whilst it goes on, whilst FATF 40+9 Recommendations do not have the same status as international law instruments, such as the United Nations Conventions and the UN Security Council Resolution, and are therefore not legally binding. There are substantial linkages in the themes and underlying policies of the UN instruments and FATF 40+9 Recommendations. And this was reinforced in a document by the International Monetary Fund dated July 17, 2012, which speaks to FATF standards, and it went on to talk about the FATF standard is not legally binding under international law, nor is it directly applicable to the fund.

[MADAM PRESIDENT *in the Chair*]

So we have a situation, Madam President, where FATF, we are told, is not and does not constitute international law and therefore it is not legally binding. So it is voluntary. It is a voluntary arrangement comprising of about 170 to 180 countries. But we are being told every day that we have to put our house in order, otherwise we will be on the grey list and then later on posted on the blacklist.

Madam President, I want to deal immediately with the provisions of the Bill that is before us. I want to go to clause 2(a) of the Bill that is before us. I want to indicate that like my colleague, Sen. Hosein, when it comes to the issue of “insurance agent” in 2(a)(ii), we do not support the exclusion of an agent, that is,

an insurance agent. Risk constitutes risks: high, low, medium. Let the court, let the courts decide that. I do not want politically exposed persons, and I have a definition under the FIU as to who are politically exposed persons which includes the entire Cabinet. And we are being told by the Cabinet, without any proper explanation, Madam President—without any proper explanation—that we must exclude insurance agents from being regulated, or be omitted from regulated bodies. We do not agree with that provision.

Madam President, from a practical point of view, we believe that insurance agents operate with a great degree of autonomy and independence, and they are also the best placed to determine the financial position of their clients. They are likely to have the best access to background information and/or records of their clients with respect to their financial positions, whether the investments and/or policies sold to them accord with the same background.

Hon. Al-Rawi: Madam President, I rise on 53(1)(b). This is the third speaker to talk about insurance agents, et cetera. I am sorry to interrupt but—

Madam President: Sen. Mark, just be aware of what has been said before as you proceed.

Sen. W. Mark: Well, you will have to listen to me a lot this evening, you know, and you will have to write a lot. You might get tired too.

Hon. Al-Rawi: I need a little exercise.

Sen. W. Mark: Yes, I think you should go outside.

Madam President: Sen. Mark.

Sen. W. Mark: Sorry, I withdraw. Madam President, I go now to the issue that the AG has introduced here of tipping off. Of course, it has been spoken to, but we

have a right to speak to it again. Madam President, may I suggest that the Attorney General is seeking to criminalize the act of disclosing to any person information or any other matter which is likely to prejudice the filing of what is called “suspicious transaction report” or suspicious activity report.

Madam President, this is a provision—I try to go to the Proceeds of Crime Act of the United Kingdom, because you know, we came from the British experience. So I wanted to see if in the United Kingdom Proceeds of Crime Act, they have such a provision. I got a copy of their legislation on the Proceeds of Crime. Under 33A, titled “tipping off”, there is no such provision as we are being asked to include into our legislation. So I am trying to understand where this strange provision came from, and what is the purpose of that.

Is the Government trying to scare public officers and public servants who might be exposed to certain activities that are taking place within the Government, and the Government is now seeking to impose what is called unacceptably high fines and jail terms for a public officer who may reveal something? We do not know, because where did this come from? Who asked for this? What is the rationale for this? So I have looked through this particular provision in the legislation concerning the United Kingdom, which is a country that we ought to follow in terms of good law and good international practice, and this is a strange phenomenon. It does not exist in the Proceeds of Crime Act of the United Kingdom.

So we call on the Attorney General of this country to delete that provision from the legislation. We do not believe this is a provision that ought to be included in the Bill that is currently before this honourable House. [*Desk thumping*]

Madam President, public officers are a special set of creatures under the Constitution, and rather than the Attorney General seeking to invest and to take action under the appropriate provision of the Proceeds of Crime Act, and get the Minister of Public Administration to effect the regulations so it could be effected and probably guide how this thing should be done, the Attorney General chooses to repeal that provision and then invoke and insert a provision where we are being told that a public officer is going to be faced with a fine of \$10 million and to imprisonment for 10 years. And further, unlike others, on summary conviction, \$500,000 and imprisonment for five years.

Madam President, this is disproportionate. Why has the Attorney General and the Government targeted public servants and public officers?

Madam President: Sen. Mark, you have been saying this for a little while, but now the way you have just presented that, I would ask you to just rephrase.

Sen. W. Mark: What I am asking, Madam President, through you, it is disproportionate, I am saying, and I am asking the question, under the Constitution, section 4—because this might end up in court—under section 4 of the Constitution of our Republic there is section 4(b):

“the right of the individual to equality before the law and the protection of the law;”

And to consolidate that, (d) says:

“the right of the individual to equality of treatment from any public authority in the exercise of any functions;”

So how can we be called upon to support a measure that is so harsh—so harsh? It is almost inhuman, inhumane. Therefore, we call on the Attorney General to

indicate to us what is the rationale for this, because we do not support the measure in its current form.

Madam President, I also would like to draw to your attention, this matter of the unit that the Bill seeks to establish. It is called the Anti-Terrorism Unit. There is something called the Anti-Corruption Bureau. It is called the Anti-Corruption Investigation Bureau. It was established by a Cabinet Minute in 2004. It still exists, and you know where it exists? Under the Office of the Attorney General. Nobody has come to this honourable House between 2004—2018 to place this into statute. It is still the play thing of the Cabinet. It is still under the control of the Executive. But lo and behold, you have something called the Anti-Terrorism Unit. I looked at FATF, I went to Barbados. I looked for this anti-terrorism unit that we were told exists in Barbados. I have not seen it. I would call on the Attorney General to provide proof.

Hon. Al-Rawi: I said NAMLC.

Sen. Wade Mark: Oh, NAMLC. So the hon. Attorney General's Anti-Terrorism Unit is unique to Trinidad and Tobago.

Hon. Al-Rawi: So what?

Sen. W. Mark: So what? I will tell you what is so. Madam President, you know what is dangerous about that? You are putting for instance, an anti-terrorism unit under the hands and under the control of what is called under the Financial Obligations Regulations, a "politically exposed individual". How can a politically exposed individual, who is a senior politician—and I am a politically exposed individual—and you are putting that under the control of that individual? That cannot be fair, that cannot be right. Where are the checks and balances in this

context? So this is a one-man show? So the Attorney General will have the power to do whatever he wants?

When you look at this NAMLC, or whatever they call it, and you have these individuals, so you have a combination of constitutional office holders like the DPP, mixing and blending with advisors. To do what? Determine, among other things, recommendations to the Minister in relation to, coordinating the implementation of the national Anti-Money Laundering and Counter Financing of Terrorism and proliferation of financing policies. Madam President, could you believe this? A unit in law having that power and commingling with constitutional offices or office holders. So you have the DPP, who is a constitutional officer holder—sitting next to the DPP is the advisor to the Attorney General, which is a Cabinet-appointed post. That is totally wrong and unacceptable.

I would call on this Senate, that if the Attorney General wishes to have a team of politicians who are employed by the Cabinet under him, who is a politically exposed individual, to deal with money laundering, they can sit by themselves, but do not bring constitutional office holders together with those people. That is a dangerous brew. It is a dangerous mix. *[Interruption]*

Sen. W. Mark: Do not disturb me, please.

Madam President: Sen. Mark, the Attorney General would not be allowed to disturb you if you would only do what you are supposed to and address me. Turn to me and address me. You are actually turning away from the Chair and addressing, I do not know who. So just do that, address me and you will not be disturbed by the AG.

Sen. W. Mark: You know, I want to wish you a Merry Christmas “one time” for

that. [*Laughter*] I must wish you a Merry Christmas.

Hon. Al-Rawi: As you turn away again.

Sen. W. Mark: Madam President, I understand what you are saying. But the point I am simply making is that there is a certain kind of arbitrariness that is involved in this exercise. When, as I said earlier, you bring legislation to this Parliament and the legislation is designed to do what? It is designed to give the Attorney General more power, but with power comes responsibility, because whilst they have not told us in this Parliament, they are playing hide and seek with us.

You know why, Madam President? They are not naming who is going to appoint those members of NAMLC but I suspect it will be the Attorney General at the end of the day. Who will do it? Is it the head of the National Security Council? Is it, for instance, the Attorney General? Is it the Minister of National Security? Can we make legislation blindfolded? Can we make legislation and pass legislation in the dark? Is the Attorney General trying to handcuff us in this Parliament? [*Desk thumping*] We cannot support this measure in its current form. And I am telling the Attorney General, you are going to have a lot of battles in 2019.

Madam President: Sen. Mark.

Sen. W. Mark: You are going to have a lot of battles in 2019.

Madam President, I want to ask also your good self. I looked at 18E of the Financial Intelligence Unit Act of Trinidad and Tobago, and I see something called the Supervisory Authority. I read for this honourable House what 18D says, because I am wondering if this is not a roundabout way of undermining the

Financial Intelligence Unit. Is the Attorney General and the Government seeking to take away powers currently enjoyed by the Financial Intelligence Unit, by its establishing a parallel organization? Is that the purpose? Madam President, let me read 18D for you, and this honourable House:

“Where in the course of carrying out any of its functions as a Supervisory Authority, the FIU acquires knowledge or has reasonable grounds to suspect that a person is engaging or has engaged in money laundering or the financing of terrorism it shall request an investigation by the relevant law enforcement authority as soon as is reasonably practicable, but in any event before the expiration of seven working days.”

6.20 p.m.

So the FIU is responsible not only for money laundering, but also the financing of terrorism, but the Government is now seeking to give that power to a unit to deal with. So you have two units being established under the legislation—one, NAMLC and the other one is the Anti-Terrorism Unit, Madam President.

Now, under 18F.(1) the FIU shall effectively monitor non-regulated financial institutions and listed businesses for which it is the supervisory authority and shall take the necessary measures to secure compliance with this Act; and it talked about all the Acts, Proceeds of Crime, Anti-Terrorism Act, among others. Why has the Attorney General brought this amendment which is in conflict with 18E?

Hon. Senator: Well, Saddam talked about that.

Sen. W. Mark: Forget Saddam, Wade Mark talking. [*Laughter*] So, Madam President, is the Attorney General seeking—

Hon. Al-Rawi: Madam President, I rise on Standing Order 53(1), please.

Madam President: Sen. Mark, continue, please. [*Desk thumping*]

Sen. W. Mark: So, Madam President, I am simply asking through you, whether the Government is seeking to undermine the FIU; that is the point we are making on this side. We do not support that decision on the part of the Government.

Madam President, I just also want to bring to your attention what is called—you remember I always bring to your attention a doctrine that I came across reading literature, law, in the law books called “the doctrine of vagueness”. And I want to introduce you to an element of vagueness in this legislation, Madam President.

Madam President, if you go to this so-called dangerous Anti-Terrorism Unit which, by the way, Madam President, would you believe you are establishing an Anti-Terrorism Unit and there are no functions defined in the legislation.

Madam President: Sen. Mark, you have five more minutes, and now you really are starting to repeat comments that have been made by previous speakers. So, I will ask you as wrap up—

Sen. W. Mark: Well I am going to the vagueness part, so I would not repeat. Madam President, we would like to know what is meant when we are told in subsection (3), in clause 3, I should say subclause:

“(d) such other matters as the Attorney General considers necessary.”.

Madam President, we do not know what that means, and that is why on our side we are saying to Attorney General and the Government that, when we examine this document, this measure that is before us, we cannot support it in the current form that has been placed before us.

We want to make it very clear, Madam President, that the Government has the opportunity to look at what it has brought before us this afternoon, and it has the opportunity and so on to make the necessary amendments as we are suggesting.

We want to put the necessary checks and balances under those two provisions that have been established in the legislation. We want checks and balances as it relates to the Anti-Terrorism Unit, and we want checks and balances in place as it relates to NAMLC.

Madam President, I also looked at a report of the special select committee, and in that report there were many other functions identified for NAMLC when they appeared before a special joint select committee. But I noticed some of these functions that they carried out in terms of their mandate has been left out. So I do not if the Attorney General has looked at those functions in the context of what has been left out, and I will ask him to consider looking at this report, once again, to see to what extent those other functions that this body is supposed to carry out is, in fact, carried out.

Madam President, we want to ensure that that particular body reports to the Parliament, NAMLC. If you are going with NAMLC, there must be a mechanism of reporting. So, we are proposing that there be a provision under NAMLC for it to report directly after it does its work at the end of, let us say, three months of the year, it must submit a report to the Parliament. So, we want that report submitted to the Parliament so that we can properly appreciate what it is doing.

So, Madam President, I know that my time apparently has flew, and in those circumstances I just want to indicate that in closing, the United States of America charges someone for an offence of the nature that we have here, US \$500,000.

Trinidad and Tobago is charging for that same offence US \$3.5 million. Madam President, no, this is the conversion. We are charging \$10million to a public servant. In the United States the crime is \$500,000. In Japan it is US \$94,000.

So we would like to know why the Attorney General has gone with these hefty fines. Why are you punishing—Madam President, in closing I believe that the Attorney General ought to review this legislation, and we look forward to dealing with that in the committee stage. Thank you very much.

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

Sen. Anthony Vieira: Thank you, Madam President. Before I again, just a couple general observations. Since I was given this legislation, the word “perfunctory” has been going around in my head. The word “perfunctory” means as a courtesy or formality only.

Now, as you heard this is a short Bill with far-reaching consequences. Right? It is not for the faint of heart or the inexperienced. It is involved law and a web of interrelated legislation, regulators and stakeholders. So, I would have liked to have had sufficient time to go through it and to have really given my best effort, as I am sure my colleagues on the Independent Bench as well. [*Desk thumping*] And so I could not help but wonder if my contribution this evening is just perfunctory.

We all want to make good laws, and I want to remind the hon. Attorney General through you, Madam President, that we are joint authors in the legislation. We share collective responsibility. So, I would want us to be treated as valued partners in the exercise, and I would really call on him to do all that is necessary in getting the best out of us. All right?

I forgive on this occasion because I understand the particular circumstances of this legislation, the time constraints, but as the guardian of the public interest, I would ask him to go the extra distance with us in treating us as valued partners and co-drafters.

My second general observation arises from a remark that Sen. Hosein made, and I want to agree with him. It is well and good to satisfy our international obligations, but that should not be the primary purpose or goal of this Parliament; we do this for ourselves. It necessary for us to root out and destroy organized crime, terrorism and corruption.

Another observation arises from a point that Sen. Ramdeen made. He asked an important question about the gap between getting information and getting convictions. And he asked: Why the lack of prosecution? Well, the FIU relies on the Director of Public Prosecution's office to bring the prosecutions. And if the Director of Public Prosecutions lacks critical and necessary resources, well then behoves the powers that be to work with that office in making it fully staffed and battle ready. [*Desk thumping*]

We should critically look at and evaluate the whole value chain; supervised entity, listed business, FIU, law enforcement, DPP and the courts, and see where we need to shore up where there are gaps. And perhaps we should also consider the possibility of the FIU handling its own prosecutions instead of relying entirely on the office of DPP.

Now, the DPP will still have all the functions, all the powers under Chapter 6 of the Constitution, but the FIU could have specialist full-time prosecutors tackling the scourges of money laundering, corruption and financing. [*Desk*

thumping]

So, I turn now to the substantive points. Generally, I have no problems with this legislation. A lot of them—I am going to go through them quickly—are innocuous, and I do not really think they attract much controversy. No new powers are given to the FIU, but the Bill does however, seek to make the prosecution for offences under the Act simpler, and it strengthens the institutional framework for anti-money laundering and countering financial terrorism.

So when I go through the non-contentious points I would then like to focus on the three things that attracted my attention. The Anti-Terrorism Unit in the AG's office, the National Anti-Money Laundering and Counter Terrorism of Financing Committee and the tipping off provisions; and I will try not to be repetitive.

Well the change of definition of “financial institution”. There could be nothing objectionable here. An insurance company agent involved in the underwriting and placement of life insurance other than term-life insurance and other investment-related insurance or broker registered under the Insurance Act, is now excluded; that makes sense.

The exemption of financial institutions from liability, again, when they make suspicious transactions or suspicion activity reports in good faith; there should be no dispute here for that.

The exclusion of the:

“National Insurance Board and the Unit Trust Corporation of Trinidad and Tobago”

—again, makes perfect sense; nothing invidious there.

The liability of “officers, directors and agents” under section 57(2) of the Act, well nothing mysterious there. That is a theme in many statutes across the board. It is section 42 in the Copyright Act. There is a similar provision in the Trade Mark Act, there is a similar provision in Patents Act, section 70 in the Interpretation Act, and section 511(2) of the Companies Act all speak to the same point. I expect that the problem is that the civil law jurisdictions, the Europeans would probably want to insist that kind of provision is in the legislation as well, but I see nothing there that occasions any surprise.

I turn now to the three main points. First one, the Attorney General and the Anti-Terrorism Unit. Well, Madam President, the role of the Attorney General is an ancient and august one dating back to the 13th Century in England.

Sen. Hosein enquired about the rationale behind the Attorney General’s office having such a unit, and so did Sen. Mark. I see nothing improper or irregular in having the proposed Anti-Terrorism Unit in the AG’s office. Terrorism is international. It is enabled by networks with offenders and technical infrastructure often located in different jurisdictions. So in investigating and prosecuting these kinds of crimes, the cooperation of courts and agencies across borders is often necessary. The provision of such mutual legal assistance is governed by domestic legislation, often influenced by international agreements that we have signed on to.

So how it works, a prosecutor or an investigator in one country may require various kinds of assistance from the authorities in another. Where such assistance involves the use of legal powers in the requested country, a formal request for assistance is required. And the types of assistance they vary, they could include

things like taking evidence, serving judicial documents, carrying out searches, seizures, freezing, examining objects on sites, providing information, evidentiary items and expert evaluations, providing originals or copies of relevant documents and records, identifying or tracing proceeds of crime, property or other things for evidentiary purposes, and facilitating the voluntary appearance of persons in the requested State.

Now, sometimes the contact is made informally, but the usual and proper procedure is for the request for assistance to pass through the designated Central Authority of the requested country to the Central Authority of the requested jurisdiction, and that will in turn pass it on to the relevant enforcement agencies. If the requested country accepts the request, the relevant agency in that State would use its domestic powers to execute it.

And in Trinidad and Tobago, international legal cooperation is governed by the Mutual Assistance in Criminal Matters Act. And although informal cooperation may be possible without recourse to the Act, in order to secure the assistance of the courts, a legal basis must be present in the form of a bilateral or multi-lateral agreement between Trinidad and Tobago and the requesting State.

And request for mutual legal assistance, of course, is based on principle of reciprocity. And the typical provision is that the Attorney General is the Central Authority for the purpose of receiving and transmitting requests for mutual assistance; that is typical.

And I would remind this honourable House that under the Constitution the Attorney General is responsible for the administration of legal affairs in Trinidad and Tobago, and legal proceedings for and against the State generally, and

proceedings are generally taken in his name.

The Attorney General is the principal legal advisor to Cabinet and he is the State's representative in legal matters. And as the designated Central Authority for the purpose of transmitting and receiving requests for mutual legal assistance, it is only right and fitting that the Anti-Terrorism Unit should be placed in his office; so, I have no problem with that provision.

Similarly the National Anti-Money Laundering Counter Financing of Terrorism Committee. We have heard that this committee can comprise between nine and 15 members, and they are from different law enforcement bodies and regulators; Ministry of Finance, national security, Central Bank, DPP, Commissioner of Police, FIU, Chairman of the Board of Inland Revenue, Securities and Exchange Commission and such other persons as the Minister may think fit.

And the legislation tells us what the functions of this committee are. They include: making recommendations and developing and coordinating the implementation of national anti-money laundering, counter financing of terrorism and proliferation financing policies; collecting and compiling statistics. With respect to anti-money laundering, the counter financing of the terrorism and proliferation financing, and coordinating the conduct of national risk assessments and mutual evaluations.

So this is a multi-disciplinary committee made up of the main regulators and the top law enforcement officials. Organized crime and terrorists are serious. They are sophisticated, and if we are to effectively counteract their nefarious deeds and intent, then we need to be equally determined and serious.

So a multi-pronged and coordinated approach is welcomed, and I have no problem with the fact that this may be a unique committee. I believe that Sen. Drayton bemoaned the fact that so many of our laws are triggered by the international obligations rather than home-grown. I very much welcome seeing us take a proactive approach, not just “follow fashion”. You know, we have a history of being very innovative. We have come up with the CCJ, the Family Court, we have done amazing and remarkable things. We have taken the lead in a numbers of things in family court matters. So, I have no problem with the proposed committee, and I am satisfied with its intent and proposed structure.

I turn now to the tipping offences. Well, I checked my text on the Proceeds of Crime, and I believe that tipping off is an offence in the UK. I think it is section 3331 of the Proceeds of Crime Act, and it is also at 342, the offences prejudicing an investigation. So, again, this is not something that is unique to us, and the tipping off offences are set out at section 51 of the Proceeds of Crime and they are an important safeguard.

When someone informs a person or informs people who are suspected of being involved in money laundering or terrorism financing activities in such a way as to reduce the likelihood of they being investigated, that is a very serious matter. It not only negates all of the hard work and efforts of the investigators, but it could even put people’s lives at risk. So tipping must be a serious offence. And for whatever purpose, whether ignorance, whether because you are getting dirty money or whether it is just spite, snitches can prejudice, undermine and torpedo costly and important investigations.

The amendment to section 51 makes clear that tipping off is not only limited

to police investigations, but now applies equally to financial institutions and listed businesses, reviewing information to determine whether to file or is in the process of filing a suspicious transaction report or a suspicious activity report.

And it also now applies equally to persons employed in the service of the State whether as a public official or on contract. So the net is now cast wide, and the amendment makes clear that no one will be allowed to tip off or to spoil investigations. And you know how we hate spoilers when you are watching a movie that you have not seen, and somebody comes and blows it for you, but this is much more serious. No one should be allowed to spoil investigations which are being carried out or contemplated.

Now, this does not prevent businesses and individuals discussing with clients and advising on issues regarding the prevention of money laundering or other related matters on a nonspecific basis. So that is my speed on the tipping off, and I just want to conclude with some general observations.

The biggest fear that criminals have is being detected. When they are detected their illegal activities are disrupted, they can be arrested, they can be detained, their organizations can be dismantled, assets and property can be seized and confiscated, and so that is what all of this is geared towards, going behind the proceeds of crime.

Money laundering is the conversion of criminal proceeds, and it also includes those derived from corruption. I was glad that Sen. Drayton raised the issue of corruption because corruption is the abuse of power for personal gain, and the motive behind corruption is usually money.

And so money laundering is a very important component for corrupt

officials to achieve their objectives covertly and to be successful. The ability to clean the proceeds of their crimes by integrating illicit money into the financial system and making transactions appear legitimate, that allows corrupt officials to operate and to commit crimes undetected whilst having access to their ill-gotten gains and proceeds to support their lifestyles.

This legislation will limit the ability of corrupt leaders and officials to launder their illicit proceeds, and as such it can act as a disincentive for them to engage in corrupt behaviour. By implementing effective money laundering regimes and other preventative measures, we as parliamentarians are taking an important step in the fight against corruption.

The laundering of dirty money is everyone's business, but especially us in this Parliament because of the unique role we have in enacting legislation, in having oversight and beefing up where legislation is lacking or needs to be beefed up.

So, may I take this opportunity to wish everyone a very happy Christmas, and on that note, I thank you. [*Desk thumping*]

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

Sen. Charrise Seepersad: I am going to deal with clause 2 of the Bill which seeks to amend the definition of "Supervisory Authority" in section 55D(4) of the Proceeds of Crime Act to exclude the National Insurance Board and the Unit Trust Corporation. And I am going to differ with Sen. Vieira in my contribution, because I am concerned about this measure.

Madam President, billions of dollars passed through this institutions and they are both designated as Systemically Important Financial Institutions, SIFIs by the

Central Bank. The SIFI guidelines have not been concluded by the Central Bank, and this has been going on for three years. So, in fact, the regulations are not in place.

With respect to the UTC, the only part of the UTC's business that is specifically regulated is the Bureaux de Change, because the Central Bank gives them the licence to operate that business, and they are regulated by the Central Bank.

Madam President, other than that, the rest of the UTC's business is not subject to the Central Bank regulations. UTC voluntarily submits to regulatory oversight by the Central Bank since there is no Act where it states that the Unit Trust Corporation is be regulated by the Central Bank.

And, Madam President, even if the Central Bank has regulatory oversight over the two institutions, this should not preclude them from being subject to the Proceeds of Crime Act. Central Bank is responsible for monetary policy. They are not responsible for anti-money laundering oversight. These institutions should therefore remain subject to the Proceeds of Crime Act.

Mr. Attorney General, I really am asking you, through Madam President, please, seriously consider this. I am very, very concerned.

In closing, Madam President, I wish to wish everybody in the Chamber warmest wishes for a happy, healthy and prosperity for the Christmas season and the new year. Thank you, Madam President.

Madam President: Minister of Trade and Industry. Sen. Chote. [*Desk thumping*]

Sen. Sophia Chote SC: Thank you, Madam President, for the opportunity to speak briefly on the Bill before us. This is an Act to amend three pieces of

legislation—Proceeds of Crime Act, the Anti-Terrorism Act and the Financial Intelligence Unit of Trinidad and Tobago Act.

Now, with respect to the first part of this proposed piece of legislation I see no difficulty. In fact, clause 2(b)(i) essentially is just a rewording of what we had proposed and what was enacted under the anti-gang laws earlier in 2018. So, I have no problem with that at all.

With respect to (c) which continues on page 3, I take Sen. Ramdeen's point and I respectfully suggest that perhaps we could remove the word "facilitates" which is not known in criminal law, and perhaps use the word "encourages" which, again, appears in the anti-gang legislation.

6.50 p.m.

Now, my concerns lie with what occurs from page 5 of the proposed legislation, and I will explain why I have some concerns. Now, I understand that NAMLC is already in existence, and I have seen the Eleventh Report of those who come to look at our FATF compliance and so on, and I have noted that they did recommend that NAMLC become part of the law. So, the idea of legislating to create or to give authority, this kind of authority to NAMLC, I certainly have no difficulty with that, because it follows the path which we have chosen to follow in relation to compliance with FATF.

Now, I do, however, think that perhaps we need to look at this a little more carefully. Because NAMLC is already in existence, I think its constitution is perhaps something we could be told a little more about, because simply telling us that "shall comprise a minimum of nine but no more than 15 members selected from among persons representing these various Ministries and bodies" really is not

good enough. I mean, at what level of representation, or what level of representation are we getting from these bodies and Ministries? I think as a Parliament when we are asked to create a body or give a body statutory life we ought to know who are the persons or at what levels do they function when we give them that life.

So, I certainly would be interested to find that out. Especially since we see that a member of NAMLC shall be appointed by the Minister for a period not exceeding four years, and may be reappointed. So, I think we need to have some sort of reassurance that these persons who will occupy these positions are in fact the type of persons who we will want to do that job. And the reason I say that is because we are essentially amending the Proceeds of Crime Act. And the Proceeds of Crime Act when you look at it, when you look at section 58G already has a body created in law called the Seized Assets Advisory Committee. That committee, according to the legislation, the Proceeds of Crime Act, is selected from among persons with experience and relevant qualifications in areas of finance, community development, drug abuse treatment, rehabilitation and law enforcement. I do not think I read out all the parts or all the requirements of section 58G, but certainly there is a committee there, a body there created in law, and we are told in that piece of legislation what they are required to have as qualifications to become part of that committee.

Now, I do not know how this committee intends to function or coordinate with NAMLC. I am not clear on that at all, so I would respectfully ask if the hon. Attorney General, Madam President, through you, when he does his winding-up if perhaps that could be cleared up, because otherwise we would have a duplication

of functions. Now, under the Proceeds of Crime Act, this supervisory authority also has to present an annual report to Parliament. So, I see that reflected in the legislation here, and that I think is a good thing, because when a committee of this kind is given wide-ranging powers I think there must be some clear line of accountability. I see no difficulty at all with the Anti-Terrorism—how is it referred to in the legislation?—Unit falling under the office of the Attorney General, because the Anti-Corruption Bureau was pulled under the office of the Attorney General, I believe, many years ago, perhaps under the—

Hon. Al-Rawi: Ramesh.

Sen. S. Chote SC: No. May have been. I thought it perhaps was AG Morean, but I could be wrong. I am corrected by the Attorney General who says that it was Senior Counsel Ramesh Lawrence Maharaj. So I accept that when we are dealing with peculiar aspects of the law which are not strictly speaking criminal law matters that perhaps they should be more conveniently housed under the office of the Attorney General.

Now, my curiosity or my concern is this, what happened then was that police officers who had been trained in financial fraud and who were specialists in a sense were the members of the Anti-Corruption Bureau. The reason they were put there was so that they could source the expertise of people like forensic accountants, with the office of the Attorney General paying for it. So, I am not quite sure, in my mind, who is going to form this Anti-Terrorism Unit, and I certainly would want to know what role is the police or the Commissioner of Police going to play in this unit. I think in terms of investigation that perhaps they should be the main body to form this unit, and then seek outside expertise. But

that is just my respectful suggestion.

Now, hon. Attorney General, I see that under the Proceeds of Crime Act there was, according to 56B, a joint committee of Parliament which was to be known as a Joint Parliamentary Committee on the Proceeds of Crime, and that committee was supposed to report to Parliament, and I think you may have mentioned that no reports were prepared with respect to the Proceeds of Crime Act. But thankfully, we are not without statistics because of the number of agencies which have looked at money laundering and similar offences for us to be able to enact legislations such as anti-terrorism, anti-gang, and so on, and so forth.

So, I do not think that that is necessarily going to hamper us as we move forward. Now, I respectfully asked the hon. Attorney General, through you, Madam President, to reconsider clause 3, and in particular what is written there as 38B(2). It says:

“The functions of the Attorney General under this Act may be exercised by the Attorney General in person or through a public officer or legal officer who is—

- (a) employed in the Unit;
 - (b) authorised by the Attorney General in writing; and
 - (c) acting under and in accordance with the general or special directions of the Attorney General.
- (3) Nothing in this section shall be construed as authorising a public officer or legal officer to make an Order or other statutory instrument under this Act.”

I think, with all due respect, having regard to the constitutional significance

of the office of the Attorney General, that this wording is way too broad. We cannot have a Cabinet without a Prime Minister and an Attorney General. And where we have a kind of similar handing over of powers we see it, for example, with the Director of Public Prosecutions under section 90 of the Constitution, but the director in those circumstances has three identified purposes, and he is entitled to direct the persons to whom he is handing over his powers to act within the ambit of those three specific purposes under the Constitution. So even the Director of Public Prosecutions, who is not a member of the Executive, has those constraints. I think it is very dangerous where we only have this one constraint for an office holder which is so powerful, under our Constitution.

Now, I see under the Mutual Assistance Act, the Central Authority is created by saying that the Central Authority shall be made up of persons designated by this country to do certain things. And I see that in another piece of legislation, if I may just have one quick minute. Yes, the Attorney General is also entitled to delegate some of his duties to the Central Authority. But the word there is “delegate”, and again the purposes for which the delegation is done is heavily circumscribed.

Now, I think when we legislate we must look ahead. We must look ahead to an Attorney General 10 years from now, 15 years from now, and we must make sure that the office is protected. I do not think that that is sufficiently done by the wording of 38B here. I think perhaps we need to look at it again. This is just my very humble opinion, not knowing much law [*Laughter*] and perhaps being too old to be up-to-date on everything. But I think by a plain meaning of the reading of what is before us, I certainly have some concerns about the derogation of powers of an Attorney General in this manner. So, I would respectfully suggest that that

be redrafted.

Now, I see in 38D that the Attorney General shall prepare a report and it shall be laid in both Houses of Parliament. That is an excellent idea. But, as we see, having that in the legislation, because it already appears in the Proceeds of Crime Act, does not mean that it is going to happen, so I was wondering how could one perhaps—what is the penalty for not laying it in Parliament? Is it possible to have a sanction for not laying a report in Parliament? Otherwise there would be no purpose in this section. There would be none of the accountability that we want to ensure that the legislation brings to Parliament for its oversight.

So, Madam President, these are my few comments on the proposed Bill. Thank you very much. [*Desk thumping*]

Sen. Dr. Varma Deyalsingh: Thank you, Madam President, for allowing me to comment on this Bill, “An Act to amend the Proceeds of Crime Act, the Anti-Terrorism Act and the Financial Intelligence Unit of Trinidad and Tobago Act”.

I would like to echo the sentiments of some of the other Senators who say this Bill came very quickly. The haste that it came it seems to me like it was a terrorist attack. It struck and I had to try to get my bearings to see how could I try to give my two cents’ worth, but, in a sense when I looked at it I realized it is really two things we are looking at. We are looking at the money laundering issue. And again, when we looked at 2017 there was a report that there were 158 cases within the last two years of money laundering, and I do not have the most recent figures. I do not know if the Attorney General will have the other figures of money laundering in Trinidad and Tobago. So I have the figures from 2017.

So, the money laundering issue is very important, because you see that is linked to the drug trade. And I have seen the ill effects of drugs in society, the fallout that occurs with gang warfare. So we know the gangs, their warfare, their drugs, we also see the ill effects of it where the normal citizens are now caught up in collateral damage. So any issue, any sort of legislation that we could somehow curb this money laundering, I would be full supporter—in full support of this legislation.

I want to look at—you know if those persons involved in the drug trade, if those persons are allowed to continue the money laundering and the benefits from it, then, you know, this beautiful country which is positioned, you know in such a beautiful position. You know we are protected from hurricanes, and people say that God is a Trinidadian, but we are also positioned as the hub to the Americas where the drug trade is a trans-shipment point, so there are the blessings of the natural disasters, but then there is the curse of having the man-made breed coming into play where you have the guns, the drugs, the war, the money laundering.

So, this trans-shipment zone, I am saying, we have to look at this in the entirety where if we could stop this money laundering, stop the profit, we would somehow be able to get a country that may be safer, that would not have all these murders that we are having, would not have all the ills of society in terms of drugs. I mean, we are looking at even companies in Trinidad and Tobago, I do not know if to buy tins of Coca Cola or “jaliter” drinks again, or whatever packages. We see the cocaine has now found itself into these packages, and reaches abroad. The white powder is all over, companies are there, they have their packages there, and Trinidad, it is a shame when people look at international news and see, hey, these

goods are coming from Trinidad, and these goods are packed with cocaine.

So, we have to stop that. We have to get legislation in place where if someone somehow, they are benefiting from money, we can be able to track those persons, stop it, and let them move on to other pastures, that may be a little less worrisome for them to deal with. So the movement here is what I am supporting. I am supporting this. I want to also look at the case recently where we had a case in the Magistrates' Court, and in this case it was really—

Madam President: Sen. Deyalsingh, whenever someone is referring to matter in the Magistrates' Court I always ask, is it a completed matter? Is it a pending matter? Because I normally do not allow mention of matters that are pending before the court, especially the criminal courts. Okay?

Sen. Dr. V. Deyalsingh: Thank you, Madam President. Well, this matter was before the court, but I do not know where it has reached, if it has been appealed. But the scenario is we may have been seeing cases in the courts where questions have been raised with certain decisions by magistrates in certain drug issues, and again it referred to the DPP in most instances. So I support Sen. Ramdeen's position where he was actually saying that the DPP office needs to be beefed up, it needs to be revamped, it needs to be looked at with scrutiny, and any sort of legislation that we could bring into place to help that later on I would welcome that.

So looking at this from the side of money laundering I would support it. Looking at this in the aspect of terrorism I would like to now look at the terrorism aspect, and Sen. Saddam Hosein actually looked at the Anti-Terrorism Unit and he claimed they know that the unit itself—he did not really seem to understand why

this was here, what was the need for this unit since he did not find it in any other legislation. So I would just like to elaborate on that point, that I see there is a great need for this unit in the Ministry and in the AG's office. I see the great need for it. And I see the need for it because I was fortunate to be in a workshop, where we looked at understanding violent extremism in Trinidad and Tobago, in April 2018, and it was a body where it was the involvement of certain embassies, the Trinidad and Tobago Police Service, and we actually looked at the terrorism, the mind behind the terrorist. Why would somebody turn to terrorism in Trinidad and Tobago? And I also would like to refer to an article that I was part of in the *Mirror* on May 22, 2016, page 4, where, Deyalsingh cautions T&T ripe for terrorist threat, disillusioned youth looks to ISIS.

So this level of terrorism, this threat, it has been here, and it has been here, and even the Prime Minister had mentioned before that the risk to terrorism is no more than the threat we had in 1990, and he made that statement some time ago when he was actually referring to the fact that people used the social media as a means where terrorists now can reach from whichever country into Trinidad and get the minds of our youths.

So, just trying to elaborate a little bit, Madam President, that I am seeing the need to go after the terrorists. I am seeing the need to stop that trade. Because I think ISIS has spent money in sending individuals, even in the 2014 World Cup football match. They made promises of staying in five star hotels. So the money that they send actually gets to these young persons. They actually get these young persons to come out for different factors. So there are many factors why young persons may want to go and join ISIS, money is one. Some persons may have

radical views because we may have radical views and some scholars may help indoctrinate members in nudging them into the direction of ISIS.

In Trinidad and Tobago we have people of different backgrounds who have been recruited by ISIS, persons from affluent backgrounds as well as lower socio-economic groups. So it always brings to the question, yes, money is involved, but other individuals may want to join these organizations because, you know, and we ask why do they need to travel thousands of miles to join ISIS. And it is mainly 18 to 29-year-old males who join ISIS, and you find now that there are two main factors, the motivation and the vulnerability which are important in the creation of these terrorist minds. Young people are often searching for their own identity and independence. They question values, attitudes, beliefs of their parents, the norms of society. They often want to defy them. They have perception that they are the first to be rebellious and independent. But it is really a thirst for change that is the part of youth to go out to something, to get something.

So ISIS appeals to them, asking them to join with their brothers to save the world and to save their Sunni brothers who are being slaughtered. This humanitarian appeal to help save the world, to help create the idealistic perfect Muslim State, the thrill of joining an international movement and having a sense of mission attracts some. The need to belong. The opportunity that they have for action and adventure, the desire for social status in being part of this international movement. Some feel the need to end injustice and fight the evils of capitalism. Others join for the material reward, so again money is a factor there. All these can be summed up into the facts that in what motivates individuals to join the ISIS: injustice, identity, economic and a sense of belonging.

So, there are those individuals who we could describe as anarchic ideologues who come from a dysfunctional family who were abused and mistreated, and now hostile towards parents and displace this rebellion and this hostility to state authority. So there is the nationalistic successionists who are also loyal to parents but are motivated to retaliate to avenge the wrong done to his parents, family or people. Some are narcissistic individuals who are loners and who develop a passion for violence and religious fanaticism. Think of the young, lonely, idealistic, hyper-religious male sitting at home playing violent videogames and his mind always being attracted. He is being pulled.

In Trinidad and Tobago we—and this is the point I want to make. We are more at risk than any country in the western hemisphere to be influenced by ISIS, and this is why this move by the Attorney General to put the Anti-Terrorism Unit, we need it more than anyone else, because we have the history. [*Desk thumping*] We have the history that it is not only due to the fact that our Muslim population—no, because the United States also has the highest Muslim population in the western hemisphere. But it is not just because of our Muslim population, but it is due to the fact that in 1990 we were very close to becoming a Muslim State. When Mr. Abu Bakr, if he had succeeded, you know, we would have been a Muslim State, and this is still etched in the minds of our youths. And when they see this tall powerful looking individual who stormed the seat of our democratic institution and he flaunted his nose at the authority, and is still walking around a free man, sometimes they may see what he started as unfinished business, others see him as a man who sent a message to the politicians of the day, that a third force still exists to combat social contradictions.

Now, we do not really need war in our country to incite terrorist minds. But any perceived injustice which causes you emotional trauma, which you will internalize presenting as depression and anxiety, some may learn to accept the injustice as part of life while others may look for an external outlet for ISIS, to bring catharsis to the inner feelings that they built up against, you know, hostility against State, action and ineffective state systems. So, the shadow that Mr. Abu Bakr cast in the country should always serve as a reminder to politicians.

Madam President: Sen. Deyalsingh, I have been listening to you and you are giving a very interesting framework, but I really have to ask you be a little more specific to the Bill at hand. Okay?

Sen. Dr. V. Deyalsingh: Thank you, Madam President. I just wanted to elaborate the fact that the social conditions in 1990 are similar that we have today. The minds of the youth may still be there, there may be still a restlessness. You know, we have the unemployment, and all these unemployed youths, the social ills, the fact that if the economy does not improve, and we have to look to the IMF, the conditions here are just as in 1990. So more than ever I am saying, more than ever, I would want to support any sort of legislation, I would want to support the Anti-Terrorism Unit, and I would want to support any sort of legislation that could help us bring this factor into play that we could protect our country, and I thank you.
[*Desk thumping*]

Sen. Paul Richards: Thank you, Madam President. I had not intended to speak today, but if any of my colleagues had mentioned one point that I had not heard mentioned, then I intend to keep this to beat Sen. Seepersad's concise record to less than 90 seconds. [*Laughter*]

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Hon. Senator: What?

Sen. P. Richards: Yes, and I will make it.

Hon. Al-Rawi: Put your money on that?

Sen. Baptiste-Primus: Impossible.

Sen. P. Richards: This Bill is about corruption, money laundering, in some ways it is drug and illegal gunrunning, terrorist financing and trade, and I think it goes quite a long way in accomplishing those goals.

Sen. Baptiste-Primus: Forty three.

Sen. P. Richards: But, what I have not heard mentioned in terms of corruption, which is a developing paradigm in the world in terms of white-collar criminals, which this Bill intends to capture, is the issue of an unseemly and dangerous development in many jurisdictions, possibly in our own, and that is where white-collar criminals are possibly financing political parties and campaigns.

So I think that has not been mentioned today, in terms of corruption, and I think to support this kind of legislation what we need is comprehensive campaign finance legislation. [*Desk thumping*] And that has not been mentioned today in the context of corruption, money launderers, drug and illegal gunrunners, and sometimes terrorists seeping into the political landscape as has happened in other jurisdictions, and this is a significant threat to what is our sacred democracy in Trinidad and Tobago.

So I am beseeching the Attorney General. I have heard many administrations promise it and it is yet to come to fruition in Trinidad and Tobago, and I am hoping that the AG makes good on that promise in 2019, or sooner. And with those few words, Madam President, Merry Christmas to you and yours, and a

happy and holy and peaceful Christmas to everybody.

Hon. Senator: “Ooooh.”

Sen. P. Richards: Ninety seconds. Thank you very much, Madam President.
[*Desk thumping*]

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. Madam President, I have to confess that I genuinely enjoyed the debate today. I thought that there were very excellent submissions made all round. I believe that there is some commonality in the submissions made by many of the hon. Senators. I think it incumbent to address not only the individual contributions, but also the thematic overlap positions. Madam President, we have to clarify the Anti-Terrorism Unit, the NAMLC committee, the tipping off provision, the agency issue, and the consequences of NIB and UTC. Those are in general the five matters.

7.20 p.m.

These matters are genuinely capable of being addressed quite properly. And I will proceed into them starting with Sen. Seepersad’s submission on the need to look over the Unit Trust and the NIB scenario. It is incumbent that I read actually the section that we are amending in the Proceeds of Crime Act. We are amending section 55D of the Proceeds of Crime Act. And just—let me allow—perhaps I should press pause.

I sincerely apologize to all hon. Members, Opposition, Government and Independent Bench that we were compelled to come here in the manner that we have. It was not intended that this perfunctory application could ever be the truth. The fact is, we got the recommendations from the international bodies just a

moment ago. I warned as soon as I got the recommendations, whilst we were debating the Income Tax (Amdt.) Act, that we would have to come again and this is certainly, there is nothing in the history of my piloting of work in the three years that I have been in this particular position that will ever show you that I have come last minute, none.

This is the first one that has come. It is through no fault of my own or through the Office of the Attorney General that we have received these submissions, because as I told you, the face-to-face reviews by the joint group exercise, they come at you in a very tight time frame. Other jurisdictions have the ability to legislate very quickly, because most other jurisdictions simply pass regulations, they have committees to do these things. They do not understand or have regard for the individual legal systems and Trinidad and Tobago's Constitution is remarkably different from most other Commonwealth Constitutions, in particular, in the Caribbean.

In the Caribbean, our own colleagues, Jamaica, Barbados, et cetera, they asked us continuously, Trinidad and Tobago, why is it that you take so long to pass law? And then I explain to them that we have constitutional safeguards, including constitutional majorities for three-fifths rights or two-thirds rights or three-quarters rights. But all of their Constitutions have an exception for national security which includes economic interests. So they get to skip past that clean. We are the only jurisdiction of the type to wrestle with whether Sen. Mark feels like giving a three-fifths support or not. I am putting it plainly.

So, the point is, Sen. Mark in saying today that the UNC intends to behave differently in 2019. You noticed I thumped the desk, right? Perhaps you all were

wondering if I was being sarcastic. I was not. I was genuinely thrilled to hear Sen. Mark say, that the UNC would be different in 2019, because, good Lord, they were difficult in a legislative sense, in 2016, 2015, 2017 and therefore it was almost impossible to pass certain things.

I mean, Sen. Hosein could genuinely reflect upon having given very excellent contributions in our Anti-Terrorism Joint Select Committee where we produced [*Desk thumping*] a unanimous report of the Joint Select Committee. Sen. Hosein did very good work on that particular committee's work. I complimented him publicly on that then, I repeat it now. But we came to the House and there was a complete renege on the unanimous report, 100 per cent renege; 180 degree turn. *voltafaccia* they call it in Italian, an about face. And Sen. Hosein, if I may be permitted in addressing something that he said, you get what you give in this Senate. If there is respect to intelligent argument on both sides it is returned. So in this particular gayelle and in this particular arena there is a little saying, you beat the drum and I will dance. And I think you catch what I mean.

Sen. Ameen: You threatening—

Hon. F. Al-Rawi: There is no threat in that. This is advice to a colleague and to a friend and a young man who is putting his best. But we take these things in stride, Sen. Hosein. [*Crosstalk*] Let me return to the particular issue of section 55D of the Proceeds of Crime Act. 55D of the Proceeds of Crime Act:

“(1) The relevant Supervisory Authority or a person authorised by the relevant Supervisory Authority may enter into the premises of any financial institution or listed business during working hours in order to—

(a) inspect...”—et cetera.

“(b) determine...compliance...

(c) determine...compliance...

(2) Where the Supervisory Authority is the FIU, the FIU shall obtain the consent of the owner or occupier of the premises for the entry.

(3) Where the listed business refuses to give consent under subsection (2)—that is for the FIU—“a police officer above the rank of sergeant may apply for a warrant to enter the premises accompanied by an officer of the FIU.

(4) For the purposes of this section, “Supervisory Authority” means, in respect of—

(a) financial institutions licensed under the Financial Institutions Act, the Insurance Act, the Exchange Control Act or the National Insurance Board established under the National Insurance Act...Home Mortgage Bank...Home Mortgage Bank Act...Agricultural Development”—et cetera—“the Unit Trust Corporation of Trinidad and Tobago established under the Unit Trust Corporation of Trinidad and Tobago established under the Unit Trust Corporation of Trinidad and Tobago Act...”

So what we are doing in deleting UTC and NIB from 55D is we are saying they are not supervisory authorities. It is not that we are removing them from the provisions of the Proceeds of Crime Act. They are 100 per cent obliged to fall under the Proceeds of Crime Act. All that we are saying is the fact they are not supervisory authorities. They are not the Central Bank, they are not the SSC, et

cetera. They are not the FIU.

So we are not in need to—I think that it is definitely and that is why I stopped to give the apology when I did about the timing. I know that perhaps if there was a little bit more room for us to appreciate what we were actually amending that maybe that would have become apparent, so I apologize again for the time frame; that is why I wanted to read section 55D. All that we are doing is removing the supervisory authority as a reference to the UTC or the NIB.

In fact, just to underscore that point, the UTC and NIB both have AML/CFT obligations. It is so under the Securities Act, Chap. 83:02; the TTSC are under the category of broker-dealer, underwriter or investor. They fall into section 55(4)(c) of the Proceeds of Crime Act. So they are squarely anchored inside the Proceeds of Crime Act and I wish to allay any concerns to hon. Members that we are somehow removing them from AML/CFT supervision. We are not doing that. They are subjected to Proceeds of Crime Act. The CBTT does have them on the one side in the very limited sense of the financial issues that they manage in the “chargé d'affaires—Bureaux de Change”, and also the TTSC has them on another side. The NIB is a different story. The NIB itself is superfluous. None of the jurisdictions that we looked at have any form or collection of reference to the type of business that NIB does. But people are still subjected to the AML/CFT positions. So I hope that that lends some clarity to hon. Senators that there is propriety in the recommendations that we have offered.

If you would permit me, Madam President, to turn to the issue of agency. It is true the FATF definition of financial institution as it has been cast, et cetera, has references to agencies. It is true that certain types of products can fall into odium

from a money laundering or countering financing of terrorism perspective, however. We did an exercise, it was actually conducted by the Central Bank of Trinidad and Tobago and in Trinidad and Tobago, being the first into the fourth round of mutual evaluation process, we now have the benefit of many other jurisdictions, including Caricom jurisdictions falling under the fourth round of mutual evaluation. And we, in treating with the Insurance Act, I want to say that I spent seven years as a legislator, four in the Opposition and three in Government working on the Insurance Act.

So that new Bill, I know like the back of my hand, I spent seven years working on that legislation. It is not yet proclaimed, it has been assented to, but in the submissions coming out of the Insurance Act, Joint Select Committee work that we did, we had submissions coming to us from ATTIC in particular, asking us to have a look at the cost of AML/CFT supervision. So we asked the Central Bank to engage in an exercise to look at the issue of agencies. And I want to tell you, Madam President, that in looking at that particular piece we actually looked at the following jurisdictions, Bahamas, Bermuda, Canada, Caiman Island, Jamaica, Singapore, Turks and Caicos, the United Kingdom, the United States of America.

And, Madam President, the conclusion is that the Cayman Islands and Turks and Caicos are the only jurisdictions of the nine reviewed that consider insurance agents as AML/CFT reporting entities. But their structure of other coordinating laws is quite different, so that they can be distinguished out of that nine-country pot that we looked at, they can be distinguished on the basis that their system operates differently. When we looked at this we have had the advantage of having other Fourth Round Mutual Evaluations had. And in those seven jurisdictions that

we looked at, Britain just had its Fourth Round Mutual Evaluation, Cayman Islands just had it, TCI had theirs. But of the jurisdictions apart from TCI, not a single one of them had agents involved in the pot and they all had a largely compliant satisfaction as it relates to not regulating agents. And the reason is because agents have to handle the business in tandem with the underwriters and the brokers who are licensed to do that work.

So if I am taking work—it is the attorney-at-law, for instance, as a listed business, engaging in conveyancing or formation of businesses that is the listed entity under the Proceeds of Crime Act. Not the clerk, not the office manager, not the—and a clerk, do not get me wrong, a clerk is an integral aspect of a Law Chamber or a firm. The clerks often are the ones that know more than most people. I recall as a young lawyer spending all the time that I had with the clerks at the firm that I worked at, because they were so skilled in what they were doing, be it in conveyancing, in litigation, in whatever it is. But we do not regulate the clerk. We regulate the attorney.

Similarly, with respect to the agency and the type of work that they are underwriting, the agent has to bring the business to the agency, which is the broker or the insurance company itself that does the underwriting. And that is where “know your customer”, KYC, information comes into the realm and where AML/CFT kicks in. So, it is low risk. It is deemed to be acceptable by the FATF, but the cost of regulating is a serious issue in this country. Lawyers will tell you right now, if you are really complying with the financial obligation regulations, you are keeping all your data for as long as you are supposed to; you are doing your KYC transactions, the cost of doing conveyancing or incorporation businesses

are not covered by the current scale of fees for attorneys. Because in fact the scale of fees are really matters which have been set in 1997 to 1999. And I want to tell you, in the legislation which I am going to bring—the Government is going to bring very shortly—to put serious obligation on attorneys-at-law. I intend concurrently with that to look at the scale of fees for attorneys-at-law.

You see, it is important that we make sure that banks as listed entities, as financial institutions that have to regulate AML/CFT that they do not hit customers with heavy costs. Insurance is also a heavy-cost industry, attorneys-at-law in the non-contentious scale of fees aspects. In balancing this exercise on a risk-based approach to AML/CFT in satisfaction of that first criterion of the FATF 40 recommendations, we need to cut off the cost if we can. And therefore there is precedent, there is safety in removing the agents as an entity to be enveloped in the AML/CFT because their work is going to be supervised anyway for it to be underwritten or written.

Madam President, that is agency. That is UTC and NIB. Let us jump to the provisions of the Anti-Terrorism Unit. Madam President, the Anti-Terrorism Unit is being proposed to be inserted in the Anti-Terrorism Act. It is true. I mean, if I were writing a judgment I would literally say that I concur with everything that Sen. Vieira had to say. In summary form and putting it on the record as I must, section 76(2) of the Constitution, with the authority and responsibilities that the Attorney General must manage, sets it out in the bifurcated responsibilities for criminal and civil responsibilities. Statutorily, the Attorney General must also carry out certain functions in relation to this law. It is the Anti-Terrorism Act. The Attorney General is the Central Authority for Trinidad and Tobago, so fashioned

under the Mutual Assistance in Criminal Matters Act, Chap. 11:24. That has been law in Trinidad and Tobago since 1997, that is by Act of Parliament No. 39 of 1997.

The functionality of the entities under the Anti-Terrorism Act—Sen. Chote is correct. Of course we have the DPP, we have the Commissioner of Police and we have the Attorney General. The Attorney General functions are really to be found in the listing provisions, only. The Attorney General's functions are to be found after section 22, but let me mention section 22. Sen. Mark made this most—let me be polite—Sen. Mark made the observation that weapons of mass destruction needed to be managed because he somehow knows that the Russians are establishing a military base 10 miles off of Trinidad and Tobago. I do not know how he knows that, I would not ask him here today, but Sen. Mark apparently knows that. I want to tell Sen. Mark section 22 of the Anti-Terrorism Act:

“22. (1) A person who, unlawfully and intentionally uses, threatens or attempts or conspires to use chemical, biological or nuclear weapons...
commits an offence...”

So Sen. Mark you claimed to have done some significant research. Perhaps you missed section 22 of the Anti-Terrorism Act. I ask you to have a look at it so that you can satisfy yourself with what I have said addresses your concern.

So let me return to the Attorney General. The Attorney General's functions are to be found largely, Part IIIA of the Anti-Terrorism Act under the heading “Financing of Terrorism”. This was brought in Act No. 2 of 2010; Act No. 15 of

2014 and we last did some amendments, Act No. 13 of 2018, which is the one that we just did recently. But this is where the functionality of the Attorney General is set out. And the functions are to carry out the listing and investigatory aspects that the Attorney General may ask the Commissioner of Police to do or the DPP to consider. But it is only the Attorney General who could approach the court for a listing, only the Attorney General. So when we propose that we insert this Anti-Terrorism Unit into the Office of the Attorney General, and we are asking for the Anti-Terrorism Unit in clause 3 to be inserted such that we put in a new unit—here is what we do, in a new section 38B.

“(1) There is established in the Office of the Attorney General, a unit to be known as “the Anti-Terrorism Unit” (“the Unit”).

(2) The functions of the Attorney General under this Act”

—let me repeat that—

“the functions of the Attorney General under this Act may be exercised by the Attorney General in person or through a public officer or legal officer who is—

- (a) employed in the Unit;
- (b) authorised by the Attorney General in writing; and
- (c) acting under and in accordance with the general or special directions of the Attorney General.

(3) Nothing in this section shall be construed as authorising a public officer or legal officer to make an Order or other statutory instrument under this Act.”

Let us go to the functions. Functions are to be found in 22A, where you set out—

where a:

“...person...commits an offence of financing of terrorism.”

But here is where we going, 22AA. We have the position of the lists, 22AB, 22B:

“(1) Where the Attorney General receives information that—

(a) an individual...”

—has done certain things et cetera

“(1B) The Attorney General shall apply to a judge for an order...”—
 et cetera.

So the functions are set out specifically, in the legislation. The clause which we are putting in, the section which we are putting in by this clause, to allow the Attorney General to set up a unit, can only be read in light of the expressed statutory functions set out in the law. There is no other way to read the law and apply the law. I see Sen. Ramdeen shaking his head. Let me prove my point. Mutual Assistance in Criminal Matters Act and I will read that, section 3.

“(1) Subject to subsection (2), the Attorney General shall be the Central Authority.

Subject to subsection (2) now:

“(2) The Attorney General may delegate any of his functions under this Act to any public officer or legal officer employed in the Ministry of the Attorney General and Legal Affairs.

(3) Nothing in this section shall be construed as delegating to the officer referred to in subsection (2), a power to make Regulations under section 39.”

This is in spirit and in fashion and in law the same thing as we are putting in the Anti-Terrorism Act. Now ladies and gentlemen, hon. Senators all, what is the

most contentious law to be applied in Trinidad and Tobago? One of the most contentious laws to be applied in Trinidad and Tobago, one of the most heavily litigated laws, laws which have occupied the attention of our courts for 18 years plus, is what? Extradition. True or not? There are umpteen cases, high-profile cases, recent cases. “Man fighting for their liberty” in this country looking to avoid deportation. Who is the functionality carrying that out?

Sen. Khan: AG.

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, inclusive of the Motions on the adjournment.

Hon. Senators: Oooh.

Sen. The Hon. F. Khan: And this time it is not from Sen. Mark. [*Laughter*]

Question put and agreed to.

MISCELLANEOUS PROVISIONS (PROCEEDS OF CRIME, ANTI-TERRORISM AND FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO) BILL, 2018

The Attorney General (Hon. Faris Al-Rawi): Thank you, Madam President. I will go back to the point. The most tested area of law, big money spend in this country, big money spend in this country and will continue to spend in this country, has to do with part of the operationality of the Mutual Assistance in Criminal Matters. That is a fact. It is also a scandal, but the one thing that has never been tested in our courts, section 3 of the Mutual Assistance in Criminal

Matters, Act, the delegated functions that the Attorney General has given to any public officer or legal officer employed in the AG's office. That is what it says.

So hon. Senators, when we come today to say that the Attorney General will establish a unit and the functions of the AG may be exercised by the AG in person, that is exactly like the Mutual Assistant Central Authority provision, or through a public officer or legal officer, exactly the Mutual Assistance in Criminal Matters provision. We have precedent. We have precedent that has also been the subject or capable of being the subject of litigation from the period 1997 to 2018, moving to 2019 where we now stand.

Now, Madam President, the rationale for bringing in the Anti-Terrorism Act through a unit, let me explain this. Other jurisdictions around the world treat with terrorism in a much more nebulous fashion. Sen. Hosein referred to the referee in the United Kingdom, the special referee that can actually be the arbitrator to say where things are being improperly managed in the United Kingdom. But in the United Kingdom and in the United States you have very curtailed rights. You do not face your accuser, they present limited evidence, it is in a sequestered arrangement and you get shipped to Guantanamo Bay. Off you go.

They hold your inferences against you, adverse inferences against your right to remain silent in the United Kingdom whereas that is an entrenched right in our Constitution that you have the right to remain silent. So in these so-called sophisticated jurisdictions they have robust, dare I say, if you take it from a Trinidad and Tobago perspective, seriously curtailed infringing upon constitutional rights mechanisms. But the anti-terrorism world operates in two realms, counter-terrorism and PVE or CVE, Preventing Violent Extremism, Countering

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Violent Extremism. [*Crosstalk*] CVE/PVE. Sen. Hosein knows, he was the recipient of some training by the United States Government. I want to say I asked the United States Government to ensure that the Opposition was trained in this area as well.

Sen. Obika: Very well.

Hon. F. Al-Rawi: And that is the first time things like this have happened. Because I made the representations to our foreign counterparts that they cannot be talking to Government alone, they must talk to Opposition, because this is a whole-of-society approach.

So, Madam President, in treating with the preventing of extreme violence, in treating with the Countering Violent Extremism there is an entire agency that treats with that. But when you are treating with counter terrorism and the hard-line terrorism, the United Kingdom in particular is the best in class model. They operate something called the SO15 Office. That is their special office that is against countering terrorism. But do you know what they do? They have a functionary work alongside an investigator. So a lawyer sits down with an investigator so that they are working on the terrorist matters hand in hand so that they can actually get a conviction built from scratch.

Sen. Ramdeen was right. We could have all the laws in the world, what is the product of it? Where are we going to in terms of demonstrating the product?— and I will come to that in a moment as soon as I finish with the unit itself. So we are—what is the rationale for putting this in? Yes, Sen. Hosein as you reflected upon the words of then Sen. Christine Kangaloo, in another incarnation, all of the questions you asked are valid, as you repeated the comments and submissions

made by Sen. Christine Kangaloo. This is going to be the existing functionalities in the AG's office. It is because of the extreme workload of the Attorney General.

Sen. Ramdeen himself has testified, albeit, just yesterday, that there are a few extremely hard-working members of the AG's Secretariat that really are there to pick up the slack when we are talking about the inefficiencies of whole systems. But I want to say something that the population may not be aware of. Every time Governments change, there has been in the past a slash and burn that comes in. When Attorney General Anand Ramlogan came into the Attorney General's Office, everybody that worked for the Attorney General in the Attorney General's Division was sent home. "Every man jack" was dismissed. Secretary, lawyers, positions. I want to tell you—

Sen. Baptise-Primus: Including Nafeesa Mohammed.

Hon. F. Al-Rawi: Yeah, including Nafeesa Mohammed; whomever. The bottom line is, when I came in as Attorney General I did the exact opposite. Everybody that I inherited is still working for me [*Crosstalk*] except for one person and I will explain that in a moment. Every single person is still working for me. My secretary was the secretary to the last Attorney General. My other secretary was the secretary to the last Attorney General. The current head of the anti-terrorism desk worked for the last Attorney General. The special advisor to the Attorney General continues to work for me. Why? Because when I came in as Attorney General I said to people—in fact, there is a wonderful head of division in the AG's office who campaigned toe to toe against me in San Fernando West, still working for me, in fact now promoted. Why?

My philosophy, this Government's philosophy is, professionals are

professionals. Your politics are your politics. You are entitled to flourish and represent yourselves in your politics. There is a freedom of political expression in our country and I tell the people that work in the AG Secretariat, good for you, just “doh” bring your politics into your professionalism. And I want to say, thank you today to the hard-working members of my Secretariat.

I went to the Ministry of Justice and I took their entire legal division. They thought they were going home, they are all working in the Attorney General’s Office now. This is not something to get a medal over. I am trying to tell you that the focus and the uniqueness in this Anti-Terrorism Unit is because I believe in the continuity of Government. And I want to genuinely anchor a system that survives the vagaries of political revolving door syndrome. Because I do not know if somebody else, the next Attorney General will have the courage that I have had by the blessing of my Cabinet and colleagues to do what I have done.

So, workload, precedent in the Mutual Assistance Central Authority Model, continuity of Government, and I want to put on to the record the kind of work that we have delivered. It was not Sen. Ramdeen that I said that the—or was it Sen. Mark? It was Sen. Mark, I apologize, who said that the laws were not being applied and then he went on to read the MOUs from the FIU. That is not what I said. I said the Anti-Terrorism Act was virgin territory.

It is true the UNC in five years did 14 MOUs in the FIU. We did 17 in two years. The bottom line is there is a continuance in the purpose, but it was the anti-terrorism law—let me remind you. In the state of emergency Shane Crawford was locked up. Shane Crawford was a suspected activist for ISIS. Shane Crawford left Trinidad and Tobago with an Anti-Terrorism Act being the law since

2005, you know. Shane Crawford found himself as the star child, poster boy for *Dabiq* magazine saying, he is “Sa’ad Ibn-Trinidad”. “Sa’ad” in Arabic means happiness. “Ibn-Trinidad”, son of Trinidad. He is calling himself “happiness, the son of Trinidad” and he is the poster boy for *Dabiq* magazine to recruit ISIS fighters.

7.50 p.m.

Did the UNC use the Anti-Terrorism Act to treat with Shane Crawford? No, they did not. We did. And for those of you who think Shane Crawford might be dead, think again, because you cannot believe propaganda. We have done 506 listings. We have established an inter-coordinated rubric and maintenance, bearing in mind traditional boundaries with law enforcement agencies, with the FIU, et cetera. We have done our role, but this Anti-Terrorism Unit is intended to anchor good practice, established practice, into the office of the Attorney General exactly like another unit there, which is called the Central Authority, comprised and structured in exactly the same way. So I ask hon. Senators to find comfort in that recommendation and in the precedent. And, yes, it is okay that we lead the world in establishing an Anti-Terrorism Unit. I am proud to break ground on behalf of Trinidad and Tobago, all of us, not just the PNM Government.

Madam President, if you would permit me to go to the National Anti-Money Laundering Committee, the NAMLC committee, Sen. Mark—“woo”! My good friend, Sen. Mark, in his usual fashion, stood up here today to talk about the danger of the National Anti-Money Laundering Committee—the danger! I shouted out, quite improperly, across the floor; I asked him, “Sen. Mark, would you support the NAMLC in its current form”? “No! I will not do that”, he said. “I would never do

that. We could never support that”— oh, Lord. Madam President, the National Anti-Money Laundering Committee is a creature which exists in Cabinet structure at present. It does not exist in legislation. We have been asked to entrench it in our law. We were asked in our mutual evaluation report to do that. There are models in Barbados, et cetera. I never said that the Anti-Terrorism Unit had a model. I said that the National Anti-Money Laundering Committee had a model.

And to answer Sen. Mark’s—I want to be polite—concerns as to the NAMLC committee, I want to put this on the record.

Cabinet Minute No. 650 of March 23, 2006 agreed to the establishment by the Ministry of National Security of a National Committee to monitor Trinidad and Tobago counter money laundering and terrorist financing regime.

Hear this one:

Cabinet Minute No. 13/12 of November 04, 2010—

Hear that again:

November 04, 2010, agreed to the renaming of the National Committee to the National Anti-Money Laundering and Counter Financing of Terrorism Committee, NAMLC, N-A-M-L-C, as well as the reconstitution of the committee as follows:

Director Compliance, Anti-Money Laundering Combatting of Financing of Terrorism Compliance Unit, Ministry of National Security;

Director of Public Prosecutions, constitutional office holder.

Remember that?

The Commissioner of Police, constitutional office holder;

Miscellaneous Provisions (Proceeds of
 Crime, Anti-Terrorism and Financial Intelligence Unit
 Of Trinidad and Tobago) Bill, 2018
 Hon. F. Al-Rawi (cont'd)

2018.12.18

Chief of Immigration;

Comptroller of Customs and Excise;

Deputy Permanent Secretary, Ministry of Finance;

Head of the Financial Investigation Branch, Trinidad and Tobago Police
 Service;

Director, FIU, Ministry of Finance;

Head, Central Authority Unit, Ministry of Attorney General;

Legal advisor to the Minister of Justice;

Let me repeat that:

Legal advisor to the Minister of Justice;

Representative from the legislative drafting department, AG;

Representative of the TTSEC;

Representative of Central Bank.

Come on. Sen. Mark sat as the presiding officer, Speaker of the House of Representatives in a UNC government that set up the very thing that he says he could never live with. How do you take anything that Sen. Mark has to say seriously, at times? There are times when he ought to be taken seriously. Sen. Mark deprecated the involvement of an advisor to the Attorney General sitting next to a Commissioner of Police and a Director of Public Prosecutions. Over his proverbial dead body, he said, this would happen. But you know what? “Been happenin’”, for eight years—five years and three months under the UNC. It was all good then. All of a sudden, now is a problem.

So, respectfully, I ask you to ignore the submissions coming from Sen. Mark because there is nothing odious in the contribution that we now set into law. In

fact, it fits within the national and international realm of law enforcement coordination. Sen. Drayton said something that was so powerful. I want to repeat it. Sen. Drayton said—listen to this, “Silos create gaps”. That is what Sen. Drayton said. Sen. Drayton hit the nail on the head. It is the silos and ego-turfing and turfing of institutions—Madam President, what time do I end, precisely?

Madam President: Three minutes past eight.

Hon. F. Al-Rawi: Thank you—that caused the complications for performance. And I again want to compliment both Sen. Ramdeen and Sen. Le Hunte for hitting upon a very important issue of constitutional roadblocks. Yes, the Office of the DPP needs to perform better. The office of the DPP, if you notice, the lower ranks are all filled. There are only five vacancies. It is the upper ranks that are not filled and the upper ranks can only be filled when the DPP gives his recommendations. The DPP asked for space. The JLSC has to do the promotions themselves. But I can tell you this, in asking for space, we have given the DPP the San Fernando office; we have given the DPP the Port of Spain office on Park Street; we have opened the Tobago office. I agree with Sen. Ramdeen, they need to go there.

But you know where the real, real problem is? The DPP only does 5 per cent of the prosecutions in Trinidad and Tobago, you know. The DPP’s office does 5 per cent of the prosecutions. The Trinidad and Tobago Police Service does 95 per cent of the prosecutions. That is why the Government did a manpower audit into the TTPS. And for those of you who did not hear it, Commissioner Griffith has already announced the reconstitution of the ACIB, the Financial Investigations Branch, the Fraud Squad and the Cybercrime Unit, being merged into a financial intelligence division. And for those of you who missed it, you may

not have seen the TTPS advertise for a head of Legal.

And for those of you who do not know—in answer to a question that Sen. Ramdeen, quite laudably asked about a particular matter that has been going for over 10 years and people asking, where is the prosecution?—very shortly the publication and announcement of over 30 special investigators will come to the public attention, specialist skills in the TTPS. And very shortly, the DPP has assured, that matters will be proceeding to the courts. I am not permitted to say more than that. In fact, on one particular matter I have recused myself entirely. And I say that openly because of a past incarnation that I had.

Madam President: You have five more minutes.

Hon. F. Al-Rawi: Thank you, Madam President. Madam President, the National Anti-Money Laundering Committee in terms of its purposes, in terms of saying what it ought to do, that is a difficult task. The difficulty is that the National Anti-Money Laundering Committee is, really, strictly to work on the FATF obligations. That is what that is for. And the FATF rules do not allow for the publication of that work. It is like how we operate in a joint select committee before we publish a report, where you are prohibited from stating or discussing the work in public until the committee is at an end, the National Anti-Money Laundering Committee cannot produce a report, cannot make it public. It is there to advise the Minister only on the policies for the National Risk Assessment, because those constantly change. So it is not something that can go on the outside, and that is the reason why we have not put it that way, or asked for a report to go that way. That is also the reason why we have not prescribed in detailed format, how the offices are to be held, what their security of tenure looks like, et cetera. In

fact we have modelled ourselves largely after the Barbados example.

On the issue of facilitation, I would just like to remind hon. Senators that the term “facilitation” has been used in the Anti-Gang Act. I think it is section 7 or 5, and also in the Anti-Terrorism Act, either section 7 or 5. So it is anti-terrorism and also the anti-gang legislation, both of which we passed this year in 2018. So even though the term “facilitate” is not known currently to the common law, I think that the interpretation by the Judiciary as to the elements of that functionality is something that can happen. But I will tell you why it is there. It is there specifically because the assessors have asked us to put it in. We tried, we made the representations that it ought not to be included. We went on the accessories and aiding and abetting legislation; we went on section 66 of the Interpretation Act; we went on the common law and we were deemed to be non-compliant. And therefore we have introduced this term specifically, knowing that we have done it in the anti-terrorism and the Anti-Gang Act—we have parked it into this submission.

There is a whole other debate, genuinely, to address what the Government is doing in terms of quickening the pace of justice in the criminal justice system. This Senate, this Parliament, this Eleventh Republican Parliament, has been a large part of that. The proof will be in the eating of the pudding—full stop. It can only get better if we take it step by step. We have done a lot. There is a lot more to do. You have heard me mention it, I will have to come back to it in another debate, but suffice it to say, Anti-Terrorism Unit, National Anti-Money Laundering Committee, NIB, UTC, “facilitation”, and general principles, I think we have covered the majority of the issues raised. And permit me for not singling out the particular points.

I want to commend Sen. Drayton on the observation of the CSME free travel point. There is a whole lot that we are doing on that, because it is something that we have flagged and which we are treating with at Caricom level and the Legal Affairs Committee of Caricom, and the functionality of our law enforcement working. And the Prime Minister of Trinidad and Tobago has already put a statement in that regard.

Hon. Senators, the time frame, I regret is very short. In fact, this law has to be—I am sorry to use the word—perfunctorily considered. The fact is that we have little room to even get back to the House. In fact, we have none. I have demonstrated a conclusive ability to give a representation and undertaking and fulfil it. We did it yesterday, as Sen. Ramdeen knows. If I hear an observation that needs to be ticked off, I will come back to the Parliament. I hope that the committee stage is one where we can get past any further issues. Madam President, I thank you for the opportunity to contribute.

I will not be permitted to say Merry Christmas and Happy New Year other than this opportunity. I wish to wish all of my hon. colleagues, all of the listening public, all of the hundreds of messages I get every day, of positive vibes from people—[*Laughter*]

Sen. Mark: “Awww.”

Hon. F. Al-Rawi:—by my own hand. I want to wish the Hansard staff, our security, the police and our nation, a hopeful and bright and prosperous new year. I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed: That clause 2 stand part of the Bill.

Madam President: Now, hon. Senators, clause 2 is from page 2 to page 8, so what I propose to do is, we will just do it page by page and if someone wants to ask a question we will deal with it accordingly. So page 2 of the Bill, any questions or comments? Page 3? Page 4? Page 5? Page 6? Sen. Hosein.

Sen. S. Hosein: Thank you very much, Madam Chair. Hon. Attorney General, with respect to new subsection (2) at page 6, the composition of the NAMLC, it says:

“The NAMLC shall comprise a minimum of nine”—members—“but no more than fifteen...selected from among—

(a) persons representing...”—these ministries.

Is it that persons outside who are not employed with the Ministries can be appointed? I am looking at the way in which it is phrased. It just says a person representing. Can a Ministry now nominate anyone outside of its employ to sit on the NAMLC?

Mr. Al-Rawi: No. And the reason is, the manner in which the service of the Attorney General is actually constructed. So for instance, special advisors do not attend. Only employees who are contract or public officers are the representatives that, in fact, attend.

Sen. S. Hosein: The reason I raise the query is because when we look at the Anti-Terrorism Unit, it actually states that the person must be employed in the unit, whereas in the NAMLC that element is absent in terms of the employment of the

person representing the various Ministries.

Mr. F. Al-Rawi: Well, because of the manner in which we wanted the law to continue to speak, we did not know, for instance, if somebody could fit a sort of a hybrid structure. Let us suppose that someone was brought on for a particular project, there is also a right of audience. NAMLC sometimes invites the Registrar General. So the Registrar General is not there. But when they are considering legislation or input that affects the Companies Act, or the Registration of Deeds Act, et cetera, those persons are brought in. And that is silent. That does not come to the point that you are asking. But we went with representation of the Ministries to allow it the widest purport. But the habit has been that it is somebody who is employed. In fact, the habit has been that unless you are employed on contract or otherwise, you do not have the authority to attend there.

Sen. S. Hosein: Thank you.

Madam Chairman: Sen. Richards.

Sen. Richards: Thank you, Madam Chair. Through you, to the hon. Attorney General. Is there some section that tells us what is the minimum number of persons for the committee in terms of some procedure that can form a quorum for the committee to sit?

Mr. Al-Rawi: No. If I tell you that we actually sit almost every week, and technically NAMLC is being appointed—you notice that we have this odd phrase, that it is appointed by the Minister. Minister means the Minister to whom responsibility for NAMLC is assigned. There are really three Ministers that fit this category: National Security; Attorney General and Minister of Finance. Technically the prime contact for Trinidad and Tobago to CFATF right now is the Minister of National Security but, de facto, the Attorney General has been doing the work on all of them. So we have just divided our position from a financial—

the reason why we have left it that way is that from a financial point of view the Ministry of National Security has a larger budget than the AG does, and therefore they take the cost, and then the AG does the actually work on that side. So there is nothing in that manner in the fashion that you asked, but we have allowed for it to be as fairly flexible as possible.

Sen. Richards: Just one more question, through you, Madam Chair—

Sen. Vieira: Well, if I could help, I think the answer to that question is at 57B:

“NAMLC may make rules to govern its own procedure.”

And that will treat with quorum.

Mr. Al-Rawi: Oh, Sorry—on the quorum. I was jumping past the people and who represents. And, yes, it is intended to be that. That is common, for instance, in the companies' realm, et cetera, where you allow the flexibility. And we have that in section 58I of the Proceeds of Crime Act as it relates to the seized assets committee and how it organizes itself.

Sen. Richards: Thank you.

Sen. Mark: Madam Chair, should NAMLC be making rules, or should the Minister be making the rules, through the Attorney General?

Madam Chairman: Let us just pause because we are on page 6. Sen. Obika.

Sen. Obika: Thanks, Madam Chair. And the question I have for the Attorney General, through you is, if this NAMLC committee is merely of a feedback mechanism. And if that is the case, then—and they do not have much actionable decision-making powers, so then there would be no need for a quorum to be constrained upon them. That is a question for the AG.

Mr. Al-Rawi: Well, Madam Chair, the truth is that if you look at the—that is why we put people representing these things, right? So we are not asking for the DPP himself to be there, or the AG himself or herself to be there from time to time.

And, really, sometimes this works out just in functioning subgroups where we divide up the work. I spend a vast amount of my time sitting with representatives of NAMLC doing what I call pre-scrubs, pre-LRCs: draft one, draft two, draft three, draft four. So that is why we ask for the flexibility of the structures.

But remember the purpose of the NAMLC is really to feed into the FATF cycle. Solely for that. Because unless we were to coordinate all these entities, we would never operationalize the laws or get the efficiency done right. So we needed these people around the table in a working group structure just simply to get the work done. But it cannot be disclosed because the FATF methodology does not allow disclosure of these documents until the mutual evaluation reports are produced and then the country does certain action points. It is just the way the FATF works.

Madam Chairman: Sen. Chote.

Sen. Chote SC: Thank you. Through you, Madam Chairman, hon. Attorney General, the committee to which you referred in your example in the Proceeds of Crime Act, the supervisory committee, the creation of that committee is followed by procedure governing the committee. Is there any reason that there is no procedure included in this legislation for NAMLC?

Mr. Al-Rawi: Yes. So 58I establishes—this is of the Proceed of Crime Act, the parent Act—the Seized Assets Advisory Committee:

“The Seized Assets...Committee shall meet”—and here is where you are spot on—“at least once a month...such other times...necessary or expedient”, et cetera.

“The Minister with responsibility...may, in writing”—et cetera—
“convene...”

“...shall elect a Secretary...”

Because this functionality is born to receive the proceeds of crime—and, in fact, we established the seized assets committee for the first time. It was never populated before and it did not work. And, in fact, it was Madam Justice Gillian Lucky that gave the first award into the seized assets fund, which the committee was established to manage. But because they are acting as trustees in a fiduciary responsibility with respect to assets, we modelled that particular structure from other jurisdictions, where part of a network which Trinidad and Tobago is actually one of the co-founders under Attorney General—me—Trinidad and Tobago being chair of CFATF. We founded something called CARN, the Caribbean Asset Recovery Network, which is a subset of ARIN.

So we have been very much contemplating how we build out this. But we went, because of the trusteeship aspects, to put a little bit more prescription in this point, because there is an external-relating functionality to the court, in particular. So we wanted to do that. Because the NAMLC is reporting, really, to the de facto, de jure Minister who is running NAMLC—in this case, I am de facto, now de jure as well, running that—it is a lot more flexible because it is basically an in-house operation.

So those are the two essential differences. Very shortly you are going to see when we bring the civil assets recovery—explain your wealth legislation, the tie-in to asset recovery from that into this as well, where we establish the trustee relationships and the functionalities.

Madam Chairman: Sen. Richards.

Sen. Richards: Thank you, Madam Chair. Just one more question, AG, and this is really, a really sincere question. I know you have a clear understanding of how you expect this to operate and how it has been operating. Are you not concerned that by how open it is to interpretation and wide in terms of flexibility, that it may

be open to some sort of abuses later on—10 years, 15 years, down the road?

Mr. Al-Rawi: And my answer to that is, if I look at the mischief of what the abuse is, one would have to be abusing oneself, because this committee is designed to let the Minister perform the functions that the Minister must comply with under international and local parameters. Sen. Vieira was right earlier. We do this for ourselves. But if somebody were to be involved in mischief, the only sabotage would be the sabotage to yourself.

Sen. Richards: And also the country, by extension.

Mr. Al-Rawi: Well, let me put it this way, in answering in the affirmative. I do not know if any Minister in the five years prior to me or 10 years prior to me, sat in NAMLC. I can tell you, I have. In the five years that I spent in the Senate, we did a couple of FIU Bills, but there was never this kind of fulsome discussion or exposing of what we are doing and positions. Sen. Vieira was there with me. He will recall vividly. This was nowhere on the radar of the Government of Trinidad and Tobago. And yes, it did hurt the people of Trinidad and Tobago because we ended up being grey listed and negatively treated, which is why we are doing this now, to put it into the law so that it cannot just be blowing in the wind. There is reference now to it in the statute.

And, you know, Sen. Chote asked a very important point. Why put forward reports if there is no sanction? There is actually a sanction, you know. You can be compelled by the court to produce your report, and that has, in fact, happened. Ex-Senator Devant Maharaj sued the Government for not producing the SSA reports for the years 2012, '13, '14, '15. Let me repeat that. A UNC member of government sued the present Government in 2015, just after the election passed, for the last Government not producing the annual reports, and we were compelled to produce the reports and we had to pay costs. What a thing.

Madam Chairman: Any other questions or comments on page 6?

Sen. S. Hosein: One question, Attorney General. I am looking at the Bermuda legislation and the Bermuda legislation has a provision that states:

“A person is disqualified for appointment as Chairman if—

(a) he is a member of either House of the Legislature;”

I wonder if we can put a similar prescription here.

Mr. Al-Rawi: Why?

Sen. S. Hosein: I think it is because the NAMLC will be used as a stakeholder body, like what happened in the special select committee with respect to the Income Tax Act. Now, if the chairman is a member of the House or a member of the Senate, it would show as though there is no real consultation.

Mr. Al-Rawi: So the Minister shall appoint the chairman and deputy chairman of NAMLC from among the members, and the members are described as persons representing the Ministries.

Sen. S. Hosein: Exactly. And the Minister can represent the Ministry.

Mr. Al-Rawi: I respectfully cannot see any merit in the suggestion because this is a body designed to advise the Minister in performing Trinidad and Tobago's obligations to the Financial Action Task Force. So the disqualification of the Minister himself, why complicate the thing that way? We want to get the work done.

Sen. S. Hosein: I understand. I am just looking at the Bermuda legislation and I see some merit in having it there, because I looked at other areas and Bermuda was one of the only jurisdictions I saw that the NAMLC was actually legislated in the Proceeds of Crime Act.

Mr. Al-Rawi: I respectfully cannot agree to the suggestion. I just do not understand the rationale for the exclusion. I cannot factor what the mischief is and

I respectfully disagree.

Madam Chairman: Page 7. Sen. Mark.

8.20 p.m.

Sen. Mark: Through you, to my honourable friend, the Attorney General, I observed in a joint select committee report, no I should say a special select committee report, one of the functions of NAMLC was awareness raising from the perspective of AML/CFT in the context of symposiums, seminars, et cetera, I was wondering—do you see a role for NAMLC in terms of its functions under that particular heading, AG? When I look at the functions of NAMLC here, I am not seeing that awareness-building function.

Mr. Al-Rawi: NAMLC is not the entity. All right. So if we look at the functions: (a) making recommendations to the Minister; (b) well (ii), coordinating the implementation of National Anti-Money Laundering and Counter Financing of Terrorism and proliferation financing policies, it is under that rubric of coordinating that we get the real implementation side, but it is effectively— If we look at the publication of the NRA, the National Risk Assessment for Trinidad and Tobago, that is done by the line Ministries with responsibilities for those factors. So we intended to capture that submission really by the use in (ii) at the top of page 6.

Sen. Mark: And what about reporting; do you see a role for them to report to the Parliament?

Mr. Al-Rawi: No, then we would be breaching the FATF. So we cannot produce publicly. You see NAMLC receives the correspondence that comes from the FATF and CFATF. So CFATF sends me, personally, all of the things that we need to do. I write them, give high-level commitment, I attend before them physically together with team members, DPP's Office, Central Bank, whomever we might

go—we go with a delegation—and then we work out our things, but all of that is entirely confidential and we are not obliged to put it forward because it is deemed to be a working group. It is exactly like we do in the Senate when we are in a committee and we cannot prematurely publish what we are doing.

So the FATF rules for mutual evaluation and mutual joint supervision, they do not allow you to go public because they have not yet made a decision on what they are doing. And only when the report becomes public, they put out two forms of statements which the FATF would put out, the public statement, et cetera, and it is only that document that speaks then. But we are not allowed to even indicate what we discussed in those positions because that is deemed to be privileged.

Sen. Deonarine: Just clarification, we are page 7, right? No. 8, the Chairman of the Board of Inland Revenue, would the transition we expect soon to the Revenue Authority, that will automatically mean the director general of the Revenue Authority?

Mr. Al-Rawi: So in the transitional provisions that we will put into that legislation, so we will create that law to repeal and replace a law, and then we will state “wherever in any written law X finds itself, it means Y”, and that is how we do it legislatively for anticipated legislation.

Question put and agreed to.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed: That clause 3 stand part of the Bill.

Sen. S. Hosein: Attorney General, through you, Madam Chair, I think, as I mentioned in my contribution, there is typo in terms of 38D. So it is 38C.

Mr. Al-Rawi: Thank you, Sen. Hosein, for observing it. You are perfectly correct. The technocrats have advised me that in the proofreading of the Bill that

that will be corrected automatically, and I thank you for pointing it out.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Question put and agreed to: That the Bill be now reported to the Senate.

Senate resumed.

Bill reported, without amendments, read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Madam President. Madam President, I beg to move that this Senate do now adjourn to a date to be fixed.

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 of the Senate. Sen. Haynes.

Overburdened Accommodation at POS General Hospital (Government's Failure to Address)

Sen. Anita Haynes: Thank you, Madam President, and thank you to all of my Senatorial colleagues for encouraging me to still do this Motion on the adjournment, because I can guarantee that it is very important. Most of the Motions on the adjournment that I have brought here today have been brought with a very specific purpose because members of the public, persons who are parties, in this one in particular, looking at the failure of the Government to address the overburdened accommodation at the Port of Spain General Hospital since the decommissioning of the Central Block in said institution.

I spoke to persons, Madam President, who both work in Port of Spain General Hospital and utilize the facilities at the hospital, and I was encouraged to visit the Port of Spain General Hospital and see first-hand what was happening

there, and from my experience I know that the Minister of Health will come here and play the usual blame game and possibly restate plans and give information that we have already had in terms of what is being done. So I looked at an article from August 29th, which was right after the earthquake happened, where we were told that certain measures would be put in place and that one of the options put in place is that we would use the St. James Medical Facility and persons would be relocated to facilities around the area which will be able to accommodate almost 300 inpatients.

Madam President, I think as a society, we should be at the point where we evaluate the decisions taken, look at what is actually happening and see if we have made the right decisions and if we need to change. Because, like I said, I have brought this Motion based on persons who are quite frankly extremely fed up with the situation and I will give some very clear examples of what is happening in Port of Spain General Hospital at this time. The information I have been given—and some of it are things I have seen first-hand—is that there are no elective surgeries being performed at ICU, as ICU has taken up the theatre space in Port of Spain General Hospital, and at this point the wait list for persons awaiting surgery is becoming ever-expanding and growing daily.

The wards are overcrowded. If you look specifically at Ward 3 in Port of Spain General Hospital, you will see what citizens are going through. With upwards of 30 patients in a single ward, add to that ward attendants and the doctors, you are looking at upwards of 50 people in a ward that is meant to accommodate 15 to 20 people at most.

There are 50 people in that ward with one exit, Madam President. There has been no OSHA Act enforcement. There has been no debriefing of staff in terms of

what the emergency procedures are. The Radiology Department is in a mess. They have lost, I heard, back scans from three to four years ago, and nothing has been done to address this. The Eye Department was relocated to St. James, while the Medical Records Department remained in the Port of Spain General Hospital, and this is a direct quote from someone working in this space that to have patient notes available on time for clinics this is literally running the records staff to the edge of sanity.

Now, Madam President, the persons who have to utilize our health care facilities and, in particular, Port of Spain General Hospital are under a lot of pressure. I have raised this Motion specific to Port of Spain because of the closure of the Central Block, but persons across the country have been complaining bitterly about the state of our health care system, and despite the assertion by the Prime Minister that we have best health care in the Commonwealth, the citizens of this country beg to differ.

Madam President, what we are looking at in the north-west region at this point in time is pure anguish as the persons have been just dislocated by the closure of the Central Block, and the patients who are reassigned to other public health care facilities have been reassigned to facilities that quite simply do not have the resources to meet the needs or have the capacity for secondary and tertiary health care. The Minister promised in September that construction of a new 540-bed patient tower to replace the Central Block will take place. My understanding is what has started is construction for a radiology department instead of the entire Central Block. So that they are again treating with the real problems facing the public health care system.

The Motion was specific to what has been done since the earthquake,

because I thought that at that time the pressure would have been on to act decisively. And while I appreciate that in an emergency you do have to make certain concessions, several months in, you ought to be able to evaluate if what you have done has worked, and if persons are benefiting from the changes made. What we are seeing are doctors that are in a work environment, that is quite frankly unsafe and in some cases unsanitary. You have patients who are housed in overcrowded wards and you have a Government that is willing to tell you that despite all of these problems, despite all of these things facing the persons utilizing the Port of Spain General Hospital, that all is well, and health care is well, and that Trinidadians should be satisfied with the state that our health care system is in. Thank you. [*Desk thumping*]

The Minister of Health (Hon. Terrence Deyalsingh): Thank you very much, Madam President. Madam President, the absolute hypocrisy of Sen. Haynes. Let me start. On June the 30th, 2017, I made a statement to the Parliament—June the 30th, 2017—in which I said:

“Further, last week, on June 22, 2017, Cabinet took a decision that...the Central Block of Port of Spain Hospital be demolished and two, a new Central Block will be constructed as a matter of urgency...”

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

The UNC Government sat on a report from PAHO for five years, from 2010—2015, with record budgets, \$300 billion spent, deficits, and what did they do? They built an 18-bed children's hospital in Couva. You ignored Central Block for five years and you have the gall and the temerity to ask me about Central Block? Let me tell you what we are doing. The Port of Spain General Hospital serves a catchment population of approximately 300,000 people. That is 23 per

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cent of the population which you ignored for five years, from Diego Martin to Barataria. You had no concern for Central Block then. So the hypocrisy about talking about Central Block.

So let me tell you. Let me give you the facts. I took a Note to Cabinet to rebuild Central Block. Your information is so wrong. I never said the construction of Central Block would start in September and that you are building a radiology department. What I said was Central Block will be developed in two phases. Phase one which started in September has to do with building new facilities to clear out and move over engineering, then when that is cleared—*[Interruption]* I sat in silence for your drivel. I sat in silence. And then once we remove the buildings and we remove the people, the new Central Block will start.

So a contract has been issued, the drawings for the phase one are now with the corporation, soil testing has taken place. Once that is finished and you remove engineering, and you remove laundry, then you start to build the new 540-bed tower which you never built because you were only concerned with Couva and to build an 80-bed children's hospital without a neonatal intensive care unit. So let me tell you what this 540-bed tower will consist of and we have to find the money.

Now, what I would like Sen. Haynes to do is talk to your de jure political leader, the hon. Kamla Persad-Bissessar, and go to Panama and bring back the \$500 million that the SIS stole *[Desk thumping]* and let us put that forward to Central Block. And while you are at it, ask your de facto political leader, Devant Maharaj, to find the \$500 million stolen and wasted on LifeSport, and between the \$500 million and the \$500 million stolen, we could get \$1 billion—

Mr. Vice-President: Minister. Senator! *[Crosstalk]* Senator!

Sen. Mark: So “how he coming here” and talking—*[Interruption]*

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Mr. Vice-President: Senator Mark!

Sen. Mark:—about the Leader of the party. Out of line. Sorry, Sir.

Mr. Vice-President: Continue Minister.

Hon. T. Deyalsingh: Yes. Ask your de jure political leader and your de facto political leader to bring back a billion dollars and we could use it toward Central Block. So what are we doing since the earthquake? [*Crosstalk*]

Mr. Vice-President: Minister, one second please. Can we have some silence while the Minister responds to the Motion on the adjournment? Can we allow the Minister to make his response, and I would like to have some—[*Interruption*]

Sen. Mark: “We don't want to hear.”

Sen. Ameen: No, people of Trinidad and Tobago want to hear. Let him continue. [*Interruption*]

Mr. Vice-President: I have asked for silence. Sen. Ameen, Sen. Hosein, Sen. Mark, there will be no more outbursts for the rest of the evening. None! Minister, continue please.

Hon. T. Deyalsingh: Thank you. So since the earthquake which we had to decant, because if they had done Central Block we would never have to decant in the first place. We have gone to Cabinet, a Note is before Cabinet now to— [*Interruption*]

Sen. Obika: I rise on a point of order subject to Standing Order 42(5), has the Minister declared his interest?

Mr. Vice-President: Minister, continue.

Hon. T. Deyalsingh: So we have gone to Cabinet. A Note is before Cabinet now because we have to find money to remodel existing buildings in Port of Spain and St. James to clear up the mess which you created because you did not fix Central

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Block when you had \$300 billion, but you built a hospital in Couva. Right?

So that is now before the Cabinet to repurpose the COSTAATT building in Port of Spain and to repurpose St. James. That is what we did since August 24th. Because you are right, it is overcrowded, but that was caused because there was an earthquake and people do not want to work in Central Block which you ignored for five years. So the new Central Block will be a 540-bed hospital, intensive care unit, HDU and coronary care unit, same-day surgery. It will have an MRI. Do you know Port of Spain hospital does not have an MRI? In this day and age—
[Interruption]

Sen. Obika: In pursuant to Standing Order 42(5), the hon. Minister has not declared his financial interest in the construction.

Mr. Vice-President: Minister, continue.

Hon. T. Deyalsingh: What? I have no financial interest in this. *[Crosstalk]* I give way, say it.

Sen. Obika: I wish to ask the Minister to declare if any member of the public that is close to him is connected to the construction in question, so that he declare his interest in the matter? *[Crosstalk]* If there is one, declare it. *[Crosstalk]*

[Mr. Vice-President stands]

Mr. Vice-President: Members? *[Interruption]* Sen. Obika, all Members, I am on my feet and I expect silence when I am on my feet. The hon. Minister is responding to a Motion on the adjournment. He has given way to Sen. Obika. Sen. Obika has made his statements. The proper procedure is that the Minister will now continue for the rest of the allotted time that he has as per the Standing Orders. For that period, unless the Minister gives way again there will be absolute silence in this Chamber. Continue, Minister.

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Hon. T. Deyalsingh: I hope I get injury time, but let me state for the record, I have no interest, no member of my family has any interest in this. You are just trying to cause scandal. A member of the public, my God.

So, Mr. Vice-President, we are putting an MRI in Port of Spain. I agree with Sen. Haynes, since the earthquake we have had to decant out of necessity, but out of necessity now we have to find tens of millions of dollars which the country does not have, but we are finding it to repurpose existing buildings in Port of Spain and St. James because, yes, there is discomfort, because out of necessity our Prime Minister is on record as championing the cause of Central Block. The hon. Kamla Persad-Bissessar never did. She ignored the population from Carenage, Diego Martin Central, Diego Martin West—[*Interruption*]

Sen. Ameen: You cannot say Carenage.

Hon. T. Deyalsingh: You did not build the hospital—Barataria, St. Ann's, 300 people. But what they did, they gave CEPEP contracts to fit health centres with not proper paperwork. So a Note is before Cabinet now as we speak to find money to repurpose buildings at Port of Spain and St. James because Sen. Haynes is right on one thing. We do have a problem, but we take ownership of the problem left behind by the hon. Members opposite. And again, ask your de jure and de facto political leaders to bring back the money from SIS and bring back the LifeSport money.

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

[*Mr. Vice-President stands*]

Mr. Vice-President: Members, please, on both sides. Sen. Haynes.

**Tobago Sandals
 (Environmental Concerns)**

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Sen. Anita Haynes: Thank you, Mr. Vice-President. I do not know if Members of the Government are aware that people are in fact looking on, and when we raise Motions and matters it is because they have been brought to us by real people who live in these spaces and that they are waiting for actual answers. So I hope, Mr. Vice-President, on this Motion which was also brought to me by very real people, with very real and very legitimate concerns, that the Minister of Planning and Development, who I think would probably be well prepared to answer because perhaps there is more work being done in the Ministry of Planning and Development than is being done in the Ministry of Health, so that the Minister was unable to answer the Motion and, therefore, gave us fluff.

So my intention, Mr. Vice-President, on this Motion on Sandals, which is to look very specifically at the environmental concerns associated with the location of the Tobago Sandals and whether or not the Government has effectively addressed the concerns raised by these persons. And it is really here to make Parliament, again, a place where the voice of people could be effectively represented and heard.

You see we have been inundated with propaganda from the Government since 2016 about all that Sandals will bring, and that the Government has almost personally appointed themselves as salespersons for Sandals. But I wish to remind them in this Motion, and as I raise some of these concerns, that their role as Government is to protect and preserve the interest of the people of Trinidad and Tobago, and to pursue development that is in the best interest of the future of Trinidad and Tobago and, in this particular case, Tobago.

8.50 p.m.

There has been an attempt to paint persons with environmental interests and

conservation interests and persons with legitimate concerns as obstructionists and as though they are obstructionists to development, rather than frontally tackling the issues and the concerns raised. We, in the Opposition, are used to these Government tactics. We are used to the blame games, we are used to being called obstructionists and unpatriotic but I am always a little taken aback when it is directed at citizens.

You see, I looked—the environmental groups have reached out to me and they have sent their concerns and I wish to put a number of them on the record, namely, in response to a press conference held by Government which is held in conjunction with Sandals—which is why I said they seem to have appointed themselves salespersons for the Sandals Hotel—that Minister Young said that there would be attempts to protect and preserve the environment while building Sandals, and Dr. Anjani Ganase, a marine scientist, had to go out of her way to debunk some of the things that have been put in place by Government propaganda, and she noted and I quote here:

“To construct the Sandals they speak of”—you—“are seeking to change natural assets. There is no other ecosystem conglomerate like this; for this reason, the Buccoo reef and lagoon area is the only coastal protected area in Trinidad and Tobago. The only way to enhance this environment would be through the active protection and management.”

She said we should:

“Leave nature alone...”

It goes on. She says the:

“...strategies...”—noted—“by Sandals representative Adam Stewart and Minister Young...”—were—“absent from...”—the knowledge that they

have as marine—"scientists..."—in terms of how—"A super hotel and ecologically thriving marine ecosystem..."—would—"co-exist."

She notes that these two things are mutually exclusive.

But what is really, really, worrying, is that as they have raised their concerns, they said there has been no attempt at real consultation with environmentalists in Tobago. I was told of a meeting in late 2016 or early 2017 where they were told it would be a consultation. When they walked in, they were given information and there was no room for feedback because it was almost a done deal. They said that if there were real consultations and real transparency in the dealing with the Sandals Hotel, that the area earmarked for this development, which is Golden Grove and the Buccoo estate, that the Government would agree with the environmentalists that if you are doing this the right way, then you ought to want an environmental impact assessment because that is the only way you can really tell if the cost of building the Sandals Hotel on our environmental assets is worth it.

Mr. Vice-President, the environmentalist noted that there seems to be at this point in time, a move to bypass having this environmental impact assessment done, and that a CEC would be granted in the absence of an environmental impact assessment. And the reason that I brought this Motion is that we were hoping that the Government will agree that if you are going to do the right thing, you would want an environmental impact assessment done before moving ahead with the Sandals Hotel.

Mr. Vice-President, what we are looking at and what we are talking about is the importance of the protection of coastal areas, fish nurseries. We are looking at tourism-related activities, flood control, filtration, amongst other things. This

particular area that has been designated for the Sandals Hotel is designated as an environmentally sensitive area. And even if you want to say that you can build the hotel and preserve the environment, the science is telling us that is simply not true. And so what we are looking at, Mr. Vice-President, is: Is the Government willing and ready to take a reasonable and responsible approach to development? No one is saying that you do not have to do things or you do not have to build things, but what we are saying is that there ought to be a reasonable and responsible approach to this entire process. What the environmentalists and persons in Tobago are asking for are real opportunities for transparency and consultation. They are hoping that the process that would be followed, that the Government would be willing to do the right thing by the people of Tobago.

We are asking, again, for the environmental impact assessment and I hope that in the response today that the Government will agree with this—we are not saying no, we are not saying you cannot build things, but we are saying that if you are going to do it, do it in a responsible manner, take into considerations those persons who have interest in protecting the environment in Tobago, and we hope that when answering the question, remember that people are looking on and they are expecting that you will take this process seriously and that you will give sensible answers to our questions. Thank you. [*Desk thumping*]

The Minister of Planning and Development (Hon. Camille Robinson-Regis):

Thank you very much, Mr. Vice-President. First of all, Mr. Vice-President, let me remind the goodly Senator that I have been a Member of the Parliament of Trinidad and Tobago since 1991 or perhaps 1992 and I do not think that there is anybody who could say that I have not served this country and this Parliament [*Desk thumping*] in a decent, responsible and respectful manner. Okay?

[*Crosstalk*] Yeah, so you do not need to school me on how I should respond. In addition to that, I am not going back to what happened but this particular Member of Parliament has been here for quite some time. We know exactly what we are doing.

Let me also say that, Mr. Vice-President, this Motion is founded on an incorrect premise. [*Desk thumping*] First of all, it is wholly incorrect, it is wholly unfounded. It is without basis in fact that anybody has said that Sandals is going to be built on No Man's Land. [*Crosstalk*] Nobody has said that. The Motion says the failure of the Government to address the environmental concerns associated with locating the Tobago Sandals in or near the No Man's Land area. Nobody has said that. Neither the Sandals people nor the Government of Trinidad and Tobago have said that. So this Motion is founded on a totally incorrect premise.

Sen. Obika: Keep telling yourself that.

Hon. C. Robinson-Regis: First of all, let me say that. Let me also say that, Mr. Vice-President, it is passing strange that a party—when in Government went to the Eddie Hart Ground and tried to build a sporting complex on an aquifer without any reference to the people of the area or to the environmental concerns that were raised—is now so very concerned about environmental issues. [*Crosstalk*] The current Opposition, the UNC. And, Mr. Vice-President, may I also bring to the attention of the goodly Senator that the people of that area who use the Eddie Hart Savannah had to go to the court of Trinidad and Tobago to prevent the Minister of Planning and the Minister of Sport and Youth Affairs—[*Interruption*]

Hon. T. Deyalsingh: What Government is that?

Hon. C. Robinson-Regis: The UNC, the last Government—had to go to the court to prevent the construction of a sporting complex on an established aquifer. So it

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is passing strange that suddenly you understand what people need and what people want.

Sen. Gopee-Scoon: And the environment.

Hon. C. Robinson-Regis: May I also remind the goodly Senator, Mr. Vice-President, that when SIS was building—[*Crosstalk*]—You want me to continue? When SIS was constructing the Point Fortin Highway, it was the current Member for Oropouche East who, when people were protesting, said that we should move them “like ah bag of aloo”. Suddenly, you all have care and concern for people who are protesting because of environmental issues.

Mr. Vice-President, let me remind the goodly Senator that when Dr. Kublalsingh was holding his fasting because of the same highway, your party denigrated—[*Crosstalk*]—You did denigrate Dr. Kublalsingh on a daily basis. So it is amazing to us on this side that suddenly you have care and concern for people who have environmental issues. [*Desk thumping*]

Let me also remind you that for the five years that you were in Government, the IMA was not allowed to do the state of the environment report because you never provided the opportunity or the ability for them to do it. As soon as we came into the Government, we gave them what they needed to prepare that report and it has been prepared. [*Desk thumping*]

Let me also say that the EMA was also stymied in the work that they had to do. [*Crosstalk*]

Hon. Senator: They were in school.

Hon. C. Robinson-Regis: Yes. [*Laughter*] They were stymied in the work that they had to do. Let me say for the record that in relation to environmental issues, it is the PNM in Government, in 2005, that went to Ramsar and asked for that very

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area, Buccoo, the Golden Grove Estate, to be declared an environmentally sensitive area, and there is no way, Mr. Vice-President, that the PNM in Government will allow anything to take place in an area that is environmentally sensitive without the proper consultation.

Let me also place on the record that when Fishermen and Friends of the Sea went to the court, straight to the Judicial Committee of the Privy Council, the Judicial Committee of the Privy Council made the point that the Government, through the EMA, had done everything that was necessary, including adequate public consultation in the relation to the Aripo Savannah for the Cumuto/Manzanilla highway. So this Government is not in the habit of doing things that are not in keeping with things being done environmentally sensitive.

Let me also say that the Vision document of the Government of Trinidad and Tobago, *Vision 2030*, places the environment at the centre of all development in Trinidad and Tobago: human development and physical development. Let me add that the company that has been established by the Government of Trinidad and Tobago to oversee the process for the development of Sandals in conjunction with Sandals has already made an application to the EMA for a CEC—[*Crosstalk*]—May I be allowed to complete what I have to say? And the EMA is the authority that will determine if there is a need for an EIA without any interference from the Government of Trinidad and Tobago. Thank you very kindly. [*Desk thumping*]

CHRISTMAS AND NEW YEAR GREETINGS

Mr. Vice-President: Hon. Members, I now invite Senators to bring greetings for both the Christmas season and the upcoming New Year's celebrations. Sen. Cummings. [*Desk thumping, crosstalk and laughter*]

Sen. Foster Cummings: Mr. Vice-President, I wish on behalf of the Government

Bench to extend Christmas greetings to you and your family and all Members of the Senate including my colleagues on the Opposition Bench and to their families and to all citizens of Trinidad and Tobago.

Christmas is celebrated by Christians and non-Christians alike to recall the birth of Jesus Christ. In Trinidad and Tobago, citizens attend mass and many take this celebration very seriously. In many rural districts, the house-to-house visits involve much food and drink and gift giving. Christmas is a time of love, Christmas carols and parang music dominate the airwaves. Mr. Vice-President, citizens use this opportunity to do repairs to their homes, change curtains and decorate and place fancy lights. The setting-up and decorating of the Christmas tree is a family activity that both adults and children look forward to. The purchase of new furniture and appliances has become part of the cultural behaviour in Trinidad and Tobago around this season.

Mr. Vice-President, the local flavour is added by such food and drink as ponche de crème, sorrel, ginger beer, pastels, ham, turkey, local wine and black cake. This is a must—the black cake that is, Mr. Vice-President. It is a time when families spend more time together, when workers exchange gifts and when politicians put some of their differences aside. In this festive season, let us share, let us love, let us celebrate the spirit of Christmas and Mr. Vice-President, may God's blessings be with all our citizens during this Christmas season and throughout the new year 2019. Thank you. [*Desk thumping*]

Sen. Wade Mark: Thank you, Mr. Vice-President. In this season of giving and sharing, goodwill and peace upon all men and women, I wish to extend on behalf of hon. Leader of the Opposition, the hon. Kamla Persad-Bissessar, and on behalf of my colleagues on the Opposition Bench warmest season's greetings to all of my

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colleagues and their respective families on the Government Bench as well as on the Independent Bench.

Mr. Vice-President, Christmas season, as you know, commemorates the birth of Jesus Christ and it rekindles the spirit of generosity towards each other. Christmas is also viewed as a time of reflection, thanksgiving, healing and renewed strengths. Let us seek out and assist those who are in need regardless of ethnicity, belief, background or constituency.

Mr. Vice-President, I cannot but extend our collective grief and sympathy to the tens of thousands of workers; those at Petrotrin who would be celebrating a sad and dark Christmas. I also want to extend on behalf of the Opposition to the families of the TSTT workers, 550 of them, who are on the breadline, not to mention the tens of thousands who have been placed there over the last three years. Mr. Vice-President, let us show care for those in our society and on the margins, the sick and the hungry, the poor and the persecuted, the weak and the vulnerable. Let us extend kindness and compassion to those citizens for this season and not only the season but throughout the year.

On this note, allow me on behalf of my colleagues, on behalf of my own family, to extend season's greetings to you, Mr. Vice-President and to your family, to the President of the Senate and to her family, to all of the parliamentary staff including the Clerk of the Senate, the Procedural Clerks at the table and of course, the officers that form the Parliamentary Police Unit. We wish to convey our deepest desire, also to the entire citizenry, for a warm, holy and joyful Christmas season and a positive, progressive and generally nation-building 2019.

We wish everyone a reflective 2019 and we hope that Almighty God will be able to bind this nation as we move forward into 2019, conscious of all our

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challenges but working together to make this nation a better nation where we will have peace, justice and progress for all. I thank you, Mr. Vice-President. [*Desk thumping*]

Sen. Hazel Thompson-Ahye: Mr. Vice-President, on behalf of this Independent Bench of nine, allow me to bring Christmas greetings in rhyme. As 2018, with its challenges, comes to an end, customary Christmas and New Year's greetings we now send. We extend to you, Mr. Vice-President, Madam President in absentia, Senators, staff, each one's family from our hearts, the love which flows from our shared humanity. And even in these days of increasing austerity, we send wishes for good health, happiness and prosperity.

We hope in 2019, this auspicious House of Parliament will pass laws for peace, order and essential good government. As we move Motions, ask questions, pass necessary law, let penchant for divisive, one-upmanship be no more. The welfare of our beloved nation and all citizens must be our only goal as the legislative agenda of next year starts to unfold. Let Christ, the reason for the season bring harmony, ubuntu, peace, no more fight. Merry Christmas, Happy New Year, and to all, a good night. [*Desk thumping, crosstalk and laughter*]

Mr. Vice-President: Hon. Senators, I, too, wish to join you in bringing greetings on the occasion of Christmas and the new year. I take this opportunity, as much as you have all just done, to speak about the reason for the season, to also add and remind everyone that in the season of giving, inundated with physical gifts, that we remember to give the gift of time to our loved ones, the gift of our hearts to our friends and neighbourhoods and the gift of the best version of ourselves to our country.

On the occasion on New Year's, I reflect on the long days that we have had

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and the heated debates of 2018, one that has just ended. I reflect on the new experiences that we have traversed, the new Senators that we have welcomed, the expectant fathers and the grandmothers. As we move speedily to 2019, I draw all Members' attention to the Coat of Arms above my head and the national flag that sits to my right and to my left which remind us constantly that for all of our differences, arguments, debates and difference of opinions, we all do this for love of country.

Therefore, all that is left to be said is from the Office of the President of the Senate and the Office of the Vice-President of the Senate, I wish all Members of this honourable House, both past and present, and by extension your families and more importantly, the people of the Republic of Trinidad and Tobago, a very merry Christmas and a happy and prosperous new year.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.16 p.m.