

SENATE*Thursday, April 11, 2019*

The Senate met at 2.30 p.m.

PRAYERS[MR. VICE- PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. Vice-President: Hon. Senators, I have granted leave of absence to Sen. The Hon. Dennis Moses, and to Sen. Sophia Chote SC, both of whom are out of the country.

SENATORS' APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. NDALE YOUNG

WHEREAS Senator Dennis Moses is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

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

UNREVISED

you, NDALE YOUNG, to be temporarily a member of the Senate, with effect from 11th April, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Dennis Moses.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 11th day of April, 2019"

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Paula-Mae Weekes

President.

TO: MR. JOSH O. W. DRAYTON

WHEREAS Senator Sophia Chote S.C., is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, PAULA-MAE WEEKES, President as aforesaid, in exercise of the power vested in me by section 44(1)(a) and section 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOSH O. W. DRAYTON, to be temporarily a member of the Senate with effect from 11th April, 2019 and continuing during the absence from Trinidad and Tobago of the said Senator Sophia Chote, S.C.

Given under my Hand and the Seal of the President of the Republic of Trinidad and

UNREVISED

Tobago at the Office of the President, St.
Ann's, this 11th day of April, 2019"

AFFIRMATION OF ALLEGIANCE

Senators Ndale Young and Josh Drayton took and subscribed the Affirmation of Allegiance as required by law.

CIVIL ASSET RECOVERY AND MANAGEMENT AND UNEXPLAINED WEALTH BILL, 2019

Bill to provide for the establishment of the Civil Asset Recovery and Management Agency for the recovery of criminal property through the use of the remedies of restriction in dealings with civil assets restriction and forfeiture of criminal property and the management of criminal property, and unexplained wealth orders and matters incidental thereto, brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made: That the next stage be taken on Monday, April 15, 2019.
[*Hon. F. Al-Rawi*]

Question put.

Sen. Mark: Division.

The Senate divided:

Ayes 22

Noes 6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Singh, A.

Cummings, F.

Dookie, D.

Simonette, G.

Thomas, A.

Young, N.

Richards, P.

Vieira, A.

Deonarine, Ms. A.

Seepersad, Ms. C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Drayton, J.

NOES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Question agreed to. [Desk thumping]

PAPERS LAID

1. Ministerial Response of the Ministry of Agriculture, Land and Fisheries to the Fifth Report of the Joint Select Committee on Land and Physical

UNREVISED

- Infrastructure, Fourth Session (2018/2019), Eleventh Parliament on an inquiry into the state of the Agriculture and Fisheries Industry in Tobago (with specific focus on the levels of participation in the industries and the output of farmers). [*The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat)*]
2. Annual Audited Financial Statements of MIC Institute of Technology (MIC-IT) formerly Metal Industries Company Limited, for the financial year ended September 30, 2017. [*The Minister in the Ministry of Finance (Sen. The Hon. Allyson West)*]
 3. Consolidated Audited Financial Statements of ExporTT Limited for the financial year ended September 30, 2017. [*Sen. The Hon. A. West*]
 4. Ministerial Response of the Ministry of Planning and Development to the Sixteenth Report of the Public Administration and Appropriations Committee, Third Session (2017/2018), Eleventh Parliament on the examination into the implementation of the Public Sector Investment Programme. [*The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan)*]

JOINT SELECT COMMITTEE REPORTS

(Presentation)

Social Services and Public Administration

Physical and Cyber Bullying

Sen. Paul Richards: Thank you, Mr. Vice-President. Good afternoon everyone. Mr. Vice-President, I have the honour to present the following report as listed on the Order Paper in my name:

Eighth Report of the Joint Select Committee on Social Services and Public Administration, Fourth Session (2018/2019), Eleventh Parliament on its

First Follow-up Inquiry into the current level of violence among students in schools with particular focus on physical and cyber bullying.

Finance and Legal Affairs

Waste Management Policies and Initiatives

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Vice-President, I have the honour to present the following report as listed on the Order Paper in the name of Sen. Sophia Chote SC:

Fifth Report of the Joint Select Committee on Finance and Legal Affairs, Fourth Session (2018/2019), Eleventh Parliament on a critical assessment of the waste management policies and initiatives of the State (with specific focus on solid waste).

ORAL ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Mr. Vice-President. Mr. Vice-President, the Government is pleased to announce that it will be answering all questions, save and except questions No. 132, 196 and 197. With regard to 196 and 197, we seek a two-week deferral.

The following questions stood on the Order Paper in the name of Sen. Taharqa Obika:

Hyatt Regency Hotel

(Taxes and Dividends Collected)

132. Can the hon. Minister of Housing and Urban Development advise as to the amount of taxes and dividends collected from the HYATT Regency Hotel (Trinidad and Tobago) for each year during the period 2015 to 2018?

Governor of the Central Bank

(Compensation Package)

- 196.** Can the hon. Minister of Finance provide a breakdown of the compensation package paid to the Governor of the Central Bank of Trinidad and Tobago?

Central Bank Inspector of Banks

(Details of)

- 197.** As regard the Inspector of Banks, Central Bank of Trinidad and Tobago, can the hon. Minister of Finance advise as to the following:
- i. the qualifications and experience required to hold the office;
 - ii. the reason why to date the post remains vacant?

Questions, by leave, deferred.

High Speed Catamaran Contract

(Details of)

- 99. Sen. Wade Mark** asked the hon. Minister of Works and Transport:
- Based on recent reports of the Government's award of a contract to design, build and deliver a high speed catamaran, can the Minister indicate:
- i. whether Australian Shipbuilder Austal has been awarded a contract valued at TT\$650.4 m to undertake this project; and
 - ii. if yes, can the Minister advise on the tender process used in the award of said contract?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you, Mr. Vice-President. Mr. Vice-President, the Austal Ships Pty Limited is a global shipbuilder and prime defence contractor. This company is recognized as a world leader in the design and construction of customized commercial and defence vessels.

Austal, the Australian shipbuilder, was awarded a contract to design and build and deliver a 49-metre high speed passenger cargo, roll-on, roll-off Catamaran ferry with a capacity of approximately 930 passengers, inclusive of 132

VIP seats, 150 cars and with the accommodation for trucks and a prison holding cell for up to 10 persons. The price agreed between the parties is US \$73,550,000.

The tender process used in the award of the said contract was conducted in the following stages: Cabinet agreed in May 2018, to an official visit by a delegation from Trinidad and Tobago to Australia, among other countries. The visit was part of the Government's initiative to seek solutions to improve reliability on the inter-island sea bridge. On that trip, the delegation was met with officials from Austal Ship Pty Limited and others. Arising out of the visit, proposals were received by the Government of the Republic of Trinidad and Tobago for the supply of fast ferries and military vessels. In June 2018, Cabinet appointed a committee to review the proposals received. The committee was comprised of the Minister in the Office of the Prime Minister and Minister in the Office of the Attorney General, as he was then; the Minister of Foreign and Caricom Affairs; the Minister of National Security, as he was then; the Minister of Public Utilities; and senior officials from the Ministry of Works and Transport, the Port Authority, the Maritime Technology Corporation Centre of the UTT, the Office of the Prime Minister and the Tobago Chamber of Commerce.

After the previous committee reviewed the proposal, a new committee was formed, comprising NIDCO officials and other experts, advisors, to conduct an in-depth discussion with Austal to finalize specifications and determine contract parameters. These decisions took place during the period August 27 to 29, 2018, at the office of the Ministry of Works and Transport. Haynes and Boone CDG of the United Kingdom, was engaged to provide legal support during the negotiations. This international law firm has global capabilities in the energy, maritime, financial service, corporate and project finance sector, and has built a significant international reputation serving the shipbuilding sector. Its shipbuilding clients

consist of ship owners, charterers and shipyards, covering the entire spectrum of commercial shipping, including the international superyacht sector.

Over the three-day period, this committee discussed several issues, inclusive of clarifying the technical, operational and maintenance requirements; risk assessment, including financial risk; commercial issues surrounding the price proposal; proposed delivery dates and other contractual issues.

Since the conclusion of these negotiations through various correspondence, the parties have finalized the vessel's specification, the contract sum and a recommendation was made to the award of a contract to Austal for the construction of a 94-metre high speed passenger cargo, roll-on, roll-off catamaran ferry at an estimated cost of \$73,550,000.

I thank you.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Mr. Vice-President, can the hon. Minister indicate when was this contract concluded? They awarded a contract. When was it concluded?

Mr. Vice-President: Minister of Works and Transport.

Sen. The Hon. R. Sinanan: Thank you. Mr. Vice-President, I will not have at this point in time the exact date the contract was signed. However, I did indicate the period of the negotiation and subsequent to that, the contract was signed and the down-payment was made. But I can furnish the hon. Senator with an exact date of the signing of the contract, if so required.

Sen. Mark: Well, I do require it, Sir. Mr. Vice-President, can the hon. Minister indicate whether the Central Tenders Board had any role whatsoever to play in this awarding of this contract to Austal? Was the Central Tenders Board involved?

Sen. The Hon. R. Sinanan: Thank you, Mr. Vice-President. I did indicate the process that was used and this is an arrangement that has been facilitated by the

Government of Australia, through their Eximbank. And having done that, there was no role for the Central Tenders Board because the Australian Eximbank will not finance a vessel that is not built in Australia. I thank you.

Mr. Vice-President: Sen. Mark.

Sen. Mark: May I ask the hon. Minister whether this fast ferry is being built in Australia.

Mr. Vice-President: Minister of Works and Transport.

Sen. The Hon. R. Sinanan: Thank you. Mr. Vice-President, this Government contracted Austal of Australia. The hon. Senator will know that you may buy a car—just to break it down in the layman language—from a certain company. The car might be an American car. Sometimes these cars are made in Japan. All right? We would have contracted Austal shipbuilders of Australia, and that is who we are dealing with. So wherever the vessel's parts come from, or what part of the vessel, we are contracted with Austal of Australia. Thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Mr. Vice-President. Mr. Vice-President, having regard to the Minister's answer with respect to the preferred choice of Austal and the specifications of the vessel, can the Minister indicate whether or not it was a consideration for the Government to select Austal, based on the fact that the Austal vessels use an aluminium hull and there have been several challenges with respect to these vessels in the US, in Puerto Rico and several European countries? Can the Minister indicate, having regard to all of these factors, why Austal was still selected when their vessels have had a lot of defects in the past?

Mr. Vice-President: I will not allow that question, Sen. Hosein. Next question, Sen. Mark.

Sen. Mark: Mr. Vice-President, we were told that Haynes and Boone was engaged by the Government to—

Mr. Vice-President: Sen. Mark, are you asking the next question on the Order Paper?

Sen. Mark: No, we have four supplemental; I asked two. Sen. Hosein asked one, so I have a fourth.

Mr. Vice-President: Go ahead.

Sen. Mark: So I am asking the hon. Minister, Mr. Vice-President, can he provide to this Senate the cost of the expertise in terms of fees paid to Haynes and Boone in offering advice for the consummation of this award of the contract?

Mr. Vice-President: Minister of Works and Transport.

Sen. The Hon. R. Sinanan: Mr. Vice-President, I will, most certainly, make the fees available to the hon. Senator, but I can indicate it is a lot less than what this country paid for legal fees between 2010 and 2015. [*Laughter and desk thumping*]

Mr. Vice-President: Next question on the Order Paper, Sen. Mark. [*Crosstalk*]

Hon. Senator: Give them the figure.

Sen. Mark: An assurance, eh? [*Crosstalk*]

Sen. The Hon. R. Sinanan: \$100 million, plus VAT. [*Crosstalk*]

Mr. Vice-President: Sen. Mark, one second. Could we allow the process of Oral Questions to continue without the elevation of noise in the Chamber? I would like to hear Sen. Mark ask the question and then the subsequent answer. Sen. Mark, continue.

Government's Award of Contract

(Details of Australian Shipbuilder Austal)

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

Based on recent reports of the Government's award of a contract to the Australian Shipbuilder Austal, can the Minister advise on the following:

- i. whether an agent acted for Austal in Trinidad and Tobago;
- ii. if yes, what is the name of the agent; and
- iii. what was the total amount paid to the agent as commission?

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan): Thank you again, Mr. Vice-President. Mr. Vice-President, again this question—let me “doh” get too political with it. There is no agent and there has never been an agent acting for Austal for the new ferries and military vessels, or anything else, in discussions, negotiations or transactions with the Government or with any government department, statutory authority, state enterprise or government agencies in Trinidad and Tobago. As such, since there were no agencies acting for Austal, this part of the question is not applicable. And since there was no agent acting for Austal, no commission could possibly be paid. I thank you.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Mr. Vice-President, in terms of the award of the contract for the construction of this vessel, can the hon. Minister indicate when this particular vessel will be delivered to the people of Trinidad and Tobago?

Mr. Vice-President: I will not allow that question, Sen. Mark. Next question?

Sen. Mark: Well, since there are no agents involved in this particular transaction, I would like to ask the Minister whether the Government is comfortable with Austal building this vessel in Vung Tau Shipyard in a warehouse in Vietnam. Are you aware of this, hon. Minister, through the Vice-President?

Mr. Vice-President: I will not allow that question, Sen. Mark.

Sen. Mark: Well, Mr. Vice-President—I think my colleague has one.

Mr. Vice-President: Sen. Hosein.

Sen. S. Hosein: Thank you very much, Mr. Vice-President. In light of the Minister's answer with respect to the agent, and this vessel was selected on a visit by the Prime Minister and the Minister of Communications to Australia, can the Minister then confirm whether or not the Prime Minister and/or the Minister of Communications acted as the agent for Austal in this deal, Mr. Vice-President?

Mr. Vice-President: Minister of Works and Transport.

Sen. The Hon. R. Sinanan: Mr. Vice-President, I never indicated that the Prime Minister or the Minister of Communications chose this vessel in Australia. The Prime Minister and the Minister of Communications and a delegation visited the shipyard. This vessel was custom-built, starting from scratch for the purpose of Trinidad and Tobago. The Prime Minister of Trinidad and Tobago is the Prime Minister of Trinidad and Tobago. He is not an agent of the Port Authority. Thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Mark.

Sen. Mark: But what prompted the Prime Minister to purchase, or to order this particular vessel? Did he just get a “vaps” that he must purchase this vessel?

Mr. Vice-President: Minister of Works and Transport.

Sen. The Hon. R. Sinanan: Mr. Vice-President, sometimes I think about the questions that they ask. The reason why the Prime Minister had to make a visit to ensure that we have a vibrant sea bridge is because between 2010 and 2015 the previous government ran down the vessels at the port [*Desk thumping*] and this country was placed in a predicament—

Sen. S. Hosein: “Allyuh run down de *Galacia* and break down de sea bridge.”

Mr. Vice-President: Sen. Hosein, there is no need to shout across the floor while the Minister is responding to a supplemental question. Let me just remind

Members of my last ruling Tuesday night. Do not forget it. It still applies. Continue, Minister.

Sen. The Hon. R. Sinanan: Mr. Vice-President, I was saying, it was in 2013 that the previous board at the Port Authority took a decision to cancel the contract of Bay Ferries. That was the company that was maintaining the two fast ferries. They reduced the contract from three years to two years, to one year, and put nothing in place for when Bay Ferries left our shore, to maintain the vessels. That, as a result, was the end of our two fast ferries, to some extent. We spent millions of dollars trying to get one back up, and one is virtually impossible to bring back on the sea bridge. And that is the reason why the Prime Minister had to go out there and use his influence to ensure that the Australian Government supported us in getting vessels to serve the sea bridge between Trinidad and Tobago. I thank you. [*Desk thumping*]

Mr. Vice-President: Sen. Mark.

Sen. Mark: I wonder if it is the reason why Ferdie Ferreira—

Mr. Vice-President: Sen. Mark, ask a question. What is the question?

Sen. Mark:—confirmed that it is your Government that ended the Bay Ferries contract.

Hon. Senator: “They doh like Ferdie, eh.”

Sen. Mark: Anyway, Mr. Vice-President, I could not allow this misinformation to stay on the *Hansard*, when he knows otherwise. [*Desk thumping*]

Mr. Vice-President: Sen. Mark, ask the question.

**Oilfields Workers’ Trade Union
(Privatization of Cove Power Station)**

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

In light of claims by the Oilfields Workers' Trade Union that the Government intends to privatize the Trinidad and Tobago Electricity Commission Cove Power Station, can the Minister advise if and when said privatization will be put into effect?

The Minister of Public Utilities (Sen. The Hon. Robert Le Hunte): This question, as appears to be customary, is a classic fake news. The Government has not been engaged in any discussions with anyone regarding the privatization of the Cove Power Station and has no intention—I repeat—no intention of privatizing it.

Mr. Vice-President: Sen. Mark.

Sen. Mark: Can the hon. Minister indicate whether it is the intention of the Government to have the Cove Power Station refurbished? Can you answer that?

Mr. Vice-President: I will not allow that question, Sen. Mark.

Sen. Mark: Well, can I ask him whether the Government has any intention, whatsoever, to have any discussions in the not-too-distant future as it relates to the possible divestment of this particular organization? Is there any intention in the not-too-distant future? Not in the immediate period, but in the future.

3.00 p.m.

Sen. The Hon. R. Le Hunte: Mr. Vice-President, again, I can say that the Government, and in keeping with what I have said before, has not been engaged in any discussions with anyone regarding the privatization of the Cove Power Station and has no intention of privatizing it. Asked and answered.

Firearm Users Licences

(Details of Applications)

172. Sen. Saddam Hosein on behalf of Sen. Taharqa Obika asked the hon. Minister of National Security:

As regard Firearm Users Licences, for the period September 30, 2015 to January 31, 2019, can the Minister indicate the following:

- i. how many applications were received by the Commissioner of Police; and
- ii. how many of the applications referred to in (i) have been approved?

The Minister of Agriculture, Land and Fisheries (Sen. The Hon. Clarence Rambharat): Mr. Vice-President, I respond to this question on behalf of the Government. According to the information provided by the Commissioner of Police, for the period September 30, 2015 to January 31, 2019, 7,076 applications for firearm users licences were received and of that number, 1,088 firearm users licences were issued. Thank you very much.

Sen. S. Hosein: Mr. Vice-President, having regard to the large number of applications that were made for firearm users licenses and the small number that was granted and complaints from members of the public, especially the business community, can the Minister indicate whether or not any steps will be taken to expedite the outstanding applications?

Sen. The Hon. C. Rambharat: Mr. Vice-President, I must apologize but I am not in a position to answer that question. The grant of FULs is a matter for the Commissioner of Police and if I have to answer that, I would have to seek the information from the Commissioner of Police. Thank you.

Sen. S. Hosein: Mr. Vice-President, can the Government then indicate whether or not any additional resources will be given to the Commissioner of Police for the expedition or granting of these firearm users licences?

Mr. Vice-President: I will not allow that question, Sen. Hosein. Any more supplementals?

Sen. Mark: Mr. Vice-President, I have a number of questions on the Appendix

that are due today, can you advise me as to whether they will be circulated?

ANSWERS TO QUESTIONS

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Mr. Vice-President. We will be circulating answers to Question Nos. 164, 189, 190, 191, 192 and 193. We ask for a two-week deferral of 194 and 213 is not due as yet.

Mr. Vice-President: The deferral that the Member seeks for Question No. 194 is so granted. Sen. Mark, as you have heard: 164, 189, 190, 192 and 193 will be circulated. Sen. Obika, you have a question?

Sen. Obika: Yes, Mr. Vice-President. Just confirming, I may have missed it, Questions 196 and 197. Are they deferred?

Mr. Vice-President: Yes, Sen. Obika, 196 and 197 on the Order Paper today were deferred earlier.

Sen. Obika: Okay, thank you.

WRITTEN ANSWERS TO QUESTIONS

Immigration Detention Centre

(Lack of medical care to detainees)

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

Having regard to claims of a lack of medical care being provided to detainees at the Immigration Detention Centre, can the Minister indicate:

- i. whether said claims have been investigated; and
- ii. if the answer to (i) is in the affirmative, can the Minister advise as to the findings of such investigations?

Paria Fuel Trading Company Limited

(Details of fuel imported and sold)

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

As regard Paria Fuel Trading Company Limited, for the period December 01, 2018 to February 28, 2019, can the Minister advise as to the following:

- i. the total amount of fuel, in barrels, imported by the company;
- ii. the cost, in US dollars, of procuring the fuels referred to in (i) above;
- iii. the amount of imported fuel sold on the domestic market and on the regional market over the period; and
- iv. whether the company is a net earner of US dollars?

National Gas Company

(Details of Vehicles)

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

As regard the National Gas Company, for the period January 01, 2016 to February 28, 2019, can the Minister provide the following:

- i. a breakdown of the number of vehicles (cars, SUVs, pick-up vans, buses/maxi taxis, panel vans, among others) purchased and/or leased by the company over the period;
- ii. a breakdown of the cost of each vehicle;
- iii. the reasons for the purchase of each vehicle;
- iv. the companies from whom said vehicles were purchased; and
- v. the cost associated with outfitting the vehicles?

Telecommunication Services of Trinidad and Tobago

(Details of Vehicles)

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

As regard the Telecommunication Services of Trinidad and Tobago, for the period September 30, 2015 to February 28, 2019, can the Minister provide the following:

- i. a breakdown of the number of vehicles (cars, trucks, station wagons, pick up vans, SUVs among others) purchased and/or leased;
- ii. a breakdown of the cost of each vehicle;
- iii. the companies from whom these vehicles were purchased; and
- iv. the cost associated with outfitting the vehicles?

Trinidad and Tobago Electricity Commission

(Details of Vehicles)

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

As regard the Trinidad and Tobago Electricity Commission, for the period September 30, 2015 to February 28, 2019, can the Minister provide the following:

- i. a breakdown of the number of vehicles (cars, trucks, station wagons, pick up vans, SUVs among others) purchased and/ or leased;
- ii. a breakdown of the cost of each vehicle;
- iii. the companies from whom these vehicles were purchased; and
- iv. the cost associated with outfitting the vehicles?

Trinidad and Tobago Postal Corporation

(Details of Vehicles)

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

As regard the Trinidad and Tobago Postal Corporation, for the period September 30, 2015 to February 28, 2019, can the Minister provide the following:

- i. a breakdown of the number of vehicles (cars, trucks, station wagons, pick up vans, SUVs among others) purchased and/or leased;
- ii. a breakdown of the cost of each vehicle;
- iii. the companies from whom these vehicles were purchased; and

iv. the cost associated with outfitting the vehicles

Vide end of sitting for written answers.

NON-PROFIT ORGANISATIONS BILL, 2019

[Second day]

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Members, on the last occasion of the Senate sitting on Tuesday, the hon. Attorney General did indicate that he would be moving amendments and that they would be circulated. Just a matter of housekeeping, is everyone in receipt of said amendments moved by the Attorney General? Yes? Okay. As well today, in this sitting, we have also had amendments circulated by Sen. Drayton. Is everyone in receipt of those amendments? A copy. Yes? So we can begin.

The Bill before us has 29 clauses and one Schedule. Members, as per usual, are allowed to move amendments as we go through clause by clause. Sen. Hosein.

Sen. S. Hosein: I have two sets of amendments from the Attorney General. One dated the 9th of April and one dated the 11th. Which one are we relying on?

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chairman, we are relying on the latter one, the one from today. There were some cross-reference changes that we wanted to make, just numerically. And very importantly, we, in a further scrub, realized that we should be exempting the Registrar of Friendly Societies. So that is the only difference in there. Some numerical changes. In the meeting with the non-profit organization sector, as I did over the several days, including up to yesterday, they asked us to change, for instance, set 14 days to 30 days, we agreed with those, so we have done numerical changes, some time frame enlargement and we have added in the

Registrar of Friendly Societies.

Sen. S. Hosein: Okay, thank you.

Mr. Chairman: Okay. So given those statements, let me ask the question again. So the amendments circulated by the Attorney General today, does everyone have that in their possession in front of them?

[Assent indicated]

Great, perfect.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

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

Sen. Mark: Mr. Chairman, I noted that there is mention in this legislation on the matter of gifts and nowhere in the definition section or the interpretation section is there a provision that refers to gifts. You know, under the Integrity in Public Life Act, there is a provision that deals with gifts and if you get a gift value beyond a certain sum, financial amount, you have to declare it and if it falls under that amount, you are not obligated to declare it. But in this legislation, reference is made to gifts but nowhere in the interpretation section. So I do not know how the members of the NPO community would be guided on this matter of gifts because as you would see, they have to account for every gift that is being given.

Mr. Al-Rawi: Mr. Chairman, may I please recommend that we take a very orderly approach to this committee stage? The Opposition has circulated no amendments. Sen. Drayton has an amendment to clause 3, the Government has none and the Opposition has already categorically stated they are not supporting this law and insofar as in the time frame between Tuesday to today, we have not received a single written proposal from the Opposition, their stated position is on the record. Sen. Drayton has an amendment circulated. Could I invite us to consider those

which are circulated first and then perhaps go into discussions? Of course, I am in your hands as to how this is to be dealt with.

Sen. Ameen: Mr. Chairman, for the record, the Opposition's position is that it will not support without consultation from the NPOs. We did indicate that. Not that we categorically would not support, for the record.

Mr. Chairman: All right. As far as the procedure is, we are going through the clauses, clause by clause, and individuals, Attorney General, are allowed to indicate or have some sort of discussion as to any amendments they wish to proffer. We will address all the amendments. Those that have been circulated and those that will be put on the floor. And I think that as long as we are going clause by clause, we will be taking that in an orderly fashion.

I do recognize that Sen. Drayton has put forward in a written fashion amendments to clause 3. When I, from a procedural standpoint, ask the question and take the slight pause, then Members will indicate as to whether they have any amendments and so forth. We will address all of them and it is a procedure to follow as we dispense of or treat with each amendment as proposed on the floor.

Mr. Al-Rawi: As I understand the procedure, Mr. Chairman, under the Standing Orders, we must deal with written amendments. I understand we have a practice of some general discussion, certainly in considering written amendments, but I do not understand that we just start off with the questions in the dark. I mean, I understand it and have always understood it from my years in the Senate, in particular, that we go with written amendments first. That puts an order and context to this discussion.

Sen. Mark: Are you challenging the ruling of the Chair?

Hon. Senator: The Chair has ruled.

Mr. Chairman: Okay, let me just state, after taking it under advisement with the

Clerks who are here to obviously assist the Chair and the Presiding Officers, that what the Attorney General is saying is true and therefore we will be taking the written and circulated amendments and dispense with those first and then deal with the general amendments if they come after. So that being said, Sen. Drayton, you have amendments to clause 3? Proceed.

Sen. Drayton: Thank you, Chair. So just to clarify that, the amendments that I have proposed here, these are amendments that came from the Civil Society for Good Governance and other 90-plus civil society organizations that consulted with me and suggested that I include these. So just to kind of lay to rest some of the issues of consultation in the room.

So in terms of subparagraph (1), definition, “controller”, there is a question around (d), “senior officer of the non-profit organisation”, and that being confused with “directors” because you have officers of the board and then you also have the persons who are responsible for the management of the organization, that is (c). So I am suggesting that (d) be deleted since they are covered in both (a) and (c), unless the hon. Attorney General could offer some clarifications. Sure.

Mr. Al-Rawi: Thank you. May I, Mr. Chair? I welcome the suggestion and I would also like to indicate that the Government did, in fact, up to yesterday, meet with representatives of the 89 other entities and we had very fulsome—and we in fact circulated the written amendments to them and I received feedback that the amendments were very welcomed and addressed the issues raised by those societies. So I welcome Sen. Drayton’s resonating position to that, because we are taking 89 plus 94, so I welcome the hon. Senator.

If I could explain? We take a graduated approach to this for the purpose of catching incorporated and unincorporated entities because they are of different types and structures. Specifically, we do catch the formal positions, “director of a

non-profit company” because that is specifically registered under Part V of the Companies Act, so that one we know with certainty that there is an actual position or locus in law for that category of person.

We then went in (b), “a trustee of a trust”, because, again, that is known.

(c):

“a person responsible for the management or administration of an unincorporated body where, the non-profit organisation is established as an unincorporated body;”

Again, that one is with certainty and with reference to the people that actually have responsibility.

The reason why we went with (d) is because we may very well not be with the incorporated or unincorporated established body because we are now looking for another order of priority and that is where we went to “senior officer”. So it was intended to make sure that you could take a priority approach. Do you fit a definition because it exists in law? You are a director of a company, you are a trustee. Do we go to management where there is an established unincorporated entity and therefore that is known? And then the other sweep-up provision is what (d) intended to do: “a senior officer”. So it was really intended to cast a priority applied approach to this.

So CPC’s department, we did look at it and we welcomed the suggestion but we felt that if we were to remove it, we may perhaps unwittingly, in some circumstances, lose that but I do welcome the discussion on the Benches.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Thank you, Chair. I understand the amendment but if you look at the Companies Act, there is a distinction between a “director” and an “officer”. They are not necessarily one in the same. So if you look at the definitions in the

Companies Act, you will see a:

“‘director’, in relation to a body corporate, means a person occupying therein the position of a director by whatever title he is called;”

And then “officer” is similarly defined:

“...in relation to a body corporate means”—could be—
“...chairman, deputy chairman...”

And most importantly, the company’s secretary. And if you go down lower in the Act at 99, you would see “Duty of Directors and Officers”, so I think it is important to maintain the distinction.

Mr. Chairman: Are there any other comments in relation to that line of clause 3? Okay. Sen. Drayton, there is a second part to that clause in terms of the amendment dealing with (e), deleting “owned”.

Sen. Drayton: Sure. Given that NPOs are not owned, I wanted to understand.

Mr. Al-Rawi: We agree.

Sen. Drayton: [*Laughter*] Okay, thank you.

Mr. Al-Rawi: We thank the hon. Senator, we agree.

Mr. Chairman: You agree?

Mr. Al-Rawi: Yes, Sir.

Sen. Drayton: Okay.

Mr. Al-Rawi: We also agree with “monetary worth of property and assets acquired”. And if may, I apologize, Sen. Drayton, I am stealing some of your run-up. “Official Receiver” is in fact defined. We amended it in the Companies Act under the Companies (Amdt.) Bill which we did in the Senate and the “Official Receiver” is defined as the “Chief State Solicitor”. So we thank you for that. And we did have a definition in section 366 of the Companies Act as well, but we clarified that in Companies (Amdt.) Act.

So, Mr. Chairman, for the record, having distinguished the rationale between us on definition of “controller” in deletion of (d), hopefully the hon. Senator is satisfied with that and may or may not remove his position, withdraw that one, and having answered the last one which is that “Official Receiver” is defined, we agree with the other two proposals. So I do not know insofar as you may wish to put this amendment to the vote, if the first and the last were withdrawn, we would be agreeing with Sen. Drayton’s amendments. But that would be for Sen. Drayton to put on the record.

Mr. Chairman: Okay, so Sen. Drayton, as proposed in written form, your amendments to clause 3, are you in agreement to dispense with the first part of the amendment as you have circulated and only circulate the last three which is in agreement with the Attorney General?

Mr. Al-Rawi: No, Sir. I am asking Sen. Drayton, you see, if the question is put to agree to your amendment as circulated, we would have to say no because we do not agree to all for the reasons expounded. So what we are inviting, if you are minded to do it, is that you would withdraw the first bracket and the last bracket because “Official Receiver” is, in fact, defined and we prefer to keep the definition in (c) which you have proposed to delete for the reasons that both Sen. Vieira and I share. So if you are minded to do that, when your question is put, then we can say yes to your amendment, otherwise we would have to say no and then propose two of the four things you did.

Sen. Drayton: Chair, I wish to withdraw the first and the fourth amendments to clause 3.

Mr. Al-Rawi: Much obliged.

Sen. Drayton: You are welcome.

Mr. Chairman: Hon. Members, the question is that clause 3 be amended as

follows:

In subparagraph (1), definition “controller”, (e) delete “owned” and in subparagraph (1), definition, “gross annual income”, (f), delete “money’s worth” and replace with “monetary worth of property and assets acquired”.

[Discussion with the Clerk]

Mr. Chairman: Okay, all right, so I am being advised that if we have any other further comments or amendments to clause 3, that we will take them now before I finally put the question. Amendments. Sen. Mark.

Sen. Mark: Mr. Chairman, I want you to take charge of this Committee, eh, and let nobody else take charge.

Mr. Chairman: All right. Sen. Mark, ask your question.

Sen. Mark: Okay. I am suggesting for clarification that there is the word “gift” used in many sections of this legislation and there is no definition as to what it means and this could be confusing to these ordinary people’s organizations called NPOs. So I am asking, Mr. Chairman, whether the Government is inclined to look at this lacunae in the legislation and to consider whether there is need for a definition of the word “gift” under the interpretation section. It is just for the consideration of the Government.

Mr. Al-Rawi: Mr. Chair, what I want to be very clear about, because I am very concerned about time management today, Sen. Ameen put forward the Opposition’s official position that they are not supporting the law unless there is more consultation. We have not stopped to have the kind of consultation that Sen. Ameen has referred to because the Opposition said take it to a joint select committee, pause the Bill, et cetera. So I want to be unusually sharp in how I approach this issue from a time management point of view because I really do not want to be entertaining a very long discussion in respect of amendments which are

not written in a circumstance where the Opposition is just going to say no. So that is what I am concerned about.

Sen. Mark: Who is in charge here?

Mr. Chairman: Sen. Mark, the Attorney General has made a statement, allow me to respond to that. I do not need any extra commentary.

[Discussion with the Clerk]

So, Attorney General, understanding what you have said, and as much as time management falls to the Chair in terms of treating with the Bill that is before us, what I am always inclined to do is to ensure the rights of each Member are protected. As much as amendments are to be circulated prior to the start of the proceedings for the view of all Members and to be discussed as we go through clause by clause, Members are also allowed to engage in very small discussions in relation to a clause or something that may have come up at that particular point in time.

Any statements that would have gone in relation to the debate as to whether the support or not, does not prevent that right to have a discussion on a particular clause if it comes up. Attorney General, it is up to you at that point in time being the person who is piloting the Bill or moving the Motion, to either engage or not engage or state as to whether you are inclined to accept or not accept those amendments. That is the procedure that we will follow.

I will manage the time in relation to this Bill so that there is no drawn out long discussion or engagement of any debate in relation to any of the clauses. That part of the procedure is over. So that is how we are going to proceed, it is how we have proceeded for various Bills that have come before the Senate. Attorney General, so we will keep it tight, rest assured, I give you that assurance but I am not going to encroach upon the rights of Members to speak on a particular clause.

I will, as you have indicated and as the Standing Orders as put forth, take the amendments as priority in that regard.

Mr. Al-Rawi: Sure. If I could, and I accept and welcome your direction and by no way seek to challenge it. I just want to explain just for the record lest it be twisted. My rationale is grounded in Standing Order 68(1):

“The Clerk in Committee of the Whole...shall call the number of each clause in succession:

(a) the Chairman shall propose the question ‘*that the clause stand part of the Bill*’;

(b) a discussion shall ensue, during which amendments may be moved.

Amendments must be in writing and handed to the Clerk...”

So I accept that we have a full discussion but you see the only reason that I am taking this approach today is [*Crosstalk*] in light of Sen. Mark’s party and the Opposition’s position in relation to this Bill. [*Crosstalk*] So I want to mark the spot carefully because maybe it is the fact that I have been in Parliament four days straight, but the point is that I have noticed a particular trend in the Opposition and today is not the day that I want to indulge certain activities. So I am guided by you, I just wanted for the record to state why I said what I said and why I asked for the direction. I am perfectly happy, Sir, to be guided exactly as you have already said so I will not detain us any further.

Mr. Chairman: All right, Attorney General, noted. We will not, like I said, prolong today’s proceedings by going into a back and forth.

Mr. Al-Rawi: Excellent. Great. If I may answer the question put by Sen. Mark, I do not agree with the need for any definition. It is the plain and ordinary meaning and that is perfectly capable of standing on its own.

Mr. Chairman: And that is quite fine. So as to keep the proceedings moving,

anybody else, comments on clause 3? Sen. Mark.

Sen. Mark: Yeah, Mr. Chair, we wanted to get some clarification on this matter of “cash”.

If you look at clause 3, we do not know whether this definition is necessary. When we look under the Companies Act, we have not seen this definition of “cash” emerging or in any other tax legislation. We know about the definition of “money” under the Value Added Tax Act, which Mr. Chairman, we are of the view should be adopted for consistency. But the definition does not the address the issue even of virtual currencies. So this question of the definition of “cash” in this particular part of the legislation, having regard to what we have seen under the Companies Act and when we looked at, for instance, other tax-related legislation there is no such definition. So we do not believe this is really necessary or relevant for the legislation at this time.

3.30 p.m.

Mr. Al-Rawi: Mr. Chairman, there are no amendments put forward by the Opposition, and therefore I am not entertaining any of the Opposition's points of view—

Sen. Ameen: What? That is for the Chair to decide.

Mr. Al-Rawi: —specifically on this particular matter and I will tell you why. The position in relation to cash, I have not even heard the hon. Member say what he wants instead. So we are having a debate and a discussion on something that is not crystallized. On a clause by clause basis, we are now going into the sub-issues, word by word, and the reason that I have been very strict today in my recommendation is that we are going to enter into a frolic, Mr. Chairman. And in relation to the definition of “cash”, had the hon. Member gone to look at the Anti-Terrorism Act, et cetera, he would find these things covered. So not only do I

disagree with the submissions made but it is coming in a disorganized fashion.

Sen. Ramdeen: Mr. Chair, the suggestion that Sen. Mark has made is a comment that finds its root in the communication—

Mr. Al-Rawi: What is the amendment?

Sen. Ramdeen:—that is presented by the Law Association.

Mr. Chairman: Okay. So, before I allow Sen. Vieira to weigh in on this, the procedure that we are following—so the Attorney General has indicated that he is not inclined, you can just correct me if only wrong, Attorney General—to accept any amendments coming on the floor.

Mr. Al-Rawi: No Sir. That is not generally it. I have had a few years well experience in this Parliament, if I could be permitted to put this, and my actions have always demonstrated that we are prepared to take genuine contributions, including those coming from the Opposition.

Sen. Gopee-Scoon: That is a fact.

Mr. Al-Rawi: That is a fact. You can judge me on my actions. But where we are going to enter into an exercise which is going to be of the type that I well anticipate today, Mr. Chairman, because there have been very clear positions drawn in relation to this in the debate. I am very concerned that we do so in a proper way.

So I can go through the question by question and answer and distinguish it. I do not want to stymie discussion, but I am just marking the spot carefully as to my deep-rooted suspicion in the Opposition's objective today.

So in relation to the definition of “cash”, we have looked at the definition of “cash” in other jurisdictions. We went in our definition of “cash” to a type which includes things, for instance which are contemplated in other jurisdictions; bearer negotiable instruments. We, of course, prohibited those in our own jurisdiction when we went to bearer share certificates. But bearer negotiable instruments or

certificates may exist in other jurisdictions and there is a certain degree of extraterritoriality and therefore we count them. So we are quite comfortable with the recommendation for cash as set out in the Bill.

Mr. Chairman: Sen. Vieira, you have comments?

Sen. Vieira: Thank you. Just to help on the debate. Sen. Mark's point does have some validity. "Cash" is not a word that one ordinarily comes across. I did look at the Anti-Terrorism Bill and what is defined is "money". Now, if you were to substitute "money" for "cash", it almost equates the two definitions come—

Now, in the Interpretation Act, there is no definition of "cash" and there is no definition of "money" but there is the old designation "coin". I do not think anybody uses "coin" today, but perhaps "money" might be a possibility.

Mr. Al-Rawi: I welcome the observation. We specifically wanted a definition of "cash". We did not want it to be reliant upon the ordinary and plain meaning under the *Oxford Dictionary* sort of approach, the literal interpretation aspect. And what we did, in looking at the other jurisdictions, is to lift from a definition of "cash". We did not go to moneys, anti-terrorism-type, but we did want to drill into cash itself. I know the Cayman Islands and the British Virgin Islands have some model references to cash.

In specifically—if I look to the anti-terrorism's definition for "cash", this is beyond moneys. Right? I lift exactly from the amendments that we made during the course of the several years gone, including 2017, 13 of 2018, it was last year, forgive me. "Cash" includes coins and notes in any currency, postal orders, cheques of any kind including travellers' cheques, bankers drafts, bearer bonds, bearer shares and bearer negotiable instruments and any other bearer negotiable instrument in any currency. So in keeping a consistent approach, we went there. The old definition of "money" had that word "cash". "Cash" was not previously

done. The recommendations coming from the FATF said let us get a definition from “cash”. There is a model description as to what that is. We applied it in the Anti-Terrorism Act and we are seeking to be consistent here.

Sen. Vieira: And for the record, I do not have a problem with the word “cash”. I think it is a word that people use ordinarily and by having it defined, I think that would clarify it.

Sen. S. Hosein: Thank you very much, Mr. Chair. I just want to re-emphasize the point earlier that Sen. Mark had raised with respect to a definition of “gift”. Now, I looked at section 27 of the Integrity in Public Life Act and a “gift” was defined as a personal benefit that exceeds \$5,000. Now it gives a threshold in terms of what would constitute a gift. As it stands now, we do not know what will constitute a gift under the present legislation, and if the aim of the legislation is that of countering financing of terrorism, money laundering, there must be some definition with respect to “gift” because then you defeat the entire purpose of legislation.

Mr. Al-Rawi: Mr. Chair, that is not the purpose in similar terms to the Integrity in Public Life Act. The reason for the threshold in the Integrity in Public Life Act was so that persons in public life did not have to declare things which were innocuous and they therefore had a certain threshold limit.

We are applying in this law, firstly a requirement that you register in one unitary place, and very importantly we are proposing that you be regulated in a particular fashion, which clause 4 of the Bill is going to say how it is to be done.

We have amendments proposed in clause 4 which will treat with a risk-based approach to be applied by the Financial Intelligence Unit and, therefore, we do agree that it is critical that we have an exception limit for gift, because these are legislative purposes with different intents and different mischiefs entirely. So

we are not in pari materia with the Integrity in Public Life Act. We are not looking at that. We believe that the interpretation of “gift” can stand on the plain and ordinary meaning of the word, and we prefer to not accept the recommendations coming now for the second time from the Opposition on the same point.

Sen. Ameen: Chair, just to correct. I think the Attorney General is misinterpreting. The suggestion is not that we take the very same definition from the integrity in public life. I think Sen. Hosein is indicating that in the Integrity in Public Life Act, “gift” is defined. So in this Act, “gift” should be defined as opposed—and I understand what the Attorney General is suggesting that we rely on the ordinary dictionary meaning of the word “gift”, but to be on the safe side I think it should be defined. It does not have to be the same wholesale from the Integrity in Public Life Act.

Mr. Al-Rawi: Mr. Chair, you see the point is, “gift” as is defined in the Integrity in Public Life Act is done so by way of reference to a threshold, because of the Integrity in Public Life Act aim. So we are not intending to apply a threshold for “gift”. There would be a risk-based approach with different sizes fitting different categories, as the FIU will develop in its guidelines and publications pursuant to section 18 onward of the FIU legislation.

Mr. Chairman: Okay, so I think we have had enough discussion on that particular line. The AG has indicated he is not willing to accept that and therefore I will now—let me just ask, is there any other comment? No? So I will now put the question.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

Mr. Al-Rawi: Mr. Chair, the Government has proposed amendments as we have also noted Sen. Drayton does. If you would permit me to lay ours first?

Mr. Chairman: Sure.

Mr. Al-Rawi: Much obliged. Mr. Chair, coming out of the submissions in the debate from the Independent Bench and coming out of our discussions with the non-profit organizations sector in the days that we have had, both post the House of Representatives and also post our sitting in the Senate, we recognized—and I want to thank Sen. Vieira for putting it in very clear fashion in the course of his contribution. We recognized that there is a need to be expressed in the law, whilst the Government was content in the law as drafted, because the regulator is the FIU. Under the Financial Intelligence Unit law, you can only be regulated as the FIU would regulate you and then you would go to that Act and that Act would say that you have to have guidelines and rules, et cetera.

We felt that there was powerful logic in Sen. Vieira's recommendation that we expressly provide for this and not rely upon the implication of law. And so we propose, Mr. Chair, that we apply the risk-based identification in clause 4 by insertion of a subclause (3). And we propose that that read:

“Where a non-profit organization under subsection (1) is registered under this Act, the Regulator shall, using a risk based approach, determine the level of supervision required for the non-profit organization under the Financial Intelligence Unit of Trinidad and Tobago Act.”

Now, I made skipping reference to the entity under subsection (1). We propose that subsection (1), this was the second recommendation coming out of Sen. Vieira's contribution, that we ought to consider what thresholds look like, and therefore we propose in subclause (1)(a)—and this is open to discussion here—that entities with a gross annual income exceeding \$500,000 be subjected to the FIU's

supervision. Any non-profit organization with a gross annual income under \$500,000 will not be subjected to regulation. That would therefore allow us, solely on the basis of monetary size, to have three categories of treatment, with then sub-categories of disaggregation via the FIU, and I will explain that.

One, non-profit organizations under \$500,000 of gross annual income are not subjected to regulation. Two, the second category, non-profit organizations that have a gross annual income between \$500,000 and \$10 million will have the obligations, of course, of keeping their records, et cetera, but they will not be required to take the step of having audited financial statements prepared pursuant to clause 15. Those that have gross annual income above \$10 million, we say “have to mandatorily have their audited financial statements produced annually”.

The sub-categorization treatment is that the FIU will, after it has some time to get into this law, because the FIU comes to regulate you via guidelines, and I will give the example, and this is really speaking through you, to the public, Mr. Chair. When the attorneys-at-law were introduced into the First Schedule of POCA, the Proceeds of Crime Act, for supervision by the FIU, first things first, not all attorneys-at-law were required to comply. There was a disaggregation of the type of work. Advocates who practised in court and solicitors as instructing attorneys had no business in there.

We went, instead for attorneys-at-law who posed a risk to issues of terrorist financing or money laundering, so property, and conveyancing and incorporation of companies. But those guidelines took several years to be produced. And it was only after those guidelines were produced, there was public consultation. There was education. Then and only then did the regulator take the step to cause compliance via the regulations, cause compliance via the guidelines and slowly warm up the sector.

So, I want to give the absolute assurance that with the express amendment that we propose to clause 4, coming in the language of subclause (3), which we imposed, we are asking for different sizes to fit different people on a risk-based approach after the FIU produces its analysis and guidelines on that basis, and those are the in-round reasons for our proposed amendments to clause 4.

Sen. Mark: Mr. Chairman, this amendment being proposed by the Attorney General is going to make this bureaucrat within the FIU, judge, jury and executioner. This is not keeping with democratic practice and principles and as far as we are concerned on this side, the risk-based approach that the regulator is now going to be pursuing to determine the level of supervision ought to have been done before this Bill entered the Chamber and was tabled in the Parliament. So to give the regulator the power, Mr. Chairman, to determine the risk-based approach, in order to determine whether they will supervise X or Y organization, does not really make sense.

And further, Mr. Chairman, we would have preferred that we remove the post or the office of regulator from the Financial Intelligence Unit and we have what is called an NPO commission that is independent, that is not ministerial and that is directly accountable to the Parliament.

This FIU is not independent. It is under ministerial supervision and we believe that these NGOs, which are independent organizations and engage in independent activities, ought not to be under the supervision of any regulator called the FIU. So I want to make it very clear, we do not support this particular amendment that is being proposed by the Attorney General.

Sen. Richards: Thank you, Mr. Chair. Two points of clarification for the hon. AG. First, I agree with the benchmarking as suggested by Sen. Vieira and are taken up by the Attorney General of the \$500,000. And just for clarity, is this an

indication that non-profit organizations under gross annual income of \$500,000 and under do not have to be registered or do they still have to be registered?

Mr. Al-Rawi: There will still be a registration requirement. So that, let us get everybody on one register approach. I am sorry, I suppose you wanted to take the questions in the round so I will hold my reply.

Sen. Richards: And two, appreciated with the response. So I agree with that, in terms of those over \$500,000 being under the supervision of the FIU. But if you could advise on why the \$10million benchmark? As I indicated in my deliberation, I found it still too lenient, in terms of those that needed to provide audited financial reports.

Mr. Al-Rawi: Can we take that, Mr. Chair?

Mr. Chairman: First of all, let me find out from your good self if you are able to give an—let me see how many Members want to comment on this particular amendment as put forward by the AG? Sen. Vieira, that is it? AG, would you be able to?

Mr. Al-Rawi: Sure, I am taking notes.

Sen. Vieira: Thank you, Chair. Just to say I think that these amendments really achieve the objectives that everybody wanted, which was to have a risk-based approach. And I think it is, just to echo what the Attorney General has been saying, it is very difficult to crystallize at this juncture for everybody. There has to be a certain amount of investigation and an analysis. And then policy develops organically. It does not make sense unless you do it. The FIU has been around for a while. They have the experience. They have the expertise, and their functions and powers are very clearly set out in the FIU Act.

Mr. Al-Rawi: May I, Mr. Chair?

Mr. Chairman: Yes, Attorney General.

Mr. Al-Rawi: In relation to Sen. Mark's most astonishing submission, and I want to explain why I say astonishing. The Financial Intelligence Unit Act, Chap. 72:01, is an Act of Parliament, No. 11 of 2009. It was amended in 2011, 2011 again, 2012, 2014, by the UNC Government. And for Sen. Mark to scandalize the FIU by saying it is judge, jury, and executioner and it is not independent makes a mockery of the fact that the UNC, when it was the Government, kept the FIU in its very form and fashion.

Now, let me deal with the fake news and scandal of the submission, and I have to be very serious about this because very simple people who do a lot of good work in the NPO sector are listening to this debate and run away with submissions.

The scandal in saying that the FIU is judge, jury and executioner is to be dismantled immediately when you realize the executioner, under the law, is that it is to be had by the FIB, the Financial Investigation Branch, which is a division of the Trinidad and Tobago Police Service. The FIU's responsibility, since 2009 and during the five years and three months that the UNC was Government and left it the way it was, is simply to receive suspicious activity reports and suspicious transaction reports, create typologies and trends, do analysis, guidelines, et cetera, perform functions which are specified under law and if there is any investigation of terrorist financing or money laundering, they send that to the police, the Financial Investigation Branch.

So for me sit here and hear Sen. Mark make it up as he goes, or rather reinvent the law, which the UNC left in its pristine form for the entire time they were the Government, is a hard pill to swallow, Mr. Chairman and this is why I started off by saying, if the Opposition has amendments I want to see some written amendments, not just make it up as you go commentary on the law.

Sen. Mark: I take objection to this is nonsense—

Mr. Chairman: Sen. Mark.

Sen. Mark:—that the Attorney General—

Mr. Chairman: Sen. Mark, one second. I want to maintain control of the proceedings, and I do not want it to run away. Right? Great. Attorney General, I am just going to ask, because you responded to Sen. Mark. So continue to respond to everyone who has made comments on this particular clause thus far and then we will treat with any other comments after that.

Mr. Al-Rawi: Thank you, Chair. I reject Sen. Mark's contribution. Makes no sense. It is divorced from the law and it is a scare tactic—

Sen. Ameen: Mr. Chairman, Mr. Chairman.

Mr. Al-Rawi:—which I do not accept, from my point of view.

Sen. Ameen: Mr. Chairman, Mr. Chairman.

Mr. Chairman: Sen. Ameen.

Mr. Al-Rawi: If I go to—

Mr. Chairman: One second, Attorney General. Sen. Ameen, I have asked the Attorney General to respond to all comments that have been stated thus far. I am trying to maintain a particular procedure and order for a smooth flow of this process. So everyone who wanted to respond to the first comments or the introductory comments of the Attorney General—

Sen. Ameen: And I do appreciate that, Mr. Chairman.

Mr. Chairman: Let me finish.

Sen. Ameen: "Um-hmm".

Mr. Chairman: The Attorney General has made his introductory comments on his proposed amendment for clause 4. I invited comments from other Members and allowed those comments to come forth before the Attorney General responded. I am now allowing the Attorney General to respond to all of those comments—

Sen. Ameen: Mr. Chairman, may I?

Mr. Chairman:—that came before. One second. So let the Attorney General respond, subsequent to which I would invite one more round of comments, which you can then say whatever want to say at that point in time. Attorney General continue.

Mr. Al-Rawi: Thank you. Sen. Richards raised the question of benchmark, indicating satisfaction with the benchmark with the lower bracket. I thank Sen. Vieira for his reinforcing the prudence of taking a start first and then getting the FIU into its typologies and trend analysis.

As for the \$10 million, that mark is wide open for discussion. It comes up technically in clause 15. We really set that. So it is not really anchored in this particular clause. The only anchor that we put here, again for discussion, was the \$500,000. And if I could say, we chose \$500,000, I could say quite arbitrarily in some senses, but then there is an anchor as it relates to value added tax. So we chose the value added tax ceiling at \$500,000. We felt that was known to most people that we would apply that particular standard.

As it relates to the \$10million, I welcome the discussion of the committee as we get to clause 15, where we would have that squaring focus with an ability to amend it if necessary.

Sen. Richards: Thank you, and if I could respond, Chair, through you?

Mr. Chairman: Attorney General, so you have completed your comments in relation to Sen. Vieira, Sen. Richards and Sen. Mark. Sen. Richards, and then I will allow Sen. Mark.

Sen. Richards: Thank you. Through you, Chair, AG does that mean like in other bits of legislation that we would have debated and come to committee stage and in legal terms, that means that the FIU will have remit to—because as Sen. Vieira

indicated, as the information comes in to the FIU should this Bill become law, they would have information upon which to make judgments and tweak as they go along. Would it be an upper limit and left up to the jurisdiction of the FIU to lower it if they realize there are issues, or would that be a fixed benchmark if it is passed at this stage? Because we can understand that information coming in, as Sen. Vieira indicated, will actually inform the FIU as to how best to operate in this new paradigm.

Mr. Al-Rawi: Sure. Because it is primary law and because we are fixing the amount in primary legislation, the FIU has no discretion to amend that unless Parliament does so.

You will see by the number of times we have amended the FIU Act and different pieces of law, particularly as it relates to terrorist financing and money laundering issues, that as the trends and typologies feedback into the world environment and the local environment, Parliament is often moved to adjust limits. So, in truly getting to the risk-based approach model, the first thing we ought to do is to get everybody registered. Once we get them registered, we are putting some rough milestones in place here now. We are saying \$500,000, you are out. But you are still registered. That allows the regulator and people who now receive, okay we have got 20,000 NPOs, as opposed to just eight. Let us assume that the number grows by two times the amount, 16,000 to 20,000. It now allows for the exercise of the FIU to have a look at what these people are doing in terms of typologies and trends. It then allows for the governmental arms to consider risk analysis, et cetera.

Now, I want to say something. We have already commenced the exercise of drafting other laws to treat with the NPO sector. I do not want to say a charities commission, because the name may not be that. But we are looking at the wider

issues of charities. But NPOs are so much more than charities. That is why I am being careful about the name. Right? So we are looking at an NPO companion law, which would treat with the larger issues. This law is intended to be fixed under a parliamentary sealing. It will only be able to be moved if Parliament changes that. But it is definitely going to be something under consideration, as the information starts to come back and resonate.

Sen. Richards: Final point on this, through you, Mr. Chair. Well then I am even more adamant about lowering that benchmark because—

Mr. Al-Rawi: When we get there.

Sen. Richards:—just in terms of a concept, imagine 10 or 15 NPOs unaudited at \$10 million, what that could mean.

Mr. Al-Rawi: When we get to clause 15, I welcome.

Mr. Chairman: Sen. Mark, you have comments. Let me just say before you speak, Sen. Ameen, do you still want to say something?

Sen. Ameen: Mr. Chairman, I appreciate your efforts or your indication to order in the committee. But I just want to suggest for everyone. We cannot have order if we are going to refer to people's comments as nonsensical and untruth and "ingenuine". And if we are to have order, it has to go on both sides, and I am seeing a level of disrespect to the Chair today, Mr. Chairman, that I find in poor taste and I just want to say that for the record.

Sen. Mark: Mr. Chairman, I just want to say before I make my contribution, I am not in the business of spreading fake news. The only person who I know has engaged in that is the Attorney General in the Ramlogan case. So I "doh" engage in fake news. [*Crosstalk*]

Mr. Chairman: Sen. Mark, yes, yes. Members, Members.

Sen. Mark: "I doh engage in dat. I doh engage in dat."

Mr. Chairman: Members.

Sen. Mark: Okay? I "doh" engage in fake news.

Mr. Al-Rawi: Mr. Chair.

4.00 p.m.

Mr. Chairman: Attorney General, one moment, I do not, I really do not want to, at this early stage, to have to suspend just to maintain order. We have 29 clauses and one Schedule to get through. We are on clause 4 and there is a second amendment put forward by Sen. Drayton. We could be here till two, three in the morning if we continue like this. Let us just, Members, understand that first and foremost.

When—and this goes for both sides—moving your amendment and making your comments let us stick to the Bill that is before us. Let us leave out as much as possible the extra seasoning, and I am sure order would be maintained. So, Sen. Mark, if you are responding to the Attorney General's response of your proposed suggestions for this clause, do so succinctly.

Mr. Al-Rawi: Mr. Chair, I must—for the record, because it has been said on open mike recorded by *Hansard* and played—refute Sen. Mark's statements about fake news. And I characterized—and this is why I asked in the beginning. So I must refute it for the reasons stated—[*Crosstalk*]—and you see that, Mr. Chair, is important because then it is reread, Mr. Chair, in a different light.

Sen. Mark: I will respond to him. [*Crosstalk*] No, he is disrespecting the Chair. The Chairman ruled. [*Crosstalk*] No, no, but he has the right to make whatever comments he wants to make.

Mr. Al-Rawi: And again, Sen. Mark puts on his mike.

Mr. Chairman: Enough, enough is enough. I do not—[*Crosstalk*]—Sen. Mark. Members, this House would be suspended for 15 minutes.

4.02 p.m.: *Committee suspended.*

4.17 p.m.: *Committee resumed.*

Mr. Chairman: Is everybody ready? Let us try this again. Please reserve your comments to what is before us so that we can allow this procedure to move forward smoothly. Comments were taken in relation to the Attorney General's amendments at clause 4, the Attorney General responded, and further comments were taken. I am now going to move forward. I am now going to move forward. I think the Attorney General has made his comments in relation to the comments that went prior. I am now going to move forward with the amendments as put forward by Sen. Drayton.

“4 In subparagraph (1) insert new ‘(c) provide technical assistance for Non Profit Organisations to ensure compliance with the Financial Intelligence Unit Act of Trinidad and Tobago’. This may have consequential amendments to the Clause 8(4)(i) of the Financial Intelligence Unit Act of Trinidad and Tobago which only refers to financial institutions and business.”

Sen. Drayton: Thank you, Chair. I am suggesting that we insert—and this is based on Sen. Richards' comments in the debate regarding technical assistance to be provided for NPOs to bring them up to speed with compliance. And section 8, there is a typo, it is section 8(3)(i) of the FIU Act speaks to the FIU providing—

“assistance to financial institutions and listed business in connection with their obligations under this Act;”

What I am suggesting is that we add (c) to clause four and it reads:

“provide technical assistance for Non Profit Organisations to ensure compliance with the Financial Intelligence Unit Act of Trinidad and Tobago

and this may require an amendment to clause 8(3)(i) of the FIU Act which only referred to financial institutions and business.”

[*Interruption*] Sorry, clause 8(3)(i). Yes, there is a typo there, so it is 8(3)(i). Okay, apologies.

Mr. Chairman: Are you finished, Sen Drayton?

Sen. Drayton: Yes, Chair.

Mr. Chairman: Attorney General, when you are ready.

Mr. Al-Rawi: Sure. I thank the hon. Senator, spot on, nail on the head. But we caught it already and I will explain where. The Bill itself asks for consequential amendments to the Proceeds of Crime Act and if I can take you to the—forgive me, let us get to the Proceeds of Crime Act, page 23 of the Bill. We actually amend the Proceeds of Crime Act to make an NPO a listed business.

Sen. Drayton: Okay.

Mr. Al-Rawi: So it is caught right there. So (i), in the FIU Act, applies to financial institutions and listed businesses, listed businesses under the Proceeds of Crime Act mean all those entities in the First Schedule in the Proceeds of Crime Act. So we amend it here in the Schedule. We have amended—at page 23, you will see we are amending the First Schedule by inserting a non-profit organization. So it is caught.

Sen. Drayton: Thank you.

Sen. Richards: Thank you, Chair. Just for clarity. Thank you AG, and I agree with that because as Sen. Drayton said it followed through my submission in the debate. And this covers those that will be supervised by the FIU over the \$500,000 benchmark.

Mr. Al-Rawi: Yes.

Sen. Richards: Thank you.

Mr. Al-Rawi: Nothing stops the FIU as it does from going about looking at concepts in general. So very often, the FIU comes forward to any government and says, “look, we think there ought to be some tightening”. Because there is a constant continuing education on the part of the FIU. They sit on the national anti-money laundering committee; we legislated that committee in law under the Anti-Terrorism Act just last year. As part of that they sit in all of the cycle equations for the Financial Action Task Force and at the Egmont Group. And at the Egmont Group, which is the expert grouping of Financial Intelligence Units, they broaden out. So they really do have an ability of their own motive and their own motion to step forward and say, “look we want to regulate more”. Then, Parliament is asked to consider that by way of a Minister proposing amendments to be moved.

Sen. Richards: Thank you. Just also, because the intention is to, while we regulate this sector, ensure that we provide support and the sector grows in an orderly manner—

Mr. Al-Rawi: Absolutely. Yes.

Sen. Richards:—does that exclude those that are registered but do not fall under the remit of FIU supervision? Can the FIU also include those in any way under the stricture of the law?

Mr. Al-Rawi: No. Technically, they go for who they are targeted to go for. But when they think they are ready to go for more, we amend the law. And I really want to thank Sen. Drayton for bringing home in this proposed amendment a very important concept for the public who is watching this debate—forgive me—who is looking at this committee. Section 8 of the FIU legislation says that the FIU has a positive obligation to help people to comply with the Act by providing the kind of assistance specified in subclause (i).

Mr. Chairman: Okay. Sen. Drayton, in light of the comments by the Attorney General, are you inclined to withdraw your proposed amendment to clause 4 then?

Sen. Drayton: I am, Chair. I am satisfied with the response.

Amendment [Sen. Drayton] withdrawn.

Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

5 Insert after subclause (4) the following new subclause:

Chap. “(5) A society registered under the Friendly Societies Act is
32:50 exempted from the requirement to be registered as a non-
profit organization under this Act.”

Mr. Al-Rawi: Mr. Chairman, thank you. We received a submission coming from the friendly society asking us a very real and pointed question that we quite frankly did not consider. So, I wish to thank the Registrar of Friendly Societies for bringing it to our attention.

Friendly societies are a bring-over from a time past where they served a great purpose in particular after World War II in Trinidad and Tobago.

Sen. Baptiste-Primus: They are still alive.

Mr. Al-Rawi: Correct. And they are very much still alive and they also have obligations for resources; under the passion of the Minister of Labour and Small Enterprise Development, Mr. Chairman, the friendly society got an uplift of energy that it has never had before. We have been seeing their assets handed over to them, their positions gone forward. But when you look to what the definition of a friendly society manages, the pot that it manages, it falls within

the NPO sector. They are already regulated under a different regulatory regime and, therefore, it is quite proper to exclude them from the provisions of this.

We did not, for instance, deem them to be NPOs as we have under clause 8 of this Bill. So it is proper in those circumstances for us to exclude them and therefore we recommend an amendment to clause 5 in the manner circulated which proposes an exclusion for the friendly societies.

Mr. Chairman: Hon. Members, any? Sen. Mark.

Sen. Mark: Mr. Chairman. As it relates to clause 5, and subclause (4), we find, given the commitment and reference made by the Attorney General to the Cayman Islands legislation, we find subclause (4) of clause 5 is a bit too onerous, Mr. Vice-President. I am talking about clause 5 and subclause (4). In the Cayman Islands, they simply ask as it relates to NPOs, for item (i) they deal with—(ii)—they would deal, Mr. Chairman, with—but they have the identity of the person who owns or controls or directs the organization and the date of its registration. All of these provisions that are contained here, we find them to be oppressive and we do not understand why we are trying to tie the hands and feet of the non-profit organizations. And if I am to take from the AG's submissions in the other place, where he said that the model that we are basing this legislation on is the Caymanian model, then I am saying there is inconsistency with what is in subclause (4) of clause 5 and we do have reservations over this provision.

We are also concerned about this imprisonment of seven years. We believe that, Mr. Chairman, there should only be administrative penalties, no NGO official should be subject to jail when they are doing voluntary service, Mr. Chairman. And you know, as you are aware, you are not being paid; it is out of humanitarian purposes, you come out there to serve, Mr. Chairman. So for you to come out there and serve on a voluntary basis and be subject to seven years in jail, that is

totally unacceptable. So I am saying, Mr. Chairman, in winding up that when I look at the Caymanian legislation, they deal with administrative penalties which deals with only cash and the maximum is US \$3,000 so I do not think we can support this seven-year arrangement here whatsoever.

Sen. Dr. Dillon-Remy: Mr. Chairman, I was concerned about subclause 2, the fine of \$50,000 and imprisonment of seven years. I know the AG had said in his submission that he was going to make these fines not as punitive. But I am looking at this in relation—this is if you are operating here without registration, which is separate from what I think the Attorney General had spoken to before about, if you are administratively, you did not submit your papers and stuff like that. Is it there, Attorney General, that you are going to change those fines? Or because this is, I think, is still punitive.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Thank you. I understand the concerns both by Sen. Dillon-Remy and Sen. Mark. But this section is relatively clear. You can operate; what it is saying is if you want to operate you must register. The registration is not an onerous requirement and I think if you are going to be serious about regulating the sector there must be a sanction for operating without registration. So I have no problem with this section.

I paid very careful attention to Sen. Baptiste-Primus when she was making her contribution; this is on the AG's amendment. And she spoke about friendly societies, fraternal orders, cooperatives, and credit unions. Now, I know all of these—friendly societies, cooperatives and credit unions—have their independent legislation. Why only exempt the friendly societies and not also include the cooperatives and credit unions.

Mr. Chairman: Sen. Obika.

Sen. Obika: Thanks Chair. I just want to submit that regarding the clause that we are on. When you look at even the cases put forward by FATF the penalties in some of these jurisdictions are to the institution, to the NGO, not to the persons. So the ultimate penalty in the case of a registered NGO is deregistration. In the case of one that is not registered, it can be that one that is not registered the penalties are imprisonment. I think it should be removed entirely.

And just to add some value to Sen. Vieira's query, given it is for the Minister of Labour and Small Enterprise Development, if I may. I think the reason why credit unions are not captured is that credit unions are regulated under the Ministry of Labour and Small Enterprise Development by the Commissioner for Cooperatives; it is a department I worked in for four years and the regulation is very rigorous and it is very detailed. And I do not think they need to be part of this Bill.

Mr. Chairman: Sen. Thompson-Ahye.

Sen. Thompson-Ahye: On that same clause, but not on that same point, clause 5(1)—“shall not operate a non-profit...unless the non-profit organisation is registered under this Act”—I would suggest that the transitional provision be brought nearer to it as happens in the —remember, last week—oh, it seems like last week—a few days ago, I spoke about Community Residences, Foster Care and Nurseries Act. I think that is why, three of us were sitting together and we missed it completely. And I am wondering if Sen. Drayton's amendment is because he missed it as well, you see. So if you have the provision here, where you have to be registered within a particular time, brought nearer to this mandatory provision for registration, I think it would be a smoother flow, it is a more logical sequence to me. That is my suggestion.

Mr. Chairman: Let me allow the Attorney General to respond, given the number

of comments that have come before. Attorney General.

Mr. Al-Rawi: Thank you, Mr. Chairman. I confess sometimes it is hard to keep a track and I do not want to do an injustice. So thank you for recognizing that. Mr. Chair, where do I begin? With respect to the offence, Sen. Mark's first point—could I just ask Sen. Mark to refresh me as to what his first point was? I got his comment on the offence, and then I got Sen. Dillon-Remy's position on that. Sen. Mark, through you, Mr. Chairman, would you remind me what your first observation was?

Mr. Mark: What I was saying, AG, is that when I looked—

Mr. Al-Rawi: Oh, Caymanian. I remember now. If I may, thank you for refreshing my memory. Mr. Chair, the Caymanian model, which is the non-profit organization law, 2017, law no. 37 of 2017, actually has a much wider and more intrusive form and detail of registration; let me read it for the record, you are for the purposes of registration to submit;

“Declared purposes of the”—NPO;

“(b) the identity, address and other contact information of a controller...senior officers...members...management personnel...;

(c) copies or particulars of the trust, trust deed and any other organisational documents;

(d) copies of the constitution, the memorandum of association and the articles of association...”—et cetera.

“(e) information with respect to the location of the money and other property of the non-profit organisation and its banking arrangements;

(f) the source or anticipated source of contributions;

(g) how contributions are to be applied; and”

—listen to this catch-all—

“(h) any other evidence which reflects the organisational structure and functions of the non-profit organisation.”

Now, that is by far wider and by far deeper an intrusion into what we define as sensitive personal information under the Data Protection Act. And for those reasons we took the opposite approach of what Sen. Mark is saying. We did not go as far as Cayman did. We actually stayed much narrower in purposes. So I want to just distinguish that immediately by saying that the Government’s approach is by far safer than the Caymanian approach; in any event we did not want to go into three-fifths issues of sensitive personal information being provided in a public record, even though that could be kept disaggregated between regulator and public aspects as the Bill proposes.

With respect to the offence, both in response to Sen. Dillon-Remy and to Sen. Mark, I thank Sen. Vieira for putting it much better than I could possibly have; he is very succinct in it. Law requires a sanction; a sanction must be certain; if we have loopholes then you create a lack of compliance. What we did inside of here is that we treat with the exceptions to the law a little bit later, and as we come to clause 23 you will see where we are proposing exceptions for one-off occasions, et cetera.

So, we respectfully must draw a line. As to the level of sanction, we took our position, fine of \$50,000 and to imprisonment of seven years. I want to inform, of course, the law is that these are just maximum statements; it is not that they are applied automatically. It is open to the court in considering any matter to have this matter treated with in a lesser fashion, including the fact that there may be no charge, monetary sum paid or no jail term imposed. So this is just a statement of the maximum that the law can offer.

The transitional migration, because the transitional law is there, it is a

feature of the architecture of the drafting of laws that you put the transitional towards the end because the Act is arranged in parts, and when we look to Part Two, Part Two is the supervision and registration of non-profit organizations. So, it is when we get down past Part Three and we get towards the end of the Bill, transitional provisions are as a matter of course usually put there, and that comes under Part Five, “Miscellaneous”.

So, the drafting experience and the consistency of Trinidadian laws require us to put it down towards the end; I am guided by the CPC’s department in that regard. I am constantly reminded by them that I am not drafting a contract. If I can draw it in contractual terms where you would usually say, you know, “subject to clause X of X position this then applies”. So, I am guided by the CPC’s department and the experience of law in this country, and I would respectfully ask you not to urge the moving of the transitional provision to this clause and to keep it where it is.

Sen. Thompson-Ahye: I am also guided by the CPC and the drafting of laws in this country and the laws I refer to is an Act which is drafted in Trinidad and Tobago and that is where it is. So I maintain—it is entirely up to you. But it seems to me to be a more logical place to put.

Mr. Al-Rawi: I also had the fight with the CPC’s department on “risk dash based” and how—

Sen. Thompson-Ahye: Yes, I spoke to them during the break about that. I told them I was allergic to bad grammar.

Mr. Al-Rawi: You and Sen. Prescott from his last incarnation.

Sen. Thompson-Ahye: Oh yes. I well remember the adoption Act, Mr. Chair.

Mr. Chairman: AG, so far you have completed the response to the first, I think, four. Sen. Drayton, you had comments.

4.40 p.m.

Sen. Drayton: Sure. I agree that the maximum fine and a prison sentence of seven years is just way too onerous and, perhaps, the AG may consider reducing it to three years or—

Mr. Al-Rawi: Let me put it to you this way, if I may. What happens if we are dealing with a hundred million dollar entity? What happens if we are dealing with Red Cross? What happens if we are dealing with massive money? You see this is a law for non-profit organizations. I cannot say well, for the \$100 million guy you get \$50 million fine and a 100 years in imprisonment. It just becomes extremely difficult to draft laws that way, which is why I put the maximum sentence and maximum conviction on the record, because a court in the administration of its function and its constructing of law and consideration of the facts and law that it hears, will decide what the appropriate penalty is. But our law just says, these are your ceiling limits. It is everything under that.

Sen. Vieira: To Sen. Drayton, through you Chair, let me share an experience, because I act for the dental profession, and the dental profession regulates dentists who are registered and dental auxiliaries. Quacks who are not registered are outside of its jurisdiction. So, ironically, you could be setting standards and trying to discipline people who are compliant and the people who most need to be reined in or to be helped, fall completely outside your jurisdiction, and your only recourse there is to have some kind of stiff criminal sanctions to say, “You cannot do that”. And so, that is analogous with the situation here. Because if you do not have that sanction, then why register? I am just outside the jurisdiction and you cannot do anything here, thumb your nose at the regulator.

Sen. Haynes: Thank you. I actually was going to clause 3, so if you wanted to respond to Sen. Vieira. I mean—sorry—Part Three under this subclause (3) on the

form.

Mr. Chairman: Attorney General, do you want to respond?

Mr. Al-Rawi: No. Sen. Vieira was assisting me. There is no response required other than to say thank you.

Mr. Chairman: Go ahead Sen. Haynes.

Sen. Haynes: All right. Thank you. So it is just on the topic of the forms. I know it was raised during the debate, the prescribed form. So when would the NGOs be seeing the forms since it is not included?

Mr. Al-Rawi: I do not want to be churlish. I say this most respectfully. But when they are drafted? After consultation. So there is still a process to go for that. That is why we have put in a proclamation clause in clause 2.

Sen. S. Hosein: Just to be clear on that position—sorry. Attorney General, after the Bill is passed, the AG's office is going out for consultation?

Mr. Al-Rawi: It always does with respect to proclamation.

Sen. S. Hosein: But if there are any amendments, you will come back to make amendments?

Mr. Al-Rawi: Of course, I give that undertaking on the record, and that is evidenced by the many times that I have done that. There have been times—I want to remind the Opposition—where Sen. Ramdeen has made very sensible submissions, I gave an undertaking to come back and amend the law and I have kept that.

Sen. Ameen: The forms then would come attached if you have changes, after consultations?

Mr. Al-Rawi: No. We are prescribing the forms. They are not scheduled forms. The methodology of prescription for forms, prescribed forms, is so that they can continue to live and breed without having to move the Parliament every single time

to change the format or how many lines, et cetera. That became very unwieldy in practice.

Sen. Ameen: I just wanted to know for the record. Right?

Sen. Obika: Mr. Chair, given the decision to keep this clause as it is in the Bill, I think it would be incumbent on the Government—

Mr. Al-Rawi: But we are not. We are proposing an amendment.

Sen. Obika: No, but I am talking about the jail term.

Mr. Al-Rawi: Oh I see. Sure.

Sen. Obika: I think it would be incumbent on the Government to ensure that they spend a lot of money to advertise to the public, because persons will not be able to join any group that does anything without being registered. So you must tell the population that they cannot join a group to raise any funds for any beach clean-up; they cannot join a group to help any sporting organization; that they cannot join a group, as I have, to help their primary school because they will be jailed simply by being part of an NGO that is not registered.

Mr. Al-Rawi: So, Mr. Chair, I must reject that contribution because it is just not true. This law is only intended to catch the definitions of “non-profit organisations” which are clearly grounded in the trustee-type relationship where the positions are managed. Furthermore, we propose amendments, as have been circulated in respect of later clauses, where you can do exactly that. So I just cannot accept the submission.

But if I wanted to be charitable, I could say that there is merit in what Sen. Obika has said. There must be outreach and training and sensitization. This has to happen. The Government will be going together with the non-profit organizations and the network of NGOs, and I love that expression. I want to single out Nicole Leoto, in particular, who comes from the entity that she does, for being as strident

as she is in her invitation, that that not only must be done, but in the willingness to accept the role to help in facilitating that. So there will be an aggressive outreach campaign. It will be very much high on agenda, not only from the Government but from the FIU as an independent regulator.

Mr. Chairman: Okay. So moving on, Sen. Drayton, you have proposed amendments on clause 5. Do you want to make some statements?

Mr. Al-Rawi: Mr. Chair, sorry, I forgot to answer a very important question from Sen. Vieira, the cooperatives and credit unions. Would you permit me?

Mr. Chairman: Sure.

Mr. Al-Rawi: The FATF rules do require credit unions and cooperatives to be regulated. The Minister of Public Utilities is actually the Chair of a committee which the Cabinet has set up and that is hard at work with the credit union sector, in particular. It would not be surprising for me to remind you that the credit union legislation to reform itself has been in discussion for a small 28 years. Much like the Insurance Act, in its most recent vintage, took as long as it did.

So the FATF does intend for the regulation of these entities. Because of what Sen. Obika actually put onto the record which is very helpful in echoing what the Minister of Labour and Small Enterprise Development put, they are managed in a different way. But they are going to be subjected to certain aspects of regulatory positions in this. So we did not intend to single them out in the fashion that we have for the—as recommended by the Registrar of Friendly Societies. So it was a very purposeful position on that, but we are intent. In fact, there is a policy paper already that the Minister of Public Utilities is in consultation over with these sectors.

Mr. Chairman: So, Sen. Drayton?

Sen. Drayton: Thank you, Chair. My amendment actually is addressed in 28, the

transitional clause that Sen. Thompson-Ahye spoke about, and I was able to get a better appreciation from the AG in terms of the positioning of that clause. So it is addressed in 28.

Mr. Chairman: So you are withdrawing?

Sen. Drayton: Yes.

Amendment [Sen. Drayton] withdrawn.

Mr. Chairman: Okay. Hon. Members, the question is that clause 5 be amended as circulated by the Attorney General.

Question put.

Sen. Mark: Division on this one, Sir.

The Committee divided: Ayes 24 Noes 6

AYES

Khan, F.

Gopee-Scoon, P. Mrs.

Baptiste-Primus, J. Mrs.

Rambharat, C.

Sinanan, R.

Hosein, K.

West, A. Ms.

Le Hunte, R.

Henry, Dr. L.

Singh, A. Cummings, F.

Dookie, D.

Simonette, G.

Thomas, A.

Young, N.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, A. Ms.

Seepersad, C.

Teemal, D.

Thompson-Ahye, H. Mrs.

Dillon-Remy, Dr. M.

Drayton, J.

NOES

Mark, W.

Haynes, A. Ms.

Ameen, K. Ms.

Hosein, S.

Obika, T.

Ramdeen, G.

Question agreed to.

Clause 5, as amended, ordered to stand part of the Bill,

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Mr. Al-Rawi: Thank you, Mr. Chair. There are two circulated amendments that for the Government and that by Sen. Drayton, and I think we actually captured the same thing so, if I could, in anticipation of hopefully his agreement to deal with both; clause 6 treats with the power to grant or renew registration, and coming out of the debate and in the discussions with the NGOs sector, there was a lot of merit in managing this in a slightly different way.

We propose, Mr. Chair, that immediately after clause 6(2) that we insert a new subclause and then we treat with some further amendments. So 6(1) is where the Registrar is satisfied and an applicant has met registration renewal, he shall, and then he does certain things and then 6(2) says “the Registrar General may refuse to register or renew an applicant as a non-profit organization if” and then it sets out certain criteria.

So we propose just after that that we put in some due processing and it will look like this in the new subclause (3):

Where the Registrar General refuses to register an applicant under section 5, or refuses to renew an application under section 7, the Registrar General shall, within fourteen days of such refusal, issue a notice to the applicant and provide reasons in writing thereof.

We then go on to subclause (4) to say:

Where an applicant receives a notice under subsection (3), he may within thirty days of the date of the notice provide the Registrar General with written reasons as to why his application should be approved.

And then we deal with a new subclause (5):

Upon receipt of reasons under subsection (4) the Registrar General shall determine whether the registration should be granted or the renewal refused and a notice shall be sent to the applicant accordingly.

Now, we have done something which is a little bit exceptional. It is administrative law in proper context that when the registrar does something that reasons must be provided. So we did not rely upon that on an implied basis because of the sector that we are dealing with. We have expressly put that into the law that the registrar must give, not only notice, but written reasons as to what is going on in the registrar's mind. We agreed, coincidentally, as a result of the

urgings coming from—we got an e-mail just today asking us—it was Colin Robinson from Kaiso. Mr. Robinson recommended that we go to 30 days. We thought that that was eminently sensible, so we have harmonized the period for 30 days in terms of the reply from the applicant, and then we have said in that due process structure, how we ought to treat with it. So that is in the round the reasoning behind our proposed amendments, Mr. Chair.

Sen. Ramdeen: Attorney General, I just wanted to ask: What is your view as to whether you think that even if the refusal is done, the extra duty that you have put to provide reasons, our experience in this jurisdiction has not been very good with the provision of reasons during a fixed time period. So, for example, we have 60 days for a Magistrate to provide reasons under the Summary Courts Act, and I was wondering whether the notice should be given within 14 days or whether we should give the Registrar General a little bit longer period of time than 14 days for the provision of reasons. I think 14 days are a little bit short for the provision of the reasons, because I expect that the reasons will be in writing. It would not just simply say, it is deprived because of sections (a), (b), (c) or whatever.

Mr. Al-Rawi: Sure.

Sen. Ramdeen: They will have to extrapolate as to why it is that this is not done and I just think from experience—

Mr. Al-Rawi: I welcome the prudence of the suggestion, Sen. Ramdeen. On the one hand, we were trying to make sure that the registrar acted quickly for people who are anxious, but there is eminent sense in what you are proposing.

Sen. Ramdeen: That is not what I am saying. I am saying that we should perhaps divorce the 14 days from the period of time for the provision of reasons, because one would want the decision to be done quickly, but the provision of reasons does not necessarily have to be within the same period of time. So you can keep the 14

days to achieve what you wish to achieve by virtue of putting it in. I hear you on the provision of reason, but I think 14 days is a bit short. The Registrar General has a number of things that we are adding to on a daily basis. So I would suggest—I do not suggest that we go to 60 days but I would, at least, suggest that we—

Mr. Al-Rawi: Thank you. Mr. Chair, accepting Sen. Ramdeen's submission, what could be open to us in the subclause (3) is to modify the language as circulated. So, we could say:

The Registrar General shall, within fourteen days of such refusal, issue a notice to the applicant.

And then we could add in:

...and provide reasons within fourteen days thereafter.

So what we could say—so we could:

...issue notice to the applicant, shall within fourteen days of such refusal, issue a notice to the applicant and provide reasons in writing thereof within fourteen days thereafter.

That would catch the concept.

Sen. Ramdeen: Because of the nature of the way in which legislation is drafted, which is that if you do not have registration, you are not supposed to perform any function, you will have cases where—I can foresee that you will have cases where perhaps on a reconsideration of the reasons that are being provided by the NPO, that you would have a period of time, a subsisting period of time where your application may be rejected. I am speaking in terms of staying that decision as to whether you want to give the Registrar General that power, because what would happen is that if you are rejected, you should stop conducting any business. You then go into a stage where you have this reconsideration period “like an appeal

period” where your application is going to be subject to a review during that period of time. Would you want to consider that some organizations may suffer some degree of hardship during that period of time where by the law, they are not supposed to be conducting any business, but they may will be found—the Registrar General may well be found to have not exercised a discretion or a power properly and, therefore, they would be reinstated then, if you want to put it that way. It is a matter of policy for you as to how you wish to treat with it, but I could just see that that situation may arise that can cause some hardship to particular organizations.

Sen. Thompson-Ahye: Mr. AG?

Mr. Al-Rawi: So, Mr—sorry?

Sen. Thompson-Ahye: When I proposed this amendment, it was because you actually have in the legislation, specific instances for cancellation. So it is not a case where the Registrar General is going to look for reasons. My concern was that it was not stated, and all these are very specific and I think what should happen is automatically when you are cancelling, you know, that you write it there. So you do not really need time, because when you come to that decision, you come to that decision based on these specific, what I called “the unlucky seven”, on the last occasion. So I do not think the time factor is really important here for this part of it.

Mr. Chairman: Before you answer, Attorney General. Sen. Vieira?

Sen. Vieira: Thank you, Chair. I think the purpose of this clause came out of one of the suggestions from the Opposition about avoiding having poor people to find lawyers to go to a judge to appeal, and so the idea was to give a first stab by dealing directly with the Registrar General. I take what Sen. Ramdeen has said and I was wondering whether we could, perhaps, have done it a little differently, that the decision of the tribunal not to renew. He issues the notice and the notice

should contain reasons for the decision. But if the Registrar does not state its reason for the decision or order then the applicant can serve a notice on him, requiring him to provide reasons within a certain time, and that could deal with the time constraints.

Mr. Al-Rawi: The lawyers in all of us are coming to the front, because we like to due process everything out in meticulous points. So the suggestion came from the NGO sector itself, the NPO sector. Secondly, the model for treatment came from the Companies Act. Thirdly, cancellation, we treat entirely separately. I agree with Sen. Thompson-Ahye on this. Clause 10 is where treat with cancellation, but cancellation is not to be conflated with renewal or application on an initial basis.

The disaggregation of decision and reasons is somewhat problematic. We could probably fix that if we were to just put a plain 30 days, and probably we can fix the standstill which is, essentially, what we are talking about by treating with that in a very simple way, which is to just simply say that the decision shall not be conclusive until the last step, is really hard which is where we come down to the subclause (5)—

upon receipt of reasons under (4) the Registrar General shall determine whether the registration should be granted or the renewal refused.

But, in saying that, I would say that it is not until the completion of steps (3), (4) and (5) that actually they jury a refusal. So the process must be had. So even though the notice goes out saying: “Look, I am not renewing you and I am not going to grant you your first time” it is not a binding decision until subclause (5) happens which is where the tribunaling or administrative routing happens.

So if I may, therefore, in summary suggest, so as to avoid the position, what we could do is to accept Sen. Ramdeen’s position, as I now interpret it—so forgive me if I have done an injustice to what you have said. In subclause (3), we just add

the words “within fourteen days thereafter” to the end of that. So that means, you get your 14 days’ notice. You know it is not going to happen. The reasons come within 14 days thereafter. They may come simultaneously or not, but I will be comfortable with the fact that it is not until subclause (5) happened that a decision is, in fact, by way of the operation of the law, effective. So may I just, therefore, recommend the addition of those words into the Government’s proposal as circulated?

Sen Ramdeen: Thanks. Attorney General, the subclause (5), sorry. Attorney General, I am just not following the last thing that you had said about the subclause (5). That subclause (5) is found in your amendments?

Mr. Al-Rawi: Yes. It is on page 2.

Sen. Ramdeen: I am sorry.

Mr. Al-Rawi: On the top of page 2.

Sen Ramdeen: And you are saying that it should not be effective until (5) is carried out? I agree with that.

Mr. Al-Rawi: Thank you.

Mr. Chairman: Sen. Drayton, you had proposed amendments to clause 6. Based on conversations, thus far, are you inclined to withdraw that?

Sen. Drayton: Yes Sir, the Attorney General beat me at it. So, yes.

Mr. Chairman: Okay. Hon. Members, the question is that clause 6 be amended as circulated and further amended to say, after subclause (2), new subclause (3), at the end:

“within fourteen days thereafter.”

Attorney General is that correct?

Mr. Al-Rawi: Just delete the word “thereof”, I apologize. So it is delete the word “thereof” and then “within fourteen days thereafter.”

Mr. Chairman: Okay. So, let me just read that again. The question is that clause 6 be amended as circulated and further amended after subclause (2), the new subclause (3), at the very end, delete the word “thereof” and add the words “within fourteen days thereafter.”

Question put and agreed to.

Clause 6, as amended, now stand part of the Bill.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.

Mr. Al-Rawi: Mr. Chairman, clause 7 is amended as follows:

Delete the words “three years” and replace with the words “five years”.

The Government has proposed an amendment to clause 7. We accept that the three-year period may be too tight and, therefore, we propose that the reregistration ought to be at five years instead. Of course, we welcome views on this particular period.

Sen. Mark: Mr. Chairman, I wanted to ask whether companies for profits in this country are they given a stipulated time period and why are we imposing on these ordinary people’s organizations a time frame? Because remember, Attorney General, you did make reference to the Cayman Island. Even as you said, they are very strict and we have backed off on many aspects of what they have in their legislation, when I go, Mr. Chairman, to section 7(4) of the Cayman Islands legislation on non-profit organizations it reads:

A certificate of registration issued under subsection (3) shall have effect indefinitely.

So, in other words, once an NGO registers with the Registrar General’s Office, it is left up to the State to monitor this NGO. But why are we having them traipse to the Registrar General’s Office every three—well now it is five years—to

have a renewal and have an axe over their heads? I do not support and we do not support this time stipulation. We believe that it ought to be an indefinite period. Once you register, Mr. Chairman, it should be for life and that you should not have to be going through. Because, you see, already you are putting it in the hands of a bureaucrat, the Registrar General, a lot of power to determine the faith of these NPOs, and I do not believe it is fair. So I would suggest that we consider going the way of the Cayman Islands and have an indefinite period of registration. Once you register, you are registered for life.

Mr. Chairman: Any further comments from Members? Sen. Vieira.

Sen. Vieira: Thank you, Chair. I understand the sentiment, and I could be wrong on this, but I thought that in the case of the profit companies, they have a requirement every year to file annual returns. That is not visited on the non-profit organizations, and so five years give a lot of time to see whether you are still operating or not.

Sen. S. Hosein: One comment with respect to Sen. Vieira's comment is that the Bill will also capture those non-profit organizations that are incorporated as companies under the Companies Act. Now, those companies are required to file an annual return also, Mr. Chairman. So, I do not know whether or not the point that Sen. Vieira is making will make a distinction with respect to those that are incorporated and those that are unincorporated under the Companies Act.

Mr. Al-Rawi: I thank both Senators. Mr. Chair, Trinidad and Tobago's context must be considered as Trinidad and Tobago's context. So it is true that Cayman has indefinite registration, but it is true that BVI has a registration for one year. So different jurisdictions have different standards.

Secondly, yes it is true that non-profit organizations file a Form 29 under its obligations under Part IV of the Companies Act on an annual basis, but it is also

true in the Trinidad and Tobago's context that we have 104,000 companies and 25 per cent of them are in terrible arrears and people find themselves in a dramatic situation where those companies cannot be brought up to date until they take expensive steps like paying hundreds of thousands of dollars in penalties that have accrued over years.

5.10 p.m.

I would go further. To drive a car you have to have a license which is renewable; a passport is a license which is renewable; a liquor license to sell alcohol is renewable. So the concept of a limited time frame for regimes is an important one. In the non-profit organization sector we propose this because of the analysis of the Trinidad and Tobago context. So, in the round therefore, Mr. Chairman, we think it is a safe mechanism which will assist non-profit organizations. And what I can tell you, from an operationalization point of view, the Registrar General's office is about to receive a significant facelift from an IT perspective. We have procured new software and new servers which are of significant importance to the operation of this. People will be receiving electronic reminders. They will be receiving notifications that are automatically generated.

They will also, hopefully, by the course—if not this month, by next month, be able to do all their filings by way of electronic payments and filings. This is not in the distant future, this is as close as next month, and there are very robust entities that offer a range of services in this regard that the Government has already put to use. First Citizens Bank, WePay, there are lots of providers and platforms for these services so we are very close at hand. We think it a safeguard to take the non-profit organizations out of that hundreds of thousands of dollars pot of trouble that companies find themselves in under the Companies Registry.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Thank you. So, Attorney General, I think this is an important point for a lot of the NGOs because they were enquiring whether or not it would have been possible for online registrations and certifications, and, again, that they will not be subjected to filing these annual returns.

Mr. Al-Rawi: Correct. But Sen. Hosein was correct, the non-profit companies continue to comply with the Form 29 requirement under the Companies Act.

Mr. Chairman: Sen. Obika

Sen. Obika: Thank you. The question I have has to do with when you get questions from the public, and it has to do with pan sides, does this legislation capture steel pan organizations? And how, given this particular clause, the ability of the Registrar General to refuse registration if a pan side is registered with Pan Trinbago, would the Registrar General be allowed to refuse them to register? That is the question.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: If a pan side falls within the definition of charitable and other purposes, as defined in the trustee-type relationship, well then, yes, they would have to be so defined. But pan sides are not necessarily that, it depends upon how they structure themselves. So if pan sides are engaging in non-profit-type behaviour, yes, but that is a very limited description. They have to be engaging in something where they are not benefiting for themselves to do something. So, for instance, a commercial pan side which is going out and playing and paying, and receiving money, et cetera, and then their members receive money, well, they are not a non-profit organization. Because the exclusion for a non-profit organization is that you cannot be doing this for the benefit of your members, so there is a very careful description as to what constitutes a non-profit organization. So if you are in the business of doing something for the benefit of your members, you are not a

non-profit organization.

Mr. Chairman: Sen. Obika.

Sen. Obika: Chair, however, that is in conflict with the explanation clause, I think clause 3, which states under “non-profit organisation”—that is—

Mr. Al-Rawi: Page 4 and 5 of the Bill.

Sen. Obika: On page 5 at the top, subsection (b):

“carries on its business without pecuniary gain...except as reasonable compensation for services...”

National Centre for Persons with Disabilities, for example, has on their roll, staff. They have a CEO’s salary in excess of \$15,000. It is significantly more than that but I do not want to quote the actually salary. So I am saying, are you saying that the NCPD is not a not-for-profit? That cannot be true. So the point I am making is, a lot of pan sides provide compensation for, under this clause, “reasonable compensation for services rendered”, if someone is a pan tuner for the side, an arranger for the side. So the question still stands, if Pan Trinbago sends their full list of 100-plus steel bands, is any one of them going to be debarred registration?

Mr. Chairman: AG.

Mr. Al-Rawi: Mr. Chair, we could intellectualize and fine-tooth descriptions based upon facts which are all hypothetical right now. This thing will have to be judged upon the case by case analysis of the facts. I mean, Sen. Obika started talking about pan sides and then went to a completely different type of structure which is not a pan side, and then came back to pan sides. So the point is, if you fall within the definition of a non-profit organization, yes, you will be registered. Filling out that paperwork is not a hard thing to do. There will be outreach, there will be sectors, et cetera, but the definition of an NPO is:

It—“is established...for...promotion of...patriotic, religious, philanthropic,

charitable, educational, cultural—”

Sen. Obika: Cultural.

Mr. Al-Rawi: Yes, okay. I can read, Sen. Obika.

Mr. Chairman: Okay. Okay. Let us not—

Mr. Al-Rawi: And then:

You carry—“on its business without pecuniary gain to its members or officers except as reasonable compensation...”

And:

It—“restricts the use of any of its profits or other accretions to the promotion of its purpose or object;”

So if somebody falls within that definition, yes, you are going to be registered, and then, so what?

Mr. Chairman: Okay, Sen. Mark, you had—

Sen. Mark: Yeah, I just wanted to get clarification, Mr. Chair. Mr. Chair, and this is for the AG’s consideration, under clause 7(2) and (3), the AG, like myself, believes in the due process, and we have a situation here where the Registrar General will be making rules, including the termination of fees that these non-profit organizations are called upon to pay, but these rules are not going to be seen by the Parliament. According to what I have read in the document or the Bill, the rules are going to be submitted by the Registrar General’s office for the approval of the Attorney General. I find this a bit unhealthy because we are passing legislation to prescribe rules, but after we pass these rules, Mr. Chairman, in terms of giving the Attorney General the power to make these rules, we do not see sight of these rules. It is being kept secret between the Registrar General’s office and the Attorney General. So what is the role of the Parliament? The Parliament should have sight of what fees and other rules are being advanced. And

I am asking the Attorney General that that be subject—I like affirmative, but I will ask him, in the interest of transparency, he could even go for a negative, but at least there must be some oversight by the Parliament of these rules.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chairman, the Registrar General Act of Trinidad and Tobago is an Act of Parliament, 19:03. It was promulgated in the year 1921, and since this Act came into effect the ability to make rules is expressly provided for at section 10 of the Act. And section 10 of the Act provides that the Registrar General shall make rules, et cetera. Since 1921, straight up to today's date in 2019, nearly 100 years later, 98 years later, no Government has come to amend the law to say make rules subject to negative or affirmative resolution. For the record, the rules are continuously made by the RG and they are a bare pittance. It is \$25 to file a name search and name reservation; \$25 does not even buy a coffee in some places. So, we are confident that the robustness of the 1921 Registrar General Act can take care of this.

Sen. Mark: Mr. Chair, just briefly, I understand what the AG is saying; 99 years ago, I was not around, I am around now, and I am suggesting, Mr. Chairman, that we take into consideration the current reality. Mr. Chairman, if I may invite you to go to 27(1) of the Bill, they are formulating, they are establishing forms, they are determining fees and other matters relating to registration, and we have no sight of that. Mr. Chairman, that cannot be fair. So if that was a relic of the past, why must I continue with that relic, and I am sorry that if other Governments overlooked it, but I am not overlooking it.

Mr. Chairman: I think I get the gist of what you are saying, Sen. Mark. Attorney General, not to pre-empt you, I assume that you are going to make the same response. So those are the comments in relation to this particular clause. I shall

now put the question.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clauses 8 and 9.

Question proposed: That clauses 8 and 9 stand part of the Bill.

Sen. Mark: Mr. Chairman, wait, I just want to—the Clerk just rushed. I know that we were going clause by clause but I do not know if this a special one that she is connecting, but I do not want it to become a habit on the part of the procedure because you have established a procedure, clause by clause. So if you are going clause by clause, “8 and 9”, next thing you are going 10 and 11, I do not want to go there. Let us go clause by clause.

Hon. Senator: Who is the Chairman?

Sen. Mark: No, I am proposing what the Chairman has said. The Chairman has said we are going clause by clause and I am just saying let us keep to that rhythm, clause by clause. We may not have any objection to this and in two seconds it is gone.

Mr. Al-Rawi: Let me remind you, you can speak to both clauses, you know.

Mr. Chairman: No need to respond, Attorney General, let me respond. The question was put to me. So what is happening here is that there are no written amendments put forward to clauses 8 and 9, so the reason we called clauses 8 and 9, and as you well know the procedure, there is a slight pause to allow Members to make any comments in relation to both. Any comments? No comments. [Interruption] Sen. Mark, let me put the question, please.

Question put and agreed to.

Clauses 8 and 9 ordered to stand part of the Bill.

Clause 10.

Question proposed: That clause 10 stand part of the Bill.

A. In subclause (1)—

- (i) insert the word “or” at the end of paragraph (e);
- (ii) delete the words “; or” at the end of paragraph (f) and replace with the words “.”; and
- (iii) delete subclause (1)(g).

B. In subclause (2), delete the words “notice,” and replace with the words “notice giving reason for the cancellation.”

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chair, the Government proposes that we do some tidying up to clause 10. The tidying up which we do relates to clause 12 and it really is where we allow in clause 10, cancellation in 10(1)(g) to be done on the recommendation of the regulator under section 12. That clause 12 is dangerous when we had a second look at it. Because when we massaged it and we had a proper scrub look at it, clause 12 effectively allows the Registrar General the ability to cancel a registration before the FIU has finished its administrative run under the Financial Intelligence Unit Act. So of our own volition, without anybody noticing this, we had proposed that we delete clause 12. It is the Government’s recommendation. No stakeholders referred to this. Nobody in the debate referred to this, but on my second reading with our team we felt that we should remove clause 12. In those circumstances it is effectively a consequential amendment to clause 10 that when we delete subclause (1)(g), that we would have to move the word “or” into the subclause above and just adjust it. So this is really in contemplation of the recommendation for the deletion of clause 12.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman, again, we have some reservations about the Registrar

General having this power to cancel registration of non-profit organizations for the reasons outlined in this section, and we had indicated that it is Caesar speaking to Caesar, meaning that the Registrar General has the power to cancel. But what is being advised as we go along, in the future reasons can be proffered as to why they are cancelling, but the determination for cancelling remains in the hands of the Registrar General. I think something is wrong with that process. There is no arbitration. There is no independence. There is one body that is telling you, Mr. Chairman, “Ah cancelling, ah giving yuh reasons, you object, I object”, and when I object you will then determine for me whether I will be cancelled or not. This cannot be fair. This is an unjust provision and therefore, that is why we had argued that we need a tribunal to intervene in these matters where, for instance, there would be some justice and fairness in the process.

Mr. Al-Rawi: I get the point.

Sen. Mark: This is going from the Registrar General back to the Registrar General. So we find this to be a bit onerous, Mr. Chairman, and we would like the Attorney General to revisit this provision.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Thank you, Sir. May I just start off by saying, everything that Sen. Mark just said is wrong, completely and totally wrong, and it is wrong from a plain reading of the clause. Let us go to what Sen. Thompson-Ahye called the seven deadly sins, now the six deadly sins. Listen to subclause (b):

“The Registrar General may cancel the registration of a non-profit organisation...”

—Sen. Mark just said, Caesar onto Caesar, so let us look at if Caesar is talking to Caesar:

“(b) it is proven in Court that the non-profit organisation breached a duty

owed to itself or any of its contributors;

- (c) it is proven in Court that the non-profit organisation committed a criminal offence which carries a penalty of a term of imprisonment of three years or more;
- (d) the non-profit organisation is found guilty of an offence under the Proceeds of Crime Act, Anti-Terrorism Act, Financial Intelligence Unit of Trinidad and Tobago Act, or any other written law by which the recommendations of the Financial Action Task Force...”—have to happen;

—That is a court.

- “(e) the non-profit organisation is a designated individual...under section 22B of the Anti-Terrorism Act...”—and—“...the Economic Sanctions Act;”

—Section 22B requires listing before a High Court judge in a court of law after an application is made and publication is had. It is a court of law that does that.

- “(f) the non-profit organisation is struck off the Companies register under section 461 or 489 of the Companies Act;”

—That is the Companies Act. The one I left for last, (a):

- “(a) the non-profit organisation failed, without reasonable cause—
 - (i) to keep...financial accounts and records...”—within—“section 14; or
 - (ii) to submit audited financial accounts and records in...section 15;”

So let us deal with (ii). Who gets the reports and then says that you failed to submit?—the FIU. How does the FIU operate?—section 18G of the FIU Act. They have to go through an entire administrative process which requires them to

tell you, you breached, call upon you to do something, give you the opportunity to do it, and if you do not do it, they go to court, they get an order of the court; the court tells you to do it, the court then warns you, then the court sanctions you. So, Mr. Chairman, where does Sen. Mark get this from?

Sen. Mark: I will clear the air for you just now.

Mr. Al-Rawi: Respectfully.

Sen. Mark: Mr. Chairman, can I clarify?

Mr. Chairman: Sen. Mark.

Sen. Mark: Yeah, let me clarify. Mr. Chairman, what the Attorney General has said in 10(1)(a) and (b), the Registrar General has the final say in this matter. All right? We have said, and the Attorney General is only supporting what I am saying, when you go to (b), (c), (d) and (e), Mr. Chairman, in the case of, let us say (b), where it is proven in court, you have a right under this law, once it is proven in court, to appeal, that there is a provision in the law that talks about appealing, and one of the points that we have made in our contribution, for the Attorney General's consideration, is that this is going to be a very costly exercise for these NGOs. So when they have to go to court, or when a court decides to do X, Y or Z, then they have a right of appeal, and they have to find money to go to the court. So what we are saying, Mr. Chairman, is that this provision in 10 ought to be the responsibility of a tribunal.

Mr. Chairman: Okay. All right.

Sen. Mark: That is the point we are making.

Mr. Chairman: Sen. Vieira had a comment.

Sen. Vieira: Thank you, Chair. The Registrar General is the last phase in a number of different possibilities that may take place, according to my reading of this section. And above what is here, even if someone is convicted or found guilty

in one court, that process could go all the way up to the Privy Council, and none of these things here, I think, are objectionable for a non-profit organization being struck out. But, interestingly, it does not say, “the Registrar General shall cancel the registration”. After all of these things, any one of these things occurring, he still has a discretion and can allow you to continue on the register.

Mr. Chairman: The Attorney General.

Mr. Al-Rawi: I thank Sen. Vieira for the calm, dispassionate response to that and I thank Sen. Mark for his enquiries.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Mr. Chairman: Before we move on to the next clause, hon. Senators, the time is now 5.31 p.m., and it is a good time to take the tea break, therefore this House will now stand suspended until 6.01 p.m.

5.32 p.m.: *Committee suspended.*

6.01 p.m.: *Sitting resumed.*

Mr. Chairman: Attorney General, are you ready?

Mr. Al-Rawi: Yes, Sir.

Mr. Chairman: Okay, so we are on clause 11.

Clause 11.

Question proposed: That clause 11 stand part of the Bill.

Sen. Mark: Mr. Chairman, under clause 11, there is an area that we have some—no, I think clause 11 seems to be okay with me.

Question put and agreed to.

Clause 11 ordered to stand part of the Bill.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Mr. Al-Rawi: Mr. Chair, the Government proposes that clause 12 be deleted for the reasons discussed relative to clause 10. This is a recommendation which comes from the Government itself. No stakeholder or Senator has spoken on this issue, but we believe that we should remove the option of the Registrar General to have a role to deregister whilst there is an ongoing process at the FIU. So we prefer to take this clause out entirely.

Question put and agreed to.

Clause 12 deleted.

Clause 13.

Question proposed: That clause 13 stand part of the Bill.

Sen. Mark: Mr. Chairman, in clause 13, again, we would like to submit that whilst it is noble for us to have a provision where, once your registration is refused, you may appeal the decision to a judge in the High Court and, of course, that would be subject to a process, of course, that would follow.

What we would like to record here, Mr. Chairman, is that for many non-profit organizations, this is a very expensive, costly and time-consuming exercise. And, Mr. Chairman, as you are aware, our court system is based and is experiencing right now, heavy, heavy backlog of cases. So that to put a non-profit organization to line up in a matter of this nature, we believe that this is a very punitive, onerous exercise.

And I think that the Attorney General should take a page out of the Charities Act of 2011 of the United Kingdom where a tribunal has been established for this purpose. So that ordinary NGOs, when they are faced with certain challenges, they do not have to pay lawyers to go and appear for them at the High Court level. You can have for instance, yourself or somebody who has some experience, going before a tribunal.

So I am suggesting, rather than we subject these NGOs to a judge in the High Court, could the Attorney General consider establishing a provision for a tribunal to be established where it will be less costly, less time-consuming and it would give these organizations a greater degree of flexibility in doing their work. That is my submission, Mr. Chairman.

Sen. Teemal: Yes, Chairman. During my contribution to the debate I did raise this matter in terms of—my concern is more particularly for what I refer to as the small to medium-sized NGOs operating, you know, with budgets that could be, you know, a couple hundred thousand dollars or less. I mean it is good that there are grounds for appeal, for means of appeal, but it may well be beyond the means of a significant number of small to medium-sized NGOs. And I am not sure how we can address that. Maybe the AG could take it into consideration.

Mr. Al-Rawi: Thank you. I thank the hon. Senators for their considerations. We certainly do intend in a separate piece of law, which we have undertaken to draft together with the non-profit sector and the network of entities that comprise that, a larger piece of legislation which would more than likely, I think quite prudently, have tribunal-type arrangements.

Tribunal-type arrangements are deceiving in the sense that people believe that they are not costly. The cost is certainly not the judge or the tribunal, it is the representation. And insofar as in tribunals we build in the right to appear by counsel—six, a dozen on one; half a dozen on the other—but it gets worse, because in the tribunal context you actually have your ultimate appeal from the tribunal going to the court anyway. So you are putting in one layer of equal expense, which is the tribunal, because it is the lawyers that cost, and then you are going to a second layer of expense which is the High Court all the way up to Privy Council. So you have got two sets of expenses.

It was one of the mischiefs identified in arbitration and mediation, and until we had caught a next mediation to remove the cost of the mediator, that is only when fees started to crawl down. So, sounds good, you know, tribunal sounds good, but until you get a lawyer to tell you, “I eh charging yuh”, then you are not out of the bamboo.

So we do think that the argument is one to be had, depending upon structures. I am not so concerned about the capacity. The civil law capacity in the courts are being well managed. Cases are down to one year in trial, if so long at all. We have managed to crack the backlog considerations. It is almost a 90 per cent disposition rate in the courts, et cetera. Where we had problem was in the criminal justice arena. Fortunately, this Government has done a lot in that area and we are headed in the right direction.

So, quite respectfully, may I say that it is important to have an appellate route. There is no better way to do that when you are treating with potential property than by way of due process. This is how you clothe this thing in proportionality, and may I respectfully at this stage decline the invitation to construct a tribunal arrangement.

Sen. Vieira: Thank you, Chair. My area is ADR, alternative dispute resolution, and so we are always looking at ways in which you could resolve disputes outside of the strictures of a court. We have looked at tribunals long and hard, for example, in sports, copyright and intellectual property. We have looked at models in Kenya and all over the world, but as the AG says, it is an expensive undertaking.

First of all, who will man the tribunals? Where will you site your tribunals? You will have to have rules and procedures for the tribunals. You will have to have staffing for the tribunals, and at the end of the day people are still going to go with lawyers and argue them vigorously just as though you are going before a

court.

Now, you have tribunals, for example, in the Industrial Court where you have panels of three, but that is a whole system, that is a whole ecosystem. So while it is attractive, I think the compromise that was reached arising of the debate, because it was originally just appeal to the judge, but by having the first round by going to the Registrar General or the Registrar directly and then having the appeal, I think makes sense. Maybe down the road there can be a tribunal for all these other things, but for this specific legislation you would have to have a specific tribunal with alternates to deal just with this. And it just might not—just might not be not cost effective, but the time it is going to take for implementation as well is something we would need to be mindful of.

Question put and agreed to.

Clause 13 ordered to stand part of the Bill.

Clause 14.

Question proposed: That clause 14 stand part of the Bill.

- A. Delete the words “(1)” in subclause (1).
- B. Delete subclause (2).

Mr. Al-Rawi: Mr. Chairman, the Government proposes that clause 14 be amended specifically and quite simply to delete subclause (2). One of the representatives for the NGOs pointed out in our consultation between the House of Representatives and here that this could potentially be difficult, and we want to agree with her. She pointed out in particular the obligation to have a disclosure which at any time is accurate was something that was probably even a higher standard than clause 15, and we think that there is great prudence in that recommendation, and in those circumstances we propose to delete subclause (2) and to renumber, of course, by removing the reference to a subclause (1). Those

are the proposals for our recommendations in this clause.

I know that Sen. Drayton has a proposal for clause 14, and we actually agree to it:

“In subparagraph (d) amend to read ‘non-monetary transactions of property...’”

That would be—if I could be so bold, Sen. Drayton, thank you again—subclause (d), as proposed by Sen. Drayton, that it be amended; (d) right now says:

“non-monetary transactions as may be prescribed by the...Regulations;”

And what we think is prudent there is:

“non-monetary transactions of property as may be prescribed by the...Regulations.”

Mr. Chairman: So I will now put the question first on Sen. Drayton’s—I assume Sen. Drayton has nothing to say because it is agreed upon. So I would now put the question first on Sen. Drayton’s amendment and then subsequently on the Attorney General’s amendment.

Question, on amendment, [Sen. J. Drayton] put and agreed to.

Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15.

Question proposed: That clause 15 stand part of the Bill.

Sen. Dr. Dillon-Remy: We had said we were going to revisit the \$10 million, 15(1):

“...a gross annual income exceeding ten million dollars...”

Mr. Al-Rawi: Yes we did, thank you, and I missed it because Sen. Richards is temporarily out of the Chamber.

Sen. Dr. Dillon-Remy: I am in agreement that \$10 million is very high. That is approximately \$850,000 a month passing through your organization, and you do not have to audit. I was thinking probably something like, down, I would say about five or two to five.

Mr. Al-Rawi: If I could say why we thought 10. So we debated this quite strenuously at the Cabinet level, and it was in fact the Minister of Finance who suggested the \$10 million. In his rationale put forward, because we were potentially dealing with property as well, meaning asset, physical land, et cetera, a bus that is donated, we thought that that number could trip up quite quickly.

The second thing is, because we have not yet gotten into the risk basing, which the FIU is going to do after it collects this list and then goes ahead, we thought it prudent to allow that opportunity to happen first. Under 14, everybody has to keep records, so the records are going to be there. Under 15, you are keeping records and you have to audit them. So we thought it prudent to start a little bit high, let us gauge the industry, let us see where the parameters are, and then as the industry's compliance comes into purpose and education and outreach happens, we then are able to look at where the ceilings really ought to be. So we did not want to unwittingly go too low. So we prefer to go a little bit higher in this matrix, knowing that this is an issue which you are going to have to come back to as a country quite soon.

Obviously, this law is not intended to be proclaimed until there is a significant amount of education, outreach, message. Again for the record, we give the commitment that we are going to plug into the network of NGOs, have their feedback on the legislation as proposed. We are separating out this particular law from the other legal purposes that we would look to develop as a grouping, and then to come back. So that was the Government's rationale for the 10.

Sen. Obika: Thanks, Chair; \$10 million should be okay because at the end of the day there are organizations that have a throughput in terms of funds of \$3 million and \$5 million, and really the margins are insignificant. The issue that I would have is how is this \$10 million looked at, because one year an NGO, let us say they built houses and they can have \$30 million passing through, and the next year or the next couple of years, because they are basically looking at disbursing and raising funds again they may have less than \$1 million passing through, and then may not be able to pay for audited accounts, which is very expensive. So I was wondering if you can treat with that as well.

Mr. Al-Rawi: It is as set out, it is with a gross annual income, so it is a year-to-year position. What I know happens is that these entities tend to, when they reach a particular critical mass, they tend to do these accounts anyway, because the vast majority of contributions which feed entities of this type, result in them having to have audited financials anyway. So I do not think it should be so much of a difficulty. It is technically a year-by-year basis, and it is \$10million for that year. If you are below that year, you can safely argue, “look, I am below \$10 million and it does not apply to me’. But you would find that the funders usually require that you do that.

Sen. Mark: Mr. Chairman, through you, under 15(1), we have this \$10 million, but under 15(2) this is applying to all NGOs, meaning that they have to complete an audit of their financial accounts, or is this related only to those NGOs exceeding \$10 million, or am I to read it separately?

Mr. Al-Rawi: It is the latter. So 15(2) is in the context of 15(1); 15(1) only applies if you are over the \$10 million mark. So anybody who is under the \$10 million complies with 14, not 15.

Sen. Mark: Okay. All right, cool.

Sen. Drayton: Thank you, Chair. Attorney General, quick question about 15(5). In the definition of a “qualified auditor”, what if an NPO has an auditor outside of Trinidad and Tobago, does that still apply, or how would that work?

Mr. Al-Rawi: Fortunately, we have one of the best here in the Senate, Sen. Drayton. There is Sen. West who is on the bench here. Perhaps she could lend us a hand from her perspective in having worked in this area. It really is intended that you are qualified within the meanings of the IFRS positions, et cetera. But I think the question is the territoriality?

Sen. West: Yes. What happens is that when you have a situation that would usually be an international organization, their main auditors would prepare the accounts but you would have to have somebody local certified that it is in accordance with our IFRS rules.

Sen. Vieira: Yes, we also have ICATT, and they have rules and regulations about who can give audited accounts in this jurisdiction.

Sen. S. Hosein: Thank you very much, Chair. Through you, to the hon. Attorney General. AG, I noticed that we have stated the NPOs that would be liable to file the audited accounts. Now, is there a date in which these NGOs are obliged to file these accounts?—because I did not see whether or not the date. Because when you look at the Companies Act, companies have to file within a certain date. Is it that we are going to prescribe something similar, because right now it is a bit vague in terms of the date in which these NGOs are obliged to file by?

Mr. Al-Rawi: Sure. IFRS catches that, and just like the Companies Act you file on the anniversary of your incorporation. So everybody’s date is different under the Companies Act. So we did not intend to use that sort of formula. The IFRS will catch that in its circle as to what the NPO’s financial year end is and how accounts go, et cetera. So that is left up to the IFRS standards.

Sen. S. Hosein: And those directions will be given to the RG from the IFRS in terms of the date?

Mr. Al-Rawi: The RG has no position other than—so an NPO with a gross annual income shall have the obligation to audit.

“Upon the completion of an audit of the financial accounts and records of a non-profit organisation, a qualified auditor shall submit his report to a controller of the non-profit organisation.

A controller of a non-profit organisation shall submit the audit report...to the Registrar General when requested by the Register General.”

So what this was, really done, the right of audit that the FIU is going to do, that is where the in-tandem between the FIU and the RG comes about. So the FIU would tell the RG, call for that report, and what it is, is that entity would have a continuing obligation to produce reports, but not necessarily file it on a continuous basis.

Sen. S. Hosein: AG, what I am saying is that that position, the latter position, you stated for FIU calling on the RG is in subclause (4). When we look at subclause (3), the one you just read, is that the RG does have the power to call on the NPO for audited accounts, and because we do not have a date I am asking whether or not the IFRS standards would guide the RPO also, because if you are making regulations maybe that may be captured under the subsidiary legislation.

Mr. Al-Rawi: Yeah, I follow what you are saying now. Thanks for the clarification, and yes it will be the regs. So the IFRS will say in what cycle they are to do their own business from their financial year end perspective. When that is produced, the regs under the law will say to the RG how and when you call for what, and then the FIU has its independent focus.

Sen. S. Hosein: Because we need to know the date in which the financial year

starts, because when I looked at—

Mr. Al-Rawi: Senator, if I were to ask you—sorry to interrupt—what specifically is the amendment you are asking for, apart from—

Sen. S. Hosein: I am asking for some clarification with this particular provision, because when I looked at the definition of “financial year” it does not give a specific start date, whether or not it is from January to December.

Mr. Al-Rawi: And it will not, because each entity will be different.

Sen. S. Hosein: Each financial year would be different.

Mr. Al-Rawi: Correct. It is the same way each annual return is filed on a different date, because the Companies Act does not say that. It just says you file it on the anniversary of your incorporation or continuance.

Sen. S. Hosein: Okay.

Question put and agreed to.

Clause 15 ordered to stand part of the Bill.

Clause 16 ordered to stand part of the Bill.

Clause 17.

Question proposed: That clause 17 stand part of the Bill.

Mr. Al-Rawi: Mr. Chair, we propose that we delete clause 17 which provides for an offence, and we replace it instead with the provision of an administrative fine, which is in keeping with section 516A of the Companies Act, and we actually use the same terminology from that which is:

“Where a controller fails to notify the Registrar General in accordance with section 16, the Registrar General is entitled to collect from the controller a penalty of three hundred dollars for every month, or part thereof, that the controller fails to notify the Registrar General.”

Sen. Mark: Mr. Chair, I think that the Attorney General should try to—if he can

use that same approach, as it relates to other provisions, because I am seeing that that is a remarkable alteration on his part to deal with administrative penalties, rather than fining and jailing. I was wondering if this is a procedure that he can follow as we get into the offences section. I think that is a very important step that we should look at as we proceed.

Sen. Dr. Dillon-Remy: Chair, it goes back to not—clause 16, AG, this says that you have to submit to the RG any changes within 30 days of such a change. Do you still have to submit, let us say, annual returns or—[AG *nods*] No, you do not?

Mr. Al-Rawi: The company is registered under the Companies Act. The non-profit companies will still have to submit their annual returns, yes. So remember there are different types of NPOs. One specie of which is the not for profit companies registered under Part V of the Companies Act. Under the Companies Act they are required to fill and to file an annual return. It is called the Form 29, and that is done on the anniversary of its incorporation or continuance.

Sen. Dr. Dillon-Remy: What would that mean for that company as far as this is concerned, this clause 16?

Mr. Al-Rawi: So, the controller of non-profit companies who fall under the provisions of the Companies Act, they continue to be governed by the requirement to file their annual returns.

Sen. Dr. Dillon-Remy: And therefore, they do not have to submit within 30 days of a change, because they would submit that when they submit it yearly?

Mr. Al-Rawi: So let us hold on. This particular clause 16 now is tied into clause 5(4), and clause 5(4) in this Bill is where we put the obligation. It is to be found at page 7 of the Bill—5(4), this is the form containing name, address, declaration, name, occupation, copies, et cetera, et cetera. If any of these particulars which are filed, which are referred to here in 5(4), change, all NPOs, including NPOs which

are companies under the provisions of the Companies Act, have to file within 30 days.

6.30 p.m.

Sen. Dr. Dillon-Remy: So therefore a question remains—that means that the non-profit companies has to file twice? The change is twice?

Mr. Al-Rawi: They will be filing two separate documents—

Sen. Dr. Dillon-Remy: Okay.

Mr. Al-Rawi:—yeah?—under two different regimes, because the Companies Act still applies.

Sen. Dr. Dillon-Remy: Okay.

Sen. Mark: Mr. Chairman—

Mr. Chairman: Members, just to indicate that we are on clause 17 and you are asking questions on clause 16. The procedure does allow for any comments to be made on a particular clause at a particular point in time. So we are on clause 17 as it is right now, and we are trying to dispense with that clause. Clause 16, has already put to the question, and now stands part of the Bill. So we are on clause 17, not to derail, Attorney General, you have made the necessary comments in relation to your amendments on clause 17?

Mr. Al-Rawi: Yes, Sir.

Mr. Chairman: Good. So, Sen. Mark, you are on clause 17?

Sen. Mark: Yes, Mr. Chair.

Mr. Al-Rawi: He made his comments already, I took note of them.

Sen. Mark: No. I am just—

Mr. Chairman: Sen. Mark.

Mr. Al-Rawi: He asked me to look at this applied approach throughout the rest of the offences and I listened.

Sen. Mark: No. No. No.

Mr. Chairman: Is there anything new to add, Sen. Mark, to that?

Sen. Mark: Yeah. This is why I am intervening.

Mr. Chairman: Okay. Okay. No. No. No need to get—

Mr. Al-Rawi: Did I say something that was wrong?

Mr. Chairman: No need to get worked up.

Sen. Mark: This is a democracy, you know.

Mr. Chairman: No need to get worked up, just add the comments so that we can keep the procedure moving as smoothly as we have been doing. Go ahead.

Sen. Mark: Thus far. Mr. Chairman, what I was about to ask the Attorney General is that this amendment to clause 17 that is in circulation now, is it the same provision that is applicable to companies for profits when they fail to submit their annual returns? Are they subject to the same \$300?

Mr. Al-Rawi: The answer is, yes, it was amended in the year 2012 by one Larry Howai, Minister of Finance and the Economy under the UNC Government.

Sen. Mark: Well, Mr. Chairman, what I am saying is this. These are non-profit organizations and I do not think that we have to be slavishly following amendments that would have been done in 2012. This is not a profit organization or company, this is a non-profit organization. So I find it very punitive to impose on a non-profit organization in the event of them forgetting, Mr. Chairman, to file their financial statement or their annual returns to the Registrar General's office. They are going to be called upon to pay \$300, and every month or part thereof they are to pay that \$300 if they fail to notify the Registrar.

How can we equate a company for profit for a company that is not making profit and impose this kind of fee. So Mr. Chairman, I think this too onerous, it is too oppressive, and I call on the Attorney General to reconsider that matter in

terms of this amount of fees that we are imposing on a non-profit organization.

Mr. Chairman: So, Sen. Mark, just as a point of clarification as far as I understood it. So the Attorney General would have spoken to the reason for moving this amendment. You would have responded by endorsing that, and now you are saying that you are not endorsing that.

Sen. Mark: No. No. No. I am saying that the fee is onerous. So in other words, it is not a question of not paying, but why 300? I am saying, why not say \$100, why not say \$50?

Mr. Chairman: We got it. We got it. Attorney General, any specific response to that?

Mr. Al-Rawi: We are harmonizing it with the Companies Act and it has been in application.

Mr. Chairman: Okay. All right.

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed: That clause 18 stand part of the Bill.

In subclause (5) delete the word “which” and replace with the words “who knowingly and without reasonable cause”.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chair, we believe that we ought to put in a qualification to the mens rea, the mental intention to cause this trigger. As stated we have clause 18 simply going:

“(1) A non-profit organisation which—”
—does certain things “shall”, and then when we get down to the actual penalty, we then provide for it which seemingly does not take care of the wilfully or knowingly

or without justified cause doing something.

Now, the truth is that the Companies Registry which is run by the Registrar General which is now going to be with a new registry for non-profit organizations, so there are two separate registries, that actually has a system of querying.

So when you fill a document in the Companies Registry they issue a system of queries, they send you a notice to say you need to amend this, this appears to be inconsistent, et cetera. So taking into account those things we thought it prudent to amend this clause by adding in the qualification that you must knowingly and without reasonable cause do something before you trip the offence. We think that this would allow for some more latitude in particular, Ms. Leotaud who I recognize is here, had raised the submission across coming together with other members of the NPO sector and said that look we want to take care of the categories of entity that do not have sufficient education or understanding and they may have a legitimate or just cause for doing these things, so that is the rationale for this amendment.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman, we completely reject this amendment and the entire provision. We believe this is oppressive, it is absolutely necessary and we believe it is an invasion of the rights of persons to property which is guaranteed under sections 4 and 5 of our Constitution. This is one of the most contentious parts of the legislation among other parts that we are heading to.

So, we want to say very clearly and plainly that clause 18 is unacceptable, unsatisfactory and it really compromises the rights of those non-profit organizations to determine how they are going to treat with property, and there is an invasion here by the Government through the Registrar General and somebody calling themselves “the receiver”, I do not know where they get that power from to

tell an NGO or an NPO how they must distribute their business. That is totally unacceptable, so we reject out of hand that entire provision.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Yes, Mr. Chair, I would like to just put on to the report that to say that this is unreasonable and to be rejected is to, firstly, reject the whole principle of voluntary surrender, this clause is about voluntary surrender. So if the UNC's position is that people cannot voluntarily surrender or end their pursuit of being a non-profit organization, well then so be it, that is the UNC's perspective.

The second aspect is, clause 18 says:

“(a) A non-profit organisation which—

- (a) wishes to voluntarily surrender...
- (b) or is no longer in operation,

shall notify the Registrar General...

receives notice...he may approve the surrender...

(3) Within six months after receiving approval to surrender...a non-profit organisation shall distribute its property in accordance with section 21.”

It has it the discretion to distribute its property, Mr. Chairman.

When we get to subclause (4), the contravention of subclauses (3) and (4) which is what we are dealing with by adding in a wider range of treatment with a qualification to the mens rea. What we are doing here is we are protection this thing in a much greater way. So I respectfully reject the arguments offered by my learned friend Sen. Mark and for the reasons adumbrated.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Sen. Dr. Dillon-Remy: I have a question on who “knowingly and without reasonable cause”, who makes that call?

Mr. Al-Rawi: A court.

Sen. Dr. Dillon-Remy: A court.

Mr. Al-Rawi: So to trip an offence you have to get to court. To be guilty of an offence after a trial, a judge would hear, “Look I am hearing a matter that you breached section 18 of the non-profit organizations law”. If you get that far as to actually have an offence offered against you that takes you to court, it is a court who listens to the factors. Well, tell us why? It is not a strict liability that it just happened. It is not like possession of drugs where because you had the cannabis on you are guilty and your intention is irrelevant.

Here we provide for the first element of a crime, that is, the mental intention to commit a crime to be widened. And here we say look you have an exculpation, you have a defence, if you had a reasonable cause for what you did. Look we sent in the certificate with John Brown, and John Brown got sick or we gave it to our lawyer and the lawyer had a fire or the lawyer died, there are all sorts of reasons that the court has come to recognized as “reasonable cause” in these circumstances; I hope assists.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: And just add to that, the burden of proof is on the prosecution. So it will be the prosecution that will have to prove knowing, knowing relating to actual knowledge. That is to say, that the defendant knew of the circumstance which made his actions an offence. And so, again, the decision maker here is going to be a court, and the burden of proof will be on the prosecution.

Mr. Al-Rawi: Thank you.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 stand part of the Bill.

A. Renumber subclause (3) as subclause (4).

B. Insert after subclause (2) the following new subclause:

(3) Where the Regulator in exercising its powers under section 18G of the Financial Intelligence Unit of Trinidad and Tobago Act determines that a non-profit organisation is not keeping the records required under this section it shall issue a notice to the non-profit organisation requiring it to provide the records within such time as the Regulator determines.

C. In renumbered subclause (4), delete the words “which” and replace with the words “who knowingly and without reasonable cause”.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chairman, we propose an amendment to clause 19 to add some more due processing in. We thought it prudent to have a new subclause (3) added into the Bill, and we also thought it prudent exactly as we just did to clause 18 to provide for a specific type of mental intention element to a potential offence.

Firstly, we say in the insertion we provide that in the obligation to keep records which is what clause 19 is about, we are saying, first subclause:

“(1) A controller...shall ensure that records...are kept.”

—the following records, and it is listed there.

“(2) A non-organisation shall retain—”

—these records for specific periods of time. We have harmonized it to six years which is what the taxation requirements are in this country. And then we say by way of an insertion as circulated:

Where the regulator...

—that is the FIU—

...in exercising its powers under section 18G of the FIU Act determines that

a non-profit organisation is not keeping the records required under this section, it shall issue a notice to the non-profit organisation requiring it to provide the records within such time as the Regulator determines.

So we thought it imprudent to let the NPO sector have the benefit of a knock on the door, a notice from the regulator who is the FIU saying, “Please produce your records” and then after that move into the cycle of considering an offence. But specifically here we say, if you have contravened an offence, put the qualification that you must knowingly and without reasonable cause to have done that; we did not get the notice, we moved office, it was never served upon us. We did certain things that in are exculpatory in nature. And as Sen. Vieira quite properly put it, to trip an offence it is the burden on the prosecutor to prove the beyond unreasonable doubts certain things that would be the elements of knowledge and the lack of reasonable cause.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman, this provision which gives the regulator which is the FIU what is called “arbitrary power” to determine things as it relates to notice, totally unacceptable. We are dealing with law and we need to be a little more certain and specific. You cannot give the regulator this wide power to determine when—what is the timeframe? We do not know and this too much power in the hands of regulator. So this is open for favouritism Mr. Chairman, big organization might get away, small organization that is giving the Government trouble, they might crush them. So you need to have equality of treatment in this arrangement, and I am not seeing it.

And worse, Mr. Chairman, when you go to the provision, subsection (3), you have a fine of what?—\$50,000 and seven years. Why does the AG not deal only with administrative penalties and impose a fine and not a jail term?

Mr. Al-Rawi: Mr. Chair—

Mr. Chairman: AG.

Mr. Al-Rawi:—first of all, arbitrariness is just not even on the table. We have specified here that the FIU is acting pursuant to the FIU Act. We have said which section in the FIU Act, that is prescriptive which is the opposite of arbitrary. So I do not know where that comes from quite frankly, and I am going to try my best to be as polite as I can.

Secondly, there must be a line drawn in the sand as to when something is serious enough to be an offence or not. Provision of notice in the manner that we are doing is an amplification of due process, Mr. Chairman, and therefore, I most respectfully do not accept the propositions offered by Sen. Mark.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

- A. Delete paragraph (b) and renumber paragraphs (c), (d) and (e) as paragraphs (b), (c) and (d) accordingly.
- B. Delete the word “or” at the end of the renumbered paragraph (c).
- C. Delete the word “,” at the end of the renumbered paragraph (d) the following paragraphs:
- D. Insert after the renumbered paragraph (d) the following paragraphs:
 - (e) is less than eighteen years of age;
 - Chap (f) is mentally ill, within the meaning of the Mental Health Act; or
 - (g) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Trinidad and Tobago or

elsewhere,

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Mr. Chairman, there was a considerable amount of discussion as to what disqualification should look like under the provisions of this law, and there was a very compelling argument that including disqualification on the basis of a conviction as the Bill had pointed out here in:

“20(b) is found guilty of a criminal offence which carries a penalty of a term of imprisonment of three years or more;”

That would be unduly restrictive.

In fact, even outside of the Senate, the many representatives of the NGOs raised the issue and they point out to the very proper position that NGOs include for instance, if you are looking at those engaged in recidivism management, reformation, et cetera, they may very well include people who are, in fact, offenders and who are best suited for this purpose.

We think that there is great merit in that argument therefore we propose the deletion of (b), 20(b). And what we have proposed by way of that which is circulated, is that we have gone back to the formula that is used in the Companies Act. One, that you should be a person over 18 years of age, 18 and over. Two, if you are mentally ill within the meaning of the Mental Health Act that you should not be permitted, and if you are undischarged bankrupt.

And then we propose to keep the things which treat with terrorist financing and money laundering which is as set out at (a) breaches of the finding of guilt under the Proceeds of Crime Act or the Anti-Terrorism Act, a sentence of imprisonment involving fraud or dishonesty, largely because you are treating with trustee-type relationships here. And if you a designated individual under section 22B of the Anti-Terrorism Act and the Economic Sanctions Act, and if you are

found guilty of an offence under this Act. So that encapsulates the rationale for the Government treating with this.

I know that there has been a discussion as to the mental health issue. In fact, I want to thank Mr. Robinson from CAISO for his enquiries in relation to the mental health element, citing that there are people who are functional notwithstanding mental issues, but I do not think that they fall within the category of treatment of certification under the Mental Health Act.

So we are dealing, after all, with entities that handle money and that handle certain aspects, and we have been advised to keep it within the parameters or the mental health legislation.

Mr. Chairman: Sen. Mark.

Sen. Mark: Yeah. This provision especially 20(e), Mr. Chairman, where if:

“A person who—

(e) is found guilty of offence under this Act...”

—of course the person:

“...shall be disqualified from acting as a controller...”

And you have many offences outside of the main ones that have been outlined.

I am wondering if the AG does not want to delete (e) as well, because the main criminal provisions will be anti-terrorism and fraud.

Mr. Chairman: AG.

Sen. Mark:—as well as—before, Sir, so you are talking about proceeds of crime in (a) you have Anti-Terrorism Act in (a) as well, and these are serious offences. But when you put a catch all is “found guilty of an offence under this Act”, I do not understand why we are deleting (b) which I could understand to allow other people to get out of this thing and rehabilitation to take place, but we are keeping (e).

Mr. Al-Rawi: Mr. Chair, I get the point, please.

Mr. Chairman: Just let Sen. Vieira have comments.

Sen. Vieira: I do not think this section is referring to administrative offences, but to criminal offences. And the criminal offences are set out at Part Four and they are very specific, “solicits or causes to be solicited contributions...whilst not registered”, “knowingly or recklessly makes or provides a false document, financial accounts or records”, and the like, so—

Mr. Chairman: Mr. AG.

Mr. Al-Rawi: Mr. Chair, I thank Sen. Mark for his contribution and for the offer of caution. We respectfully believe that compliance with the Act should be a mandatory feature of disqualification, and I respectfully decline his invitation.

Mr. Chairman: Sen. Richards.

Sen. Richards: Thank you, Chair, through you to the AG. On the issue of the offender who has served his or her time, and is now considered eligible to run an NGO, is there a qualifier with a certain time having passed and someone determining that this person is not likely to offend?

Mr. Al-Rawi: No. You mean for an offence under the Act?

Sen. Richards: Yeah.

Mr. Al-Rawi: In the context of the last one?

Sen. Richards: Yeah.

Mr. Al-Rawi: No. The standard route of having to go for a pardon would apply, that is the process under our laws. The Mercy Committee, the Pardons Committee sits pursuant to the constitutional arrangements and that is where we continue to reside. And as a member of that committee I can tell you that we receive applications on a constant basis to clean people’s records all the time, and they are dealt with.

Sen. Richards: Thank you. And just one more comment in terms of the concerns that some persons had advocated in terms of person who may be mentally ill but functional, unable to run an NGO or participate in a NGO. Is there any qualifying as to the functionality of the person? And who makes that determination?

Mr. Al-Rawi: Under the provisions of the Mental Health Act there would be certification under that Act as to whether you are mentally incompetent. Now remember it is not as if you are waking around with a certificate to that effect anyway. Somebody has got to take a positive step against you to bring you under the provisions of the Mental Health Act. You may very well be prone to long talk, walking in crooked lines, contradicting yourself, all sorts of things which may cause a rational person to question your mental capacity. But if you did a search on the record to see if that person had, you know, found themselves under a certification under the Mental Health Act, as much as you would want that to be the case, chances are it is not going to be.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Yeah. Just to add, there is a presumption of mental capacity, and it is a court that determines whether a person is mentally competent or not, not even the psychiatrists.

The other point that you raised about the convictions being spent, plea bargaining and community service orders allow if in certain circumstances that after you have been found guilty and you have purged yourself that the conviction could be struck from the records.

Mr. Chairman: Sen. Ameen, you had something to say?

Mr. Al-Rawi: Thank you, Sen. Vieira.

Sen. Ameen: My point was made by Vieira in terms of the court declaring a person mentally competent or not. My question also has—I also want to raise a

concern in that even if a person is declared mentally incompetent, there are instances where people remain on treatment and their capacity to function is reinstated, so to speak.

So this is an area I want to express caution, and I understand that the Attorney General indicated that he wants to be guided by the Mental Health Act, but it is an area particularly because I know that there are NGOs and NPOs who are advocates for people with mental challenges, well, I should say mental health challenges and very often they themselves have experienced mental health issues, and in that area you do not want to eliminate people who have mental health issues from serving.

So perhaps that is an area that we have some more consultations, apart from the NPOs themselves the professionals, to consult with the Attorney General's office have their input and their recommendation based on a scientific perspective.

Mr. Al-Rawi: I think, Sen Ameen's contribution is extremely sensible and I welcome it. It is certainly something that ought to happen. I do not feel equipped to make that decision here today as to where or how one draws the line, and I did not understand that Sen. Ameen was even saying that, so I welcome the suggestion from Sen. Ameen and will certainly take it on board immediately.

Sen. Vieira: I wanted to support Sen. Ameen because the solution might be, not to use the words "mentally ill", but is declared "mentally incompetent", because you could be bipolar, you have a number—depression, and be still *compos mentis*. On the other hand, if you are mentally incompetent because of dementia, Alzheimer's one of those, then certainly you should not be allowed to serve.

Mr. Al-Rawi: I lifted for now from the exact version from the Companies Act, so I kept it in harmony with that, but I do think it is a very interesting and important issue. I think Sen. Ameen hit the nail on the head in saying it the way that she did,

it is certainly something that we are going to—Mr. Robinson from CAISO raised it with us by way of an email correspondence today, so the sector is already thinking about it and we will certainly get to work on it.

Question put and agreed to.

Clause 20, amended, ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 now stand part of the Bill.

Mr. Chairman: Sen. Mark.

Sen. Mark: Yeah. Mr. Chairman, we do not believe a non-profit organization should be bureaucratically regulated and controlled by the State, and if we have a non-profit organization and we are winding up voluntarily, our obligation is to simply inform the State. But this application to the official receiver into this and granting approval, this is a kind of process that is unnecessary, it is arbitrary, it is unconstitutional, it is unlawful, it is infringing and breaching sections 4 and 5 of the Constitution as it relates to the enjoyment of property rights, and therefore, under no circumstances can we associate ourselves with this clause.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: Let me try to find the list of words to describe everything in the opposite of the manner that was just used by Sen. Mark. It is lawful, it is proportionate, there is ample precedent, it is continuously used, it is a feature of good proportionality, but more than that, Mr. Chairman, clause 21 says, the organization itself will decide what it wants to do, but the organization does not have the capacity at law to handle the distribution and therefore, we use a functionary who is a chief legal officer under the provisions of the Law of Trinidad and Tobago that is the official receiver described as the Chief State Solicitor. That entity is appointed pursuant to the Judicial and Legal Service Commission

obligations to choose that person and there is an entrenchment of the functionality.

It is that receiver that lifts the cost of transferring property, because we are not saying go to lawyer, have a lawyer pay fees, have a lawyer charge you for these matters, we are using the State's services to cause the conveyancing and distribution mechanisms in a manner that has been tried and tested for years under the Laws of Trinidad and Tobago. So I wholeheartedly reject the summation of Sen. Mark's argument.

7.00 p.m.

Sen. Vieira: And it is a standard feature whether it is non-profits under the Companies Act or with charities that, in the case of a winding-up or dissolution, that the proceeds would go to a similar type body. And what I understand this section to be saying is that, you may have designated a similar type body but just get the approval to make sure that it is a body that falls within the purview of this legislation and the other parameters. So I do not see any objectionable there.

Question put and agreed to.

Clause 21 ordered to stand part of the Bill.

Clause 22

Question proposed: That clause 22 stand part of the Bill.

Mr. Al-Rawi: Mr. Chairman, we propose some tidying up of the language in subclause (1) of 22. We are just reorganizing. Instead of using the phrase "shall be forfeited in accordance with", we say "shall be treated in accordance with the forfeiture provisions". It would just read in a smoother fashion as it relates to the Proceeds of Crime Act and the Anti-Terrorism Act. Clause 22 treats with forfeiture of property upon cancellation. In subclause (2) we propose that we effectively just delete the reference to (g) by just confining ourselves to the reference to subclause (f), and that is obviously because we deleted (g) previously.

So it is a consequential amendment.

Sen. Mark: Mr. Chairman, this is absolutely extensive incursions into property rights by the Attorney General, and we do not believe that the Attorney General should be involved in this exercise of forfeiting property in the way that this provision outlines, and we believe that again, it is unhealthy, it is unconstitutional, it violates property rights under the Constitution, and therefore we cannot associate ourselves with this provision, Mr. Chairman. So we reject this provision.

Sen. Vieira: Now, forfeiture does seem onerous, but it is a regular feature in many laws in this jurisdiction. For example under the Trademarks Act, seized goods can be taken and forfeited by the controller. Under the Copyright Act, there is forfeiture provisions. Under the Trade Descriptions Act there are forfeiture provisions, under the Customs Act, again, very important powers in relation to seizure and forfeiture of infringing goods. So, this is not a novel provision.

Mr. Al-Rawi: Thank you for the assistance, Sen. Vieira.

Sen. Mark: You know you like to talk.

Mr. Al-Rawi: Pardon?

Sen. Mark: I say you like to talk.

Mr. Al-Rawi: Well I could just, for the record, just simply reject the argument as put by Sen. Mark, just as simple as that. It is just incorrect.

Sen. Mark: Okay, I like that.

Mr. Chairman: Members, all right. [*Interruption*] Yes, I know. I know. Okay, that is fine.

Sen. Mark: At least he start it.

Mr. Chairman: Sen. Mark, you do not always have to have the final say, eh. [*Interruption*] I know, I know. But let me have—I am the Chair, let me have the final say, and my final say is, the question is that clause 22 be amended as

circulated by the Attorney General.

Question put.

Sen. Drayton: Chair.

Sen. Richards: Chair.

Mr. Chairman: Oh, Sen. Drayton, my apologies.

Sen. Drayton: We are on 22, Chair, not so?

Mr. Chairman: Yes.

Sen. Drayton: So, subparagraph (2), I was suggesting to replace “shall” with “may”. That the Attorney General “may” make an application. I am not too sure if that is appropriate legalese, and probable seek clarification there, given that you may want to give time for an NPO to get its books in order.

Mr. Al-Rawi: Mr. Chair, we can easily agree to the recommendation. Thank you.

Question, on amendment, [Sen. J. Drayton] put and agreed to.

Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

Clause 23

Question proposed: That clause 23 stand part of the Bill.

Mr. Al-Rawi: Mr. Chair, we propose again a specific amplification of the mental intention to commit a crime by putting in the phrase “who without reasonable cause” into the body of clause 23. Clause 23 is the non-solicitation of public funds. It might very well be in this universe of non-profit organizations that someone may have the need for a defence that they just simply did not know certain aspects, or could not comply with it from a strict point of view, so we think it important to relax the provisions of this clause by loosening the mental intention requirement.

Mr. Al-Rawi: Sorry, sorry, forgive me, I forgot to look at the other Bill. We are also proposing, this is a very important one. The NGOs sector raised, in particular Ms. Roberta Clarke, she raised a very important point, what about people who can find themselves caught by non-solicitation, but they really do not want to be in the NPO dance at all. They are just doing a one-off event. So we have proposed the insertion of a new subclause (3), “this section shall not apply to a person or group of persons who carry out a single event to raise funds for charitable purposes.” Now there is a discussion afoot as to, and this came from Ms. Clarke again, what about an enlarged period of saying, look, people ought to be permitted to solicit funds, for example, as came to us for a two-year period, you know, whilst they decided if they were going to be in the dance. We actually took several stabs at drafting that, but did not come up with any legislative precision, and that was very complicated, because if we try to attach it to a person then you could sidestep the law entirely. If you said, look, the law shall not apply to a person who is soliciting funds for a period of two years prior to registration, what happens if you just keep changing people? So, it is John today, Jane tomorrow, X the day after, Y the day after. That was issue number one.

Sen. Richards: Just raising funds?

Mr. Al-Rawi: Yes. So, we are looking at whether NGOs should have a period to solicit before they become registered. That is the issue. One of the legislative treatments, and in fact Sen. Drayton had proposed in some of his circulated comments, let a person have that facility. But then if you had a concert of people, then they just keep changing people and then you could go ad infinitum. The other factor that we had was, if we required somebody to give notice of the start date, because where does the two-year period start from? How do you prove that that person has actually been in the dance for two years and not 10 years? So, it is a

nice thought, but to get the legislative precision seems to be quite difficult, at least for now. So, we are thinking about it, we have not come up with a formula yet. I think this is one of the things that we are going to have to have a feedback from the network of NGOs on. So, certainly when we go into the consultative positions with them we are going to try to map out how this works. Do we have a—look, I want to get in the dance so I will file a notice, and then the two years starts. But then if you are going to file the notice what about somebody who did not know they should file the notice? Do you provide an offence for that? So I think that this is something that would come about through some exploration with the network of NGOs and our drafters, and what we would do is we would go to the experts that assisted us at the UK's charities and other entities to see how to manage that process.

Mr. Chairman: Sen. Richards.

Sen. Richards: Thank you, and just for clarity AG, through you, Mr. Chair, and this is for any person/entity raising funds for a cause not unto themselves. I see this as very problematic for—if it is not resolved assiduously—for several persons who over decades in this country have found themselves and their families in challenges and now will be out in a kind of limbo legally.

Mr. Al-Rawi: Which is why we have put the specific language. This section, the whole section shall not, that is offences, “shall not apply to a person or group of persons who carry out a single event to raise funds for charitable purposes.” You see, there is also a significant thing in Trinidad and Tobago, you know, the institutionalized person who you meet on the same corner or outside the grocery door with the same list collecting and soliciting money for a supposed purpose, et cetera.

Sen. Richards: And I appreciate that AG, but, sorry to interrupt you.

Mr. Al-Rawi: No, no, not at all.

Sen. Richards: Sorry, Mr. Chair. I know of a person right now whose husband has been diagnosed with cancer, who has put on several bar-b-ques and events within—

Mr. Al-Rawi: Those persons are not caught in the definition of an NPO, so let us start there.

Sen. Richards: Okay.

Sen. Mark: They are not an entity which is a trustee type of relationship that has a body of members engaged in a practice which is for their pecuniary gain, other than for reasonable expenses. That is in the definition section. So, the cake sale person, the raising money for the amputee, somebody who has cancer going ahead, a child who is in a sick condition, none of those people fall within the definition of NPOs.

Sen. Richards: As you said earlier, this is being broadcast, so for public ease.

Mr. Al-Rawi: Oh, I appreciate it Sen. Richards. Thank you so much for allowing me to get that on the record through your interrogation.

Mr. Chairman: Sen. Hosein.

Sen. S. Hosein: Thank you very much. Now, the new subsection that the AG is replacing (3) with, the tail end of it is for charitable purposes in terms of groups soliciting for charitable purposes or individuals. Now, I want to ask the Attorney General whether or not it might be prudent in order for us to create a definition for charitable purposes, because I know that the Minister of Finance does have some discretion where, for example, tax breaks, when a group is defined as charitable— for the purpose of charity, sorry.

Mr. Al-Rawi: Mr. Chair, that is a very sensible enquiry. So, the charitable purpose as it falls under, firstly being listed and having the status of a charity, falls

under specific legislation, and falls under 19th Century case law which the BIR is guided by. So that is an application for charitable purpose to an entity, in this case here, the Board of Inland Revenue, and then the recommendations that flow pursuant to the corporation taxes and the Board of Inland Revenue regimes that apply there. In this context here, we are reliant upon the plain and ordinary meaning of charitable purpose, and that is intended to provide the broadest form of exculpation here.

Again, I would like to remind, we do not intend until we get the feedback on this very important issue to be getting into this dance, and if necessary, I want to remind, look a worst case scenario if you are proclaiming after everybody has scrubbed it and said, look, we are good with it, is that you partially proclaim. You can always leave a section out entirely as we do all the time. So, the criminal division law is entirely proclaimed except for one section, the registrar of the Magistracy, because that has to be worked out in a particular point. So, there is a lot room in the response mechanisms to get this right.

Mr. Chairman: Sen. Hosein.

Sen. S. Hosein: Also AG, what I was also contemplating are situations in which, because we are now regulating the entire industry, what about groups, for example, who would like to now come and say, well, this week we are going to sell cakes or whatever, and then next week they do it again. So they use this provision in order to escape the entire regime, but they continue to do repeated charitable exercises?

Mr. Al-Rawi: Very good point. Very good point.

Sen. Hosein: How are we going to treat with that?

Mr. Al-Rawi: It is the same argument we have in how we get people to pay VAT, how we get them to pay taxes, how we get them to register. There is a genuine issue in this country as to that. I mean there are lots of businesses that should be

paying VAT' and do not, and there are lots of businesses that should be self-assessed and paying PAYE—it will ultimately come to the level of sophistication in the society as it rolls out. So, you are right Sen. Hosein, there are gaps inside of this as there will be in any law.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: I just want to lend my support to both Sen. Richards and to Sen. Hosein, because this aspect about people and groups of people coming together to help other people who are in need, I think it is a very significant part of this whole debate.

Mr. Al-Rawi: Absolutely.

Sen. Vieira: You know, as a lawyer, we could look at it and we could see a definition and say, well, it is not spelt out there so you are not included, but that does not give comfort to the average person. I think it really should be written large and clear, and in the part about “a group of persons who carry out a single event”, that definition of what “single event” means can be problematic, because people may be doing multiple different things for the same cause or purpose.

Sen. Richards: Or multiple people for the same cause.

Mr. Al-Rawi: So, I agree and, perhaps, let me perhaps do it this so that the committee of undertakings gets this one, because I want to give people the comfort. I agree with Sen. Vieira, Sen. Richards, with the network of NGOs, Sen. Hosein brought some very sensible perspectives in his contribution just a short while ago. We do not intend under any circumstances to proclaim this law as and until we have gone into a deeper form of consultation, and we have gotten the feedback from the network of NGOs, and the state entities too, because the Board of Inland Revenue is necessary, the FIU is necessary, et cetera and this is something which could mean the life blood of certain things, so we certainly

recognize and accept that.

Sen. Vieira: Thank you.

Sen. Richards: Much appreciated.

Sen. Ameen: I just want to at this juncture ask through you, Mr. Chair, to the Attorney General. On several occasions you indicated that you would not proclaim the Act. Does the requirement, the CFATF requirement, will it be met if you pass the Act but you do not proclaim it as not operational, it is not function?

Mr. Al-Rawi: Yes. Let me tell you why. Specifically because we have done the risk assessment in identifying the numbers, bodies, et cetera, across the platform. Which is why we can speak with precision about the numbers that we know about for now. Secondly, because we are involved in legislation which meets for technical compliance. But thirdly, the continuation of the exercise prior to consultation, prior to proclamation via consultation feeds from your effectiveness, your immediate outcome perspective, whether your law is being applied, because what it does is it addresses the risk factor by getting into deeper analysis. So we would be compliant from that perspective.

Question, on amendment, [Mr. F. Al-Rawi] put and agreed to.

Question put and agreed to.

Clause 23, as amended, ordered to stand part of the Bill.

Mr. Chairman: At this point hon. Members, clauses 24 to 27 have not been circulated by way of written amendments. So let me just ask, in the interest of time and ease, and process going forward, if anybody has comments between clauses 23 to 27?

[Sen. Vieira raises hand]

Yes, Sen. Vieira. Okay, let me—*[Interruption]*—before you put the comments, let me just put the question.

Clause 24.

Question proposed: That clause 24 stand part of the Bill.

Sen. Obika: Thank you, Mr. Chair. The issue that I have with clause 24 is that it serves to be a catch all, and notwithstanding the Attorney General's submission that they are going to put in a part in one of the prior clauses where persons have a one-time event, is not going to be caught under that particular clause, but clause 24 says once they contravene any part of this entire Bill then they can still catch you. I have fundamental issues with this clause in its entirety because of that.

Mr. Chairman: Attorney General.

Mr. Al-Rawi: This clause is necessary. You have to draw a line on what is law and what is not, and what is a penalty and what is not. If we separate out the fact that—okay, I understand that the UNC's position is that they support nothing in this Bill. That has been made clear, and on the collection of voices every single time.

Sen. Ameen: Mr. Chairman, I would like the Attorney General—

Sen. Obika: I think that that is a lack of respect. I think the Attorney General should apologize for that.

Mr. Al-Rawi: Mr. Chair, I am just stating a matter of—

Sen. Obika: It is wholly disrespectful to this entire process, Mr. Chairman.

Mr. Al-Rawi: Mr. Chair, this shouting at me is not going to—

Mr. Chairman: All right—

Mr. Al-Rawi: May I just finish my submission?

Sen. Obika: I am not shouting. I was speaking into the mike.

Sen. Ameen: Mr. Chairman, I want to save the Attorney General from repeating an untruth—

Mr. Chairman: Sen. Ameen, one second. Sen. Ameen. Sen. Ameen, Sen.

Obika, one moment please? Just let the Chamber fall quiet for a few seconds. Right. Now, the Attorney General is responding. He is allowed to state observations that he has made. There is absolutely nothing wrong with that. I do not expect Members to get riled up because the Attorney General is making an observation. Nor as I indicated earlier in these proceedings today, that we are going to engage in the kind of back and forth that would just lower the standard of dignity and decorum in this Chamber. So, you will have the opportunity to respond. You will do so succinctly, and like I said, just do not add the seasoning, it is not needed, and we will keep the process moving forward. So, Attorney General, continue your statements.

Mr. Al-Rawi: Thank you, Mr. Chair. I was just proceeding to continue, to say, the law must have a line. There must be a consequence. The first part, section 24—clause 24—treats with liability of a controller in a very specific context. It is the falsity of documents, et cetera. That is something which ought to be an offence. The second aspect, which is the controller breaching and committing an offence in relation to any other offence in this Act, it is necessary that we do provide those positions. The liability should be pinpointed to the person who has that responsibility, and therefore we have pinned that liability upon the controller. I want to remind that the controller is the named controller in the circumstances of the definitions clause, and when you are registering you say who your controller is. If you are going outside of that definition, then you are going to, what we have called the real mind and functionality behind it. I do understand the position that I have observed from the Opposition bench tonight. I am just simply making my observation of that, that at every point that we have had a clause by clause vote, the vote has been no from the Opposition. I do not think I am being untruthful when I say that. I recognized the submission made by Sen. Obika, particularly as it relates

to the solicitation clause, and as I have undertaken, and as is again an observation of fact on my part, we have treated with that in a very careful way tonight.

Mr. Chairman: Sen. Obika, just before you respond, just be mindful of the temperament, no need to get riled up. You can make your response.

Sen. Obika: I am never riled, but I am glad for the guidance. [*Laughter*] The word I want to point to, is two words, “or recklessly”. So whilst it may seem prudent when the wording in clause 24 (1) says “a controller of a non-profit organization who knowingly”, but then it adds “or recklessly”, all right. And, I mean, really and truly, that is an easy catch all which can mean anyone who makes an error, because reckless gives a wide range for interpretation. So, I think if this part was drafted properly we would not have had this issue. But, there is an issue with the drafting, so I think the Attorney General should take serious contemplation regarding this entire clause. It should not be there in the first place, because it gives a catch all, and it gives the Registrar General a free hand to discriminate, and that is the issue that I am having with this clause.

Mr. Chairman: All right. Sen. Hosein.

Sen. S. Hosein: Thank you very much, Mr. Chair. Through you to the Attorney General, AG I understand what the intention of this clause is in terms of compelling persons through the imposition of a criminal sanction to file their documents on time, to file their documents when requested. But respectfully when you go out to the consultation after the passage of the Bill, I would like to suggest that something more proportionate be used, especially in light of the objectives of these NGOs. Why not, instead of imposing a criminal sanction, that something else be done in terms of an order from the court to compel these organizations to produce the documents? So, we have instances of that in various pieces of legislation, so it is unprecedented. It is preceded, sorry in terms of we have

changed the method in which you try to compel these organizations to provide the documents.

Mr. Al-Rawi: Mr. Chairman, before you broaden it, it is important. It would go too wide for me to answer, so would you permit me?

Mr. Chairman: Go ahead.

Mr. Al-Rawi: I thank Sen. Hosein for putting it into the context that he has, and I think that I can give him comfort, but I must take a step back to Sen. Obika. The Registrar General is nowhere inside of this in the context—in the manner in which Sen. Obika raised it. Secondly, we are talking about offences. The filing of documents on time is not an offence under this law. We just amended clause 17; it is an administrative fine for that. Apart from that we have also specifically said the compelling is done by the FIU under 18G of the FIU Act, so you get notice, you are told to do this, the FIU tells you what to do, et cetera, so, that again does not apply in the circumstances raised. But more than that, for an offence to bite, it is proof beyond reasonable doubt by the prosecutor having a burden to discharge. And then even more than that, there is the fact that this thing is not—it is far from trivial. Recklessness is not a pure mistake. Recklessness is a concept of law that has been well defined in the criminal law. So it is a very high burden, high hurdle, significant bar, and it does not capture the innocent or the innocent misrepresentation, the minor mistakes. It does not deal with late filing of documents. It does not have a divorce from the FIU's compliance and notice, et cetera. That is nothing of what this is about.

Mr. Chairman: Sen. Vieira.

Sen. Vieira: Just to re-enforce what the AG is saying, because these offences deal with false documents, and they are serious matters considering the fiduciary nature of the controller. Recklessness is something that is well dealt with in the legal

jurisprudence. It involves the knowledge or danger of risk and persistence in a course of conduct which creates a risk that the prohibited result will occur. Also, even without these sections, we have an aiding, and, Accessories and Abettors Act that could kick in here. There is common law offence of conspiracy that could kick in here, and attempts under the Interpretation Act that could kick in here. So, this is just, I think, directing your mind that you have to be careful and that there is a consequence for engaging in this type of unlawful behaviour.

Mr. Chairman: Sen. Mark.

Sen. Mark: Mr. Chairman, we continue to close the spaces for the people's sector and their operators, and this is another manifestation in this particular provision where the Government is criminalizing NPOs. You know sometimes I ask myself the question, but I have to go to the companies legislation to determine, Mr. Chairman, if profit companies in this country have similar criminal sanctions as we are imposing on ordinary people's organizations? And this to my mind is another manifestation of the Government of Trinidad and Tobago seeking to close and reduce the spaces available for the non-profit organization, which is the people's sector and a people's institution, and under no circumstances, Mr. Chairman.

Mr. Al-Rawi: Mr. Chairman—

Mr. Chairman: Senator. One second, Attorney General. Sen. Vieira.

Sen. Mark: Yeah, I cannot support this.

Sen. Vieira: I understand Sen. Mark's passion and his commitment, and what he is really striving to prevent. I mean he cannot be faulted for really standing up here. But the difference between what is happening with a non-profit and a for-profit company is that in a for-profit company you have all kinds of ready checks and balances built in.

7.30 p.m.

You have a board of directors that would have all kinds of very strict duties and consequences and obligations under the Companies Act. You have shareholders that would call in and call directors to account. But with a non-profit you need to have these additional safeguards because people are handling money and they have to be, (a), held to account and there must be consequences if they do funny business.

Mr. Al-Rawi: Thank you, Mr. Chair. Just to answer Sen. Mark squarely, yes, the Companies Act has offences of a similar type. Full stop. So it exists for companies that are limited liability or guaranteed by share or guaranteed otherwise or all the multiple versions externally registered companies, et cetera. So, yes, the answer is just, yes. There is fiduciary responsibility, there are liabilities attached to officers as opposed to directors, there are shareholder issues, et cetera. And I mean, that is just trite law. And I am compelled because people are listening to this debate to reject out of hand the attempt to sensationalize what this law is doing, to say very high bar that is being set and there is absolutely nothing wrong in this approach and I want people to understand that it is carefully measured.

Question put and agreed to.

Clause 24 ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25 stand part of the Bill.

Sen. Vieira: Thank you, Chair. AG, the notices, a lot of these non-profit organizations they have Facebook, they use social media. I was just thinking why do we not include within the serving of notices, email and electronic communications via social media and stuff because—

Mr. Al-Rawi: Excellent suggestion. But, need the physical copy as proof of service. Not that that is any guarantee. The fact is sometimes the registry sends

you a document like the court registry or elsewhere and you get it months later and then you can deal with that because there is a stamp that goes with it. But what I can tell you, Sen. Vieira, is that on our e-platform we are going to be doing this year the electronic notification to all entities. So that is part of the suite of services that we have purchased. The name of the company is Axiell Group. They are bringing our new company server and whole IT platform up on deck and that is going to be an experience that will certainly benefit Trinidad and Tobago. So we are doing that as well.

Question put and agreed to.

Clause 25 ordered to stand part of the Bill.

Clause 26.

Question proposed: That clause 26 stand part of the Bill.

Sen. Mark: Mr. Chairman, under clause 26 of this Bill you have two sets of politicians being responsible for making regulations. You have the Minister of Finance making regulations, you have the Attorney General making regulations. This is a recipe for confusion and I am looking forward to the day when we will have what is called an NPO commission that is independent, non-interministerial and directly accountable to the Parliament of the Republic of T&T. That is the day I look forward to, because clearly Mr. Chairman, in the haste to bring this legislation here and not to be creative, as far as I am concerned, the Government has now burdened both the Ministry of Finance and, of course, the Attorney General's office with dealing with regulation.

So one, Mr. Chairman, is a regulator and the other one is an administrator. So, confusion. So the poor NGO community will now have to look for two sets of regulations to govern their activities in T&T. I do not think that is obtains for private companies, Sir, or companies that are for profits.

Mr. Al-Rawi: That could not be anything other than the thing furthest from the truth. Number one, the Minister of Finance is the line Minister with supervisory function over the FIU, pursuant to law. If Sen. Mark felt that strongly about it he had 2010 to 2015, five years and three months to sort that out, it was never done. Secondly, the Minister with responsibility for the Registrar General is the Minister with responsibility for Legal Affairs. In this particular incarnation, that happens to be the Attorney General who has both portfolios. There is nothing wrong with this. It is trite law and parliamentary arrangement that this is how we do it. But more than that, yes you are going to have to look for two different aspects because the registry is one thing and the FIU is another thing.

And to answer Sen. Mark's position about whether for-profit companies fall into this category, yes. For-profit companies that are banks fall under CBTT, FIA, Financial Institutions Act, the Central Bank Act; the Insurance Act also provides a regime where for-profit companies which are insurance companies have multiple regulations to manage and all of them have more than that when you are looking at the financial obligations regulations under the Proceeds of Crime Act. So there are umpteen examples where for-profit companies have to comply with three, four, five, six, seven, eight, nine different sets of regulations and Sen. Mark ought to know that. So to make this allegation, in this brave sort of way that he does, has to just be rejected because the facts are the furthest thing from the truth.

Question put and agreed to.

Clause 26 ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Sen. Mark: May I say again, the colonial mentality that we have in this country where we have legislation dating back to 1906 and we are in 2019, I call on the

Attorney General and the Government to revisit this old anachronistic, outdated piece of legislation which gives the Registrar General's Department power to make and to determine fees, to formulate and prescribe forms and other matters and that these rules be made subject to a positive or affirmative resolution so that the Parliament can have oversight over these matters and not continue with this old colonial hangover of 99 years, where the Parliament has been left out. I think the Parliament should be involved in supervising these provisions.

Mr. Al-Rawi: I just rejected out of hand—first of all, the law is 1921 not 1906. Secondly, colonial laws serve us very well. The Exchequer and Audit Act and, you know what, the Constitution of the Republic of Trinidad and Tobago which is the supreme law of Trinidad and Tobago pursuant to section 2. Thirdly, it is now the established practice around the world that instead of occupying Parliament's time for every single thing that there ought to be a certain delegation of function, if I can put it that way, or a devolution of authority for minor matters such as these. And this has served our country very well. Our Parliament could barely keep pace with committees or with sittings. Other Parliaments around the world do not draft laws the way we are doing now. Our very Parliament is anachronistic in many senses. So I just respectfully reject the argument coming from Sen. Mark and stand with the position as enunciated by this Bill.

Sen. Mark: Well, we reject your position.

Hon. Senator: No problem.

Mr. Chairman: Okay, Sen. Mark.

Question put and agreed to.

Clause 27 ordered to stand part of the Bill.

Mr. Chairman: Hon. Members, at this point in time I will suspend the committee stage to allow the Procedural to take place.

Senate resumed.

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Mr. Vice-President. Mr. Vice-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 Sen. Mark's two Motions on the adjournment.

Hon. Senator: "Ohhh God! De Wade Mark show, boy."

Question put and agreed to.

Committee resumed.

NON-PROFIT ORGANISATIONS BILL, 2019

Mr. Chairman: Hon. Senators, please allow me to put the question—we were on clause 28—before we took the Procedural.

Clause 28.

Question proposed: That clause 28 stand part of the Bill.

Sen. Drayton: Chair.

Mr. Chairman: Hold on. Sen. Drayton, my apologies. It is my understanding that the clause 28 that you have proposed an amendment is actually treating with new clause 28 as proposed by—

Sen. Drayton: Yes.

Mr. Chairman: Right. So we do that after we dispense with all the original clauses of the Bill.

Sen. Drayton: Sure. Thank you, Chair.

Mr. Chairman: So once again, I put the question.

Question put and agreed to.

Clause 28 ordered to stand part of the Bill.

Clause 29 ordered to stand part of the Bill.

New clause 28.

Insert after clause 27 the following new clause:

“Guidelines 28. For the purposes of its functions under this Act, the
Under Regulator may exercise its powers under section 8(3)(i)
Chap. and section 18F(2) of the Financial Intelligence Unit of
72:01 Trinidad and Tobago Act to issue guidelines in respect of
non-profit organisations.”.

3 A. In the definition of “Regulations” delete the word
“26” and replace with the word “25”.

B. In the definition of “Rules” delete the word “27” and
replace with the word “26”.

6 In subclause (2)(d) delete the word “20” and replace with
the word “19”.

10 In subclause (1)(a)—

(i) in paragraph (i), delete the word “14” and
replace with the word “13”; and

(ii) in paragraph (ii), delete the word “15” and
replace with the word “14”.

16 as renumbered Delete the word “16” and replace with the word
“15”.

17 as renumbered In subclause (3) delete the word “21” and replace with
the word “20”.

18 as renumbered In subclause (2)(b) delete the word “14” and replace with
the word “13”.

New clause 28 read the first time.

Question proposed: That the new clause 28 be read a second time.

Mr. Al-Rawi: Mr. Chair, we propose that the new clause 28 be inserted. Of course, the rest of the amendments we proposed already, just the tidying up of numbers, et cetera. So as we call it 28, it is because we have consequentially amended and we will come to that in a moment in other positions.

We are asking for specifically this clause, to have reference to the Financial Intelligence Unit Act, we will say:

“28 For the purposes of its functions under this Act, the Regulator may exercise its powers under section 83(1) and section”—8F(2)—“of the Financial Intelligence Unit Act of Trinidad and Tobago to issue guidelines in respect of non-profit organisations.”

That is critical to tie in to the amendment we made in clause 4 to be abundantly clear that this tiered system would be managed by the FIU, that the FIU will cut the jacket to fit the different sizes of players in the industry.

Now, specifically Sen. Drayton pointed out what he thought to be an anomaly, and I understand very well why, because the Revised Laws of Trinidad and Tobago are in the process of being done right now. We have done so many amendments that we do not have one compendium of laws. So I want to apologize that that has not been issued yet, but in particular, in this Parliament we have done with such rapidity so many amendments that we are fixing them. So the law as amended specifically, believe it or not Act No. 12 of 2014, that Act No. 12 of 2014 amended the reference to properly be 18F. So I can give you the clarification that the amendment as noted by you, it is not 18E, it is 18F because “E” was amended to “F” because of insertions elsewhere.

Sen. Drayton: Thank you, Chair.

Sen. Thompson-Ahje: Initially, in reading the amendment, the Attorney General

said, “8F”. So, for the purpose of the record, I think you ought to clarify—

Mr. Al-Rawi: Forgive me, 18F.

Sen. Thompson-Ahye: 18F right through?

Mr. Al-Rawi: Yes. Apologies. Thank you.

Sen. Mark: Mr. Chairman, I would just, I would like the Attorney General to advise us whether the guidelines to be issued by the FIU, whether those guidelines would be laid in the Parliament so that we will have sight of those guidelines. So that we will know what is taking place, what the FIU is proposing or whether it would be kept a secret document?

Mr. Al-Rawi: Mr. Chair, it is certainly not a secret document and the guidelines are being issued in the same way all guidelines by the FIU are issued. So I do not know why it is it is all of a sudden something that is difficult. But let me just deal with the issue of secrecy, 18F(2) says:

“The FIU may, from time to time, issue guidelines as to compliance with the written laws listed under subsection (1) which shall be published in the *Gazette* and at least one newspaper in daily circulation in Trinidad and Tobago.”

And I would like to remind that this particular amendment did not come from anybody else other than a UNC Government in 2011 and then in 2014. Act No. 8 of 2011 while the UNC was in Government, Act No15 of 2014 while the UNC was in Government. So I do not know all of a sudden how a change from one side of the House to the other suddenly makes this secret and draconian and all sorts of things like that, Mr. Chairman.

Sen. Mark: I never said “draconian”.

Mr. Chairman: There is no need to—

Sen. Mark: But we will still like it to be laid.

Mr. Chairman: That is fine. So there has been the commentary between Sen. Mark and the AG. Let me just invite Sen. Drayton to make comments on your proposed amendments to this new clause 28. Sen. Drayton.

Mr. Drayton: Thank you, Chair. Given the update by the Attorney General, I am satisfied that that change has been made and I withdraw my amendment

Amendment withdrawn.

Question put and agreed to.

Question proposed: That the new clause 28 be added to the Bill.

Question put and agreed to.

New clause 28 added to the Bill.

Schedule ordered to stand part of the Bill.

Mr. Chairman: Attorney General, just for a matter of clean up, would you like to just notify hon. Members in relation to the consequential amendments as you have put on the circulated amendments?

Mr. Al-Rawi: Yes, please. Mr. Chair, clauses 3, 6, 10, 16 as renumbered, 17 as renumbered, and 18 as renumbered, require consequential amendments as a result of the acceptance of amendments which we have done already in the course of this committee stage. For the record, the Government's rationale in proposing the amendments consequentially to clauses 3, 6, 10, 16 as renumbered, 17 renumbered and 18 as renumbered stand in that regard and they are in the terms circulated.

Question put and agreed to: That the Bill, as amended, be reported to the Senate.

Mr. Al-Rawi: Mr. Chair, sorry. Before you do that, in having given the rationale for those consequential amendments, the Chair, I believe would need to put that those amendments stand part of the Bill? Could I be guided on that? No? Okay. Great. Thank you for the clarification.

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Sen. Khan: Division.

The Senate divided: Ayes 24 Noes 6

AYES

Khan, Hon. F.

Gopee-Scoon, Hon. P.

Baptiste-Primus, Hon. J.

Rambharat, Hon. C.

Sinanan, Hon. R.

Hosein, Hon. K.

West, Hon. A.

Le Hunte, Hon. R.

Henry, Dr. L.

Singh, A.

Cummings, F.

Dookie, D

Simonette, G.

Thomas, A.

Young, N.

Richards, P.

Vieira, A.

Deyalsingh, Dr. V.

Deonarine, Ms. A.

Seepersad, Ms, C.

Teemal, D.

Thompson-Ahye, Mrs. H.

Dillon-Remy, Dr. M.

Drayton, J.

NOES

Mark, W.

Haynes, Ms. A.

Ameen, Ms. K.

Hosein, S.

Obika, T.

Ramdeen, G.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Mr. Vice-President. Mr. Vice-President, I now beg to move that this Senate do now adjourn to Monday 15 April, 2019, at 10.00 a.m. During that sitting we will be debating the Civil Asset Recovery and Management and Unexplained Wealth Bill, 2019.

Mr. Vice-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. Mark.

National Flour Mills

(Termination of Four General Managers)

Sen. Wade Mark: [*Desk thumping*] Thank you, Mr. Vice-President. Mr. Vice-President, recently the Government, obviously acting with their majority, at

the National Flour Mills, through their board and management, took a decision to terminate the services of four general managers. This entire process that was conducted by the NFM to terminate the services of four general managers was flawed in that on the 15th of March the general managers were advised by the chairman, Mr. Romano, and the CEO at a meeting held at the Hilton Hotel that they had decided—that is, the board and management, the board, in particular—to flatten the organization by first eliminating the general manager layers with immediate effect. And Mr. Vice-President, it is to be noted that no prior discussions was held with the general managers who were dismissed like animals. The SWWTU which represents the workers at the National Flour Mills liken the treatment of these general managers, four of them, as that of “cattles” and not human beings.

Mr. Vice-President, there is no structure in place to deal with the removal of four general managers. The principle of good industrial relations must always be observed and action taken by the board and the CEO left a bitter taste in the mouths of those workers and particularly the four general managers who were dismissed.

Mr. Vice-President, in an enlightened industrial age there is no excuse for any missteps in the practices of good industrial relations and fundamental basic rights of all employees to be consulted in matters that may affect them. And therefore, the failure of the board and the CEO to treat these four general managers like “cattles”—

Hon. Senator: Cattle.

Sen. W. Mark: Cattle.

Hon. Senator: Singular.

Sen. W. Mark: Cattle rather, thank you—like cattle, with respect to the dignity

that they deserve and they ought to have experienced, speaks volumes and should be condemned by all right-thinking citizens in our country.

8.00 p.m.

Mr. Vice-President, what was this undue haste to eliminate four general managers immediately, when there was no operational contingency plan? And why were these four general managers treated in such a cruel and unusual manner and not allowed any closure of outstanding company affairs? Mr. Vice-President, the NFM has many highly-paid legal consultants on their payroll, and we will expose them at the appropriate time, and there is already a legal advisor in the position of corporate secretary and there is somebody in charge of IR matters, but yet still, the same National Flour Mills has retained an IR consultant at very exorbitant rates, whilst they have an HR manager. Mr. Vice-President, they have an IR officer who is on full-time within the company but yet still they hire and pay for consultancy services.

Mr. Vice-President, whilst they have eliminated four managers, you know what NFM has done? They have advertised. I have the advertisements here, Mr. Vice-President, where, for instance, in the Sunday newspapers they claim that they are flattening the organization. They want to save costs. But here it is in the *Express* of April the 7th, 2019, on page 67, they are advertising for a manager for Financing and Accounting. And as if that is not sufficient, Mr. Vice-President, in the same newspaper, on page 66, they are advertising for a manager for Manufacturing, and that is before they employed a COO. That is a Chief Operations Officer.

So the NFM is claiming that they have no money—not they have no money, they are flattening and they want to make the company more efficient. But you know what? Why are they seeking to make the company more efficient? Is this the

first step towards the privatization and divestment of the National Flour Mills to the financiers and friends of the ruling party? Is that the reason why they have acted in this manner? So as far as we are concerned on this side, we would want to ask: Why were these general managers not offered alternative employment, or a proposal made for the freezing, or even the reduction of their salaries before the action was taken to dismiss these four general managers? Why? Is it because of competence? What is the reason? And, therefore, they talk about they want to establish, as I said, a lean and cost-conscious and competent-based structure within the NFM, and that is why they have done that.

So, Mr. Vice-President, they have disposed of four general managers; they are advertising for two; they have hired already one called the COO, so three. So what is the objective? What is the objective, Mr. Vice-President? Is it, they are bringing in these new managers to prepare the basis, as I said, and lay the groundwork for the privatization and the divestment of the National Flour Mills? We know in Trinidad and Tobago there is one major competitor in the industry today. We would like to ask the Government, and we would like the Government to explain to this country, whether the Government's intention is to privatize and divest National Flour Mills. That is what we want to find out here this evening. Because we know that National Flour Mills is a bit inefficient because of the fact that the Government controls prices for flour at the retail level, so they cannot charge us the price that they want. And maybe that is a good thing, because it keeps down the cost of living. But at the same time, Mr. Vice-President, what is the game plan of the Government insofar as the future of the National Flour Mills is concerned?

That is why I have brought it to the attention of this honourable Senate, so that the Government could clear the air, because the talk in town is that the

Government wishes to privatize the National Flour Mills to their friends and financiers.

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

Mr. Vice-President: Minister of Trade and Industry. [*Desk thumping*]

The Minister of Trade and Industry (Sen. The Hon. Paula Gopee-Scoon):

Thank you, Mr. Vice-President. And let me say, the first sign of ill-health in a company is in its financial statements, and if I look at the audited accounts of 31 December, 2017, I see a decline in revenue, and I can tell you that this is substantially due to a reduction in sales of animal feed. It is also clear that there is a decline in the net profits in the amount of 16 per cent.

Arising out of that and also for other reasons, the National Flour Mills embarked on a 2018/2022 strategic agenda with the imperatives to achieve sustainability and profitability over the short, medium and long-terms, by growth through expansion and also by adopting a lean, cost-conscious competency-based organizational model. And pursuant to the above, a comprehensive job evaluation—and I say comprehensive, Sen. Mark—and organizational review was completed in mid-2018, and the review revealed that the company's structure comprised excessive and non-value added organizational layers, including a tall hierarchal structure consisting of 11 functional areas which were in existence, and also that the general manager layer between the Chief Executive Officer and the substantive managers, contributed to limited functional differentiation or value-added.

Further, this arrangement added significantly to managerial lay overheads of the company, and the managerial costs are high relative to the value-added at the point of delivery of the customer. And an examination of the local manufacturing

sector also revealed that such a multi-tiered or stacked organization is almost non-existent, and they would have looked at some local comparators, like NP, S.M. Jaleel and Vemco. And it is that the positions of general managers normally typify the top rung of the executive layer and five functional levels from top to bottom. That is the norm in organizations.

So that in the light of the above, and particularly in the context of a very aggressive and competitive environment, the board of directors of NFM took the strategic decision to pursue an organizational strategy of de-layering at the top level and up-scaling from the bottom in an effort to create and sustain a lean and more cost-effective organization. Can I inform that the benefits of de-layering are many? That kind of strategy places leadership, competence and the resultant value-creation activities much closer to the points where value is actually created. Also, a flatter organization structure facilitates both communication and shared conversations and shortens the distance between decision and execution. And the resultant consolidation and harmonization of former silo-type functions at NFM will now allow for the coordination of complementarity, complementary work processes, as opposed to the previous arrangements. NFM will measure the benefits of the restructuring in terms of reduced management overheads, improved productivity and profitability, improved employee-satisfaction and improved customer satisfaction.

I want to say that the Ministry of Labour, Small and Enterprise Development also looked at the proposal, along with the Ministry of Trade and Industry and also the Minister of Finance, and the Minister of Finance would have granted approval for NFM to implement its restructuring plan. It is important to note, especially with the allegations raised by Sen. Mark, that at the unionized level, the process of up-scaling will commence with a competency assessment exercise. So this is a

competency exercise to begin from the bottom, up-scaling all of the employees. The union and workers have been engaged and will continue to be a part of the process of competency evaluation and assessment during 2019. Staff will be given development plans as needed, and the organization would ensure the appropriate training and development takes place.

At the end of the day—let me say something about the separation packages, that NFM did, in fact, adhere to established industrial relations practices in making the positions of general manager redundant. And further, the managers are being paid salary and allowances during the notice period which ends on April 30, 2019, as outlined in the terms and conditions of the existing contracts of employment. And following this, all termination benefits, severance pay-out and pension benefits, would be paid to the affected managers. And as such, the managers are being given countable separation packages. And it is important to note that the four positions were not a part of a recognized bargaining unit.

Let me say as well that the divestment of NFM to the private sector is not under consideration by either the Government of Trinidad and Tobago or the board of directors of NFM. You asked the question: Where is NFM going? Now, the company is required to be as lean as possible, with a focus of diversifying the business into the production of other types of foods and agricultural products. They are, at this time, also pursuing its SQF level three certification, that is their quality certification, and they are going to complete that by September, 2019. Their employee training and retraining will continue as well. The main deliverable is a quality product to the nation and also for export. But they must improve productivity and also reduce their operational cost.

So, Mr. Vice-President, there is absolutely—absolutely—nothing sinister about the way this has been done. It has been done, as I said, in the proper manner

and in line with good industrial relations practices as well. Sen. Mark also raised a question about the manufacturing manager. And, yes, they are, in fact, recruiting a manufacturing manager to oversee the food production, the feed production and the maintenance functions. And they have already replaced the departing general managers with a CEO with responsibilities for manufacturing, sales and marketing and information technology. I am quite satisfied that NFM is on its way to being a lean organization and, again, I emphasize that the Government has not been looking at any divestment of NFM and has not been entertaining any discussions with any members of the private sector at all.

I give everyone in this August Chamber the comfort of knowing that NFM is on the right track. Several times in the life of an organization, this is what is necessary to ensure profitability and also, whatever they do, in the best interest of their employees as well, always taking them into consideration. So it is a good future ahead for the NFM. Thank you. [*Desk thumping*]

Paria Fuel Trading Company

(Low Quality Fuel)

Sen. W. Mark: Mr. Vice-President, over the last few months, particularly the last three months, motorists have been complaining about the quality of the fuel being used and being purchased by Paria Trading Fuel Company which supplies fuel to NP and, in turn, NP supplies the fuel to their retail outlets. And whilst Paria Fuel Trading, the National Petroleum Company, even UNIPET, have been making statements to the effect that the fuel that is being imported by Paria Trading Fuel Company Limited is of a higher quality than what was produced previously by Petrotrin, nevertheless the complaints from the motoring public and population continue to flow into the various areas of our country, whether it is social media, whether it is the national media, or whatever medium of communication. People

are concerned about the quality of the fuel that is being supplied to National Petroleum by Paria Fuel.

Now, recently the situation became so severe and grave, that is the amount of complaints, that National Petroleum chairman, Sahid Hosein, indicated that NP will make an attempt to conduct an independent test of the fuel supply in order to reassure the national population. But this is what they have been doing, because they do have, from my information, certain systems at NP to test the fuel that they receive from Paria Trading Fuel Company. And Paria also, when they import their fuel from different sources, they, too, have systems at Pointe-a-Pierre to test the fuel that they are importing, and they, too, claim that the fuel is of a high quality. But yet still, Mr. Vice-President, the population—that is the motoring population—continues to complain about the low quality of fuel that they are in receipt of when they make their payments at the pump.

So, Mr. Vice-President, in an effort to get to the bottom of this—because people were not complaining when Petrotrin was alive, but now that we have fuel coming from different sources, and because of the absence of transparency, we do not know if it is coming from Venezuela; we do not know if it is coming from Saudi Arabia; we do not know if it is coming from Nigeria; we do not know if it is coming from the United States. Because there is absolutely no transparency and accountability [*Desk thumping*] from that company called Paria Fuel Trading to the population as to where it is importing fuel for the Trinidad and Tobago market.

So, Mr. Vice-President, I think that the time has come when the population must get some answers from the Government. And whilst the Bureau of Standards has its work to do, and whilst Paria Fuel is testing and confirming that the fuel is of a good quality, and whilst NP is also saying the same, the population is not supporting their positions. That is what is being communicated to us and to the

public, generally, through the medium of the newspapers and the communication network. So what we are asking and what we are requesting is for the Government to really take a real serious, objective look at this particular question of the quality and the standard of fuel that we have been importing.

We need to have an independent group to test the fuel that we are consuming, as motorists in this country. And I am not talking about the Bureau of Standards, and I am not talking about Paria Fuel conducting their own test, and I am not talking about NP going and conduct their own test. We need to get, to deal with this matter once and for all, an independent outside team of experts to really conduct an objective test on the supply of fuel because the claim is that the fuel that we are consuming is burning faster than what we used to experience in the past. And, therefore, if it is burning faster and you are getting less per mile in terms of consumption of gasoline, Mr. Vice-President, it means to say that the ordinary people, whether you be a member of the middle class or you are a member of the working class, with this brutalization that we have experienced, and oppression under the PNM for the last four years, you could understand that people have to dig deeper into what is coming shallower and shallower pockets, in order to pay for fuel. That is really cutting down on their disposable income.

And, therefore, it is absolutely necessary for the Government of Trinidad and Tobago to take heed of the advice or the views that are coming far and wide on the quality and the standard of fuel that consumers who have vehicles are complaining about. And I would like to suggest to the Minister of Energy and Energy Industries that we may have to look to get external, independent experts to really look at this question of the quality of fuel supply in Trinidad and Tobago. And I think that when I speak today, I speak on behalf, as a driver myself, using fuel, I myself have observed the consumption rate being rapidly—

Hon. Senator: Yeah, yeah.

Sen. W. Mark: You are not getting the mileage that you used to get in the past, and therefore, the fuel is burning faster. So I speak on behalf of the motoring public in Trinidad and Tobago to get some answers [*Desk thumping*] from the Government on this entire question of the quality of the fuel that we consume in our motor vehicles that is supplied by Paria Fuel Trading. The Government needs to take steps to reassure the population that they are not buying “cat in bag” and they are not being ripped off by the Government through the [*Desk thumping*] supply of gas from this company called Paria Trading Fuel Company.

I thank you very much, Mr. Vice-President. [*Desk thumping*]

Mr. Vice-President: Leader of Government Business. [*Desk thumping*]

The Minister of Energy and Energy Industries (Sen. The Hon. Franklin Khan): Thank you very much, Mr. Vice-President. Mr. Vice-President, since this Government decided to restructure and retool the operations of Petrotrin by ceasing refinery operations at Pointe-a-Pierre, there are those in this country, spearheaded by the UNC, who wish everything would have gone haywire. We promised the country at that point in time three things. There will be a seamless transition in the supply of liquid fuels, LPG and Bitumen. That has happened. [*Desk thumping*] Everybody said there will be shortages of this, shortages of that. There have been absolutely no shortages.

Sen. Gopee-Scoon: None.

Sen. The Hon. F. Khan: Paria imports liquid fuels. Liquid fuel is an internationally traded commodity. The first contract went to BP Trading to supply. For those of you who visit the United States, the BP service stations sell more expensive than everybody else, you know, because their quality is good. BP has been supplying. Most of our products come from the gulf coast of the United

States. That is where the big refineries of the world are. We import RON 92, RON 95 and diesel. RON means Research Octane Number. Octane Number is the compressibility and combustion quality of the fuel. So if you buy RON 92 from BP Trading, you are buying RON 92. You are not buying some lower RON. When you are buying RON 95, you are buying RON 95.

All Paria cargo's products are fully tested at the load port—that is before it is shipped, eh—where it is loaded in Louisiana, or Texas, or Oklahoma, where-so-ever. It is tested there. On reaching Trinidad, there are laboratories at Guaracara that do testing. Testing is in compliance with the Trinidad and Tobago Bureau of Standards, the TTBS specifications, for motor vehicle fuels. Independent inspector companies do the testing, not Paria. Some of these are called Saybolt, SGS, Camin and AmSpec. Those are locally-operated inspection companies that do the testing.

Invariably, all Paria fuels meet the standards of the Bureau of Standards or surpassed it. There has never been one instance where the quality was less. But people's minds are being conditioned to think a particular way. Within a month of importing fuels, there was this rumour going around that the fuel was burning faster.

Hon. Senator: A month before too.

Sen. The Hon. F. Khan: Good? Even when—let me give you the story—Paria had Petrotrin stocks for 30 days. So even though we announced the importation of fuel, at the point in time when the rumour started that the fuel was burning faster, it was Petrotrin's fuel, the same fuel they have been using for donkey's years, you know, because that was part of the inventory of the refinery. And that rumour spread, unsubstantiated. And that has died down now. Next thing you know, somebody did not maintain their vehicle properly, [*Laughter*] a “fire catch”. They blame it on the fuel, you know. From a mechanical engineering point of view, fuel

combustibility and RON has nothing to do with the burning up or a vehicle catching fire. It has to do with a leak in the system. And, again, people have been conditioned to want bad things to happen to Trinidad and Tobago, and I resent that, because it is being fuelled by this front bench.

So I just want the population to understand that the systems are in place. There is nothing wrong with the fuel. The fuel is being imported by reputable traders. The fuel is being handled by Paria. The fuel is being sold onwards to Unipet and NP, who are the retailers under licence, and they distribute fuels to Trinidad and Tobago. There is absolutely nothing to worry about and all this ole talk about it burning faster, “yuh car ketching ah fire”, all that—“ah doh want tuh use de words ‘fake news’, becor a fed up here it”—it is untrue and it is unsubstantiated in science and in fact.

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

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.28p.m.