

ORAL ANSWERS TO QUESTIONS

ICAC – FINANCIAL CRIME COMMISSION & BOARD MEMBERS

The Leader of the Opposition (Mr P. Bérenger) (*by Private Notice*) asked the Rt. hon. Prime Minister, Minister of Defence, Home Affairs, Minister for Rodrigues and National Development Unit whether, in regard to the Independent Commission against Corruption, he will –

- (a) state –
 - (i) when legislation to set up a Financial Crime Commission and a revised and enhanced Independent Commission against Corruption model will be introduced, and
 - (ii) the date and time the two members thereof, other than the Director General, were appointed;
- (b) obtain information as to the date and time on which the new Director General thereof made and subscribed to the prescribed oath in respect of the –
 - (i) disclosure of assets and liabilities before the Master and Registrar of the Supreme Court, and
 - (ii) oath of secrecy before the District Magistrate, and
- (c) obtain from the Independent Commission against Corruption, information as to if the new Director General or Commission has stopped any ongoing investigation or prosecution.

The Prime Minister: Madam Speaker, I would like to reply to the PNQ together with PQ B/54 as both relate to ICAC.

In regard to part (a)(i) of the question, as the House is aware, the Government Programme 2015-2019 provides as follows, I quote –

“Government (has a mandate for change and) will relentlessly fight fraud, corruption and financial crime. To that effect, a Financial Crime Commission will be set up to act as an apex body to oversee the ICAC, the Financial Intelligence Unit and the enforcement department of the Financial Services Commission.

Government will (leave no stone unturned to) eradicate fraud, corruption, malpractices and irregularities in all aspects of public life and restore our national values. To this end, a new Declaration of Assets Act for MPs and high ranking public

officers and a Financing of Political Parties Act will be enacted. A new Code of Conduct will be introduced for all MPs and public officers.”

In this context, the Minister of Financial Services, Good Governance and Institutional Reforms and the Attorney General are on mission at present in London for, *inter alia*, discussions with the following institutions regarding assistance in the setting-up of the Financial Crime Commission -

- Serious Fraud Office;
- Foreign and Commonwealth Office;
- Financial Conduct Authority, and
- National Crime Agency.

The Financial Crime Commission will be set up as an umbrella organisation to oversee the operations of a revised and enhanced ICAC model, the FIU and Asset Recovery Unit, the enforcement units of the Financial Services Commission and the Financial Reporting Council relating to securities, insurance and financial reporting fraud within a newly set up Anti-Fraud Unit. This will bring harmonisation in the structure for the fight against financial crime in Mauritius and will ensure better coordination amongst existing institutions. This will also mitigate the risks of fraudsters exploiting loopholes in the functioning of institutions which may have led to the recent cases of Ponzi schemes where many innocent but gullible persons have lost their hard earned money.

As an immediate measure, pending the setting-up of the Financial Crime Commission, an amendment will be brought to the Asset Recovery Act and the Asset Recovery Unit will be merged with the Financial Intelligence Unit.

Madam Speaker, the present composition of the Board of the Independent Commission Against Corruption is as follows -

Chairperson	:	Mr Luchmyparsad AUJAYEB
Members	:	Mr Narainkrishna PEERUN, and
	:	Miss Shakilla Bibi JHUNGEER

The appointments of the previous Board Members were terminated under section 113(4) of the Constitution and after consultation with the Solicitor-General. All the outgoing members have been paid compensation for loss of office in accordance with section 113(5) of

the Constitution and section 52 of the Employment Rights Act. They have also been paid all their benefits due and accrued.

In regard to part (a)(ii) of the PNQ, the two other Board Members of the ICAC were appointed on 10 February 2015. They assumed duty on 16 February 2015 in the morning.

As regards part (b)(i) of the question, I am informed that the new Director General has on, 28 January 2015, subscribed before the Master and Registrar of the Supreme Court to the oath in respect of the disclosure of his assets and liabilities as required under section 25 of the Prevention of Corruption Act.

With regard to part (b)(ii) of the question, I am informed that the new Director General has already taken the oath of secrecy as required under section 81 of the Prevention of Corruption Act.

With regard to part (c) of the question, I am informed that –

- (i) the Commission which is the sole authority vested under the Prevention of Corruption Act with the power to discontinue an investigation, was constituted on 16 February 2015. No ongoing investigation has been discontinued by the Commission so far, and
- (ii) by virtue of section 72 of the Constitution, only the Director of Public Prosecutions can discontinue a prosecution.

Mr Bérenger: Madam Speaker, the Rt. hon. Prime Minister quoted the Government Programme but, as the Rt. hon. Prime Minister is aware, before that, in the Electoral Programme, what was put forward, what was promised, was a Financial Crime Commission that would conduct its enquiries and that would *englobera différentes institutions existantes dont l'ICAC etc.* Then, we move to the Government Programme which said -

“A Financial Crime Commission ...”

The Rt. hon. Prime Minister just quoted that paragraph.

“... will be set up to act as an apex body”.

And then last Tuesday, here, the Minister of Financial Services, Good Governance and Institutional Reforms, hon. Bhadain, said that the Financial Crime Commission will be set up as an umbrella organisation to oversee the operations of a revised and enhanced ICAC model. I have tried to hear when will the two things be done, that is, when will the legislation to set

up the new institution, and to replace ICAC by ‘an enhanced’ to use the words of the hon. Minister, ‘a revised and enhanced ICAC model’, come?

The Prime Minister: Well, we have already started working on it. They have been to London to get further information to help us in this context and we will do our best to come as soon as possible.

Mr Bérenger: Well, I am glad to hear that Government will come forward with the legislation as soon as possible. But, then, can I ask why the new Director General, under the present law, has been appointed for three years in the letter that he has received and which I received; I will move on to that later on?

The Prime Minister: For the time being, we have been acting under the present law.

Mr Bérenger: I take it that with the new legislation everything will be reviewed?

The Prime Minister: Well, I do not know what there will be. I cannot foresay beforehand!

Mr Bérenger: Well, then, at least, can I put the following question? The Rt. hon. Prime Minister will remember that the essential difference between the present Prevention of Corruption Act and the one which we voted in 2000-2005 was the existence of an Appointment Committee to appoint the Director General and the others and to remove them with the unanimous vote to remove them so as to secure security of tenure which is the essential part thereof. Can I know from the Rt. hon. Prime Minister whether the present law which was rushed in after the 2005 general elections will be replaced by a new, to use the words again of the Minister concerned, ‘a revised and enhanced ICAC model’ like in the legislation which we voted in 2000–2005, there will be a guarantee of security of tenure of the Chairperson, the Director General and the other members?

The Prime Minister: We will do everything that we feel is necessary.

Mr Bérenger: Can I know whether the Rt. hon. Prime Minister is aware that when he made his speech last Tuesday, the hon. Minister included in the forthcoming Financial Crime Commission not only ICAC, FIU, Asset Recovery Unit, but also the Financial Reporting Council? Is he aware that the Financial Reporting Council like, for example, the Bank of Mauritius is a regulatory body and not a crime combating agency?

The Prime Minister: There is always some fine-tuning to be done, Madam Speaker.

Mr Bérenger: Fine-tuning is being done in London, I understand.

(Interruptions)

Therefore, can I insist that the way that they are appointed and that they are removed, especially the way they will be removed, can I have that guarantee from the Rt. hon. Prime Minister that we will have, at least, the same security of tenure as in our law in 2000–2005?

The Prime Minister: We will do everything that will be in the best interest of this country.

Mr Bérenger: In his speech last Tuesday again the hon. Minister said, I am quoting, Madam Speaker, from the Hansard -

“As an immediate measure pending the setting-up of the Financial Crime Commission, an amendment will shortly be brought to the Asset Recovery Act and the Asset Recovery Unit will be removed ...”

Très élégant!

“... from the Office of the Director of Public Prosecutions and will be merged with the FIU (...)”

How immediate will be immediate? Can we take it that this piece of legislation which has been promised to be introduced as an immediate measure will be very soon forthcoming? Can I know whether the DPP has been consulted about that removal of the Asset Recovery Unit from the DPP’s Office and, if yes, what his reaction has been?

The Prime Minister: I cannot say whether the DPP has been consulted and so far as “immediate” is concerned, it is not most immediate, but it will be immediate.

(Interruptions)

Mr Bérenger: If I can move to the next part of my question, as we know Madam Speaker, the law provides for consultation between the Rt. hon. Prime Minister and the hon. Leader of the Opposition before the appointment of the Director General is made. Is the Rt. hon. Prime Minister aware that I received the letter of consultation, supposedly, on 30

December 2014, in the afternoon and the next day the Press reported that he had taken office on the same day, that is, on 30 December 2014?

The Prime Minister: Madam Speaker, the letter for consultation was issued and then we proceeded with the appointment of the new Director of ICAC. It was an urgent matter because the Members of Parliament had to do what we call the declaration of assets and that was the last day. Therefore, because of the emergency, things went on very fast.

Mr Bérenger: That was not done at all! But, does he realise that, in fact, the appointment is irregular? The law provides that the Leader of the Opposition must be consulted before he is appointed! Now, I received a letter - I am not usually very slow - but, in the same afternoon, the gentleman concerned took office supposedly because of declaration of assets requirement. Can the Rt. hon. Prime Minister tell me that he agrees with that and that the appointment was regular?

The Prime Minister: We all know consultation means consultation! We had already made up our mind. Whatever would be the comments of the hon. Leader of the Opposition, Mr Aujayeb was going to be appointed!

(Interruptions)

Mr Bérenger: Well, can I ask the Rt. hon. Prime Minister whether he is aware that if he had given me not even an afternoon - in other words he is saying: "we don't consult, we decide and we send a letter like that" - I would have informed him that I object to the appointment of that gentleman and I would have given him in confidence why, what information I have found since then, that in my view, disqualifies this gentleman from this job? Is he aware of that?

The Prime Minister: This gentleman took office on the next day; it was on 31 December.

(Interruptions)

Mr Bérenger: The Rt. hon. Prime Minister was reading, so probably, he did not catch my question. My question is: is the Rt. hon. Prime Minister aware that had I been consulted as the law requires, I would have advised against appointing him because I would have communicated in confidence information which shows that that gentleman is unfit to occupy that job?

The Prime Minister: The Leader of the Opposition could have phoned me and informed me. He didn't do so.

Mr Bérenger: Madam Speaker, honestly, the Rt. hon. Prime Minister has been President of the Republic. Usually, I react within two days whenever he consults me and the President. He finds it decent that I received a letter in the afternoon. The gentleman *prête serment* in the same afternoon, he starts work, and he has just confirmed the next day. I don't even have time to react. I have to seek information. I don't *agir à la légère*. Is he seriously telling us that that was in order? *Vitesse de croisière n'a pas encore été atteinte*, bureaucratic model, what have you?

The Prime Minister: In the circumstances, we have no alternative.

Mr Bérenger: Madam Speaker, if I can move on to the other two members. We have now the Director General and the Chairperson whom I consider unfit to sit in that job. I am prepared to communicate to the Rt. hon. Prime Minister the reasons I said that.

Now, if we can move to the two other appointments, Madam Speaker. We are supposed to instil confidence in ICAC. The previous Government and the previous Prime Minister changed the law and destroyed ICAC over the years. Now, supposedly, we want to instill confidence to show that the members are all independent. Is the Rt. hon. Prime Minister telling me, honestly, that it will instill confidence in the independence of ICAC and that the two other members are –

- (i) a senior Police officer at the head of the NIU - a good friend of mine - but a Police officer to sit as an independent member for long years at the head of the NIU. He can be given any other kind of job; he is a friend of mine, and
- (ii) a young lady to sit on ICAC with the supposedly an image of independence when that lady on 22 March 2014 was proudly presented by the hon. Minister Pravind Jugnauth - this is right - as an upcoming political recruit of the MSM.

I am tabling that, of course.

Is this kind of appointment going to instill confidence in the population in this new ICAC?

The Prime Minister: Madam Speaker, we will judge these people after the action they will be taking in ICAC. We have, in this country, precedence where political people, people who have already been Ministers, people who have been in this House, been appointed in the Judiciary, an independent Judiciary, where they have been delivering, doing their duties properly and we have had no reproach whatsoever. Why not in this case?

Mr Bérenger: Madam Speaker, I move on to the last part of my question to give some time to my colleagues who have their own questions. I am glad that the Rt. hon. Prime Minister, at least, did not hide like the former Prime Minister, behind the Parliamentary Committee. The Parliamentary Committee has a wide ambit to monitor ICAC, open-ended, but the former Prime Minister and the member he appointed at the head of ICAC put on a very restrictive, prohibitive interpretation on the monitoring of ICAC to be done by the Parliamentary Committee. I am glad that the Rt. hon. Prime Minister today has not adopted the same attitude. Can I know whether he has in mind the member who will instill confidence and will chair - because we walked out of that committee under the previous Government. It was useless and a waste of public money because the Chairperson took orders from the former Prime Minister to paralyse the Parliamentary Committee. Do we have a guarantee that this will be allowed to work this time and that the Rt. hon. Prime Minister will choose the right person as Chairperson to let that Committee do its work?

The Prime Minister: I have no one in mind so far, but we will certainly do what the hon. Leader of the Opposition is suggesting. This is really our aim, what we want to aim at.

Mr Bérenger: On the last part of my question again. Is the Rt. hon. Prime Minister aware that there have been several Press articles in which it was reported that the DPP being dissatisfied with the way ICAC was conducting one specific enquiry, called in the Director General, I quote –

“... a convoqué le conseil légal de la commission to express his dissatisfaction with the way ICAC was conducting one given enquiry”.

Now, we know that the DPP likes *mise au point*, *communiqué* and so on, but there was none in that case. It was reported on several occasions, but there was no *démenti*, *no mise au point*, *no communiqué*. Can we know whether the Rt. hon. Prime Minister has looked into that and whether it is in fact that the DPP expressed his dissatisfaction in that way?

The Prime Minister: I am not aware of this.

Mr Bérenger: The last part of my question was whether any prosecution or investigation has been or is being stopped by the new Director General or the Commission as a whole now that it is constituted. Can I know from the Rt. hon. Prime Minister whether he is aware that two sitting Ministers in the present Government have been targeted by the former ICAC? An enquiry was conducted on two now sitting Ministers and ICAC with the green light of the DPP was going ahead with prosecution. Can I know from the Rt. hon. Prime Minister whether he is aware of that and, if he is not, whether he will look into it?

The Prime Minister: I am not aware of this, Madam Speaker. But, if there is any decision to prosecute, the DPP is free to do that.

Mr Uteem: The Rt. hon. Prime Minister stated that the Director General and other members of the Commission were dismissed under section 113 subsection (4) of the Constitution. Is the Rt. hon. Prime Minister aware that under the Prevention of Corruption Act, there is a special procedure under section 23 for revocation of the Director General by the Parliamentary Committee? Would he agree that by bypassing this statutory provision and going under the Constitution, the Government is going against the United Nations Convention on Prevention of Corruption, which provides for security of tenure to people at the head of corruption investigating agencies?

The Prime Minister: Madam Speaker, I am advised that everything has been done according to our law.

Mr Ganoo: I will pursue on the point which my hon. friend has just raised. Doesn't the Rt. hon. Prime Minister agree that the state of our law, as it is today, including the provisions of our Constitution which have been used for the termination of the appointment of the previous Director General means that any Director General or high ranking member of the ICAC is at the mercy of any freshly new elected Government? Does not the Rt. hon. Prime Minister think that there is need to amend our law for further clarity so that impartiality and the independence of the Director General of the ICAC should be entrenched by further amending the law?

The Prime Minister: We will do everything that is necessary in the interest of the country.

Madam Speaker: Last question, hon. Leader of the Opposition!

Mr Bérenger: As a last question, can I say the following? The Rt. hon. Prime Minister and you Madam Speaker will allow me to say that the new ICAC *a pris un très mauvais départ*, the worse possible. Is he prepared to review the appointment of the new Director General, to go through the proper procedures and to call for *appel de candidature*, as is claimed nearly every day, to review the appointment of the new Director General and the two members so as to instill the required confidence in the public or alternatively to introduce as soon as possible legislation to set up the Financial Crime Commission and to set up the revised and enhanced ICAC model that has been promised; to do that, either to review their appointment or to come forward with the legislation as soon as possible?

The Prime Minister: The second part I have already answered, we will do our best to come as soon as possible. Insofar as the first part is concerned, to me it looks like *après la mort, la tisane*.

Madam Speaker: Last question to the hon. Leader of the Opposition!

(Interruptions)

I will give the hon. Member some additional time.

Mr Uteem: Thank you, Madam Speaker. The Rt. hon. Prime Minister stated that the former Board was revoked on 26 December and we heard that it is only on 31 December that the Director General was appointed. May I know from the Rt. hon. Prime Minister, in those five days, who were in charge of those highly confidential materials, sitting in the offices of ICAC?

The Prime Minister: Well, there were other people who were there; they were in custody of those that were there.

Madam Speaker: Any other question, Leader of the Opposition? Do you have any other question, Leader of the Opposition?

(Interruptions)

Leader of the Opposition, I am asking you whether you have a final question now, because we have got only two minutes left. So, I am just asking you if you have; if you don't have?

(Interruptions)

If you don't have any, then time will be over in two minutes. Questions addressed to the Rt. hon. Prime Minister! Hon. Uteem!