



**FIFTH NATIONAL ASSEMBLY**

**PARLIAMENTARY**

**DEBATES**

**(HANSARD)**

**THIRD SESSION**

**FRIDAY 04 JULY 2014**

**(UNREVISED)**

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Members

Members

**THE CABINET****(Formed by Dr. the Hon. Navinchandra Ramgoolam)**

Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP	Prime Minister, Minister of Defence, Home Affairs and External Communications, Minister of Finance and Economic Development, Minister for Rodrigues
Dr. the Hon. Ahmed Rashid Beebeejaun, GCSK, FRCP	Deputy Prime Minister, Minister of Energy and Public Utilities
Hon. Anil Kumar Bachoo, GOSK	Vice-Prime Minister, Minister of Public Infrastructure, National Development Unit, Land Transport and Shipping
Dr. the Hon. Arvin Boolell, GOSK	Minister of Foreign Affairs, Regional Integration and International Trade
Dr. the Hon. Abu Twalib Kasenally, GOSK, FRCS	Minister of Housing and Lands
Hon. Mrs Sheilabai Bappoo, GOSK	Minister of Social Security, National Solidarity and Reform Institutions
Dr. the Hon. Vasant Kumar Bunwaree	Minister of Education and Human Resources
Hon. Satya Veyash Faugoo, GOSK	Minister of Agro-Industry and Food Security, Attorney- General
Hon. Devanand Virahsawmy, GOSK	Minister of Environment and Sustainable Development
Dr. the Hon. Rajeshwar Jeetah	Minister of Tertiary Education, Science, Research and Technology
Hon. Tassarajen Pillay Chedumbrum	Minister of Information and Communication Technology
Hon. Louis Joseph Von-Mally, GOSK	Minister of Fisheries
Hon. Satyaprakash Ritoo	Minister of Youth and Sports
Hon. Louis Hervé Aimée	Minister of Local Government and Outer Islands
Hon. Mookhesswur Choonee, GOSK	Minister of Arts and Culture
Hon. Shakeel Ahmed Yousuf Abdul Razack Mohamed	Minister of Labour, Industrial Relations and Employment
Hon. John Michaël Tzoun Sao Yeung Sik Yuen	Minister of Tourism and Leisure
Hon. Lormus Bundhoo	Minister of Health and Quality of Life
Hon. Sayyad Abd-Al-Cader Sayed-Hossen	Minister of Industry, Commerce and Consumer Protection
Hon. Surendra Dayal	Minister of Social Integration and Economic Empowerment
Hon. Jangbahadoorsing Iswurdeo Mola Roopchand Seetaram	Minister of Business, Enterprise and Cooperatives
Hon. Mrs Maria Francesca Mireille Martin	Minister of Gender Equality, Child Development and Family Welfare
Hon. Sutyadeo Moutia	Minister of Civil Service and Administrative Reforms

## PRINCIPAL OFFICERS AND OFFICIALS

Mr Speaker	Peeroo, Hon. Abdool Razack M.A., SC, GOSK
Deputy Speaker	Peetumber, Hon. Maneswar
Deputy Chairperson of Committees	Deerpalsing, Hon. Ms Kumaree Rajeshree
Clerk of the National Assembly	Lotun, Mrs B. Safeena
Acting Deputy Clerk	Ramchurn, Ms Urmeelah Devi
Clerk Assistant	Gopall, Mr Navin (Temporary Transfer to RRA)
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**MAURITIUS**

**Fifth National Assembly**

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**THIRD SESSION**

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**Debate No. 01 of 2014**

**Sitting of 04 July 2014**

**The Assembly met in the Assembly House, Port Louis,**

**At 3.30 p.m.**

**The National Anthem was played**

*(Mr Speaker in the Chair)*

**The Clerk:** Mr Speaker, Sir, hon. Members, I will now read out Proclamation No. 24 of 2014 to proclaim the opening of the Third Session of the Fifth National Assembly by his Excellency Mr Rajkeswur Purryag, Grand Commander of the Order of the Star and Key of the Indian Ocean, Grand Officer of the Order of the Star and Key of the Indian Ocean, President of Republic of Mauritius.

**Proclamation No. 24 of 2014**

**TO PROCLAIM THE OPENING OF THE THIRD SESSION OF THE FIFTH  
NATIONAL ASSEMBLY**

**BY HIS EXCELLENCY MR RAJKESWUR PURRYAG, G.C.S.K., G.O.S.K.,  
PRESIDENT OF THE REPUBLIC OF MAURITIUS**

RAJKESWUR PURRYAG

*President of the Republic*

RAJKESWUR PURRYAG

- *By His Excellency Mr  
RAJKESWUR PURRYAG, Grand  
Commander of the Order of the  
Star and Key of the Indian Ocean,  
Grand Officer of the Order of the  
Star and Key of the Indian Ocean,  
President of the Republic of  
Mauritius.*

**WHEREAS** by section 56 (1) of the Constitution of Mauritius it is provided that the sessions of the National Assembly shall be held in such place and begin at such time as the President by Proclamation may appoint;

**NOW, THEREFORE**, in the exercise of the powers vested in me as aforesaid, I do hereby proclaim that the Third Session of the Fifth National Assembly shall begin on the fourth day of July, two thousand and fourteen, and that the first sitting of the Fifth National Assembly in its Third Session shall be held on the day aforesaid at fifteen thirty hours in the Chamber of the Assembly in Port Louis.

Given at State House, Le Réduit, this twenty-fifth day of June, two thousand and fourteen.

### **DEPUTY SPEAKER - ELECTION**

**The Prime Minister:** Mr Speaker, Sir, in accordance with the provisions of Section 32 of the Constitution and Standing Order 7 of the Standing Orders and the Rules of the National Assembly, I move that the hon. Maneswar Peetumber be elected Deputy Speaker of the House.

**The Deputy Prime Minister rose and seconded.**

**Mr Speaker:** Is there any counter proposal? If there is none, therefore, there being no counter proposal, I declare the hon. Maneswar Peetumber elected Deputy Speaker of the National Assembly. I offer him my sincere congratulations.

*(Applause)*

**Mr Peetumber:** Mr Speaker, Sir, I am deeply honoured by the renewed confidence and trust that the House has placed in me. May I seize this opportunity to give the assurance to the House that I will continue to discharge my duties in all fairness, and support the Chair to maintain the dignity of the House.

Thank you once again.

### **DEPUTY CHAIRPERSON OF COMMITTEES – ELECTION**

**The Prime Minister:** Mr Speaker, Sir, in accordance with the provisions of Standing Order 7 of the Standing Orders and Rules of the National Assembly, I move that the hon. Third Member for Belle Rose and Quatre Bornes, Ms Kumaree Rajeshree Deerpalsing, be elected Deputy Chairperson of Committees.

**The Deputy Prime Minister rose and seconded.**

**Mr Speaker:** Is there any counter proposal? There being no counter proposal, I declare the hon. Third Member for Belle Rose and Quatre Bornes, Ms Kumaree Rajeshree Deerpalsing, elected Deputy Chairperson of Committees of this Assembly. I offer her my sincere congratulations.

*(Applause)*

**Ms Deerpalsing:** Mr Speaker, Sir, I am deeply honoured to be re-elected as Deputy Chairperson of Committees, and I would like to thank the hon. Prime Minister and the House for their renewed trust placed in me. I would like to assure the House that I will continue to discharge of my responsibilities with utmost professionalism.

Thank you.

### **PAPERS LAID**

**The Prime Minister:** Sir, the Papers have been laid on the Table -

**A. Office of the President**

The 40<sup>th</sup> Annual Report 2013 of the Ombudsman. *(In Original)*

**B. Prime Minister's Office –**

- (a) Certificate of Urgency in respect of the Constitution (Declaration of Community) (Temporary Provisions) Bill (No.V of 2014). *(In Original)*
- (b) The Financial Statements of the Prime Minister's Relief and Support Fund for the year 2012.
- (c) The Audited Accounts and the Report of the Director of Audit on the Financial Statements of the Prime Minister's Cyclone Relief Fund for the year ended 31 December 2013. *(In Original)*
- (d) The Ports (Amendment of Schedule) Regulations 2014 (Government Notice No. 77 of 2014).
- (e) The Maritime Zones (Economic Activities) Regulations 2014 (Government Notice No. 88 of 2014).
- (f) The Finance and Audit (*Maurice Ile Durable* Fund) (Amendment) Regulations 2014 (Government Notice No. 58 of 2014).
- (g) The Gambling Regulatory Authority (Government Lotteries) (Amendment) Regulations 2014 (Government Notice No. 59 of 2014).
- (h) The Excise (Amendment of Schedule) (No.2) Regulations 2014 (Government Notice No. 65 of 2014).
- (i) The Statutory Bodies Pension Funds (Amendment of Schedule) Regulations 2014 (Government Notice No. 66 of 2014).
- (j) The African Development Bank (Privileges and Immunities) (Amendment) Regulations 2014 (Government Notice No. 67 of 2014).

- (k) Digest of Agricultural Statistics 2012.
- (l) Digest of Environment Statistics 2012.
- (m) Digest of Public Finance Statistics 2012 (Vol.24).
- (n) The Dollar Credit Line Agreement between the Government of the Republic of Mauritius and the Export-Import Bank of India. *(In Original)*
- (o) The Sales by Auction (Appointment of Auctioneers) Regulations 2014 (Government Notice No.75 of 2014).
- (p) The Customs (Amendment) Regulations 2014 (Government Notice No.84 of 2014).
- (q) Virement (Contingencies) Warrant Nos. 1 to 118 of 2013. *(In Original)*
- (r) Retrospective Virement (Contingencies) Warrant No. 119 of 2013. *(In Original)*
- (s) Virement Warrant Nos. 1 to 49, 51 to 86, 88 to 91, 93 to 153 and 155 to 171 of 2013. *(In Original)*
- (t) Retrospective Virement Warrant Nos. 172 to 178 of 2013. *(In Original)*
- (u) Virement (Contingencies) Warrant No.8 of 2014. *(In Original)*
- (v) The Annual Report 2013 of the Procurement Policy Office. *(In Original)*

**C. Ministry of Energy and Public Utilities –**

The Annual Report 2012 of the Central Water Authority.

**D. Ministry of Public Infrastructure, National Development Unit, Land Transport and Shipping –**

- (a) The Annual Report of the National Transport Corporation for the financial year 2012. *(In Original)*
- (b) The Road Traffic (Crop Season) Regulations 2014 (Government Notice No.85 of 2014).
- (c) The Road Traffic (Crop Season) (Amendment) Regulations 2014 (Government Notice No. 95 of 2014).

**E. Ministry of Housing and Lands –**

The Pas Géométriques (Amendment of Schedule) Regulations 2014 (Government Notice No. 90 of 2014).

**F. Ministry of Social Security, National Solidarity and Reforms Institutions –**

- (a) The Audited Accounts for the year ended 2012 and the Annual Report 2012 of the Senior Citizens Council. *(In Original)*
- (b) The Audited Accounts and Report of the Director of Audit on the Financial Statements of the Special Fund for the Welfare of the Elderly for the Financial Year ended 31 December 2012. *(In Original)*

**G. Ministry of Education and Human Resources –**

- (a) The Annual Report 2011 of the Private Secondary Schools Authority (PSSA). *(In Original)*
- (b) The Mauritius Institute of Training and Development (Transfer of Undertaking) Regulations 2014 (Government Notice No. 60 of 2014).
- (c) The Education (Amendment) Regulations 2014 (Government Notice No.87 of 2014).

**H. Ministry of Agro Industry and Food Security, the Attorney-General –**

The Witnesses' Attendance Allowances (Amendment of Schedule) Regulations 2014 (Government Notice No. 76 of 2014).

**I. Ministry of Information and Communication Technology –**

The Information and Communication Technologies (Quality of Service) Regulations 2014 (Government Notice No. 72 of 2014).

**J. Ministry of Fisheries –**

- (a) The Annual Report 2012 of the Fishermen Investment Trust.
- (b) The Fisheries and Marine Resources (Amendment of Schedule) Regulations 2014 (Government Notice No. 68 of 2014).
- (c) The Fisheries and Marine Resources (Fish Farming) Regulations 2014 (Government Notice No.73 of 2014).

**K. Ministry of Youth and Sports –**

The Sports (Amendment of Schedule) Regulations 2014 (Government Notice No. 61 of 2014).

**L. Ministry of Local Government and Outer Islands –**

- (a) The Municipal Town Council of Quatre Bornes (Markets) (Amendment of Schedule) Regulations 2014 (Government Notice No. 74 of 2014).
- (b) The Municipal Council of Curepipe (Paid Public Toilets) Regulations 2013 (Government Notice No. 79 of 2014).

- (c) The District Council of Black River (Collection and Disposal of Refuse) Regulations 2013 (Government Notice No. 80 of 2014).
- (d) The District Council of Savanne (Environmental Health) Regulations 2014 (Government Notice No. 81 of 2014).
- (e) The District Council of Savanne (Fair) Regulations 2014 (Government Notice No. 82 of 2014).
- (f) The District Council of Savanne (Markets) Regulations 2014 (Government Notice No. 83 of 2014).
- (g) The Municipal Council of Vacoas/Phoenix (Traffic Centre) (Amendment) Regulations 2014 (Government Notice No. 91 of 2014).

**M. Ministry of Arts and Culture –**

The Annual Report and Financial Statements of the English-Speaking Union for the year ending 31 December 2013.

**N. Ministry of Labour, Industrial Relations and Employment –**

- (a) The Occupational Safety and Health (Fees and Registration) (Amendment) Regulations 2014 (Government Notice No. 64 of 2014).
- (b) The Printing Industry (Remuneration) Regulations 2014 (Government Notice No. 78 of 2014).

**O. Ministry of Tourism and Leisure –**

The Annual Reports and Audited Financial Statements of the Mauritius Tourism Promotion for the years 2009/2010, 2011 and 2012. *(In Original)*

**P. Ministry of Health and Quality of Life –**

- (a) The Medical Council (Medical Institutions) (Amendment) Regulations 2014 (Government Notice No. 57 of 2014).
- (b) The Report of the Director of Audit on the Financial Statements of the Morris Legacy Relief Fund for the year ended 31 December 2013. *(In Original)*
- (c) The Report of the Director of Audit on the Financial Statements of the Trust Fund for Specialised Medical Care for the year ended 31 December 2012. *(In Original)*
- (d) The Report of the Director of Audit on the Financial Statements of the De Chazal Maternity Home Fund for the Financial Years 2012 and 2013. *(In Original)*
- (e) The Report of the Director of Audit on the Financial Statements of the Mauritius Institute of Health for the year ended 31 December 2013.
- (f) The Medical Council (Medical Institutions) (Amendment No.2) Regulations 2014 (Government Notice No. 89 of 2014).

**Q. Ministry of Industry, Commerce and Consumer Protection –**

- (a) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.9) Regulations 2014 (Government Notice No. 62 of 2014).
- (b) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.10) Regulations 2014 (Government Notice No. 63 of 2014).
- (c) The Consumer Protection (Control of Imports) (Amendment) Regulations 2014 (Government Notice No. 69 of 2014).
- (d) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.11) Regulations 2014 (Government Notice No. 70 of 2014).
- (e) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.12) Regulations 2014 (Government Notice No. 71 of 2014).
- (f) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.13) Regulations 2014 (Government Notice No. 86 of 2014).
- (g) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.14) Regulations 2014 (Government Notice No. 92 of 2014).
- (h) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.15) Regulations 2014 (Government Notice No. 93 of 2014).
- (i) The Rodrigues Consumer Protection (Control of Price of Taxable and Non-Taxable Goods) (Amendment No.16) Regulations 2014 (Government Notice No. 94 of 2014).
- (j) The Consumer Protection (Control of Imports) (Amendment No. 2) Regulations 2014 (Government Notice No. 96 of 2014).

**R. Ministry of Business, Enterprise and Cooperatives –**

- (a) The Annual Report 2008-2009 of the Small Enterprises and Handicraft Development Authority (SEHDA).
- (b) The Annual Report 2012 of the St. Antoine Planters Co-operative Trusts. (*In Original*)

**MOTION****SUSPENSION OF S.O 10(2)**

**The Prime Minister:** Mr Speaker, Sir, I beg to move that all the business on today's Order Paper be exempted from the provisions of paragraph (2) of Standing Order 10.

**The Deputy Prime Minister rose and seconded.**

*Question put and agreed to.*

**PUBLIC BILL***First Reading*

*On motion made and seconded, the Constitution (Declaration of Community) (Temporary Provisions) Bill (No. V of 2014) was read a first time.*

(3.42 p.m.)

*Second Reading***THE CONSTITUTION (DECLARATION OF COMMUNITY)****(TEMPORARY PROVISIONS) BILL**

**(No. V of 2014)**

*Order for Second Reading read.*

**The Prime Minister:** Mr Speaker, Sir, it is with a sense of pride and deep satisfaction that I rise to introduce this Bill of historical importance and significance in this august Assembly this afternoon.

Mr Speaker, Sir, this Bill ushers in a new dawn in our political history and the electoral landscape of our country. This Bill, Mr Speaker, Sir, is the first step along a highway that started 46 years ago when we obtained our independence and freedom. What we are starting today is the process of removing the consecration of communalism from explicit enshrinement in our Constitution. It is the first step towards achieving the hopes and aspirations of many of us who believe in the oneness of humanity and the oneness of our nation. For this Bill, Mr Speaker, Sir, is the beginning of the end of institutional communalism in the highest law of our land.

Mr Speaker, Sir, the Constitution and the electoral system inherited at Independence, after protracted and heated discussions between our leaders and the colonial powers of the day, have undoubtedly served us well. However, as I said before, 46 years after Independence, much change has taken place. Our Constitution and electoral system need to evolve and reflect these changes. I have been saying it for many years now, Mr Speaker, Sir, that I strongly believe that after more than four decades, 46 years now, since our Independence, it is time that we remove even the shadow of communalism from the highest law of our land. The Bill we are to debate today is the first step towards the achievement of

this goal. It is the first step towards consolidating and strengthening our national identity, and towards nation building. The final step will be the full electoral reform, which I hope will be enacted by the next Parliament, which will dispense altogether with the need for a candidate to declare his or her community to stand as a candidate at the general election. It will also subsume, as we have mentioned, the current Best Loser System by changing its mechanism while maintaining its objective of broad socio-demographic representation of all the components of our rainbow nation in this august Assembly. This, Mr Speaker, Sir, is the ineluctable process of historical development in which our nation is irreversibly engaged.

Mr Speaker, Sir, since this Bill has been circulated, some have said - and I am sure hon. Members opposite me, on this side, will repeat *ad nauseam* - that it is only a mini-amendment, it is small in scope; that they can't understand why it should have taken so many weeks to prepare. Let me, therefore, tell them straightaway that they are utterly misguided in its significance, in its place. In our constitutional history, it is momentous. This Bill, for the first time, Mr Speaker, Sir, since Independence - for the first time - abolishes the legal requirement upon a candidate, at the next general election, to declare his or her community as a condition of eligibility to stand for election to this House. This is a major change, Mr Speaker, Sir. To understand why it is such a momentous change, I think we need to go back to how our Constitution was so framed, and the background to it, Mr Speaker, Sir.

As I said earlier - I think in the White Paper you will see it - at the time, there was bitter division between the different parties, with the consequence that the country itself was very divided. The Labour Party had for a long time been demanding our Independence. It was later on joined by the *Comité d'Action Musulman (CAM)*, and the Independent Forward Block (IFB). But the *Parti Mauricien*, at the beginning, later on renamed the PMSD, was totally opposed to Independence. Communal fears were whipped up. People were being told that the minorities were at risk of being excluded. The then Secretary of State for the Colonies appointed a Constitutional Commissioner, Professor Stanley de Smith, to advise him and to report to him. When he came to Mauritius in 1964, he saw the divisive political and social environment for himself. He decided that a system should be devised to allocate additional seats. It wasn't him who decided; he wanted to have something else. But it was decided that a system should be devised to have allocation of seats on communal lines. That system, that is, the Best Loser System, necessitated that each candidate should declare to which of four constitutionally defined communities he or she belongs, which we find in

Schedule I. But Professor de Smith himself, Mr Speaker, Sir, was opposed to the proposal. He said, and I quote him –

“My own belief is that the immediate effect of the introduction of communal representation in any form would be to intensify communalism by endowing it with the accolade of legitimacy.”

He went on to say –

“Candidates in an electoral campaign would experience irresistible temptations to appeal to the narrower communal prejudices, that there would be increasing demands for communal representation in other walks of private life, and that the long-term effects would be deleterious both to the minorities which now think of it as a safeguard and to the general welfare of the island.”

He could not have been more prophetic, Mr Speaker, Sir. Because this is exactly what has happened. I see some are saying: ‘Well, communalism is a way of life!’ It is a way of life, because we have actually embedded it and people have started thinking in those terms. Communalism has become entrenched in the way of thinking of many, even today, probably even more today.

Prof. de Smith went on to call it ‘a distasteful procedure’. And then, unbelievably at the time, because later on the problem arose. But he said –

“I imagine that it would be difficult to agree upon the constitutional definitions of a Hindu and a member of the General Population.”

In other words, he already saw the problem that could arise from somebody declaring a different community or looking at the way of life. Already in 1964, he already foresaw this. But when it became apparent that there could be no agreement between the political Leaders, he then conceded that given –

“The social and political climate in Mauritius - it may be regarded as the least of evils but an evil nevertheless, and one which may seriously inhibit the growth of national consciousness over the years.”

Mr Speaker, Sir, Prof. de Smith was a Constitutional expert who rightly foresaw that we were planting at the time the seeds of communalism and division at the very birth of our nation. It was inevitably as I said, because there was so much disagreement. And the misgivings against the BLS as it is now, still remains unrefuted by time and progress.

It is unquestionably true, Mr Speaker, Sir, that our Constitution is one, to my mind, of the very few remaining in the world that divides its people by ethnicity - and worse - it is the only one that does so by means of approximation.

For it is clear - it is a fact - that the four constitutional communities do not accurately reflect the true ethnic roots or identities of our component traditions. They are over-inclusive approximations - artificial legal constructs - that in themselves give rise to serious problems of interpretation and disenfranchisement.

As I said in the White Paper, Mr Speaker, Sir, if only you took the Population Census of 1962, which was used for the election of 1967 and then the Population Census of 1972 which was used for the 1976 Election, if you just reverse the two, use the 1972 Census and apply it to the election of 1967 and use the 1962 Census and apply it to the 1976 Election, you will see differences. Why? In any country in the world there are movements in the population. It is never static. Now, these difficulties have now been joined by a new, but even more powerful objection. In 1982, the Government, of which the hon. Leader of the Opposition was a leading Member, decided to do away with the mandatory collection of data about a citizen's community in the Population Census which is carried out every 10 years. I must say, Mr Speaker, Sir, this was a farsighted decision. It was a great decision to take because it was in the direction that I am speaking about now.

However, we know that since then, it has transpired that the Best Loser System had automatically been living on borrowed time because it must refer to the last census in which such information was gathered so that the relevant proportions of each community can be reliably calculated for the purpose of allocating the additional seats.

Automatically, as time has elapsed, a system that depends on statistics gathered over forty years ago has become impossible to justify. This is where the problem has arisen. Either the census now must resume the compulsory collection of this data or the Best Loser System must change. And we all agree, I think, that we are not going to go down that line of having a new census.

Mr Speaker, Sir, it did not take the decision of the United Nations Human Rights Committee to tell us this inescapable fact - that sooner or later, the nettle must be grasped. But we must also recognise the fact that the Group *Rezistans ek Alternativ* - others have done it also, there are cases before them - have had the courage to persist through the Courts and the United Nations Human Rights Committee to force the issue to an earlier conclusion. That

we must agree. The Human Rights Committee has, no doubt, acted as a spur to our domestic debate. They have acted as a spur. There is a growing consensus for electoral and constitutional change and it is responding to a much more profound – I should say - aspiration that is moving our nation towards modernity. It is a fact; I see it. Some people do not see it, I see it. I know some people still say: “Don’t change anything.” They are living in cuckoo land. It may now only be after the Judicial Committee of the Privy Council, they have pronounced a judgment. I will read a little bit from it later on.

After the United Nations Human Rights Committee, it is clear that to do nothing is not an option. But we want to do it because we always believe in it. I think, at least, the majority of people here believe in it.

Starting with the abolition of the census in 1980, we did not do the one in 1982. As I said it was a farsighted decision because it goes in the direction of eliminating communalism altogether. Some people think: “Why do we have to do it?” They are not reading the signs on the walls. They are not! It may now only be the faintest of breezes barely disturbing the sails of the ship of State. But a prudent captain of a ship makes changes before the breeze becomes a gale. That is what we are doing now, Mr Speaker, Sir.

It is noteworthy also that an eminent Judge of the South African Constitutional Court together with two equally eminent members of the Sachs Commission - Mr Tandon, a former Electoral Commissioner of India and our own former Supreme Court Judge, Justice Ahnee - repeated Prof. de Smith’s warning on the BLS in their report in 2002. So many years, more than three decades later, they repeated the same thing. The Sachs Commission described the BLS as ‘a unique and novel electoral device that increasingly divided Mauritius and baffled visitors to the country. Such comfort as it offers, comes at the price of it appearing as odd and anachronistic to the very security it was designed to offer.’ In other words to the minority. He says the same thing. And he says –

“It carries with it the real danger of marginalising from the rest of society those identified with it so that what started off as intended to be a protection could end up becoming an impediment.”

Same words! I think they started the work in 2001, but the report was in 2002.

They suggested that we should “find means and ways of assimilating the BLS into the new dispensation without prejudicing the status of the community or communities concerned and without keeping alive features which are widely considered to be anachronistic and

offensive”. For those who are still oblivious to this stark reality, two experts – constitutional experts – have to come here to tell us what is so obvious to everyone of us!

For those who are still oblivious to this stark reality, and who still think in terms of community, let me remind them that our own Courts, Mr Speaker, Sir, in clear terms, have told us that we must remedy the situation. The Courts cannot change our Constitution, but they keep telling us what we need to do. Let me just quote from what Supreme Court Judge Seetulsingh had to say in “Carrimkhan v Lew Chin & others” in 2000. I am quoting it, Mr Speaker, Sir, because it is pertinent to the changes that we are bringing and to what will happen later on. He said -

“The problems of dividing the population according to the four categories are highlighted where the Supreme Court states, Way of life may depend on a series of factors - the way one dresses, the food one eats, the religion one practises, the music one listens to, the films one watches. External appearance and the name one bears are also pointers as to the community to which one may belong. The expression “way of life” used in the First Schedule has never been put to the test and some 33 years after the Constitution was drafted one cannot escape the fact that a common way of Mauritian life has gradually and steadily developed in Mauritius which cuts across communal lines.”

It is the same thing as Professor de Smith said -

“How will you distinguish eventually between a Hindu and a General Population?”

And Judge Seetulsingh goes on to say that -

“This makes it still more difficult for a judge of the Supreme Court, whose decision is not subject to appeal, to determine whether somebody belongs to a particular community by looking at his way of life. The issue further arises as to how the judge can determine the way of life of a citizen unless he becomes like Big Brother in G. Orwell’s novel of 1984 and watches how a citizen leads his private life.”

He goes on to say -

“One may also change one’s way of life from one election to the other.”

Your way of life might change!

“Our attention was drawn to the fact - he says - that a way of life can be dependent on class distinction, (...)” as well.

He goes on to say and it is a good example that -

“(...) for a rich Hindu and a rich Sino-Mauritian may have a similar way of life, depending on their financial means, whereas a rich Hindu and a poor Hindu may lead altogether different ways of life.”

This is true, we see it. I mentioned this today in Cabinet.

Therefore, Mr Speaker, Sir, already cracks are appearing - not to say big holes - in the declaration of community which could lead to even more difficulties. Those who I hear want to embark on such an exercise massively this time, that is, keep it as it is, Mr Speaker, Sir, would be acting recklessly. There are some who are saying: “Let us all declare we are General Population.” There are some who are saying this at the moment. They will be acting recklessly with the sole purpose of disrupting the whole exercise. And let me tell them that they will be judged harshly by history! I have no doubt!

At a time when the two Leaders, I must say, of the main political parties, have agreed on a way forward towards nation-building, history will record that there were those who did exactly the opposite and they are trying to find reasons for it. We can find hundred reasons for one thing, but the people of this country, our younger generation will never forgive us if we fail here, Mr Speaker, Sir. Each one of us will have to bear the full consequences of our action.

It is an inescapable fact, that the BLS system must be subsumed so that we do not have to refer to which community we belong. Even Mr Carcassonne said this. Some people misread Carcassonne. He did not talk of abolition. He said it must never be abolished but it must be subsumed.

I hope I have dealt with these misguided opinions of those who speak of mini-amendment. This Bill has far-reaching consequences, Mr Speaker, Sir. It is a first step, but a first step, but it is a giant first step in the huge leap forward that the full-fledged electoral reform will propose.

Those who say: why did it take so long, they think that it was just a question of removing ‘shall’ and adding ‘may’, so why did it take so much time? The Bill may look

simple to some, but it is not just a matter of replacing ‘shall’ by ‘may’ in the First Schedule, Mr Speaker, Sir. And I give credit to the hon. Leader of the Opposition and also to Dr. Rama Sithanen who came up with the idea as to why we cannot do this. But, as we were working on it - hon. Ganoo was involved - we saw the complication that can arise.

In law, Mr Speaker, Sir - you are a lawyer yourself - especially in constitutional law, one must be very, very careful to look at all the possibilities which probably are not obvious at first. I quoted the other day Murphy's Law who was a Surgeon from Ireland. He said –

“Before you operate on a patient, remember one thing, what won’t happen, will happen.”

And that is what this is about. Any Bill which any Government brings, we must look at all the possible scenarios, however unlikely and provide a cure for them. We must also look at the unintended consequences. It is never easy to foresee what these consequences may eventually be.

A very good example, Mr Speaker, Sir, is what happened when our own Constitution was adopted with its electoral system. After the Banwell Commission Report which was rejected by the Independence Party - Hon. John Stonehouse, who was the Junior Minister, was sent by the Secretary of State for Colonial Affairs to try to resolve the deadlock. Mr Stonehouse was no Constitutional expert and many people do not know this but I do, some people do, he went and consulted Professor de Smith before coming to Mauritius because we talk of the Stonehouse’s proposal without realising. Professor de Smith made suggestions to him which he came with. The proposal consisted of 5 parts – A, B, C, D and E.

However, proposal E was not adopted. I was trying to find out, I can’t find out why it was not adopted, but we can guess and, even better, the full Bench of the Supreme Court consisting of former Chief Justice Glover, Senior Puisne Judge Lallah who was at that time and Justice Ahmed had, in fact, to deal with that issue in 1991. I would like to quote from the judgment because it clarifies many of the things that some people perhaps do not realise. I have the judgment with me. He says that -

“These proposals (...).”

I will not quote lengthily. He mentions the other reports, Trustam-Eve, Banwell and Professor de Smith reports and he says that they say that there is a difference in nature

between what we call a Stonehouse Agreement and the three other reports that he mentioned which are Banwell, Trustam-Eve and Professor de Smith reports. He reproduces the paragraphs of the Stonehouse document, the A, B, C and D. D says “the remaining”, he talks about the four first seats and then he said -

“The remaining four Best Loser Seats would be allocated on the basis of party and community.”

And then he goes on to say that -

“The object would be to restore the balance between, on the one hand, the party or party alliance qualified under this above which had most seats before the allocation of the first four seats and, on the other hand, the other qualified party or party alliances taken as a whole.”

But then, there is E which was not adopted and which says -

“If no Best Loser Seat belonging to the most appropriate community or the most appropriate community and party or party alliance under D were available for any particular Best Loser Seat then the seat will be allocated to the Best Loser of the community next most appropriate according to the criterion in C above – which I just mentioned - in case of the remaining four seats to the Best Loser of the community and party or party alliance next most appropriate according to the criteria in the above.”

Then the seat will be allocated to the Best Loser of the community next most appropriate according to the criterion in (c) above, which I have just mentioned; in case of the remaining four seats to the Best Loser of the community and party or party alliance next most appropriate according to the criterion in the above; in other words, to keep the balance. You give the four seats according to community and the next four seats to keep the balance of what the wish of the electorate was. They say –

“One is immediately struck by the fact that there is nothing in those paragraphs which resembles item (e) of the Stonehouse agreement.”

He says item (e) which we have just been able to see pointedly envisaged that all of the eight Best Loser seats would or should be filled. Because whenever there would be no unreturned candidates available from the appropriate community, the seat in question would be allocated

to the next most appropriate community whichever it might be. They say it is not conceivable that failure to implement (e), an agreement to the orders in Council containing the future Constitution was due to a breach of faith by the Crown as represented by the Secretary of State. They go on to say - because they make the diagnosis, it was corrected later on - that one way of looking at this ambition – whether it was an ambition or not, I am not sure – is to say that in normal circumstances, no difficulty would arise. This was the case in 1967, 1976, 1983 and 1987 with the result that the omission of item (e) would have had no effect.

In other words, Mr Speaker, Sir, they say that it was unintentional, but we have had this problem because of what happened in 1991 – I think it was in 1991 as far as I remember. Then there was a new amendment brought to try to re-balance the seats. This is how hon. Yerrigadoo, hon. Ramdass and others came in. The wish of the people was thus, but with the Best Loser System, with the omission of (e), it was different. They go on to say something else, but I want to point out because some people do not seem to realise this – I am sure the hon. Leader of the Opposition does, but many people do not. He goes on to say -

‘On one hand the framers of the two Constitutions may or may not have assumed that the former by-polarisation of the electorate such as it existed in the 1950s and 1960s would continue forever with a fair number of seats going to each side at election and each one therefore having a reasonable number of the Best Loser seats’.

But, this changed as we know in 1982 and then in 1995. They go on to say something else that many people do not realise. He said that there is worse. One can envisage a situation where a 32-30 majority in favour of one party or party alliance could be converted into a 32-34 minority, that is, before the amendment was brought. It could easily have happened. It did not happen, but it could have happened.

Therefore, Mr Speaker, Sir, the full bench said, in fact, that nobody predicted or ever thought it would be possible that one day the electorate of this country would vote massively for just one party or an alliance leading to a 60-0. As I said, it happened once - again Murphy’s law. What they thought would never happen actually happened. It happened once in 1982, again in 1995. And it may well happen again! Murphy’s law!

*(Interruptions)*

That is why, Mr Speaker, Sir ...

*(Interruptions)*

*Jamais deux sans trois! L'honorable Leader de l'Opposition a parfaitement raison. Il faut s'assurer qu'il n'y ait jamais deux sans trois au fait!*

This is why again, Mr Speaker, Sir, we had to provide for the very unlikely event at the moment that a candidate who has not declared his or her community gets selected. To resolve this anomaly, I must say, Mr Speaker, Sir, we all put our heads together, it was not an easy task, looking for means and ways.

One suggestion was made that it is up to the Electoral Supervisory Commission to decide, based on objective and publicly available documents: census, birth certificate, marriage certificate and all these to what community that candidate belongs to. It is one of our lawyers from the Privy Council, Mr Cox, in fact, who was trying to find a solution; that is perhaps the only solution available. We did not agree. I know the hon. Leader of the Opposition did not agree. I did not agree. Dr. Rama Sithanen did not agree. Even the Electoral Commissioner was not probably too happy with it.

Mr Speaker, Sir, we tried other solutions. We looked for other solutions to that problem, but eventually the most preferred solution was the one proposed by Dr. Rama Sithanen. We thank him for it and it is this: for the next general election, where a candidate has not declared his community is returned as a member, then the Electoral Supervisory Commission does not have to go and pry into the private life of the person who did not, in fact, want to declare his community. So, we are not going to look at his birth certificate, his marriage certificate, what he eats or does not eat, how he dresses. The Electoral Supervisory Commission shall then for the sole purposes of determining the appropriate community and allocating seats under paragraph 5 of the First Schedule to the Constitution, proceed on the basis of the average number of returned members belonging to each community at all general elections held since 1976. Why 1976? Because we are using the census of 1972! They were suggesting 1967, but that was 1962 census; I said maybe it is better 1976.

Now, Mr Speaker, Sir, it must be made clear that this is for just this election - it is not forever - that we have to do it because there are cases waiting for us. To avoid any doubt, it is provided in clause 4(2) (c) of the Bill that in case all candidates who are returned as members, they have actually declared their community at the next general election, which we hope will be mostly the case, the allocation of the additional seats shall continue to be

effected wholly in conformity with paragraph 5 of the First Schedule of the Constitution. In other words, the First Schedule is there. It is unchanged apart from the Median Chart. It is unchanged, but we put other provisions because they are temporary provisions until the Electoral Reform is brought to this august Assembly, debated and hopefully passed.

I would like also to mention, Mr Speaker, Sir, that pursuant to section 41(3) of the Constitution, the Electoral Supervisory Commission and the Electoral Commissioner have been consulted regarding the alterations being brought to the Constitution, as we must. They have looked at it very carefully and they have raised no objection to it.

I need also to remind the House, Mr Speaker, Sir, that we have had a judgment by the Judicial Committee of the Privy Council in December 2011 brought by the members of *Rezistans ek Alternativ*. The Law Lords, although rejecting the appeal, did, however, make it clear in their judgment that the judgment will not prevent a constitutional challenge being brought against the Best Loser System in the future. I quote, Mr Speaker -

“It appreciates - that is, the House of Lords, the Judicial Committee of the Privy Council – that, if the issues cannot be resolved politically, they may be raised before the Judicial Committee in the future.”

It is an invitation for them. I look at it that way. I mean all the Lords are looking at it that way. We are living at a ball of a time. It says -

“It remains open to the applicants to advance a constitutional challenge in the future.”

It could not be more clearer, Mr Speaker, Sir.

Furthermore, Mr Narain and other members of the *Rezistans ek Alternativ* made a complaint to the UN Human Rights Committee on the very issue, that is, the declaration of community. I must point out again here - I see some members of the press, unintentionally, I am sure, are confusing the issue - they did not go to complain against the BLS nor did they ask for electoral reform which we are producing. What they ask is for their right not to declare their community and be allowed to stand as a candidate because they say it is a fundamental right of theirs. That is what they went to the UN for, not the other way round.

I must say the United Nations Human Rights Committee concluded that the State of Mauritius was in violation of Article 25 (b) of the Covenant and went on to say - I want to

quote, Mr Speaker, Sir, because some people don't seem either to know it or they just brush it aside - that the State of Mauritius is under an obligation to provide the authors of the communication - that is the members of *Rezistans ek Alternativ* - with an effective remedy to the violation of their rights, under article 25 (b) of the Covenant. It is clear.

They also say that the Committee further reminded the State - that is, the State Party, Mauritius - that it was bound under Article 2 of the Covenant to provide an enforceable remedy. Since a violation of the Covenant has been established and enjoined the State Party within 180 days to provide information about the measures taken to give effect to the Committee's views and specifically calling the attention of the State that it was, again it said, under an obligation to avoid similar violations in the future.

It is clear. I talked to people in the European Union, including the actual President. The United Nations Human Rights Committee has no legal possibility of enforcing us to do it, but there are consequences if we do not do it. The consequences are simple. I talked to them. It is simple. You want the European Union to give you accompanying measures, this and then that. Forget it! If you are in contradiction, you are not giving an effective remedy, you are violating human rights, you will stop getting this. So, is that what we want? And then, what you will say? I have bankrupted the country. But we have to find a remedy.

*(Interruptions)*

Yes. That is what they will say. You want to eat the cake and have it at the same time. But we are under an obligation to do this, Mr Speaker, Sir.

Mr Speaker, Sir, I must say the Judicial Committee of the Privy Council is different. Don't forget! People seem to forget. The lawyers of the State Law Office know it. Our lawyers in the Privy Council know it, whereas the United Nations Human Rights Committee cannot force us, but they can take some actions against us; many actions. The Judicial Committee of the Privy Council can decide for us. It can say: "if you can't resolve it, it is coming back to us, we are going to impose a solution." What do we do then?

Mr Speaker, Sir, to avoid any doubt, it is provided in clause 4(2) (c) of the Bill, that in case all candidates - I think I have just mentioned it - there are temporary provisions that the Schedule at paragraph 5 will go on as it is. Therefore, Mr Speaker, Sir, I have just quoted this, I won't quote it again. Let me conclude by saying, in 1968 - we have all these before us and there is a Court case here. It is coming to the Supreme Court, if I am not mistaken, on 10

July. Imagine if we don't do anything what will happen? If they go to the Privy Council, they go back to the Human Rights Committee, what do we do?

Furthermore, we believe in this. At least, we know we believe in it. I think most people believe in it. So, why we should not be moving ahead? In 1968, the Best Loser System was predicted to be at the most for three elections. If you read the papers, you will see. What has happened? It has endured for decades, for many more years; not three elections, I think 10 elections, if I am not mistaken. But now, we must again set out with faith and hope on that journey to which our manifest destiny calls us, Mr Speaker, Sir. Before I finish, I need to pay tribute to those who have been assisting the Attorney General who chaired the Committee; hon. Ganoo, former Speaker of the House; the Solicitor General, Mr Dhiren Daby; his assistant, Mrs Narain, and the other assistants, Mr Seetaram, Mr Ramloll, Sir Victor Glover. Is there anybody I have forgotten?

*(Interruptions)*

Dr. Sithanen, of course, I mentioned him! The Electoral Commissioner and his staff, not only Mr Raman, but also Mr Dauhoo. They have all sat down, then they came to my office from time to time; we worked. I have talked to hon. Ganoo from time to time so that we can come to a conclusion, Mr Speaker, Sir. Therefore, that is why I would like to thank them for what they have done and I also want to say, Mr Speaker, Sir, that let us not look for little excuses not to do it. Hon. Duval who has brought in, I think, an amendment asking for a referendum; there is no time for referendum. The Court case is on the 10<sup>th</sup>. There is no time. We need to do something now or never.

*(Interruptions)*

Mr Speaker, Sir, we can realise our vision for change only by our unifying faith in a single Mauritian identity. This is the underlying philosophy of this Bill which I hope will be supported by all the Members of the National Assembly. This is no time for pettiness. This is no time for destructive criticism or to find excuses not to vote. This is the time for nation-building and strengthening national unity and democracy. When history's verdict will be out, it would be kind to those who have put the country above party. As hon. Members of this august Assembly know, we can either choose to be the co-author of a glorious chapter which is opening up in our political history or sink into oblivion and into the dustbin of history. That is the choice before us. As for the main reform, some people are saying: "Why we are not

bringing the main reform now?" I would have wished. We have mentioned it in our manifesto, we have mentioned it in the Government Programme, but the people of Mauritius have a right to know exactly what we are proposing. They have a right, they must have a right to decide whether it is a good thing or not. I am assuming that they will. I think they will, but they need to look at it. There will be maybe counter proposals, I don't know. We will be circulating it. It is not ready for circulation, otherwise, I would have circulated it. But this is the first step, these temporary provisions, and then I am sure when we will come with the Electoral Reform, which will come after the next election, once the people have given us a mandate, it will come and I have no doubt that it will pass. But let us, first of all, go step by step. As I said, Mr Speaker, Sir, the Best Loser System was meant for three elections, it has survived 10 elections. That is why we must set out again, as I said, with faith and hope on that journey to which our manifest destiny calls us: one people, as one nation and as one destiny that we all share.

With these words, Mr Speaker, Sir, I commend the Bill to the House.

**Mr Bérenger rose and seconded.**

(4.29 p.m.)

**The Leader of the Opposition (Mr P. Bérenger):** Mr Speaker, Sir, I have seconded the Bill with great pleasure and I congratulate the hon. Prime Minister for his speech. I have had the occasion of wishing that today's debate *se déroule dans la sérénité* and that we end up with *unanimité* around the present Bill. I shall come back to that at the end of my speech. What is before us today, Mr Speaker, Sir, we are all aware of it, is not electoral reform itself.

The best loser after we've voted this Bill will stay with us, as per this Bill, but the mechanism is being changed and the main thing is that somebody will no longer - after we have approved this Bill - be debarred from standing as a candidate if he does not want to say to which community he belongs, Mr Speaker, Sir. This, the electoral reform itself is not today before the House, but what we are doing is, as the hon. Prime Minister has said, a huge first step in the right direction, a huge first step, pending subsuming, that is, absorption of the Best Loser System in the electoral reform to come.

The hon. Prime Minister will allow me to say that we had expressed our first choice as being full electoral reform; our first choice was that full electoral reform should be before us now. I take the point that the hon. Prime Minister wants - whether he is going to bring in

full electoral reform after the general elections - to have a mandate, to be given a mandate by the electorate. But as far as the MMM is concerned, our first choice was for full electoral reform to be before this House today before the next general elections. But having said that, we are taking a huge step, a historical step in that direction, Mr Speaker, Sir.

Allow me also to go back to what has brought us where we stand today. It is the case, it is rather the ruling by the United Nations Human Rights Committee in Geneva on a case brought forward by *Rezistans ek Alternativ* before the UN Human Rights Committee and we should acknowledge that it is because of this case by *Rezistans ek Alternativ* that we are where we are today, but the hon. Prime Minister was right to remind the House that *Rezistans ek Alternativ* contrary to the impression that is given, did not go before the UN Human Rights Committee to ask for the abolition of the Best Loser system. No. They went to challenge the fact that somebody is disbarred from standing as a candidate if he does not spell out the community to which he belongs. But, nevertheless, we are where we are today because they entered this case and there was this ruling by the UN Human Rights Committee and this forced all of us - let's acknowledge that - to focus on electoral reform, generally. We, the MMM - I will come to that later on - for thirty years we have been fighting for electoral reform.

This ruling by the UN Human Rights Committee forced everybody to focus on electoral reform. In fact, the UN Human Rights Committee said either you find a way of doing away with this barrier, this communal barrier, or you carry out a new communal population census. That is the choice that they offered to Mauritius. If we were not coming with this Bill, we would have to carry out, so many years after the last one of 1972, in 2014, a new communal national population census. *Quelle ironie!* If we were not acting as we are, *quelle ironie*, what would have been the end result of *Rezistans ek Alternativ*: a new communal population census. *L'histoire parfois a de ses 'coustics' comme on dit chez nous, that startles one and everyone.* That is why we are right to vote and to bring this Bill before the House, because the choice was there and the last thing except for one or two misguided people - and I am being generous when I say misguided, very generous, *je ne me reconnais pas*. So, except for one or two misguided people, nearly everybody is against carrying out these days a new communal population census. That is, this ruling by the UN Human Rights Committee is what has brought us where we are today. We had to act and it is a huge step in the right direction.

As far electoral reform itself is concerned, it is not before us, but if you will allow me a few words, just as you have allowed the hon. Prime Minister, that is not today's debate, full electoral reform, but, Mr Speaker, Sir, there is an *acquis considérable* already because this ruling by the UN Human Rights Committee forced us, all of us, to focus on electoral reform, today there is a historical *acquis*. We put our heads together and today there is a Bill, first time in the history of Mauritius since 1967, there is now a Bill ready to implement full electoral reform report. Some people are saying 'all this noise for hardly anything'. No! Two things: one, this step forward that we are taking, huge, and secondly, we have worked out in details a Bill for electoral reform. As I said, it's a huge *acquis* and I am very proud, Mr Speaker, Sir, because we had been beating about the communal bush for decades, how to move further than the Best Loser System without causing a lot of anxiety in certain quarters. That was the very hard nut that we were not managing to break; for years *la situation était bloquée* and I am proud that I came out with the suggestion that after some hesitation the hon. Prime Minister went along with. Not ideal, nothing in life is ideal unfortunately, but I am proud I found the mechanism through which we can break this nut. We can move further than the Best Loser System; *dépasser le Best Loser System sans créer de panique, d'angoisse dans certains milieux où cette panique, cette angoisse a existé dans le passé et I shall come on to that, Mr Speaker, Sir.*

Therefore, I came with this idea and today the Bill that we have worked out for full electoral reform incorporates that idea of mine, Mr Speaker, Sir. It took us a long time and, as I said, it is not ideal, what we have worked out finally is that the eight best losers will be replaced by a system where the Parties submit on nomination day, a list of candidates in alphabetical order and the leaders of the parties registered with the Electoral Commission will appoint from this list, using their wisdom, their knowledge of Mauritius, the results of the elections, and this is a guarantee because we can't take it for granted that all political leaders are fools. No. There are people who genuinely care for national unity, for the progress of this country and this mechanism *a rassuré tous ceux qui étaient inquiets qu'on peut dépasser le Best Loser System tout en rassurant ceux qui étaient inquiets*, Mr Speaker, Sir. A big breakthrough and I am proud that it was my doing and then the hon. Prime Minister came along and we have all moved together, Mr Speaker, Sir.

So, the Bill is ready; the Bill will be circulated. It is not ideal. It is not what we, the MMM, want. The Bill will provide with 60 plus Rodrigues Constituency elected, 14 proportional representations, six to replace the Best Loser and 10% as the qualifying *barème*

to qualify for these seats. We wanted 60 plus Rodrigues. We wanted 20 instead of 14 – we suggested, not wanted. We humbly suggested 20 instead of 14, eight instead of six, and 7.5% instead of 10%. If the Bill which we worked out - and it is a great *acquis*, a fantastic work! People don't realise the amount of work that we have put in it. A fantastic achievement! If that had come before the House, we would have voted under protest. Huge step forward, but not what we had proposed; to be fair enough as a stand.

So now that this Electoral Reform Bill, in the present amended form, will be before us after the elections, it will be up to us. If one separately, altogether, some together; we will see what we put in our electoral manifestos. Either we put the Bill as it has been prepared by the present majority, or what we had suggested, the next majority ...

*(Interruptions)*

...or compromise put in the Electoral Reform. It is a great *acquis* that we worked out the Bill, but now it is electoral manifesto time. Then, will come a Bill before the National Assembly, Mr Speaker, Sir.

Having said that, I am very happy what has taken place, because for 30 years we have been fighting for electoral reform. Why? Because for electoral reform it is a fantastic opportunity to do three things in one go. We consolidate national unity, as we are doing today; we are taking a huge step. But, with full electoral reform, *d'une pierre trois coups*. Firstly, we consolidate national unity; secondly, we consolidate democracy, *avec une dose de proportionnelle*, and thirdly, we promote the role of women in politics massively. That is why for 30 years we have been fighting for that. The time is not far away. After the next general elections, when, at long last, we will find a way altogether; and we will take this giant historical step after the general elections, Mr Speaker.

Before I come to the present Bill, allow me – I spend more time on history than on local or international politics – to say a few words, so that we should well understand what we are doing today. I am a firm believer that no political problem can be understood and solved without the historical perspective. It is too easy just to look at what prevails today without going *dans la profondeur de l'histoire*. *Il n'y a pas de plus grand professeur que l'histoire, ou professeuse*, these days we should say. So, allow me to go into the history of the Best Loser System, because I don't accept – I have been fighting for 30 years to get over the Best Loser System. Fair enough! But that is no reason to fiddle with historical truth.

Therefore, what people can say today, which is *simpliste*: Best Loser *égale communalisme*. You can say that if you don't know how the thing came up, what was the historical background.

And it all starts, Mr Speaker, Sir, in 1948, the first time that we had general elections worth the name in Mauritius. Everybody could write his name in any language: French, English, Hindi, Bhojpuri, Creole! In 1948! And Basdeo Bissoondoyal went round this country, teaching people how to write their name, Mr Speaker, Sir...

*(Interruptions)*

...before a handful of owners. And not lady owners! Male owners only could vote! It jumped from 7,000 to 70,000 electors. First time we had general elections worth the name. We had five candidates from the Muslim community and candidates from all the other communities. Candidates from the other communities were elected; none from the Muslim community. Not one, including Sir Abdool Razack Mohamed! All defeated! This was bound to create *un tollé!* This is what happened! There was a huge uproar, and there was a public meeting organised by Sir Abdool Razack Mohamed, *le 26 septembre à Plaine Verte*. That is how it all started.

Of course, in those days, the Governor could appoint people at every election. You had the results, and every election on that occasion and every election after that occasion, the Governor would systematically appoint conservatives from all communities, but always conservatives; people who had been against electoral reform, electoral progress, against everything! He appointed Abdool Latiff Mohamed Osman who was appointed first time in 1938, Mr Speaker, Sir. But the hurt was there. What had happened stayed in and at the back of the mind of everybody in the community concerned in this case, Mr Speaker, Sir.

History went by; 1965, Lancaster House Conference. Deadlock! No solution was found to the electoral system that Independent Mauritius was to have, and because there was no agreement, Mr Speaker, Sir, it was decided that there would be an Electoral Commission; the Banwell Commission. Banwell came out with a very complicated system; two kinds of Best Losers. Five Best Losers resembling what we still have today, and in another clause, we said that if any Party got more than 25% of the votes but didn't get 25% of the seats, it would be topped up, so that that Party gets 25% of the seats. That is what Sir Seewoosagur

Ramgoolam objected to mainly. The idea, we understand, Mauritius was to become independent.

The colonisers wanted to make sure that there will be no easy constitutional amendments. You need three-quarters. Therefore, if the Opposition had more than 25% of the seats, it was a way to block Constitutional Reforms, Mr Speaker, Sir. Labour Party, IFB, CAM objected. I forgot to say that those five Best Losers - I think that came back to the hon. Prime Minister's mind the other day - Banwell recommended that to qualify for those Best Losers, a Party would have at least 10% of the vote nationally, plus one elected member.

So, you see we do not often invent things in life. This was rejected, Mr Speaker, Sir. History has recorded that the only time that there was a joint public meeting of Labour, IFB, CAM and Hindu Congress - only once in the history of Mauritius was there a common public meeting - was on 05 June 1966 à la Place du Quai. Massive meeting! Banwell was torn, bugged, trampled upon – everything. So, because of this, a junior Minister was sent, Stonehouse, Mr Speaker, Sir.

The hon. Prime Minister will allow me to point out that there was *unanimité* in favour of our Best Loser System, as it exists today. Stonehouse came, but everybody, including PMSD - Labour, IFB, CAM, PMSD - there was *unanimité* in favour of what we worked out, what is still with us, the Best Loser System that is still with us. *Unanimité!* Except one person, *avec beaucoup de courage, a dénoncé cette unanimité, Sir Philippe Forget, qui était Editeur de 'L'Express', mais du Parti Travailleiste* - firm supporter, hardened supporter. He came out dead against it. He said so. This is the result that every Mauritian, for the first time in the History of Mauritius, will declare as he stands candidate in a general election to what community he belongs. But, let us remember that there was *unanimité*, political *unanimité*, Mr Speaker, Sir, *sauf* Philippe Forget. If I had more time, I would go and dig in the colonial papers, now public, in London, even here. I would like as a Mauritian, as a historian to know what role each one of the then political personalities present, late Stonehouse himself, what was his part in that, Sir Seewoosagur, Sir Abdool Razack Mohamed, Gaëtan Duval, all of them. Someday I am sure there will be a PhD on that. It is worthy to go and really see how this – it exists nowhere else. We are *le nombril du monde constitutionnel*. Well, it is worth knowing who did exactly what, whose idea it was, Mr Speaker, Sir.

I say, I stand to *dépasser le* Best Loser. We have worked out a Bill to do that. But, I say the Best Loser System has helped us in the past, at the difficult time when there had been

communal riots in Mauritius in 1965; then communal riots again in January/February 1968, that constitutional monster, the Best Loser System helped us, helped Mauritius, reassured people that were worried sick because of what had happened in 1948. It did help us. It did not prevent 1968, but *le Best Loser System a joué un rôle dans le progrès de l'île Maurice depuis l'Indépendance en 1968*. But, I take it today there is near unanimity *que le Best Loser System est dépassé*. I do not think it would be very helpful to try and work out at what point in our history, at what point in time, it became *dépassé*, it is *dépassé*. There is near unanimity that the Best Loser System is *dépassé*, must be replaced by something that reassures everybody, that takes care of what has been there in the mind of certain people since 1948, but that does away with the obligation for people to declare their community when they stand as candidates and for a communal electoral system as exists until today, Mr Speaker, Sir.

It is worth reminding ourselves of the history of the Best Loser System before we look at the present Bill today. But I am also proud that I found this way of *dépassé* the Best Loser System *tout en rassurant*. I forgot to say when I mentioned that, that there is nothing new in that. It is already in our Constitution. Our Constitution already provides that if a party does not have a candidate from a given community that must come in as a Best Loser, the registered Leader - the Leader of the party as registered with the Electoral Commission - has the power to choose and appoint which party will benefit from that seat. It is already in our Constitution. The greatest democracy on earth, India, there they have provided that should certain components of the Indian nation be under-represented as a result of elections, the President of the Republic can appoint Members of Parliament from this or that component of the Indian nation.

So, we are not inventing anything. It is not ideal, but it exists elsewhere, it has existed in our Constitution. And as I said, I am proud that I found this way *de dépasser le Best Loser System*.

I heard the hon. Prime Minister today saying repeatedly that today we are taking the first step. Later on, he said what I am going to say, the second step today. The first step was taken in 1982 when we, on 14 December 1982, in this House, voted to do away with the communal population census. That was the first huge step that was taken, Mr Speaker, Sir. I am proud that we took that step. I must point out before others take a stand - and I will come back to that later on - that there was *unanimité*. Later on, I will quote what Sir Gaëtan Duval said on that occasion. Great speech! There was *unanimité*, everybody, including the *PMSD*,

Sir Gaëtan Duval voted and said it is a huge step forward. Today, we are taking the second huge step forward to do away with communalism in the direction of national unity.

I remember 1982, I was Minister of Finance. When this came before the House you had thousands of young people outside asking for the Best Loser System to be done away with, shouting as they were right to shout. I had to leave the House – Minister of Finance - to go to the Headquarters of the MMM à la Rue La Poudrière to get all this crowd to come and to have a beautiful illegal public meeting, to tell them: “You are right, but we do not have a mandate.’ Hon. Prime Minister, that rings a bell! So, we said: “We do not have a mandate to do away with the Best Loser System.” They swore at me. To this day, I remember, *bann gros gros zouré bien à la mauricienne !* It stuck in there to this day. Beautiful *jurons* that cannot exist in any language, except Creole!

But we stood firm, we said: “We do not have a mandate. If you want in the next elections, we will put it in our electoral manifesto, but we do not have a mandate, we will not do away with the Best Loser System. We will go and look for a mandate if we want to do that.” But we said: “You are right in the direction in which you are looking. Therefore, we will abolish the communal population census.” And this is how and when this huge first step was taken, Mr Speaker, Sir. I have maybe quarter to half an hour, can I carry on? There is no obligation.

**Mr Speaker:** Proceed!

**Mr Bérenger:** Therefore, I come to the present Bill. That is the second time I say that I am proud because I found this mechanism which exists in India and elsewhere to *dépasser* the Best Loser *tout en rassurant*. I am not a lawyer, but I have very good lawyer friends and I have become a constitutional lawyer *par la force des choses* and it shot me this idea of replacing ‘shall’ by ‘may’. It was my idea and we worked on it. So, I am proud that this also was my finding, my suggestion, my contribution to allowing the history of our country to progress, Mr Speaker, Sir.

*(Interruptions)*

It is spelt out that what is provided in this Bill is for the next elections only.

*(Interruptions)*

It is the last time because we all agree that after the next elections, there must be full electoral reform, Mr Speaker, Sir.

*(Interruptions)*

**Mr Speaker:** Let us have some silence!

**Mr Bérenger:** So, as far as this present Bill is concerned, it will apply only for the next elections, Mr Speaker, Sir. I want to make this clear, those who will declare their community because the Best Loser System will still be with us until full electoral reform is carried out, I have no doubt that all those who will declare their community on this occasion of the forthcoming general elections, will do so for the last time and under protest, *le cœur gros*, if I can say so, because we are not doing away with the Best Loser System. All those who will declare their community, I am sure, would have rather not declared their community, declared themselves above all, beginning with me. But we still have this Best Loser System with us. Therefore, those who will declare their community will do so under protest, *le cœur gros*, for the last time before we come to full electoral reform, Mr Speaker, Sir.

I must say that the wording which was quoted by the hon. Prime Minister of 4 (2) (b) being therefore -

“Where a candidate has not declared his community and is returned as member, the Electoral Supervisory Commission shall, for the sole purposes of determining the appropriate community and allocating additional seats, proceed (...).”

Those two lines -

“(...) on the basis of the average number of returned members belonging to each community at all general elections held since 1976.”

The committee chaired by hon. Faugoo, the Attorney General came out with this formula, everybody helped and I understand that the Electoral Commission raised no objection, from what I heard the hon. Prime Minister saying. I must say - it is a bit chichi on my part - but I did say and I do repeat that it is not *un chef-d'oeuvre, le drafting constitutionnel et légal*. Certainly not! But we will go along with it. We will leave it to the Electoral Commission. Should this thing apply, good luck to the Electoral Commission! Should the Electoral

Commission have to put into practice those two lines, I wish them well! I shall pray for them as usual!

*(Interruptions)*

But I am not totally happy, I must say! *Ce n'est pas un chef-d'œuvre de drafting constitutionnel et légal*. But we will go along with it. We are not proposing any amendment. Hon. Ganoo in the committee took part and went along with the committee. We are not proposing any amendment neither then, nor now nor at Committee Stage, Mr Speaker, Sir. Especially so, that it seems to me clear that this will not apply - I can't see anybody - *peut-être en le regrettant je le dirais*, but I can't see anybody amongst the small parties, the small organisations that will present candidates, without the candidates being elected. I don't see that happening. I may be sad about that, but I can't see that happening. Therefore, that part of today's Bill as far as I am concerned *sera sans effet électoral*. But we were nevertheless right to look at the very fine print, Mr Speaker, Sir.

Two points have been raised. One was that this Bill is against the Constitution, unconstitutional, and the point has been made. Well, I believe that it is *irresponsable de dire cela sans aller devant la Cour Suprême éventuellement*. We will see those who are saying that whether, in due course, when we will have voted that and we will have gone to general elections with this, we will see. I hope no one will play about with such a delicate issue by saying that it is unconstitutional and then not going to the Supreme Court in due course, Mr Speaker, Sir.

I have not heard the hon. Prime Minister say what the stand of the Labour Party will be as far as the candidates are concerned! We have time, we vote this and we have time. While taking my shower this morning, I was thinking about something. What the MMM will do will depend amongst other things, whether the perspective is for another 60-0 or not!

*(Interruptions)*

If the perspective is for another 60-0 *derrière la porte*, then I will be the first one to say no one has to declare his community because, as we know, if there is a 60-0, four of the eight Best Losers go automatically to what is left of the Opposition. So, let us wait! We have time before us, let us wait and both the Labour Party and the MMM will say exactly where we stand, Mr Speaker, Sir.

But, on the other hand, there has been a second point, *un esprit malade est venu insinuer que* what we have been doing is dangerous because a given community or the Labour Party might give directives to all its candidates from a given community not to declare their community which would result in Best Losers coming mainly, if not only, from that given community. I mean, *c'est seulement un esprit malade qui peut imaginer ce genre de complot communal !* It is shameful! It is shameful that *un esprit malade* should have thought out this because if that happens, *l'opinion publique* would condemn such a party, would condemn such behaviour, Mr Speaker, Sir. So, I am ashamed that that kind of *aberration* could be uttered on the occasion of that amendment that we are bringing to the Constitution.

Mr Speaker, Sir, I had said that I wished that the debate - I repeat - I hope that the debate takes place in *toute la sérénité nécessaire* but also *dans l'unanimité* as it was the case in 1982. We should have *unanimité. Il est bon et je félicite le MSM qui a décidé de voter cet amendement. Il est bon*, Mr Speaker, Sir.

As far as the PMSD is concerned, I would advise them before taking a stand and before proposing some kind of referendum, to go and read the debates of 14 December 1982. What the PMSD said and what they did, what Sir Gaëtan Duval said and what he did! They voted *à l'unanimité*. They congratulated this step in nation building that was being taken. *À l'unanimité*, it was voted! Not only that, but the idea of the referendum was rubbished by Sir Gaëtan Duval and rightly so! The words used ...

*(Interruptions)*

*Zot pou alle la guerre kan mo pas la hein!*

*(Interruptions)*

Mr Speaker, Sir, the words used by the hon. Prime Minister to say that this is not the time for a referendum were very gentle compared to the words used – I have a copy of the debate. Sir Gaëtan Duval rightly so - on an issue like that there is unanimity. This is what he said. He was happy that there was *unanimité* on this occasion. He said a referendum in a case like that would be a waste of time and money. I understand that there is going to be an amendment. We will see it.

*(Interruptions)*

*Ala li rekomanser enkor! Pa presser! Enn fek kitt gouvernman lott si li pas fer attensyon li pou kiter!*

Mr Speaker, Sir, *si après que soit l'amendement qui a été circulé* - we will see, it is your ruling whether *l'amendement est recevable ou non*. I have my opinion. I have the occasion of ventilating it.

If the amendment is rejected or if it is debated and rejected, Mr Speaker, Sir, *encore une fois l'histoire va juger chacun parmi nous*. And I appeal to the PMSD, if the PMSD, after its attempt at referendum or what have you, votes against whereas the MSM has decided to vote for; under protest, we are doing the same, but if the PMSD does that, contrary to what took place on 14 December 1982, *eh bien, M. le président, encore une fois, le PMSD se retrouverait à contre-courant de l'histoire et l'histoire ne lui pardonnerait certainement pas cela*.

What we are doing today, Mr Speaker, Sir, *est un grand pas en avant; deuxième pas en attendant le grand bond en avant avec le full electoral reform* as soon as possible after the general elections.

My dream - and I hope that it is not only my dream - is to make of Mauritius *un pays phare, un modèle de démocratie et d'unité nationale dans la diversité*, Mr Speaker, Sir. With this Bill - the steps small, big, huge, *chacun a son opinion*, but it is an important step in that direction what we are doing, what we are called upon today to do, Mr Speaker, Sir.

Pour aujourd'hui, M. le président, c'est une de ces occasions où je ne résisterai pas à la tentation de terminer mon discours en disant: vive l'île Maurice, vive la République.

Thank you, Mr Speaker, Sir.

**Mr Speaker:** I suspend the sitting and we will resume at ten past six.

*At 5.14 p.m. the sitting was suspended.*

*On resuming at 6.20 p.m. with Mr Speaker in the Chair.*

**Mr P. Jugnauth (First Member for Quartier Militaire & Moka):** Mr Speaker, Sir, at the outset, I wish to highlight that the Constitution (Declaration of Community) (Temporary Provisions) Bill presented in this august Assembly today is, in fact, the outcome

of this Government's failure to come forward with a full-fledged Electoral Reform Bill as has been promised by the hon. Prime Minister in this very House itself.

Obviously, I'll explain what I am saying in the course of my intervention, but looking at the Bill itself, I can say outright that it has been drafted in an infelicitous manner. The crucial clause, clause 4(2) (b) which relates to determining the appropriate community of an elected candidate who has not declared his community and allocation of additional seats after the next general elections, is pregnant with ambiguity and a clear intention to mislead.

Moreover, the Bill as it stands provides, in fact, only for a temporary alteration with regard to paragraph 3 of the first schedule to our Constitution, which in itself constitutes an evil precedent as it involves, in fact, the freezing of part of our Constitution. And I will demonstrate, in the course of my intervention, how there is a hidden agenda and how these - I would call them intended consequences - can be dangerous for our rainbow nation. But before coming to the specifics of the Bill itself, I believe it is important to situate the context in which the Bill is being presented. We have, on the one hand, a judicial context involving Government's commitment and obligations vis-à-vis the Human Rights Committee of the United Nations as well as vis-à-vis the Supreme Court and, on the other hand, a unique - if I can qualify it that way - political context with a political agenda which strikingly, in fact, has dictated the chronology and the course of events.

M. le président, voyons d'abord le contexte juridique et les engagements pris par le gouvernement sur le plan international et local. Sur le plan international, l'État mauricien se trouve, il est vrai, en face d'une obligation pour s'assurer qu'à l'avenir, il n'y ait plus de violation de l'article 25 (b) de l'*International Covenant on Civil and Political Rights of the United Nations* tel qui est établi par le Comité des droits de l'homme des Nations Unies dans un *ruling* prononcé le 27 juillet, 2012, suite à la plainte de '*Rezistans ek Alternativ*', concernant l'utilisation du recensement de 1972, pour maintenir un système électoral basé sur l'affiliation communautaire et intrinsèquement concernant toute la question de déclaration communautaire pour se porter candidat aux élections générales.

Sur le plan local, il y a aussi l'engagement du gouvernement vis-à-vis de la cour Suprême où l'Attorney General est venu lui-même donner l'assurance à deux reprises, que l'État prendra des mesures pour satisfaire la demande de '*Rezistans ek Alternativ*', dans sa demande visant à permettre à la candidature de toute personne qui choisirait de ne pas déclarer sa communauté pour les élections générales.

Le contexte politique, l'agenda politique néanmoins, comme j'ai dit, dicte, au fait, les agissements et les manœuvres de ce gouvernement. Toute l'île Maurice est témoin des tergiversations par rapport à la réforme électorale. Le Premier ministre avait promis un *White Paper* pour juillet, 2013. Ensuite, il avait demandé quelques semaines de plus. Finalement, il a présenté le *Consultation Paper* sur la Réforme Electorale le 24 mars, 2014, c'est-à-dire, à la veille de la rentrée parlementaire. Et 20 mois suivant le *ruling* du comité des droits de l'homme des nations unies. Et par la suite, il annonce qu'il donne six semaines jusqu'au 5 mai, pour que toute personne intéressée ou parti quelconque puisse soumettre ses propositions et suggestions sur les points en suspens de la Réforme électorale. Et le 25 mars, répondant à la PNQ du *Leader* de l'Opposition qui lui demande s'il va présenter un projet de loi sur la Réforme Electorale *within a reasonable delay after 5 May ? Why 5 May ? Because* c'est la date limite de soumission des propositions et suggestions par rapport au *Consultation Paper*.

Le Premier ministre déclare et je le cite -

« *Yes indeed that's what the intention of Government is* ».

Le 15 avril, seulement après quatre séances parlementaires, le Premier ministre renvoie le parlement pour le 13 mai et comme raison il avance que son bureau a reçu *and I quote* -

« (...) *a substantial number of responses* » à son *Consultation Paper*.

Il déclare que, par conséquent, il a besoin de beaucoup de temps pour étudier personnellement ces propositions et qu'il compte en publier un condensé. Et il ajoute qu'il va rencontrer tous les *leaders* politiques dans le cadre des consultations détaillées et le *Leader* de l'Opposition approuve ce renvoie du parlement. Le 12 mai, le Premier ministre décide de proroger maintenant le parlement pour une durée indéterminée. Il déclare toujours que sa priorité est la réforme électorale et il affirme que rien ne l'empêchera dans sa détermination à réussir cette grande réforme historique qui va permettre au pays de franchir une autre étape après son indépendance. Il explique qu'il a demandé au Président de la République, donc, de proroger le parlement pour permettre la préparation du projet de loi sur la réforme électorale. Et je mets l'emphase à chaque fois sur la réforme électorale.

Il va plus loin en disant qu'à la reprise parlementaire, il doit y avoir un discours programme, que la réforme électorale sera une priorité et qu'il présentera le projet de loi sur

la réforme électorale pour être débattu par les parlementaires. Encore une fois, le *Leader* de l'Opposition a approuvé la prorogation du Parlement. Par la suite, M. le président, nous savons tous, ce qui s'est passé. Aucune réelle considération n'a été donnée aux propositions soumises, que ce soit par les individus, par les partis politiques ou autres groupes que ceux du Parti Travailliste et du MMM. Il n'y a eu que ces deux propositions qui ont été discutées et le Premier ministre, comme il avait promis, n'a rencontré aucun autre Leader politique autre que le *Leader* du MMM et le Chef de l'Opposition pour des consultations détaillées.

Donc, toute la question de réforme électorale s'est résumée en des discussions entre le Premier ministre et le Chef de l'Opposition. Un comité mixte a été mis sur place, Gouvernement-MMM, appelé *dream team* pour préparer le projet de loi. Entretemps, les discussions entre le Premier ministre et le *Leader* de l'Opposition ont débordé sur la deuxième République et entretemps débordé aussi sur l'Alliance, une Alliance possible. Nous savons qu'il y a eu des épisodes de mamours et désamours, des *on* et des *off*, et le Premier ministre et le *Leader* de l'Opposition ne sont pas parvenus à tomber d'accord. On ne sait pas exactement sur quoi mais, contrairement aux apparences, l'agenda politique commun du Premier ministre et du Chef de l'Opposition est toujours le même. La perspective d'Alliance donc dicte encore ce qui se passe alors que la priorité des priorités pour le Premier ministre et le Chef de l'Opposition était la réforme électorale, alors que le Parti Travailliste et le MMM ont une majorité de trois quarts pour faire voter la réforme électorale sur laquelle - ce que j'ai appris à travers les medias - les deux partis sont tombés d'accord alors que selon le Premier ministre et le Chef de l'Opposition, le projet de loi sur la réforme électorale est fin prêt d'après les déclarations que j'ai lues. On est parvenu donc à une situation où le Premier ministre présente un projet de loi au Parlement qui ne propose qu'une solution temporaire - j'allais dire une dérogation, *an alteration* plutôt - pour se servir du terme légal - à une section de la Constitution afin de permettre à un candidat de ne pas déclarer sa communauté, s'il le souhaite, ainsi seulement pour les prochaines élections générales. Ce qui veut dire, M. le président, que tous les grands discours sur la portée historique de la grande réforme électorale que souhaitait le Premier ministre sont devenus caducs.

Le Premier ministre est en train de nous dire aujourd'hui que ce n'est - enfin il a dit déjà, mais il le dit aujourd'hui encore - qu'après les prochaines élections générales que la réforme sera réalisée alors que cette réforme aurait pu se concrétiser maintenant étant donné que le Parti Travailliste et le MMM réunissent à eux seuls une majorité de trois quarts. Moi, je ne m'aventure pas à faire des pronostics pour l'avenir, on verra parce que, de toute façon,

c'est la population qui va décider. Mais je constate que le *Leader* de l'Opposition croit dans cette hypothèse de réforme électorale après les prochaines élections générales. Comme j'ai dit: on verra, *time will tell*. Mais toujours est-il que c'est, d'un commun accord, entre le Premier ministre et le *Leader* de l'Opposition que le présent projet de loi est présenté à l'Assemblée après qu'ils aient volontairement mis la réforme électorale au placard et je vois que le Premier ministre fait l'impasse sur le traditionnel discours programme qu'il avait pourtant annoncé le 12 mai au moment de la prorogation de l'Assemblée nationale et il n'y a pas de PNQ aussi aujourd'hui. Donc, voilà le contexte dans lequel la Constitution (Declaration of Community) (Temporary Provisions) Bill (No. V of 2014) est présentée.

Let me now come to the provisions of the Bill. I can tell you, Mr Speaker, Sir, that after a perusal thereof, it would cause any reasonable person to have substantial reservations in relation thereto. What is being proposed, as I said, is a temporary alteration of the existing provisions to be found at paragraph 3 of the First Schedule to our Constitution. Despite all the buzz created in the media, both written and spoken, we are not, in fact, here to replace the word 'shall' by the word 'may' contrary to what has been said. This Bill is simply about a temporary alteration to allow a candidate not to declare his community if he so wishes, but only for the purposes of the next general elections.

Mr Speaker, Sir, this Government has chosen to temporarily freeze part of our Constitution in an exceptional manner which, as I said earlier, constitutes a dangerous, an evil precedent for our democracy. The second legal point of fundamental concern which I would like to bring to your attention, Mr Speaker, Sir, relates to clause (4) sub clause (2) paragraph (b) of the proposed Bill and it reads as follows -

“Where a candidate has not declared his community and is returned as member, the Electoral Supervisory Commission shall, for the sole purposes of determining the appropriate community and allocating additional seats, proceed on the basis of the average number of returned members belonging to each community at all general elections held since 1976.”

When one reads this part of the Bill at its face value and interprets this clause under its ordinary dictionary meaning that is under the literal rule of statutory interpretation, one can only conclude that what is being proposed, that is the course of action by this Government, can have very far reaching adverse consequences on inter communal harmony and can even threaten the social fabric of our multicultural society. Let me take a particular

example under that interpretation and I take that example following what the hon. Prime Minister has said about Murphy's Law, that we never know what can happen. *Et je le dis, M. le président - peut être pour répondre aussi - on peut avoir une situation sans qu'il y ait de complicité, sans qu'il y ait de concoction, sans qu'il y ait de stratégie politique parce que chacun sera libre.* Enfin, tout au moins pour certaines parties, il y aura une *directive*. Mais, en tout cas, pour d'autres, chacun sera libre de décliner ou de ne pas décliner sa communauté quand il ou elle va être candidat pour les prochaines élections.

Let me take that example, and let us consider the stand where, let us say, in aggregate, ten candidates belonging to a particular community decide not to declare their community, and they are elected at the next general election. Because it is people who will vote, people who will decide, and they will not, therefore, according to that section - if I read it literally - be counted as elected members of that particular community by the Electoral Supervisory Commission, although they do actually belong to that particular community. This will result in an under representation of that particular community, according to the average number of elected members of that community since the 1976 General Elections which the Electoral Supervisory Commission will make an average of.

Then, what will happen? Well, the normal logical thing is that the Electoral Supervisory Commission will have the obligation to allocate additional seats to candidates who have declared themselves under that particular community, but who have not been elected, in order to correct this under representation. We will find ourselves, Mr Speaker, Sir, in a situation where actually there will be, in fact, an excess number of Parliamentarians of that particular community in the National Assembly, and the whole exercise of designating additional seats will thus be falsified. It will result in utter injustice, and we imagine what sort of communal rift we can witness in our country.

Mr Speaker, Sir, I must say I have learnt, and I am shocked to learn that in determining the appropriate community and allocating additional seats for the purposes of clause 4 (2) (b) of this Bill, the Electoral Supervisory Commission will apply a mechanism. First of all, I don't see that mechanism anywhere forming part of that Bill, and this is unprecedented. I don't want to question the legality of that. From what I have been made to understand, Mr Speaker, Sir, "where a candidate has not declared his community and is returned as member, the Electoral Supervisory Commission shall, for the sole purposes of determining the appropriate community and allocating additional seats" predetermine the

eight Best Losers without taking into account the overall results of the next general election. In fact, if that is correct, the information that I have received is alarming inasmuch as I have learnt that in the application of clause 4 (2) (b) of this Bill, the ESC has already predetermined that the Best Losers for the next general election will be exclusively from the Muslim community and from the General Population...

*(Interruptions)*

Hon. Members can check! And whatever be the actual results of the next general election!

Mr Speaker, Sir - I hear some murmurs -, I have tried to find out, because I wanted to know about the mechanism that will apply in order to nominate the Best Losers for the next general election. I don't want to mention names here. But I have done my homework! Well, then, probably, I would invite the hon. Prime Minister to correct me, and to say that this is not going to be the case! Fair enough! Because we are here for debate, and I want to be enlightened Mr Speaker, Sir, just as people out there want to be enlightened. They want to know, and more specifically when we are talking about a matter which is complex and complicated. So, Mr Speaker, Sir, as I say, I am very worried about the application of this clause by the ESC. If it has been predetermined in terms of the allocation of the Best Losers, we are talking about two communities; whether it is going to be, I don't know, 5-3, 3-5, 4-4 or whatever, this means that there is arbitrariness and an unfair manner in which this is being calculated. Unfortunately, the ESC will be left with this daunting task of carrying this heavy burden. I hope this is not the way it is. I hope the hon. Prime Minister will, in his summing-up, correct me for the benefit of the whole population. Then, the other two communities are being excluded right from the beginning, that is, Sino-Mauritian community and Hindu community in the application of section 4 (2) (b) without, as I say again, taking into account the results of the next...

**Mr Bérenger:** Mr Speaker, Sir, on a point of order.

*(Interruptions)*

**Mr Speaker:** Please, let me listen to the point of order!

**Mr Bérenger:** Is it in order to say such things concerning an independent institution, the Electoral Commission, which are being broadcasted live, casting aspersions like that on

the Electoral Commission, and expecting the hon. Prime Minister supposedly to become the *porte-parole* of the same Commission? I put it to you that this is not in order.

**Mr Speaker:** Well, I would suggest to the hon. Member, first of all, to think well before making that kind of argument that may infringe on the prerogatives and responsibilities of the Electoral Supervisory Commission, because whatever you are saying with regard to the Electoral Supervisory Commission may be prejudicial. It has not yet been in application. You may question, but you have to be careful about making allegations and trying to...

*(Interruptions)*

Please, when I am on my feet and speaking, I expect some decency from hon. Members. I am addressing myself to hon. Pravind Jugnauth! I have said. So, be careful.

**Mr Jugnauth:** Mr, Speaker, Sir, would you allow me to say something on what you said?

**Mr Speaker:** Yes, of course.

**Mr Jugnauth:** What I am trying to find out is how this law will be applied in order to nominate the future Best Losers after the next general election. I have, in my intervention, said there is a literal interpretation, and I have also tried to find out what is the mechanism that is going to be used! I have been informed that it has been predetermined.

*(Interruptions)*

Well, then I believe that we are entitled to know how this law will apply and that the mover of the Bill could explain to us what mechanism will apply in order to nominate the Best Losers.

**Mr Speaker:** I have carefully listened to the point that you have made to justify what you have said earlier. But when you use the word 'predetermined', this is a very serious allegation. I would ask you to withdraw this word 'predetermined'.

*(Interruptions)*

Wait a minute! I am on my feet! You have to listen to what I say first and then you may stand up. I am speaking to hon. Pravind Jugnauth. The word 'predetermined' is a serious word. It implies an allegation. I interpret it to mean that you are making allegations against the

Electoral Supervisory Commission. So, I would suggest that you withdraw that word 'predetermined'.

**Mr Jugnauth:** Then, may I put the question?

**Mr Speaker:** You may not question my ruling, hon. Jugnauth!

**Mr Jugnauth:** I am not questioning your ruling...

*(Interruptions)*

**Mr Speaker:** Quiet, please! Let us have some order.

*(Interruptions)*

Withdraw the word 'predetermined'.

**Mr Jugnauth:** May I then explain...

**Mr Speaker:** I am asking you to withdraw the word and then you proceed.

**Mr Jugnauth:** Ok, I withdraw the word 'predetermined'.

**Mr Speaker:** Thank you.

**Mr Jugnauth:** I would then ask question about whether is it the situation where we already know from which community the best losers will come after the next general election. Do we know that now? I am asking the question: do we know that?

**Mr Speaker:** This question is allowed. Carry on!

**Mr Jugnauth:** So, I hope I will get an answer if it is not already known. We will see.

*(Interruptions)*

**Mr Speaker:** Please, do not interrupt.

**Mr Jugnauth:** Because the hon. Prime Minister then can clarify about this and I would also wish to be enlightened – not only myself, everybody would like to be enlightened - on the real mechanism that is put into place in order to nominate the best losers. Because we are being told now that an average – let me just check the document – number of returned candidates belonging to each community at all general elections held since 1976. Now, this is already established. I believe there is not going to be any contest about that, because I have got the figures with regard to all the general elections and that calculation has come to an average of so many in terms of Hindus, so many in terms of Muslims, so many in terms of Sino-Mauritians and so many in terms of General Population. Now again, this calculation would replace supposedly the 1972 Census, because we are going to be in violation of the United Nations Ruling if we go according to the 1972 Census. That is why my question is: when this has been already established, how will it work? Are we going to have the results of the next general election and count the number of those communities, appropriate communities, all those who have declared their communities, their appropriate communities

and how will it compare with this average. This is what I want to know. And this is why I have tried to find out Mr Speaker, Sir, and from information, again as I said, it seems that the calculation has been done already. That is why I am asking the question.

**Mr Speaker:** No, no! You have explained the word 'predetermined' which you have withdrawn already. I do not agree that you use this term. You have to withdraw that term again.

**Mr Jugnauth:** But I have not used it again.

**Mr Speaker:** You cannot point a finger to the Electoral Supervisory Commission.

**Mr Jugnauth:** Yes, Mr Speaker, but I have not used the word 'predetermined' again.

**Mr Speaker:** You may put question, but don't make any allegation, I will not allow that.

**Mr Bérenger:** Mr Speaker, Sir, can I take the same point? Because what was alleged, I mean, the Electoral Commission is no longer here but they can't defend themselves.

*(Interruptions)*

But they cannot defend themselves. The allegation, a most serious one, is that the Commission has already decided to exclude this or that community from the best loser. And this is going to stay in Hansard, Mr Speaker, Sir! That is the allegation that the Electoral Commission has already decided - I listened very carefully - to exclude this or that community from the best losers. And we are going to allow this to go on record. My reading is that this should be withdrawn from the record.

**Mr Jugnauth:** Mr Speaker, Sir, I asked the question and you have allowed me to ask the question. Therefore, ...

*(Interruptions)*

**Mr Speaker:** Well, I have ruled that you may put a question, but you have also, in a disguised way, put a question and trying to make an allegation. If you have said the words as repeated by the Leader of the Opposition, you will have to withdraw them - all the words.

*(Interruptions)*

You will have to withdraw otherwise I have to raise and go and check the transcript and we will be wasting time.

**Mr Jugnauth:** Okay. May I know which words you want me to withdraw?

**Mr Speaker:** All the words, all the allegations you have made...

*(Interruptions)*

**Mr Jugnauth:** All my speech? *Tire tout? Sa kalité democracie la !*

*(Interruptions)*

**Mr Speaker:** I want some order.

*(Interruptions)*

I want some order! What you said about the predetermined calculation etc.

*(Interruptions)*

Are you saying that you have not made any allegation against ... ?

**Mr Jugnauth:** I have already withdrawn the word 'predetermined'.

**Mr Speaker:** Not only the word 'predetermined'.

**Mr Jugnauth:** Which word?

**Mr Speaker:** The allegation of 'calculation' supposedly already made by the Supervisory Commission.

**Mr Jugnauth:** I have not used the word 'allegation'.

**Mr Speaker:** So, I raise; I'll have to check the transcript.

*At 6.58 p.m. the sitting was suspended.*

*On resuming at 7.49 p.m. with Mr Speaker in the Chair.*

**Mr Speaker:** I have checked the transcript and this is the sentence that has been pronounced by the hon. Member, and I quote -

“(...) and this is why I have tried to find out, Mr Speaker, Sir, and from information, again as I said, it seems that the calculation has been done already.”

So, I would kindly ask the hon. Member to withdraw the words!

**Mr Jugnauth:** I withdraw that sentence, Mr Speaker, Sir.

**Mr Speaker:** Thank you. Yes, the hon. Member may proceed now!

**Mr Jugnauth:** So, as I was saying, Mr Speaker, Sir, there is a system which is in place. Whether we agree with that system or not, the law has been applied at all general elections and, as the hon. Leader of the Opposition has brilliantly described the path that led to the Best Loser System, the Electoral Supervisory Commission has, at every general election, applied the Fifth Schedule whereby it is clearly stated the mechanism that will be used to nominate Best Losers after a general election so that something that not only us but the population at large is aware about this mechanism, this calculation that comes into play in order to nominate whether it would be eight Best Losers or a maximum out of eight.

Today, we are being asked to vote for a Bill that will become law so that this now will replace that mechanism that is in place only for the purposes, of course, of the next general election. But my question is that we all parliamentarians in this House and people at large would want to know what mechanism will be used in order to nominate the Best Losers after the next general election. When I look at section 4 which says that an average will be taken for the nine general elections, we can already calculate, and that is why I am asking the question now: Do we already know what will be the outcome of the Best Loser? That is, in terms of community, if we go according to that average, to that calculation, do we already know what is going to be the outcome before even proceeding to the next general election? That is the question that I am asking and I want to be enlightened on this. I hope that I am wrong in the calculation that I have made! I hope that it is not going to be that way!

So, I am looking forward for the hon. Prime Minister to enlighten us on this issue because whether after a general election, as it has always been the case and even as it is supposed to be the case, even after voting this Bill, the Best Losers will come from the appropriate communities that have been defined in our law? That is, there are four: Hindu, Muslim, General Population and Sino-Mauritian and my question is that no appropriate community will be excluded. That is my question that I am asking.

Again to my mind, that clause may give rise, in fact, to serious problems and this is why I will insist that in its endeavour to correct an anomaly, this Government will, in fact, create even more anomalies, turning confounding situations into even more confusing ones I would say.

I will end my observations as regards clause 4 (2) (b) of this Bill by sharing with you, Mr Speaker, Sir, that one of the major drawbacks of the Bill is that it has failed to provide a Schedule which would have explained, in fact, what I have just asked, an explicit and expressed manner in which the precise mechanism that will be used to allocate the eight Best Loser seats after the next general election. We have, in fact, all of us simply been left in the dark and I consider that to be most unfair and, in fact, it is a burden that will have to be carried by the Electoral Supervisory Commission in determining and interpreting this section.

Let me now come to clause 4 (2) (c) of the Bill. We learn that -

“Where all candidates who are returned as members have declared their community, the allocation of additional seats shall be effected under paragraph 5 of the First Schedule to the Constitution.”

In other words, Mr Speaker, Sir, where all candidates who are returned as members have declared their community, the allocation of the eight Best Loser seats will be made by reference to the same 1972 Census which has been found by the UN Human Rights Committee in 2012 to violate Article 25 (b) of the International Covenant on Civil and Political Rights. This is scandalous because we are back to square one! Everything then will stay the same! All the issues about the 1972 Census and to the Community-based Electoral System will remain unattended! The only thing that will change is that for the next general election, there is that derogation that will be given to a candidate not to declare his community if he so wishes. That is why I say the Republic of Mauritius with that section has lamentably failed to provide the effective remedy which it was duty bound to provide following the ruling of the UN Human Rights Committee.

In fact, the Republic of Mauritius will only be able to provide an effective remedy as per the ruling of the Human Rights Committee when we come up with a fully fledged electoral reform. As I said again, unfortunately, and ironically both the hon. Prime Minister and the hon. Leader of the Opposition have, in fact, deprived this country of this full-fledged reform before the next general election.

Now, the hon. Prime Minister has introduced to this House the Bill, which I believe, has not been well thought of and which is dangerous. Well thought of because why I say I take the former Chief Justice, Mr Glover, himself, who stated publicly that, even after having finalised this piece of legislation, would have wished that we had consulted other constitutional experts in order to see to it that everything, that is being done, is being done in a proper legal manner. That is why I say that the team that was put, although, it has taken three months, has come up with this Bill.

*(Interruptions)*

Twenty months after!

*(Interruptions)*

Yes!

As I said earlier, Mr Speaker, Sir, apart from the obligation of the State vis-à-vis the United Nations and the Supreme Court, there is a political context in which this Bill has been introduced before the Assembly. You will recall I said earlier that there is a hidden agenda. The proof in what I am saying is to be found, in fact, in the Explanatory Memorandum, which accompanies the Constitution (Declaration of Community) (Temporary Provisions) Bill and which reads as follows –

“The object of this Bill is to make special provision regarding the declaration of a candidate as to his community for the next general election, pending the subsuming of the Best Loser system in a different method of allocating additional seats.”

Now, the operative words which I want to stress upon and to which I wish to draw your attention, Mr Speaker, Sir, is the expression ‘pending the subsuming of the Best Loser System in a different method of allocating additional seats.’ I listened carefully to the hon. Leader of Opposition who has given some details about this – I thought the hon. Prime Minister ...

*(Interruptions)*

I do not know who is driving whom! But I hope the hon. Prime Minister would have given, at least, some - although the debate is on this Bill.

*(Interruptions)*

Yes. *Pour completer le tout*, he would have given, at least, some information about this supposed Electoral Reform that will come. So, we do not know what it is up to. We do not know about the method of allocating the additional seats that they would propose. There is a draft Bill which I understand has been finalised, but I heard from the hon. Prime Minister that there may be some other points to clarify. I hope that you are not bringing it through the back door through this clause. I heard the hon. Prime Minister several times say that we do not have a mandate, that is why we need to put it in our Programme for the next general election. But, the hon. Prime Minister has said it in this very House. I quoted earlier that he intended to come with a fully-fledged Electoral Reform Bill.

*(Interruptions)*

No, this is what he said. He should have circulated ...

**Mr Speaker:** Hon. Member, please address the Chair!

**Mr Jugnauth:** At least, we would have expected to have, as I said, some information about this Bill. But, the way they are acting is as if the decision has already been taken. It is as if the elections have already been held and there is a new Government with a three-quarter majority.

This is not the way that democracy is upheld. By the way, I saw there is an amendment that has been circulated by hon. Xavier Duval. Well I would say that we will support it because I would wish to draw the attention again on this issue of the Government Programme of 2012-2015; it was the Labour and PMSD Programme where he stated –

“Government will introduce new legislation providing for the people to be consulted by way of referendum on major constitutional and other issues”.

**Mr Speaker:** Hon. Member, please do not use the word ‘you’. Address the Chair.

**Mr Jugnauth:** Yes, I am addressing you, but I am saying that the hon. Prime Minister’s argument is that...

**Mr Speaker:** You are addressing me, but you are looking at the hon. Prime Minister! Proceed.

**Mr Jugnauth:** Although we do not have that kind of chemistry, but still I tend to look towards the hon. Prime Minister.

**Mr Speaker:** I am watching your physics.

**Mr Jugnauth:** Well, I am very honoured. I was saying, Mr Speaker, Sir, that the argument of the hon. Prime Minister is that now there is no time. We cannot go for a referendum and on top of that we cannot spend money for the referendum. There is no time because it is not to the fault of the others; it is the fault of the hon. Prime Minister. I mean the pronouncement of the Human Rights Committee was on 27 July 2012. The Consultation Paper only came out on 24 March 2014. Twenty months! Now I am only counting the 20 months, but the hon. Prime Minister has said earlier that it is not only because of that pronouncement; it has always been his intention to come forward with an Electoral Reform. It was bound to happen. And if it was bound to happen and you have a mandate, let us not talk about previous mandate, but let us talk from the last general election. I think if it was so

historical, it would have been a priority. At least, I believe that you would have gone according to what you have stated in a Programme. I believe that it was not, in fact, the intention of Government to consult the people any further. But, as I said, Government preaches one thing and practises another because if they had respected their programme, they would, at least, have had this opportunity to go, if ever, by way of a referendum.

The other issue I want to make is that unfortunately we have spent – you know when I say Parliament has been adjourned for one month initially and then prorogued; now we are coming up with his Bill. Now, we don't know what will happen after today. I hope that we have Tuesdays' session as from now. In fact, we have a lot of work to catch up. We have a lot of questions to ask.

*(Interruptions)*

We have a lot of problems that have been related to us by the people to bring before Parliament. For us, Mr Speaker, Sir, this piece of micro legislation, as I said, is, in fact, dangerous, of course, depending on interpretation which is not very clear. The 1972 census, unfortunately, is still in use and will stay in use. The Government is using a colourable device to try to circumvent our Constitution and create an evil precedent.

Mr Speaker, Sir, let me now come to the stands of the MSM. Now, as I said earlier in a press conference, despite our strong reservations as regards the legal aspects of the Bill, we are taking into account the fact that this Bill will afford a candidate at the next general election the possibility not to declare his or her community if he or she so wishes. We very strongly support that principle because in a modern democratic society we cannot prevent a citizen of our Republic from standing as a candidate in a general election only because that person has chosen not to declare his or her community. It is also certainly not our intention, Mr Speaker, Sir, to cause and I hope any further delay to forthcoming general elections which we have been asking regularly. Therefore, Mr Speaker, Sir, we believe that the principle of allowing a candidate the choice not to declare his or her community offers in fact the promise of a greater good which far outweighs any issue that may arise due to the infelicitous wording of this Bill, which is, for all instance and purposes a compromise within a specific political context.

Mr Speaker, Sir, because such an important democratic principal is at stake, MSM Members will be voting in favour of this Bill. We have also decided, Mr Speaker, Sir, that

there will be no party-line regarding the declaration of community by our candidates at the forthcoming general election. Accordingly, our candidates will have a free hand to elect whether to declare the community to which they belong or not.

However, Mr Speaker, Sir, as leader of the MSM, I am proud to inform the House that I will not declare my community as a candidate at the forthcoming general election. I wish to associate myself with those who genuinely want to shape a modern Mauritius with a strong patriotic faith while further consolidating the unity of our plural nation to build a better future.

While saying that, Mr Speaker, Sir, I am fully convinced that many of those who are blowing their trumpets to present themselves as modernists are, in fact, far from being genuine in their doings. In fact, they have a wilfully concocted hidden agenda.

Mr Speaker, Sir, for those who are hiding the truth behind any manoeuvres and doings in the name of Mauritianism, I invite them to reflect on a quote by Patti Callahan Henry, New York Times Best Selling Author, and I quote -

“Over time, hidden truths morph in the dark soil of deceit into something much worse.”

Thank you, Mr Speaker, Sir.

*At 8.13 p.m. the sitting was suspended.*

*On resuming at 9.13 p.m. with Mr Speaker in the Chair.*

**Mr X. L. Duval (First Member for Belle Rose & Quatre Bornes):** Mr Speaker, Sir, it has been nine years since I have addressed the House from the Opposition benches. Now, the PMSD, as you know, Mr Speaker, Sir, left Government not on a whim or fancy as some people have pretended, not on personality issues or such similar trivialities, but instead, Mr Speaker, Sir, the PMSD left Government following some profound and deep disagreement, irreconcilable differences on the major Constitutional changes that were being proposed at the time by the Labour Party in collaboration with the MMM.

Mr Speaker, Sir, I will respond at the end of my speech to some of the comments that the hon. Leader of the Opposition has made concerning the PMSD and Sir Gaëtan Duval.

But now, Mr Speaker, Sir, let me come to the point we are debating, what we take to be a first step in electoral reform and what some people have called a mini- amendment. But, Mr Speaker, Sir, like the famous miniskirt, this mini-amendment reveals something, but hides the essential, like the miniskirt you see a bit, but you don't see the essential and that is where the problem lies, Mr Speaker, Sir.

I agree with the hon. Prime Minister that no amendment to the Constitution can be said to be trivial, can be said to be minor. So, I can only utterly deplore the total confusion surrounding this amendment; utterly deplore this total confusion. We have had the spectacle, Mr Speaker, Sir, of earlier on when hon. Jugnauth stated what he thought would be the outcome or the mechanism which will be applied following this amendment and there was noise from all over the place, whether Government benches, whether Government Ministers, whether from the Opposition, both sides of the Opposition, if I say so, all sides of the Opposition, on actually what this Bill is bringing, what is being proposed. Mr Speaker, Sir, one thing we all know is that we are suspending the Constitution. For the first time, I think, in our history we will be suspending the Constitution of Mauritius, our revered Constitution, the Constitution that has brought prosperity, stability and peace to this nation; we will be suspending it, for some time and applying a temporary provision to the electoral system.

Now, there have been lots of meetings, we understand, between the Labour Party, the MMM on the Best Loser System. But my point, Mr Speaker, Sir, that I will make is that electoral reform is much greater, the need is much greater than simply reforming the Best Loser System and that is, Mr Speaker, Sir, a fundamental point. If we are not going to touch the electoral system, then why touch the Best Loser System? I say it again, the PMSD is in favour of finding a good, acceptable, credible alternative to the Best Loser System. If you ask any Mauritian, including myself, whether in the name of individual freedom it would not be right for us not to have the obligation to decline or to give our community, everyone will agree and normally it is human nature. Who would say: "No, I want absolute rigidity in this!" This is common sense that everyone will agree that that is something that is *souhaitable*, that is necessary, but what is the implication of that? And, we have seen just now the argument between hon. Jugnauth, hon. Bérenger and everybody else about the outcome of even this so-called mini amendment. What is the outcome? As if it has to be hidden, as if it has to be hush-hush, nobody can tell us what is the outcome and honestly, Mr Speaker, Sir, I had expected the hon. Prime Minister or the hon. Leader of the Opposition - it's not in the Bill - to give us more details on what is being proposed tonight. But *je suis*

*resté sur ma faim.* Not once did the hon. Prime Minister give us more information than we already had and we agree - I think all of us hon. Members of the House agree - that we don't know what is the mechanism that is being applied.

Now, Mr Speaker, Sir, I am an accountant, so I don't need to go to the Electoral Commission to work things out myself. I can work it out myself. Now, what section (4) (2) (b) is saying is quite clear. It is saying that if one member is elected, not having previously given his community then that section (4) (2) (b) will apply. What will be done? All that the section says is that from 1976 onwards an average will be calculated. It does not say, Mr Speaker, Sir, what is to be done with this average. You calculate an average and then, what? And this where the confusion and the danger lies. You have heard Ivan Collendavelloo, perhaps, Mr Speaker, Sir, on radio, thinking that this amendment, if applied in a certain way, would bring communal strife because he has, I think, misread the mechanism to apply this.

Now, you have heard also hon. Jugnauth offer the second possibility of applying this amendment. In my view there are two ways that this amendment can be used by the Electoral Commission and two ways only and now, if the hon. Prime Minister wants to correct me, I will gladly give way and let him correct me. But, there are two ways that it can be applied. Firstly, having calculated the model Parliament, having calculated, in fact, that there are 36 of this, nine of that, 16 of the other, I know it by heart now, one of the last, four communities, you have this, and this is the model Parliament.

Now, what some hon. Members - prominent Members - including Yousuf Mohamed, I think, have assumed that this model Parliament will be compared with the actual elected Parliament and any shortfall would be compensated by the Best Loser System. That is very dangerous. I understand that this is not going to happen, but that would be a very dangerous way of applying it because it would leave room for manipulation and that's where some of the debate has actually been happening. Because, obviously, if a certain number of people do not give their community and are elected, then that will obviously show a shortfall between a model Parliament and the actual number and the compensation mechanism would work. That is one way that you can actually say that you will apply this section (4) (2) (b). I hope sincerely that this is not going to happen like that, because the law does not say how it should be done. But I hope sincerely; that would be a crazy way of doing it, because you could easily manipulate ten members from any community who do not give their communal

belonging at the time of standing obviously then the average compared to the actual would be completely changed.

You can imagine, for instance, that if no general population, I should decline, gave their community, you would find a Parliament, in fact, but not in practice with no such member, therefore the Best Loser System would work. That I hope is not being proposed by Government, that would be crazy in my mind because of the manipulation that is possible. What I understand is going to be done, Mr Speaker, Sir, is that the model Parliament that I just mentioned: 36, 16, 9 and 1, would be used in conjunction with the 1972 census. You have the 1972 census which gives you the actual number of each of these four communities and, of course, there is a calculation that is made, an arithmetic calculation, nothing fancy, nothing difficult; an arithmetic calculation that you make to find out which community according to the 1972 census is under-represented and that is where the first best loser goes. Again, you would do the same calculation and that is where second best loser goes and the third calculation.

So, Mr Speaker, Sir, as hon. Jugnauth has said, he will not state his community when standing for election. I think one or two hon. Members of the Government have said so also. Should one person be elected in the next election, should this Bill be passed, then what will happen? It is that section 4 (2) (b) will apply. Therefore, whoever is actually elected will no longer matter. It will be this model Parliament that would kick in. So, it's no secret who is going to be Best Loser and which community, because we have both the 1972 census and the model Parliament. I don't know if I am making myself clear, but I hope so. Like the hon. Prime Minister uses to say, it's not rocket science; you can calculate it yourself quite easily, because as long as you know how to divide, you can divide and find out who is going to be Best Loser within that system. That is quite sure - what hon. Jugnauth has said. I'll give the figure. If you calculate it, there will be five from the General Population and three Muslims. That is how it is calculated. Now, if there is 60-0, then, obviously, you will not get eight Best Losers. That would be crazy. No one will calculate that way. But this is how it is. That is a fact.

Mr Speaker, Sir, when I mentioned the fact that I wanted a referendum, it is precisely because I want things to be out in open. Let us be clear about it. We want to get rid of a system and to replace it by another system. But what is the system? Mr Speaker, Sir, did you really need for me to stand up tonight, and tell you what the outcome of an amendment would

be? Would you not have expected Government themselves to have come up and told the population this is what this amendment will bring? It will be up to the population then to decide yes or no. I have no issue with this amendment. I can live with this, because if you look at history - I am sure Dr. Rama Sithanen must have done the calculations - from 1972 onwards, the averages that have been found are not far from the actual numbers, because as you know, Mr Speaker, Sir, there are two things in arithmetic: averages and range. An average can be meaningful, or an average cannot be meaningful if the range is big. But the range is not that big for the election of Best Losers; General Population, etc. I don't want to go too much - because it is not my style - into communal issues. Nevertheless, I am forced to tell what nobody else has been telling. So, the range is not enormous. The average is, therefore, acceptable. So, I have no issue with that.

I have another issue, Mr Speaker, Sir, which relates to the manner in which this amendment - mini, minor, major - is being brought. Firstly, because of the lack of transparency. I have spoken to many people. I have the chance now in Opposition; I meet many, many people, and nobody really understands. In fact, in this House, I think not many people understand how this amendment will work. That is the issue. You are forcing something, and - I understand that we will break - I hope that we will not vote for this at 4 a.m. in the morning. It will be very unfair on hon. Members. It would be very unfair on the population.

My first point is let's tell the population exactly what we are planning for them. That is the point of the referendum, notwithstanding the fact that His Excellency the Vice-President stood for three hours in Sir Harilal Vaghjee Hall, and read this piece of work, which is this Government Programme 2012-2015. Here, it says quite clearly what the then Government - the majority is still there - planned for constitutional reform. There is not an iota of doubt...

*(Interruptions)*

It was not the Ministry of Finance that wrote this bit. You know who wrote this bit. There is not an iota of doubt what was being planned. This is what it says at page 31, Chapter V –

“Constitutional Reform requires the buy-in of the people...”

Who would disagree with that?

“... and cannot be decided by the political class alone”

That is one thing. The second thing, it goes on to say –

“Government will introduce new enabling legislation providing for the people to be consulted by way of referendum on major constitutional and other issues.”

This is a temporary amendment. We are not saying to go for a referendum. This is perhaps where I have been misunderstood. We are not saying let's have a referendum on this temporary amendment. No! But we are saying let us inform the population what is intended. That is essential. A referendum is a second step. But what we are saying, Mr Speaker, Sir, we are saying to Government that this was agreed, this was debated for hours and hours and voted by this Parliament, and it makes sense. If it did not make sense, then I would not come up today, while in Opposition, to ask for this. But it makes sense that we should go back and ask for a referendum.

This is why, Mr Speaker, Sir, we are coming with an amendment. And it is my right to bring an amendment; it is my democratic right. I don't have to be told off by anyone because I am bringing an amendment. This is my right. It is everybody's right to vote yes or no. I will bring the amendment, and I will ask, Mr Speaker, Sir, that we are willing to support this temporary amendment to the Constitution on the agreement that the Electoral Programme that we had both agreed together is respected. That is the minimum you can expect of us. You cannot expect us to go and deny what was actually agreed and voted by the then majority, Mr Speaker, Sir. We would do so; not now. We are not asking for the referendum tomorrow. Let us say there is an election at whatever time is decided, and whatever majority comes forward, and we will have electoral reform.

As I mentioned, Mr Speaker, Sir, electoral reform is much more than Best Loser System. The Best Loser System was brought in by our elders. I mentioned again that we are not against changing it, but the Best Loser System was brought in by our elders. Why? Were they sick? Were they wrong? Were they crazy? Or were they right in thinking that the first-past-the-post and the electoral boundaries that exist do not provide a fair reflection of the wish of the electorate. We all know that this is the case. We all know, and the hon. Prime Minister has always said that the electoral system provides a biased result to the wish of the people. So, should we only change something that was created to try to mitigate the bias, or should we just not look at the whole question of electoral reform? Mr *Carcassonne* had

talked about the electoral boundaries. Nothing! There is no secret talking about electoral boundaries; how it should better reflect the wish of the population.

Also, Mr Speaker, Sir, there is every right for us to have diversity in Parliament. There is every right for us to have cultural diversity. There is nothing wrong in having cultural diversity. I say it again: the Best Loser System was not a communal system created to hurt people. It was created, Mr Speaker, Sir, so that - in the eyes of the creators of the Constitution - there would be some voice in Parliament and some protection for minorities. Now, the hon. Prime Minister has, himself, said something which is very telling. He said two things which do not agree with each other, in my mind. One is the Best Loser was meant to stay for three elections, and the other is that communalism has kept on increasing. Which is which? Do we get rid of the Best Loser System when the hon. Prime Minister, himself, says that communalism is increasing? Perhaps, the hon. Prime Minister can explain that later on to say what is happening.

Mr Speaker, Sir, I will not have *langue de bois*. I am not going to adopt that. I am not going to speak for very long, but I am not going to be hypocritical or anything. If we try to say that communalism stands or emanates from the Best Loser System and nothing else, then what about casteism? Where does that come from? I never practised either. People who know me know that I never practised either. Where does it come from then? Perhaps, the hon. Prime Minister may also say that it is there and it is also increasing – I do not know. Then, where does it come from? If we are going to get rid of communalism, how are we going to get rid of the other one?

So, Mr Speaker, Sir, my point is, let's not put everything on the back of the Best Loser System. It was created to give a voice to minorities not because they thought it was necessary, but because the electoral system is biased, is imperfect and could result in incorrect results which do not reflect.

Mr Speaker, Sir, another problem with this Bill is the Explanatory Memorandum and I will be bringing a proposed amendment later. When you talk about subsuming, you need to be frank. What are we doing? We are not subsuming anything. We are abolishing one and replacing it by some type of proportional representation. That is what we are doing. I do not agree with the word 'subsuming', because to my mind we are not subsuming anything. We have taken one out, the Best Loser System. Otherwise, if we are subsuming, then we cannot speak again on the Best Loser System, because we are continuing it. So, Mr Speaker, Sir, the

Explanatory Memorandum on the word 'subsuming' to me is not correct. Again, *il faut un langage de vérité*, we tell the truth and the population will decide, Mr Speaker, Sir. I think, therefore, we must look at this in a very, very careful way. There must be complete transparency on the part of Government about what is being proposed and what are the mechanisms that will be used; which of the two possible mechanisms is going to be applied and then we will decide on whether or not this amendment is worthwhile voting.

Pending the constitutional problem, I would not have a problem with voting the second hypothesis as far as the second application of the mechanism is concerned, but I would certainly never in my mind, I would need to be crazy, Mr Speaker, Sir, to vote. If the first hypothesis would work, that is then in that case, Mr Collendavelloo, Mr Yousouf Mohamed, etc. would be right and I would support them, but I do not honestly believe that Government could make such a mistake. I would appreciate, at some point in time, that Government actually clears the air in the name of transparency.

Mr Speaker, Sir, as I mentioned, as for the problem of the First Past the Post and the electoral boundaries there is the need to look at that. What it does, Mr Speaker, Sir, without giving any particular community, it gives a much greater weightage to some communities than it gives to other communities. If you look at the electoral system - and here you can ask the Electoral Commissioner, I am sure he will agree - it gives up to 60% greater weightage to some communities than to others. That is a fact, Mr Speaker, Sir. Some have much greater weightage in their votes than others and that is obvious when we know that Parliament is a source of power. Therefore, Mr Speaker, Sir, you can see that the whole thing gets distorted. This is why, therefore - I say it again - abolishing the BLS, yes, finding a better system, and we have made proposals, we have not been obtuse about it, we have not been reluctant to make proposals and we still believe that these proposals, that is, each party should have its own list. We don't have to rely on one list for the Opposition, one list for Government and that people should be allowed to vote twice; once, for the candidate of their choice. Secondly, for the party of their choice; we would know which big party or small party, that would come out. Why are we refusing this? We would know then which party has which support and, of course, the 10% is totally unacceptable because it goes against the very grain of democracy, the very thing that we are trying to improve - I understand - whereas, in fact, we are denying people the right to be heard.

I got elected in Quatre Bornes by, I think, 18,000 votes. Those 18,000 votes got me elected. Hon. Ms Deerpalsing had more or less the same or a bit less. 18,000! But what is

10% of the voters? It would be what, 80,000 - 90,000 people to elect someone on the PR? 10%! If you have 10% of the voters you would need 90,000 votes to be elected on PR and only 20,000 votes to be elected in Quatre Bornes, even less in No. 3 or wherever you are, in Rodrigues etc. Where is the logic in the 10%? There is no logic! I will tell you a little bit about how people change their minds.

*(Interruptions)*

But he is not here! And things have changed! I am here! Mr Speaker, Sir, as I mentioned, pending this confusion ...

*(Interruptions)*

He is a nice man really, I think; I don't know. Pending this confusion by what actually is meant by the amendment and the mechanism that is crucial to determine what will happen temporarily with the Best Loser System, the PMSD has circulated an amendment, not to the Bill itself, because I have been told it is possible to circulate an amendment to the Explanatory Memorandum, saying, Mr Speaker, Sir, in line with ....

**Mr Bérenger:** Can I take a point of order again, being given that hon. Duval says that an amendment has been circulated? Indeed, we found the amendment. My point is - I need your ruling - I believe this amendment is not acceptable. I would like to go back – I did not choose the date, 01 April 2008 - when that issue was raised here in Parliament, the Prime Minister then and now Prime Minister circulated amendments. He circulated a proposed amendment to the Explanatory Memorandum. But he also circulated an amendment to the clause of the Bill that word for word said what was said in the Explanatory Memorandum. The Chair ruled that this is not acceptable. He ruled on 01 April that the Explanatory Memorandum does not form part of the Bill, it could have been mentioned in the Second Reading, but it could not be circulated as an amendment, because it does not form part of the Bill.

Later on, when we reached Committee Stage when Clause 5 was discussed, Clause 5 proposed as an amendment to the Bill and that was discussed, but here we have only an amendment to the Explanatory Memorandum unlike what took place in 2008 where you had a proposed amendment to the Explanatory Memorandum; you had an amendment to Clause 5 of the Bill and Mr Speaker ruled that the first one was out of order, that the Explanatory Memorandum does not fall part of the Bill and now we have an amendment that relates only

to an amendment to the Explanatory Memorandum. There is no amendment proposed to the Bill itself, to any clause of the Bill.

Therefore, I ask for your ruling because this was circulated, otherwise I would not have taken the point of order. This has already been circulated. I would like your ruling that this is not acceptable, that this amendment only to the Explanatory Memorandum in the light of the ruling of the then Speaker in 2008, this amendment is simply not acceptable; it is not even operational, it would have no effect, because the Explanatory Memorandum is not part of the Bill. When we will reach Committee Stage, we will take Clause 1, Clause 2, Clause 3, but not the Explanatory Memorandum. When the Act will be published, it will not be there. It is to explain to thickheaded Members, I suppose, what is in the Memorandum, but it does not form part of the Bill and it has been ruled so by the then Speaker. I would like your ruling that this amendment which has been circulated and referred to by the hon. Member is simply not acceptable.

**Mr Duval:** Mr Speaker, Sir, no doubt you will let us have your ruling in due course, but I have taken this step after consultation with your office. So, you let us know and no doubt if there are other amendments to be brought we shall amend the amendment but the point is that we wish to have a referendum before because it does quite clearly say in the Explanatory Memorandum that this is the first step towards so-called subsuming and we wanted this to be clear. Now, in due course, you may let us have your views and your ruling and we will act accordingly, Mr Speaker, Sir.

As I mentioned, I have submitted an amendment which may or may not...

*(Interruptions)*

...to be exactly what you believe...

*(Interruptions)*

**Mr Bérenger:** The hon. Member did not wait for your ruling! He is carrying on with his speech!

*(Interruptions)*

**Mr Speaker:** Okay, I will give my ruling! I have taken cognizance of the opinion expressed on the 1<sup>st</sup> of April 2008. If I quote from what the Chair said, he said twice -

“I think it does not form part of the Bill.”

Then, the Chair ended by saying -

“I think, again, it is not necessary to move this amendment because it does not form part of the Bill.”

I have thought about this point and now I say it to all intents and purposes that the amendment is receivable technically speaking. But it will not form part of the Act.

*(Interruptions)*

Well, the hon. Members have to understand my ruling!

*(Interruptions)*

The Explanatory Note is part of the Bill, but it will not form part of the Act. Therefore, it is the view of the Chair that this amendment is a futile exercise! But the hon. Member may proceed if he wishes.

**Mr Duval:** Thank you very much! You may decide it is futile again, it is up to me, Mr Speaker, Sir, but thank you for your ruling which was very clear and I understand also that it will not form part of the Act...

*(Interruptions)*

... if you...

*(Interruptions)*

Mr Speaker, Sir, let us have *un peu de sérénité! Un peu de sérénité!*

*(Interruptions)*

**Mr Speaker:** I want some order, please!

**Mr Duval:** *Un peu de sérénité!*

**Mr Speaker:** I have ruled!

**Mr Duval:** *Un peu de sérénité serait...*

*(Interruptions)*

**Mr Speaker:** I have ruled. You may proceed, hon. Member!

**Mr Duval:** Thank you, Mr Speaker, Sir.

*(Interruptions)*

**Mr Speaker:** I do not want any comment, please!

**Mr Duval:** Mr Speaker, Sir, now let us take the point of the population census because, again, that is subject...

*(Interruptions)*

... to a lot of talk and unnecessary vilification.

*(Interruptions)*

Mr Speaker, Sir, may I continue in some peace and quiet?

**Mr Speaker:** Yes, proceed!

**Mr Duval:** Mr Speaker, Sir, Population Censuses are performed in all countries of the world and in all major countries of the world they include either religion or the community. Why is that, Mr Speaker, Sir? This is what you have to ask yourself: why does the USA, with Mr Obama as President, why does the UK with so many elected MPs from minorities in its Parliament, why does Australia and New Zealand have Population Censuses which go beyond what we do and go straight into the community issue? Why? I will tell you why, Mr Speaker, Sir. It is because these nations are great democratic nations! They worry about how – and I was Minister of Social Integration for a year and a half - these nations worry about how these minorities are integrating into the life of the community and into the life of the country.

How many graduates are being passed every year, how many people are in the Police Force, how many so and so are here and there and what is the profile of this minority that may need to be assisted? There is no dark motive, Mr Speaker, Sir, in getting a population census. Otherwise, why would President Obama do it? Is he crazy? There is no dark motive to that! There is a positive motive and we have been fighting about how to find the poor, etc. This type of information provides us with a profile of people and it helps us on how to get into university, how to get into secondary school, how to pass the SC examinations and how

to get your HSC! It helps! There is nothing sinister about it! That is why major countries do it.

In Mauritius, we do a type, Statistics Mauritius, which is highly respected; it does perform a type of community census. It does ask a question about religion which is to do with religious subsidies.

But, Mr Speaker, Sir, the Population Census that we carry out every ten years is not a small thing. It costs about Rs300 m. It is done very scientifically. If they come to your house and you are not there, they will come ten times until they get you and they talk to you. Do you know something, Mr Speaker, Sir? Out of 1.3 million people who were asked about their religion, how many Mauritians found it offensive and refused to answer that question? How many refused out of 1.2 million? Mr Speaker, Sir, little more than a thousand people refused to answer! It is 0.1% only who refused! The great majority of 1,235,000 people answered the question without any problem. That is so, Mr Speaker, Sir. The question of a Population Census should not be seen only as a negative thing, as a divisive thing. It should be shown to the population as being a tool to help, tool for integration, tool for building the Mauritian nation because if there is no equal opportunity, if there are no people who are allowed to come and prosper, this is something *où le bât blesse*. It is up to us to find out why and help. That is the point I wanted to make and there is nothing sinister about it and we should not vilify it as if it is something that is done only in Mauritius and nowhere else in the world there is Population Census. This is not true! Everywhere else it is done and in major democracies, it is done.

Mr Speaker, Sir, I do not want to be too long in fact. I wanted to be fairly short, but, at the same time, to stick to the points that were important with regard to this proposed amendment to our Constitution. Mr Speaker, Sir, the last point on the referendum on this acceptable amendment which I am proposing is this: why a referendum and why not just go to the election? That is what we will be told, I can see this coming! We don't need a referendum because we can have an election. The election will decide because it will be somewhere in the manifesto, joint or single, I do not know what manifesto it is going to be. It will be in the manifesto, so, we'll have the mandate. But we forget that in a referendum, it is truly one man one vote. It is truly one man one vote with no bias. Whereas in the electoral system, it is not the same! It is not the same! I told you before, Mr Speaker, Sir, that there is 60% more weight sometimes than the other people. So, it is not right! The electoral system

delivering a vote on a manifesto for change of the Constitution is not the same as a referendum. The referendum is one man one vote full stop! At the end of the day, you have 800,000 people who have voted, so many for and so many against, according to the wish of the nation. Electoral system, constituencies, boundaries, not to mention that there will be many other issues mingled together in the manifesto.

Mr Speaker, Sir, I come back to this point that we need to be fair in changing the Constitution. We need to be transparent and we need to give the people their say in a proper way. I don't believe that since all of us here are Members of Parliament, we have given our respective constituents their say in voting for us. We could deny these same people a say on how they are going to be represented in this very House. We have given our respective Constituents their say in voting for us. We could deny these same people a say on how they are going to be represented in this very House, a say on how their future is going to be decided, a say on how this country is going to be governed.

Thank you, Mr Speaker, Sir.

**Mr Faugoo:** Mr Speaker, Sir, I move that the debate be now adjourned.

**Dr. Bunwaree rose and seconded.**

*Question put and agreed to.*

*Debate adjourned accordingly.*

#### **ADJOURNMENT**

**The Prime Minister:** Mr Speaker, Sir, I beg to move that this Assembly do now adjourn to Monday 07 July 2014 at 11.30 a.m.

**The Deputy Prime Minister rose and seconded**

*Question put and agreed to.*

**Mr Speaker:** The House stands adjourned.

*At 10.21 p.m. the Assembly was, on its rising, adjourned to Monday 07 July 2014 at 11.30 a.m.*

