



**SIXTH NATIONAL ASSEMBLY**

**PARLIAMENTARY**

**DEBATES**

**(HANSARD)**

**FIRST SESSION**

**THURSDAY 03 DECEMBER 2015**

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Members

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Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC	Prime Minister, Minister of Defence, Home Affairs, Minister for Rodrigues and National Development Unit
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Hon. Ashit Kumar Gungah	Minister of Industry, Commerce and Consumer Protection
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Hon. Sudarshan Bhadain	Minister of Financial Services, Good Governance, Institutional Reforms, Minister of Technology, Communication and Innovation
Hon. Soomilduth Bholah	Minister of Business, Enterprise and Cooperatives

Hon. Mrs Fazila Jeewa-Daureeawoo	Minister of Social Security, National Solidarity and Reform Institutions
Hon. Premdut Koonjoo	Minister of Ocean Economy, Marine Resources, Fisheries, Shipping and Outer Islands
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**MAURITIUS**

**Sixth National Assembly**

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**FIRST SESSION**

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**Debate No. 43 of 2015**

**Sitting of 03 December 2015**

**The Assembly met in the Assembly House, Port Louis at 11.30 a.m.**

**The National Anthem was played**

*(Madam Speaker in the Chair)*

## ORAL ANSWER TO QUESTION

### CEB - TANK FARM PROJECT, GAS TURBINES & TARIFFS

**The Leader of the Opposition (Mr P. Bérenger)** (*by Private Notice*) asked the Vice-Prime Minister, Minister of Energy and Public Utilities whether, in regard to electricity, he will, for the benefit of the House, obtain from the Central Electricity Board, information as to

–

- (a) if the St. Louis 60 MW contract has been awarded;
- (b) if it is going ahead with the –
  - (i) Tank Farm Project at Bain des Dames, indicating -
    - A. whether a new location and EIA are being sought therefor, and
    - B. where matters stand concerning the National Ramsar Committee;
  - (ii) purchase of two Gas Turbines, indicating the –
    - A. estimated cost thereof;
    - B. price of electricity using diesel oil, and
    - C. impact on the environment of diesel oil as compared to coal, and
- (c) when the tariffs thereof will be lowered.

**Mr Collendavelloo:** Madam Speaker, with regard to part (a) of the question, I informed the House in my reply to the PNQ of 01 April 2015 that in February 2014 the Central Electricity Board had initiated a procurement process for four diesel engines each of 15 MW capacity.

Five prequalified bidders had been invited to submit proposals. Only one was received and the Central Procurement Board found that the bid was substantially non-responsive and that it was not in a position to approve any award of the contract.

Based on that decision, the Central Electricity Board cancelled the procurement process after consulting the African Development Bank which was the funding agency.

There was a challenge at the Independent Review Panel and subsequently in the Supreme Court. On 13 November 2015, the bidder withdrew his case.

In July 2015, the Central Electricity Board, on the advice of the African Development Bank, initiated a second procurement exercise with revised specifications for a total 60 MW with 10% plus or minus. The new bid specifications were approved by the African Development Bank.

At the closing date on 01 October 2015, five bids had been received at the Central Procurement Board. On 11 November 2015, the Central Procurement Board informed the Central Electricity Board that it had approved the award of the contract to Burmeister & Wain Scandinavian Contractor A/S (BWSC) for the total evaluated contract price of EUR85,185,404+Rs823,922,094, excluding VAT. The Central Procurement Board requested the Central Electricity Board to proceed with the notification of the award in accordance with the Public Procurement Act after having sought the concurrence of the Funding Agency, the African Development Bank, and to revert to the Central Procurement Board after the notification period or earlier.

On 12 November 2015, the Central Electricity Board informed the African Development Bank of the Central Procurement Board's decision and has sent the Evaluation Report to the Bank.

The reply from the Bank is expected by mid-December 2015. It is expected that the award of the contract will be made early next year and the project would be completed by June/July 2017.

As regards part (b), following the clearance from the National Ramsar Committee, the Central Electricity Board has repositioned the Tank Farm on the same site at Les Grandes Salines.

The Contractor has been advised that he may proceed in the meantime with the design part of the Tank construction. Physical works will start as soon as possible.

In November, the Central Electricity Board informed the Ministry of Environment of the repositioning of the tanks on the same site.

The Central Electricity Board has also appointed Hydro Geological Experts to address the requirement of the National Ramsar Committee and the experts are expected to carry out their assignment in the course of this month.

As regards part (b) (ii) -



- (i) A consultant will be appointed in January 2016 to proceed with the implementation of two 30 MW gas turbines as a first phase for the final Combined Cycle Gas Turbine (CCGT) configuration.
- (ii) The estimated cost of the two gas turbines is Rs1.6 billion.
- (iii) The current price of electricity generation using diesel fuel at Central Electricity Board Thermal Station ranges from Rs3.35/kWh to Rs3.98/kWh (These are the figures for June 2015).
- (iv) The impact on environment is measured in tonnes CO<sub>2</sub>/MWh (tonnes per Megawatt hour). With coal it ranges from 1.29 to 1.63 t/MWh. With diesel oil in Central Electricity Board stations it is currently 0.58 tonnes/MWh.

I now come to part (c) of the question. I informed the House in my reply to the PNQ on 22 September 2015 that an overall tariff decrease is not envisaged.

I wish to reiterate that contrary to other organisations, the Central Electricity Board took the judicious decision not to resort to hedging at the time that heavy fuel oil and coal prices were increasing on the world market. This enabled the Central Electricity Board to benefit from the current drop in the prices of these commodities. The CEB has to invest heavily in new generation capacity in the coming years as advised by the World Bank and the African Development Bank.

I also drew the attention of the House that the electricity tariff is not indexed to inflation and foreign currencies for payment of loans. This may erode the surplus.

I had stated that I would look into a lower tariff for lower income groups. I am pleased to announce that on 27 November 2015, Government has endorsed the decision of the CEB to introduce a new Social Tariff 110A as from 01 January 2016.

When the Social Tariff 110A was introduced in 2012, there were 30,629 customers whose electricity consumption did not exceed 75 kWh. By September 2015, this number had reduced to 7,875.

I asked the Central Electricity Board to review the scheme and it has come up with a new one which would benefit about 70,000 households.

With the new scheme, households with an average monthly consumption of up to 85kWh will benefit from a lower tariff, that is -

- (i) Rs2.18/kWh for the first 25 kWh instead of Rs3.16;
- (ii) Rs3.04/kWh for the next 25 kWh instead of Rs4.38, and
- (iii) Rs3.28/kWh instead of Rs4.74/kWh for the next 35 kWh.

The CEB is working in close consultation with the Ministry of Social Security, National Solidarity and Reform Institutions and the National Empowerment Foundation for the implementation of the scheme.

The households benefitting from the scheme will include -

- (i) households receiving social allowance from the Ministry of Social Security, National Solidarity and Reform Institutions, Social Register of Mauritius for Child allowance, irrespective of the criteria defined by CEB;
- (ii) households identified by the National Empowerment Foundation (NEF) as registered by the Ministry of Social Security, National Solidarity and Reform Institutions, irrespective of the criteria set by CEB, and
- (iii) domestic consumers, of course, excluding those on the Social Register, who satisfy the criteria set by CEB.

The CEB will work in consultation with the NEF and the Ministry of Social Security, National Solidarity and Reform Institutions to disseminate the scheme to the potential beneficiaries and provide assistance through its Customer Desk to households who have to make an application.

**Mr Bérenger:** For today the hon. Vice-Prime Minister has confirmed that we are going to BWSC, this Scandinavian firm, which had been the only firm to be qualified under the previous tender. Will he confirm that, in fact, BWSC was the most expensive offer under the latest tender and that, therefore, purchasing those machines from BWSC will cost Rs700 m. additional compared to what we would have paid if we had not wasted time?

**Mr Collendavello:** That is quite correct. The first bid was non-responsive. I can't say the figures offhand, but I am sure these figures must be more or less what they are. There was the first bid. There was a price X and the second bid was X plus Y. But do not forget that the first bid was non-responsive and that is why probably it was cheaper because they had not put up a programme according to specification.

I have the figures now. The bid price of the Scandinavian was Rs3.6 billion at that time comprising numerous major deviations. This is why the Procurement Board had not considered to be responsive. The new price with compliance with specifications for 66 megawatt capacity is Rs4.3 billion. I am advised that the difference in costs is attributed to –

- (i) change of technical specifications by the CEB;
- (ii) correction of deviation leading to rejection of first tender;
- (iii) higher rating of units by 10%, and
- (iv) market conditions prevailing.

**Mr Bérenger:** Madam Speaker, the figures speak for themselves. On the question, some time back, when we were discussing the Bain des Dames project, the CEB insisted that Bain des Dames project site was the right site for both the tank farm and the combined cycle plant to be set up in the future. When that met with the trouble that we know about, the Chief Executive of the CEB said: *‘On n’a pas d’alternative’*, whereas the hon. Vice-Prime Minister said: *‘Si jamais il y a l’espace nécessaire pour la centrale, nous la construirons sur le même terrain. Si on ne peut le faire, ce ne sera pas la fin du monde’*. *Deux longueurs d’ondes!* Can I know whether any alternative site is envisaged for both the tank farm and the combined cycle plant?

**Mr Collendavelloo:** Well, I must confess that we were taken aback by this allegation of wetland. I had myself gone to the site. I did not fall in any wetland and I could not see any wetland. But we have worked and this is probably why there were answers which were not quite in tune. I do not meet the General Manager of the CEB to work out replies beforehand. We give them as we believe them to be true. The worst-case scenario, the first two gas turbines will be constructed on a portion of land which is leased to the CEB, which is in existence and which was destined for the coal transit associated with CT Power. The site is close to the existing Fort George station and is well located from the environment standpoint.

Then, afterwards these turbines will be transferred to the new site for implementing that project. The Central Electricity Board has already written to the MPA for the release of six *hectares* plot of land which has not been allocated yet in replacement of Les Grandes Salines, if this is warranted. This site is at ex-Dockers Flat, Baie du Tombeau.. But our preferred spot is still Les Grand Salines, if it can be worked out and if everybody reaches a consensus with CEB.

**Mr Bérenger:** The hon. Vice-Prime Minister himself, on the Ramsar issue, said, and I quote from the Press –

“CEB has accepted all the Ramsar conditions.” set up by the so-called Ramsar National Committee.

Is that the case?

**Mr Collendavelloo:** Perhaps I could explain *in limine* first of all. When we had this problem of the wetland and the matter was referred to the Ramsar Committee, we had two choices, either to stick to our guns and to state clearly that we do not believe that there were wetlands on the site or to comply with the conditions of Ramsar Committee. I advised the CEB that we were not going to waste time and energy fighting Ramsar Committee. On the contrary, let us work together with them. We are not sure whether everybody is clear in their minds that this is a site where there are wetlands, but this is precisely when we do not need to quarrel. Ramsar Committee, being unclear itself, asked CEB to appoint an expert. I believe he is called geological or something of the sort, hydrological, geological expert, condition 9, if my memory does not fail me. He has been appointed and we expect his report very soon. As soon as we get his report, we shall send it to the Ramsar Committee and then we shall see whether, in fact, there is wetland or there is no wetland. Visually, there is no wetland, but we are not experts on wetlands.

**Mr Bérenger:** I thought the hon. Vice-Prime Minister, Minister of Energy and Public Utilities were, the way he talked to the Press!

*(Interruptions)*

Madam Speaker, concerning the storage plant, I heard the hon. Vice-Prime Minister, I think, say that they are going ahead, that CEB is going ahead, and he said on the same site. My point is that, in the EIA, it is spelt out that this new tank farm must be at the other end of the *terrain*, of the site, that is, farthest from the *maisons*, from the inhabitants. Is that the case? Because otherwise we would need another EIA certificate.

**Mr Collendavelloo:** It is not going to be near the houses or far from the houses or whatever. It is really a repositioning on the site. We need to look at the map, which I tabled at the National Assembly, in order to see that it is not a great repositioning. But what is more important is what happens with the Ministry of Environment and the Municipal Council of Port Louis. Those are the most important aspects. Whatever I think or CEB thinks is irrelevant. So, what we have done is that the Municipal Council of Port Louis will examine it

and, with regard to environment, we have informed the Ministry of Environment of the new location. If I can put it broadly, in the beginning it was going to be to the north of the site, now it is going to be to the south of the site.

**Mr Bérenger:** It is my concern because to me the most important thing is the inhabitants of that part of Port Louis. Can I quote the EIA, the present EIA obtained. I quote paragraph 17 –

“The tank shall be located at the northern extremity of the site, furthest away from the residential area”.

So, if we are changing the site for the tank farms, we will need a new EIA.

**Mr Collendavelloo:** This is why we have informed the Ministry of Environment. We have not sought clearance, we have not applied for a new EIA. We have informed the Ministry of Environment to see whether the change in location is of a nature to affect the environment to such an extent as to require us to apply for an EIA licence. We shall stand advised. From the information that I have, although it would have moved nearer to the habitations, the distance is not too significant.

**Mr Bérenger:** I think I heard the hon. Minister say that the CEB is going ahead with the purchase of two gas turbines. The CEB is appointing or has appointed, I am not sure, two consultants. One to look at the possibility of liquefied natural gas being used in the future, whether it is feasible, and the second one to look whether the combined cycle plan is feasible in Mauritius. My question is: are we going to issue the tender? Are we going to go for the purchase of these two gas turbines even before these two consultants have reported back?

**Mr Collendavelloo:** Well, the short answer is no! We are not going to do anything of the sort. Let me just dissociate the two: gas turbines, which will run on light diesel oil, and LNG. Those two are fuels for these machines. The LNG process is still in its infancy. We have a committee working with various Ministries. We have progressed, and we hope to be able to put a position paper before the House very soon, probably when we resume in March, so that the House be kept fully informed as to what is the progress being made. The most important aspect of it is source of supply and mode of transportation, which are the two items which can be very costly. At the end of the day, we might decide not to go for LNG at all! It is a question of cost. So, our preliminary meetings are for this. But notwithstanding what happens on LNG, we are going to place these two combined cycle gas turbines, which will run - I have called it initially. Initially might be for quite some time! - initially on diesel oil,

which will be on light fuel oil, that is, at Rs32 the litre compared to Rs22 the litre for heavy fuel oil. The advantage is that it is a new technique and that, as far as the experts tell me, the switch over to LNG is quite feasible and easy.

**Mr Bérenger:** That is my worry. It's that we are going to use this light diesel oil for we don't know, in fact, how long. Can I ask the hon. Vice-Prime Minister whether he is standing by those figures which the CEB is providing, how much it will cost as compared to other modes of production of electricity? The figures - I am prepared to take a bet - are very much on the very low side. And we must compare like with like! CEB has provided figures of what they produce with machines that have been written off, that have been and so on and so on. So, is the hon. Vice-Prime Minister going to stand by those figures - Rs3 something? Because my information is totally to the contrary, namely that producing through diesel oil is going to cost much more than that through new machines, new gas turbines.

**Mr Collendavelloo:** Of course, as usual, I always pay attention to remarks coming from the hon. Leader of the Opposition and of other hon. Members of this House. This question has been raised before. I have consulted not only the CEB but also my own advisers who have indeed told...

*(Interruptions)*

No! My own adviser, as the hon. Leader of the Opposition knows, is Mr Robertson - to have an objective view of that. Quite he has also expressed certain doubts, but without finalising these doubts. For the moment, CEB commits itself to telling me that the final cost of generation expected from combined cycle gas turbines, CCGT operation on light diesel fuel, will be Rs5.63. That is what I have. Of course, in these matters, prices are almost esoteric.

*(Interruptions)*

But that is how it is.

**Mr Bérenger:** Madam Speaker, if I can ask a question and then give the floor. We know that coal pollutes, but we know that we have progressed a lot to decrease the pollution that coal causes, and I read the Chief Executive of CEB - dismiss coal! We are going to use diesel for God knows how long. Is the hon. Vice-Prime Minister aware that using diesel oil is nearly as polluting as using coal under state-of-the-art technology? If I can quote the Financial Times of 03 November 2015 –

“According to the International Energy Agency, diesel electricity production emits only slightly less carbon than burning coal”.

Therefore, are we prepared to review the whole situation?

**Mr Collendavelloo:** I am sure the House will recall how the hon. Leader of the Opposition scoffed me when I made my first statement in this House on electricity and I said there are ways of having clean coal and we must work on it. I went back to my books and I now know that clean coal - let us call it clean coal, it is never very clean - is possible, but it is terribly expensive. So, what do we do? We spend a lot of money in cleaning coal, getting the particles because, let us not forget, coal is not only CO<sub>2</sub>, it is also mercury and all sorts of things - I don't know their names - which have got to be trapped and treated and all that, and that is expensive. Yes, clean coal is possible; but, are we in a position to pay the price or do we pay something which is a bit more pollutant but which will meet the exigencies of everything?

Let me come to the point of coal. When I made my first statement, it was in what context? It was in the context that we were not dismissing coal, but since the time I took office and up to now, there are tremendous developments on the international front, including what is happening at COP21 which we will have to await to see what will be the funding which will be associated because there are subsidies which probably we will obtain from this World Green Fund and we will have to determine the issue as from these new facts. We must not also forget that associated with this is renewable energy. Right now, there will be probably another 50 MW of solar photovoltaic which will come on the network. We are almost for finalising a waste-to-energy project. We will continue with the Sotravic landfill gas at Mare Chicose. The aeolian, which was told for ages in the ancient Government, now is starting. I am going to visit the last installation very soon. Put together, it means we are not putting all our eggs in our basket, but I repeat one thing, all that I am saying, I have not invented; I am not a magician. I have read it from the Manraj Report and from the Strategic Plan of 2009 which was more on electric, but the National Energy Commission Report, well, we may grumble, but it has been accepted unanimously in Mauritius. So, I have been going on the books which I have. They may be wrong, but I am not going to invent things myself. I am not an inventor. I am just a lawyer who happens to be a Minister.

**Madam Speaker:** Hon. Osman Mahomed!

**Mr Mahomed:** Thank you, Madam Speaker. First of all, I would like to welcome the lower tariff for the lower-income group. Pressure was from several quarters, including a specific question of mine in the PNQ of the Leader of the Opposition. Thank you for that. My question this morning pertains to the 60 MW St. Louis Power Plant. In his reply, the hon. Vice-Prime Minister said it is going to be on line, on the grid in 2017, and my question specifically pertains to power security. What is the current peak being faced by the CEB these days in summer when people are using their air conditioners, fans and all, because in my Constituency there has been very frequent power tripping off. And I would like to know from the hon. Vice-Prime Minister whether these are being associated with load shedding from the CEB because it is not able to cope with the peak that he is going to provide to us?

**Mr Collendavelloo:** No. There is no load shedding. I can assure the hon. Member of that, there is no load shedding. The current peak, I am going to wait for confirmation but for the meantime, let us say that it is 462 MW or 492 MW - I keep forgetting; I get it now. It is 460 MW. Yesterday, it was 435 MW. There is no load shedding; I am getting confirmation now on the agenda. If there are some tripping off, well, CEB has just informed me that the *chauves-souris* are now going haywire and they are disturbing all the electricity supply near Réduit. So, let us blame the *chauves-souris*, again.

*(Interruptions)*

So, in Réduit, this is what CEB tells me, they have a problem with the shooting of those *chauves-souris*.

**Madam Speaker:** Time is over, but there is one last question.

**Mr Bérenger:** My last question, of course, will relate to the new CEB tariff which has been announced. We will have to study it carefully, but my last question, Madam Speaker, is to the hon. Vice-Prime Minister. We know that prices of oil products and coal have crashed on the world market. As a result, the prices of diesel and *l'essence* have been brought down but not enough, far from enough as per the crash on the world market. Now, we know that CEB works with both coal and oil products. So, can the hon. Vice-Prime Minister tell the country why is not, as in the case of diesel and *l'essence*, a general decrease in the CEB tariffs plus, as in the past, an extra effort for the people on the lowest rank economically?

**Mr Collendavelloo:** Well, diesel and *essence* (mogas), they have got their own regulations for the fixing of prices. I am not going to make comparisons. Insofar as the CEB is concerned, I do not have a policy of just hiking down the tariffs, and then what happens? I



have put, with the Accountants of CEB, a financial plan where we will try and reimburse the debts that we have and invest in machines. I know I have the support of the hon. Prime Minister on this because we need to use the money at *bon escient*. I don't think that the '*gropalto*' of Mauritius need a 10% decrease on their electricity tariffs. I don't think that commercial or industrial undertakings need a 10% decrease - which is the figure.

*(Interruptions)*

I am sorry, but that is my policy. I am the Minister. This is what I have decided and the lowest classes have benefited from a 30% increase. I have said it publicly, hon. Ganoo and hon. Mahomed had this strategy in mind, I do not share the view of the hon. Leader of the Opposition. We must agree to disagree. With the plan which we have put up, reimbursement, reinvestment, by 2018, this Rs2.5 billion profit which we are making, not Rs5 million, not Rs4.7 billion but Rs2.5 billion which we are making now, will all be finished. What do we do? We re-increase the tariffs, again? No. We can't do that, and I am not going to do this. The hon. Leader of the Opposition knows what sort of person I am and he is also the same sort of person as I am.

## MOTION

### SUSPENSION OF S.O. 10(2)

**The Prime Minister:** Madam Speaker, 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

*Second Reading*

### THE GOOD GOVERNANCE AND INTEGRITY REPORTING BILL

**(NO. XXX OF 2015)**

*Order read for resuming adjourned debate on the Second Reading of the Good Governance and Integrity Reporting Bill (No. XXX of 2015).*

*Question again proposed.*

**Madam Speaker:** Hon. Teeluckdharry!

(12.12 p.m.)

**Mr K. Teeluckdharry (Second Member for Pamplousses & Triolet):** Thank you, Madam Speaker. Madam Speaker, yesterday, we, Members of this legislature, pursuant to our constituent powers, we voted the Constitution (Amendment) Bill. Today, pursuant to our legislative powers, we are called upon to pass a law, this legislation which is before us, as Members of this legislature, and pursuant to our duty as legislator. This duty has been enshrined in section 45 of the Constitution which provides that, subject to the Constitution, Parliament shall make laws for the peace, order and good government of Mauritius.

This legislation that has been introduced by hon. Minister Bhadain, I pause here to congratulate him, his officers and the officers of the State Law Office.

This Bill has five main objects. This Bill is one of the rare instances where law and public morality coincide. Hon. Bhadain rightly said that by passing this piece of legislation, we intend to send a signal to the population that honesty and integrity remain the values of the day. There have been many criticisms against this Bill. I have listened carefully to the interventions of hon. Members, some are seasoned politicians and some are less seasoned politicians. The criticisms against this Bill, one of the harshest criticisms is that there was no need for such legislation. Unfortunately, my learned friend, hon. Ramful is not present.

Second criticism: we are legislating in vain. This legislation offends the Rule of Law. It infringes the right to silence. It infringes presumption of innocence. It amounts to the reversal of burden of proof. We have other commentaries that its constitutionality will be successfully challenged before the Court. It will be used as a political tool to oppress political opponents. The methods of appointment are highly questionable and this constitutes criminal proceedings disguised into civil proceedings and there were also criticisms that we need popular survey.

Now, prior to coming to those criticisms, replying to those criticisms, let me point out that this legislation which was brought five weeks ago, precisely on 23 October, hon. Bhadain made it a duty to have popular consultation; consultation with professionals in Ebène; consultation with the Bar Council; consultation with the members of the public. The Press, the population have had enough time to react to this Bill and this is a very laudable initiative. We would remember that in the past, important legislations were passed on the same day, all the readings on the same day with a Certificate of Urgency and legislations

which infringe fundamental rights besides being a major financial scandal, for example, ID card scheme.

At that time, there was no hue and cry for popular consultation. There was no hue and cry for a referendum. Why is there today hue and cry for referendum for popular consultation? Though this has been done! It has been said that we are legislating in vain. The Rt. hon. Prime Minister rightly pointed out when it comes to fundamental rights, the Courts interpret fundamental rights generously and purposively to give effect not only to the letters of the Constitution, but also to the spirit of the Constitution. But suffice it to say that whilst rights are interpreted generously and purposively, limitations and provisos are interpreted very restrictively. That is why there was need to bring the constitutional amendment. The Constitution contains the empowering section and this legislation is the enabling Act. Whether we are legislating in vain, I will leave it to the population, to members of the public and the Press.

Hon. Bhadain pointed out and it is the concern of this Government, fraud and corruption has become a national scourge. My friend Ramful said: “targeting political opponents”. Our foes are not political opponents. Our foes are the ills of the society, fraud and corruption and ill-gotten gains. As legislators, we are called upon to legislate for the welfare of the nation. There have been criticisms that this legislation infringes the Rule of Law, that this legislation can be used as a tool by the Executive. But suffice it to say that who will decide that there should be an Unexplained Wealth Order? It is not the agency. The agency will enquire and will give opportunity to the owner of the property to come forward with explanations. Should the explanations not be satisfactory, there shall be another step. It will go to the Board who will consider again whether there is need to apply to the Court. As from then, if the matter goes to the Court, it is no longer in the hands of the Executive; it is in the hands of the Judiciary. In Mauritius, the framers of the Constitution made it a point and we do have an independent and impartial Judiciary.

The Judiciary will have to decide, the learned Judge in Chambers, on the basis of affidavit evidence. Should he need further clarifications, he can still send the matter to Open Court where witnesses will be called. The Court will have the opportunity to assess testimonies of witnesses and then decide. Should there be an order for unexplained wealth, the owner of the property in question can still appeal to the Court of Civil Appeal. He can appeal as last resort; an appeal as a matter of right to the Judicial Committee of the Privy Council. So, ultimately, it is for the Judiciary to decide and it, in no way, offends separation

of powers because between the citizen and the State, the Judiciary will remain the ultimate arbiter.

Coming back to the proposition that there was no need for this legislation, we are legislating in vain. Simple questions: how do we tackle the problem of persons, for instance; suspects, potential suspects, who have passed away, either at pre-trial or at trial stage? How do we tackle situations where suspects have fled or have absconded following the dissipation of his assets? What do we do? What do prosecutors or prosecuting authorities do when a person has been granted immunity, that is, immunity from proceedings? What do we do in instances where there is insufficient evidence to mount a criminal prosecution successfully to reach the standard of beyond reasonable doubt? What do we do in instances where an investigation is obstructed or frustrated? What do we do in cases where a suspect is abroad, that is, requests for extradition have been turned down? What do we do in cases where accused parties have been acquitted, not on the merits of the case, but on technicalities, for instance, on points of law for example where criminal indictments have been badly drafted?

So, in all these situations, we do need a mechanism which in the absence of criminal proceedings where proceeds of criminal activities can be recovered. This is the aim of this legislation.

There has been criticism that this legislation is a criminal legislation disguised in the nature of civil proceedings. My friend, hon. François, yesterday, rightly pointed out that section 3(5) clearly states that an application made under this Act shall constitute civil proceedings and the onus shall lie on the respondent to establish on a balance of probabilities that any property is not unexplained wealth. It is clear, black on white. But I must say that the criticism that it infringes presumption of innocence, it infringes right to silence, it amounts to the reversal of the burden of proof. These criticisms, these arguments, though attractive, have not been successfully considered by the European Court or the European Commission on Human Rights time and again.

We should not forget that our Bill of Rights contained in the Constitution, the Bill of Rights has been interpreted by the Supreme Court as early as in the 1970s. These rights are inspired from the European Convention on Human Rights and when it comes to interpretation, we do look for guidance from the decisions of the European Court of Human Rights.

We are talking today about property rights inspired from Article 1 of Protocol 1. We are talking about presumption of innocence, reversal of burden of proof, right to silence. These are contained in section 10 of our Constitution and their equivalent would be Article 6 of the European Convention on Human Rights. In a series of cases, these arguments that civil forfeiture constitutes criminal proceedings have been consistently rejected by the European Court of Human Rights.

My learned friend, hon. Ramful, has drawn the attention of this legislature to an article of Prof. Anthony Gray but he has failed to check the jurisprudence on civil forfeiture.

Reference has also been made to the comments of the Bar Council on this issue. Madam Speaker, I fail to follow the Bar Council in its reasoning. The European Court of Human Rights, there are numerous decisions on this issue whether a civil forfeiture amounts to criminal proceedings, whether one would be entitled to raise arguments like presumption of innocence, right to silence and reversal of burden of proof, these issues have been adequately dealt with. For instance, in the case of Walsh, this is a decision of the European Court of Human Rights dated 21 November 2006.

I pause here to say that Article 6 of the European Constitution on Human Rights is the equivalent of our section 10 of the Constitution.

The Court had this to say –

“The essence of Article 6 in the criminal dimension is the charging of a person with a criminal offence for the purpose of securing a conviction with a view to exposing that person to criminal sanction. These proceedings are obviously and significantly different from that type of application. They are not directed towards him in the sense that they seek to inflict punishment beyond recovery of assets that do not lawfully belong to him. As such, while they will obviously have an impact on the appellant, these are predominantly proceedings *in rem*. They are designed to recover the proceeds of crime, rather than to establish, in the context of criminal proceedings, guilt of specific offences. The cumulative effect of the application of the tests and the court goes on to cite the case of *Engel* is to identify that these are clearly civil proceedings.”

I won't burden this legislature by citing other decisions of the European Court of Human Rights, but suffice to say that there was decision of Phillips in 2001, there was decision of *Arcuri v Italy*, there was the decision of John Butler, interesting decisions, besides, these

cases clearly illustrate non-conviction based forfeiture amounts to civil forfeiture and therefore civil proceedings.

There is also a decision of the House of Lords *R v. Ahmad* in 2014. *R v. Ahmad* was a decision relating to post-conviction forfeiture and the Court in England, while stating that different provisions apply to civil recovery, independent of any criminal prosecution, though it concerned post-conviction confiscation orders, the Court held that these were purely of civil nature. The Court cited a decision *R v. Silcock and Levin*, Court of Appeal and explained that the character of a confiscation hearing was more civil than criminal. Thus, the Judge can decide issues on the balance of probabilities, compel the defendant to disclose documents, draw adverse inferences from the absence of evidence and the Court even went further to say that it can rely on hearsay evidence.

So, this is the situation today. Civil forfeiture constitutes civil proceedings and not criminal proceedings. It is very easy to find. We just have to go on the Internet, we Google 'civil forfeiture' and we will come along a string of cases, be it of the House of Lords or the European Court of Human Rights. On this issue, I fail to understand why there is so much Government bashing and demagogy even by the Bar Council. I can't understand! And I can't follow the reasoning of the Bar Council.

Coming to property rights, what is protected under the Constitution? We have two provisions. The provision of section 3 (c) and section 8, that is, no property shall be compulsorily acquired without compensation. There are the provisos for public order, public morality, public health and so on and so forth. And, now, we have the proviso that should it constitute unexplained wealth, then it won't pass the test, it will come within the limitation. One does not have a right to property which constitutes unexplained wealth, property which has been purchased by illicit/illegal means, 'un bien mal acquis'. Even if we look at the Civil Code prior to the Constitution of 1968, the Civil Code as far back as 1808 used to provide for property rights. Article 554 -

*« La propriété est le droit de jouir et disposer des choses de la manière la plus absolue pourvu qu'on n'en fasse pas un usage prohibé par les lois ou les règlements. »*

That is, it is subject to law, it is subject to regulations. Furthermore, one has to exercise even his property rights -

*«Chacun est tenu d'exercer ses droits et d'exécuter ses devoirs selon les exigences de la bonne foi.»*

Bonne foi meaning good faith. Article 18 -

*«Nul ne peut renoncer à l'exercice de ses droits civils et de ses libertés fondamentales dans une mesure contraire à l'ordre public et aux bonnes moeurs.»*

*L'ordre public et bonnes moeurs* meaning public morality. So that even the Civil Code has recognised that such a right is subject to *bonnes moeurs et la loi*. What we are saying today is that, it is contrary to public morality. My friend, hon. Ramful, stated that we need a survey to discover to what extent fraud and corruption is a scourge. To what extent fraud and corruption is a burning problem in our society.

I must say, Madam Speaker, I most humbly beg to differ. Do we need a survey to see how some institutions, public officials and politicians, over the past years have been conducting business, the affairs of this country? We are not here to put them on trial, but I am here to say that this legislation is here to cure a mischief. It is here to attack the problem of fraud and corruption, the black economy and the social ill of using illicit and unlawful ways and means to get rich.

In my life and, I am sure that other hon. Members would agree with me, we could have never known what is a Centurion credit card. Do we need a survey? On the occasion of the passing of the Asset Recovery Bill, pertinent references have been made by hon. Uteem and these debates that went on in this House in relation to the Asset Recovery Bill are very pertinent even for this legislation. Hon. Uteem made mention that we should attack the problem of prête-nom. Hon. Baloomoody made reference that proceeds of crime are not like fruits that are ripe and will fall on the ground. There should be the proper mechanism to combat same.

*(Interruptions)*

The former Prime Minister on the occasion of debates on the Asset Recovery Bill made mention that we should send a strong signal.

*(Interruptions)*

**Madam Speaker:** Can we have some order, please! I don't know whether I am becoming deaf or whether there is a problem with the microphone, but I have difficulty in following the arguments of the hon. Member. So, can we have less noise in the House?

**Mr Teeluckdharry:** Thank you, Madam Speaker.

*(Interruptions)*

During the course of the debates on the Asset Recovery Bill, the former Prime Minister made mention of casting the net very wide going 10 years back, of reversal of the burden of proof and of sending a strong and clear signal to those who thrive on ill-gotten gains. But, I must point out, Madam Speaker, we are not here to pay lip service to the words that we utter and to our duty. We intend to suit the word to the action and the action to the word. I am being told that time is up, but I am going to conclude now. This Government preaches what it does and it does what it preaches.

*(Interruptions)*

And I wish to conclude using the words of hon. Pravind Kumar Jugnauth, the leader of my party the MSM, his intervention on debates concerning the Asset Recovery Bill, namely:

“I stand to speak on this Bill as a man of conviction who also believes that we should, at all cost, stage a war against all those who are engaged in illicit activities and constitute a danger to society. It is unquestionable that in a society that prides itself of being fair and just, those who commit unlawful activities should be allowed to profit from their crimes. Instruments and proceeds of crimes should be forfeited and used to compensate victims whether it is the State or the individual.”

Thank you, Madam Speaker.

(12.44 p.m.)

**Mr A. Duval (First Member for Curepipe & Midlands):** As I said yesterday, the idea of punishing illicit enrichment is undeniably the way forward for our country. We are thankful to the Government for having taken the initiative.

Yesterday, we voted the amendment in our Constitution, which will allow now for the Good Governance and Integrity Reporting Bill to pass. The idea of confiscating wealth is a derogation from the right to property. As I have explained yesterday, that was a necessary and justifiable amendment to make to our Constitution as there is evidently a *fléau* in our society, which needs to be addressed.

Today, we are voting a Bill which allows an Authority to pursue action seeking confiscation of a person’s property. When I read the Bill a few questions came in my mind, for example, in which circumstances would that Authority confiscate unexplained wealth and



which wealth, in particular, will be confiscated? Are we strictly talking about property as immovable property, houses, for example, or property in general? For example, shares, capital and other immovable properties.

Then secondly there were the powers that will be conferred. What powers would be conferred on the Executive? What powers would be conferred on the Judiciary? And what powers would be conferred on the Board? And then thirdly, how do we ensure that we adequately protect innocent citizens from abuses? This is to me the most important issue of all. But I must say that these are legitimate questions and I am happy in the way that these questions are being answered so far in the debate. When I speak of innocent citizens, of course, the question is not about protecting the rights of the drug dealers or the corrupt people, or the fraudsters or the criminals at large. It is about protecting the law abiding citizens.

The issue which is for myself and for many of the Members here whom I had the chance to speak to about this Bill, from all parties, it is whether there was a scope, *une marge de manœuvre* for using that law for a wrongful purpose. I believe and I am happy now that this is not the case. As first, Madam Speaker, the draft has considerably changed - the draft law that was first read here has evolved since First Reading, many amendments were brought to clarify it. It appears to me that it has sufficiently evolved. But surely, Madam Speaker, it is history that will tell if it has sufficiently evolved or not.

The Government has accepted to make other changes and we are thankful for that. I would like to take this opportunity to thank all the Government MPs, the Opposition MPs, the Bar Council and the others who have contributed to the debate and to the amendments. Now we all know what are the amendments that have been brought; the important ones. The first is to protect the right of silence, which I had, myself, taken up with hon. Bhadain. Today, we are no longer compelled to provide explanations and a failure to do so would not amount to a criminal offence, passible of up to one year of imprisonment. And this, Madam Speaker, is a major step forward in reaffirming our constitutional right of silence, where a person refuses to provide explanations, he will run the risk of being ordered a judgement default against his property. And rightly so, as we are talking about the civil procedure with civil remedies.

Secondly, there was the issue of the nomination. Madam Speaker, I personally wanted to make sure that there would be the most possible independence between the Board, the Executive and the Agency. As it is not at all, I believe, the role of the Executive to confiscate

the property of a person. I strongly believe that the further away from politics that the Board and the Agency are, the better it is. I am happy with the current amendments, of course. They are not perfect, but I am happy. I will also like to have seen, for example, security of tenure, if we can give an example. That is, that the Chair and the Director of the Board be given a mandate limited by a term of service to guarantee independence and that the process of nomination be different from the process of removal from office. The nomination by the President as amended now for both the Board and the Agency is an acceptable amendment. We have trust in the President, in the judgement of the Prime Minister and the Leader of the Opposition, to put the right person in the right place. This is an option that we had considered and proposed before and I am happy that it is now here.

As rightly said before me, Madam Speaker, perception is sometimes more important than reality. So, giving the perception of independence is key when conferring such powers to an agency and again I am happy that this has been accepted and proposed to be amended.

As I have said, Madam Speaker, let us not forget that the right to property is fundamental. My home is my castle. You cannot come into my home, whoever you are, without my permission, unless you have a duly signed judicial order. It is very crucial to protect my right to my home. It is the basic principle the right to property.

Thirdly, Madam Speaker, the retrospective aspect of the Bill was an issue. I had proposed myself that there be a rolling effect, that is, from the date that the law should apply to any property acquired not later than seven years from the date of making that order, that is on unexplained wealth order and this is now the case. So, if we did not roll on as compared to before, it would have taken effect as from 2009 and would continue to do so over the years. So, now this is a very important amendment that has been made and we are thankful.

Now, there is also the duration of the inscription. There was a debate on that. I also had the view that there should be a defined time limit and we are thankful for the Minister to provide the amendment now, to limit the duration to 42 days so that the Agency can inscribe on a property.

And fifth, there is the nature of the awards before the Judge. I had proposed that we should not solely restrict the award to confiscation and that we should see what is done elsewhere like in Australia, for example, whereby an order for payment of the monetary equivalent or whatever the unexplained wealth amount is, be made. I am now happy that this has been included.

Madam Speaker, the question may arise as to how the Court will treat the term 'satisfactorily accounted for'. I am happy given that the standard of proof and it is my understanding that it is on the balance of probabilities, therefore, a person will be able to show if his wealth is legitimate and to account for it. I am sure, in practice, this is how it will work in Court.

Now, Madam Speaker, it is absolutely important for me to stress that the purpose of the Bill - and this is important - is not to allow the law abiding citizens to lose their castle. It is not meant for them. I am happy that there are judicial proceedings and that the decision will rest with the Judiciary after having read the affidavits. If ever the case has been transferred to the Supreme Court, having given the opportunity to call witnesses to tender evidence, to offer submissions then the Judge shall take the decision of whether the wealth is explained or not satisfactorily.

I must say that I would have preferred a more explicit protection for the law-abiding citizen, but again this is acceptable. We will see how it looks in practice. Madam Speaker, whether you have more or less than Rs10 m. is not the question. Making money is not a crime. Making money through a crime is a crime. This is how it should be in practice.

To reaffirm what I have just said, Madam Speaker. This law is not meant for law abiding citizens. We have to rely on the Judiciary, the Judge in Chambers, the Board and on the Agency that, whenever there is a tax issue, that is, whenever there is a case of undeclared wealth which is legitimate, which can be shown to be legitimate, but solely a case of defrauding tax, tax issue, then, that case should be dealt with, in my opinion, with the MRA. They already have the framework to deal with it; they already have all these draconian laws like inscription and all this. So, they can deal with this. I think we should not set double standard cases where, first of all, if it is the MRA that catches you, then you have to pay a penalty of 15%, but if it is the Integrity Reporting Agency that catches you, then you may run the risk of losing the whole of the asset. So, there should not be this case of *deux poids deux mesures*, in my opinion.

This having been said, the law abiding citizen should not be scared of this law. He should not be scared of this law and should not feel that he runs the risk, if he has acquired all his wealth legitimately, if he has worked, if he can show how he has acquired his wealth, of having, one day, an Agency knock on his door and ask him for explanations and then run the risk of being confiscated his wealth. So, it is important for us to stress on this - for myself!

Lastly, Madam Speaker, the value of the asset. We are speaking about the Rs10 m. value. I understand the value as at date, therefore, the historical cost of the property, and rightly so, and I understand that the Court will treat it like this. Therefore, when we will look at the property of the person, we will look at the value it was quoted for and not the value that it is now. So, this is the question, maybe, that needs to be clarified about the valuation of the property.

So, in conclusion, Madam Speaker, this law has to apply to everyone. The law is the law and it all depends on how it will be applied in practice. The Rt. hon. Prime Minister has reaffirmed recently his attachment to the principle of democracy, and it is a fact that the Constitution has been amended to insert the word 'democratic' in section 1 under his prime ministership, and I trust fully the Government to apply this law not only by the letter of the law, but by the spirit of the law, being that this law is meant to catch those criminals who have not been caught before, who have always escaped the system and who have always evaded it, that is, the corrupt people, the drug traffickers, the fraudsters and the criminals.

I would like to end by saying, Madam Speaker, that I support this Bill and I will vote for it.

Thank you very much.

**Madam Speaker:** I suspend the sitting for one hour.

*At 12.56 p.m. the sitting was suspended.*

*On resuming at 2.06 p.m. with the Deputy Speaker in the Chair.*

**The Deputy Speaker:** Hon. Ameer Meea!

**Mr A. Ameer Meea (Second Member for Port Louis Maritime & Port Louis East):** M. le président, nous sommes en faveur d'une loi qui intensifiera la lutte contre les biens illicites provenant d'une activité criminelle avérée tels que la corruption, le trafic de drogue et le terrorisme, et tout renforcement de la loi contre la corruption et l'enrichissement illicite est nécessaire. Dans le fait, une loi au civil pour confisquer les biens mal acquis peut être justifiée dans une démocratie comme la nôtre. Cependant, il faut avant tout établir les bases sur lesquelles on peut dire que les biens ont été acquis à l'origine par des moyens illicites.

Ceci dit, par rapport à cette loi, il y a eu beaucoup de discussions, beaucoup d'amendements et concernant les amendements on a entendu récemment quelqu'un dire qu'il

est d'accord avec l'amendement, quoique l'amendement n'a pas été encore circulé. Je ne sais pas si vous l'avez entendu mais beaucoup de points valables ont été soumis par des membres de l'Opposition, de tous les partis de l'Opposition et même si le ministre va reprendre tous les points qui ont été dits à l'heure du *summing-up*, ça ne va pas changer la donne.

Donc, je réitère la proposition du *Leader* de l'Opposition, c'est de nous donner le temps d'étudier toutes ces propositions faites, ici-même, mais aussi les propositions faites par le *Bar Council*, et là, on entend dire depuis hier soir qu'il y aura des amendements qui vont venir mais on attend toujours. On doit voter une loi dans quelques heures et on attend toujours les amendements.

Monsieur le président, on ne peut pas travailler ainsi dans une démocratie, avec une loi qui touche les droits fondamentaux des citoyens mauriciens, une loi qui aura de graves conséquences. On est en train de courir à droite et à gauche et on attend toujours les amendements. Donc, je réitère la proposition du *Leader* de l'Opposition à l'effet que, il n'est pas trop tard, on peut encore mettre la tête ensemble pour voir comment atteindre l'objectif de cette législation sans piétiner des principes fondamentaux de notre démocratie. Mais, *as at now, we are not voting for the Bill*.

(Interruptions)

Bien sûr, si on arrive à *postpone* le débat et on ouvre un vrai dialogue, peut-être que ça peut changer. Donc, on dit, *as at now*, on ne va pas voter la loi telle qu'elle est. Il est vrai qu'il y a deux pays dans le monde ayant de profondes traditions démocratiques et des lois permettant au Judiciaire de confisquer des biens dans le cadre d'une procédure civile, parce que leur propriétaire ne peut expliquer la source de revenus ayant permis l'acquisition de ces biens. La charge de la preuve est donc renversée et il n'est pas nécessaire que le propriétaire ait été préalablement condamné au pénal pour qu'une telle confiscation soit ordonnée. Ce type de loi existe en effet en Irlande et en Australie. Mais les *Unexplained Wealth Orders* en Irlande et en Australie sont expressément justifiés par la lutte contre le crime organisé. Le *Proceeds of Crime Act* de 1996 en Irlande et le *Proceeds of Crime Act* de 2002 en Australie visent à priver des personnes suspectées de crimes de leurs propriétés lorsque ces suspects n'arrivent pas à prouver que celles qui ont été acquises au moyen des revenus générés par des activités illicites et qu'il y a donc lieu de présumer que ces revenus proviennent d'activités illégales. Vous-même vous avez dit juste avant moi, M. le président, qu'on doit faire la différence entre les personnes innocentes et les coupables. Mais il n'y a pas de procès en Cour de justice pour

dire qui est coupable, qui est innocent alors que cette loi, telle qu'elle est, on est permis sans procès d'attaquer aux biens des gens. Il est à noter que la loi a été passée en Irlande après qu'une journaliste d'investigation et un policier ont été froidement assassinés par la mafia locale.

La raison pour laquelle le projet de loi du gouvernement mauricien s'écarte radicalement des lois irlandaises et australiennes tient à ceci : la confiscation des biens, tel que le prévoit le projet de loi n'a pas pour cible les criminels. Le *Bill* vise dans tous les cas le patrimoine d'un individu quelconque qui excéderait sa déclaration de revenus. L'individu visé n'est pas un criminel. Il n'est pas non plus suspecté d'en être un. Ce qui fera que la propriété d'un citoyen mauricien pourra être confisquée par l'État sur uniquement au fait que ce citoyen ne peut prouver devant une cour de justice que son patrimoine est proportionnel à ses revenus déclarés. Cette nouvelle loi permet donc la saisie des biens sans les liant à aucune activité criminelle. Et si je ne me trompe pas, c'est unique au monde. Comme j'ai mentionné au début de mon discours, que ce soit en Australie ou en Irlande ou même la Colombie, la saisie est liée à une activité criminelle avérée ou dans des cas de corruption, trafic de drogue et du terrorisme. Ici, dans cette nouvelle loi, rien n'est défini. Tout et n'importe quoi peut déclencher le processus, y compris une dénonciation farfelue de votre voisin.

Le but de la loi en Irlande et en Australie est d'exproprier des criminels et des biens mal acquis, c'est-à-dire, acquis grâce à des activités criminelles. En termes de politique pénale, cela se justifie pour décourager les criminels qui ne peuvent profiter des gains qui génèrent leur crime. La loi vise également à faire en sorte que ces biens mal acquis ne donnent pas les moyens aux criminels de poursuivre leurs activités illégales.

À Maurice, le but du projet de loi est d'exproprier toute personne qui n'aurait pas déclaré de manière intègre des revenus, peu importe que ces revenus aient été générés par les activités parfaitement légales et cela me dérange grandement. C'est pour cela que j'avais déclaré publiquement au début qu'on est en train de mélanger torchons et serviettes. Je fais ici la distinction entre enrichissement illicite et la possession des biens inexplicés.

Le projet de loi et l'amendement constitutionnel ébranlent le droit à la propriété privée qui devient pour tout citoyens et à tout moment révoquant dès que ce citoyen ne peut prouver devant une cour de justice que ses biens sont en proportion avec ses revenus. Outre ce point fondamental, que je viens d'expliquer, il y a des nombreuses failles du présent projet de loi.

Même si je considère que les amendements apportés représentent un pas positif mais largement insuffisant.

L'un des points contentieux reste celui de la nomination du directeur de l'*Integrity Reporting Services Agency*, ainsi que celle du *Chairman* et de ses assesseurs, qui devrait être faite par le Président de la République après consultations avec le Premier ministre et le *leader* de l'opposition parce que '*on the advice of the Prime Minister*', cela veut dire que le Premier ministre qui nomme et automatiquement il y aura une connotation politique.

L'indépendance d'un tel organe vis-à-vis du gouvernement sera par définition très limitée. L'ICAC a échoué parce qu'elle n'avait aucune indépendance à l'encontre du gouvernement. Son directeur est nommé par le Premier ministre en toute discrétion.

M. le président, c'est pourquoi j'insiste sur l'indépendance de l'institution en question parce que les membres du gouvernement ou d'un éventuel gouvernement sont en situation de bénéficié de la corruption. Il faut les contrôler d'où pourquoi il est nécessaire d'avoir une institution inébranlable.

M. le président, il y a aussi le fait que la charge de preuve, c'est-à-dire *burden of proof* est renversée dans cette loi. Admettons que vous avez commis une infraction, c'est la poursuite de prouver que vous êtes coupable. La preuve doit être rapportée *beyond reasonable doubt*. Vous pouvez invoquer votre droit de silence, mais avec cette nouvelle loi, tout disparaît, même la présomption d'innocence et le citoyen risque de perdre tous ses biens.

Dans cette loi, à la section 3, sur *application of the Act*, la loi serait applicable aux seuls citoyens mauriciens. Donc, pas aux étrangers résidant à Maurice et excluant aussi les *trusts*, autres fondations, sociétés et compagnies. Dès lors les moyens pour contourner la loi à travers les montages fictifs sont manifestes.

Et encore dans cette nouvelle loi, aucune mention n'est faite de la *declaration of assets*, donc des avoirs du directeur de l'*IRSA* ; *the Chairman* et ses assesseurs de l'*Integrity Reporting Board*. Il n'y a pas lieu pour eux qu'ils fassent de *declaration of assets* avant d'assumer leurs fonctions. Je pense qu'il aurait dû avoir une clause, obligeant ces nommés à déclarer leurs avoirs avant de commencer d'assumer leurs fonctions, comme c'est dans le cas d'autres institutions, notamment je cite l'exemple de l'ICTA. L'ICTA qui a été voté en 2001. Ils déclarent leurs avoirs. C'est dans la loi. Dans cette loi rien n'est prévu pourtant c'est un poste qui va saisir des biens. Quand on dit 'saisir des biens', ils vont saisir des biens surtout au-delà de R 10 millions. Ils sont sujets à des tentations à la corruption. Il aurait dû avoir dans

cette loi, parce qu'on a entendu dire qu'ils vont venir avec un *Declaration Act*. Mais cela quand il vient. Pourquoi ne pas mettre dans la loi elle-même?

Et puis dans la section 4 (6) -

*“The Agency shall employ such employees and consultants on such contractual terms and conditions as it may determine.”*

Donc pour moi, par rapport à cette clause *which is fair enough, the Agency can discharge all its duties by employing any employee, any consultant or anyone*. Mais avec le paragraphe suivant -

*“The Agency may, with the approval of the Minister, make use of the services of an officer of the Ministry to assist the Agency in the discharge of its functions.”*

M. le président, *this will open the door for ministerial intervention*. Déjà on est en train de voir de ce qui se passe en termes d'ingérence ministérielle à la MBC, à la SICOM, à la FSC et là maintenant, on doit où on ajoute dans cette loi que *‘The Agency may, with the approval of the Minister, make use of the services of an officer of the Ministry (...)’*

La FSC de nos jours ne fonctionne plus. Tout doit passer par le ministre et cette institution qui doit être totalement indépendante, l'honorable ministre peut placer quelqu'un dans cette *Agency* et dès lors, comme je l'ai dit, l'ingérence ministérielle va être présente. Donc, moi je pense qu'on doit enlever ce paragraphe par rapport pour qu'il n'y ait pas d'abus d'ingérence ministérielle.

La section 7 (1) (b) sur la nomination de *Chairperson* et les deux *other members*, les amendements ont été faits mais je ne comprends pas pourquoi on a enlevé – *‘on such terms and conditions as may be determined’*. Donc, sur l'Integrity Reporting Board, il y a la nomination d'un *Chairperson* et *two other Members to be appointed*, auparavant c'était by the Minister, mais cela a été amendé. Mais, on continue, on dit *on such terms and conditions as the Prime Minister may determine*, mais dans le nouveau amendement: *‘on such terms and conditions’*, cela a été totalement enlevé. Donc, on se demande qui va déterminer les *terms and conditions* du *Chairperson*, des membres du Board. Quels vont être le *pay deal*, le *package*, les *terms and conditions*? Donc, cela a été enlevé totalement de la loi.

Maintenant, venons au fameux R 10 millions. On a mis un barème de R 10 millions. Mais, dans la loi, rien n'est dit par rapport à la valeur de R 10 millions, si c'est *book value*, si c'est *market value*, si cela évolue avec le temps, si cela va être indexé avec l'inflation. R 10



million c'est R10 million dans le temps, sept ans de cela, R 10 millions aujourd'hui. Si quelqu'un a des *shares*, a des actions en bourse, c'est très volatile, cela augmente, cela diminue. Qui va faire cette *valuation*? J'espère que ce n'est pas monsieur Bissessur du Valuation Office.

Donc, par rapport à cette clause de *valuation*, rien n'est prévu dans cette loi, qui va faire le *valuation* et comme je dis si cela va être au *market value*, book value. Donc, il y a beaucoup de lacunes dans cette loi. C'est pour cela que nous, on a dit qu'il faut prendre le temps avant de voter une telle loi et ne pas venir plus devant avec des *piecemeal amendments*.

M. le président, la radicalité du projet de loi est aggravée par son effet rétroactif. Seront susceptibles d'être expropriés tous ceux qui auront acquis des biens durant les sept dernières années. Cela équivaut à punir des personnes pour des actes qui, au moment où ils ont été commis, ne comportaient pas de sanction d'expropriation dans la loi. Donc, je trouve que ce n'est pas normal, c'est *very unfair* qu'on puisse punir des gens pour un délit qui a été commis sept ans de cela et ce n'était pas dans la loi.

Autre élément de radicalité, l'extrême sévérité de la sanction: des personnes pourraient ainsi se voir priver de leur maison et se retrouver à la rue ou de leur épargne, parce qu'elles n'auront pas réussi à prouver que leur patrimoine est proportionnel à leurs revenus. Il y a là une atteinte manifeste au principe de la proportionnalité entre les peines et les actes répréhensibles.

Inutile d'insister sur le caractère extrêmement malsain de l'encouragement et la récompense de la délation : la dénonciation des criminels doit être encouragée mais non celle de son voisin parce qu'il a fait construire un étage de sa maison.

Pour résumer, le projet de loi vise à appliquer à tous les citoyens mauriciens le traitement réservé en Australie, en Irlande, en Colombie aux membres du crime organisé. Le caractère universel démesuré et outrancier du projet de loi est précisément ce qui le voue à l'échec.

M. le président, maintenant venons au financement de l'Agence, the Agency. Normalement, les contraventions, les amendes, les autres pénalités que l'Etat encaisse sont versées au Consolidated Fund et, par la suite, leur affectation, est sujet à un vote au Parlement. Leur affectation dans différents ministères, dans différentes institutions, est votée dans le budget et affecté à ces différentes organisations. Donc, l'argent public passe par le

Parlement et puis c'est voté et c'est appliqué. Mais, dans cette loi, il stipule que l'Agency peut utiliser les fonds de deux façons d'une part récompenser les dénonciateurs – et d'ailleurs, sous quelle modalité, rien n'a été précisé. Je vous laisse imaginer les dérives possibles. Rien n'est prévu dans la loi comment, combien, quel quota, quel ratio, on va récompenser un *whistle-blower*. Mais, ce n'est pas tout. Les fonds pourront également financer la lutte contre la pauvreté. Ce qui est large, flou et ne veut rien dire. Je vois que le ministre des Finances nous quitte, mais peut-être bientôt on va entendre dire que l'argent va financer les projets de CSR, l'argent va finir au Lovebridge et aussi on ne peut pas seulement financer le projet de CSR, Lovebridge sans guidelines. D'ailleurs, le ministre des Finances vient de nous quitter. Son silence sur tel projet de loi est éloquent. Cela en dit long son silence par rapport à un tel projet de loi et d'ailleurs d'autres personnes.

Donc, M. le président, je vais conclure pour dire que, dans la lutte contre la corruption et aussi afin que l'île Maurice soit un exemple de good governance et de transparence pour mieux lutter contre la fraude et la corruption, il faut venir de l'avant avec un Freedom of Information Act, un Financing of Political Parties aussi et surtout un Declaration of Assets Act dans les plus brefs délais.

Merci.

**The Deputy Speaker:** Hon. Bodha!

(2.30 p.m.)

**The Minister of Public Infrastructure and Land Transport (Mr N. Bodha):** Mr Deputy Speaker, Sir, the main objects of this Bill are to -

- (a) promote a culture of good governance and integrity reporting in Mauritius;
- (b) stimulate integrity reporting in the public and private sectors;
- (c) encourage positive reports of acts of good governance and integrity;
- (d) disclose malpractices and recover unexplained wealth, and
- (e) protect and reward persons making disclosures and reports.

Most of the hon. Members here have addressed the issue of integrity reporting in the debates. Not much has been said as regards the culture of good governance that we have to promote. On one side, you can have a culture of good governance in the best interest of the nation, in the best interest of the people of Mauritius. Otherwise, on the other hand, you can

have a culture of greed, a culture based on a conviction that the country belongs to you or belongs to those who are close to you, a culture of exploitation of natural resources. This is what we are deciding today, it is coming with a new culture of good governance and when it comes to encourage reports of acts of good governance and integrity. We know cases. You can't be growing vegetables in Carreau Laliane and then own a villa in Floreal. There are a number of things we have seen for the last 10 years and that's where I will say to the Opposition and to the Leader of the Opposition: 'On est d'accord sur l'essentiel de la législation'. L'amendement concernant la nomination qui n'a pas encore été circulé qui reprend les commentaires, le souhait du Leader de l'opposition. Concernant la nomination, il y avait deux objections principales : le temps et la nomination. Concernant la nomination, il semblerait qu'il y aura l'amendement.

*(Interruptions)*

L'autre question est une question de temps. Mais nous nous sommes compris sur une chose, sur l'essence et la nécessité d'une législation pour justement *disclose malpractices and to recover unexplained wealth*.

Mr Deputy Speaker, Sir, in a Private Notice Question on 05 December 2006, I put a question to the then Prime Minister as regards the Commissioner of Police and on one case - there were many cases - I put a question on the Police enquiry in the transfer of the sum of Rs150 m. by Hemant Bungalia on 24 November 2006 in connection with a transaction of State land. This question was put in Parliament here in 2006. What did the Prime Minister then reply, Mr Deputy Speaker, Sir? He said -

“As regards part (e) of the question, my attention has been drawn to an article that appeared in the Hebdo from 03 to 09 December of this year which refers to an alleged transfer by a Mauritian national of the sum of Rs150 m. from a Swiss bank to a bank in the UK. I have already caused the matter to be referred to the ICAC for investigation.”

And we know what happened 7-8 years later! This was put as a Private Notice Question!

I am going to take another example...

*(Interruptions)*

**The Deputy Speaker:** Hon. Minister, please continue!

**Mr Bodha:** Yes. On 11 November 2012, the hon. Leader of the Opposition, hon. Bérenger, put another question on Hemant Bungalia and Nitish Ramdharry. An issue was raised by hon. Jugnauth. He said -

“The hon. Prime Minister has just said that several authorities have been making enquiries since years. Is he aware that Mr Bungalia has an account at the Hong Kong and Shanghai Bank in Singapore and he has drawn a cheque of 3.8 m. dollars?”

And what did the then Prime Minister say?

“Mr Speaker, Sir, there are two things I must say. Again I make a plea to the Opposition not to believe everything they hear. They have always heard so many false things that have been said.”

Everything is false! They even said, the Press, I suppose -

“(...) first of all, the first cheque that the hon. Member talks about, I don’t even know what bank it is in Singapore.”

Do you know what happened? Hon. Pravind Jugnauth laid a copy of the cheque. It is here on the Table of the National Assembly and nothing was done!

What I am saying, Mr Deputy Speaker, Sir, is that with this Bill, with the agency, we will be able to disclose malpractices and recover unexplained wealth because these people will have to answer. There should be accountability!

Let us come, now, to good governance. Mr Deputy Speaker, Sir, I am going to take two examples of good governance of this Government. First of all, I will take the issue of State land. We know all the abuses and the speculations on State land. Hundreds of millions from Singapore to London, to Switzerland! What have we done? The Vice-Prime Minister, hon. Soodhun, came with a policy framework which has been approved by Cabinet and this policy framework says that applications must, without exception, be addressed to the Supervising Officer of the Ministry and made in approved form which will be available on and may be downloaded from the Ministry’s website. All allocation of State land will be displayed on the website of the Ministry and will also be published in the Government Gazette and a letter of reservation will be given only after Cabinet’s approval. This is good governance, Mr Deputy Speaker, Sir!

I am going to take another example, the example of procurement. We know how procurement was used in the past, over the last ten years, Mr Deputy Speaker, Sir. I am going

to take two examples. The G2G agreement with Singapore on the Identity Card instead of paying Rs300 m. we paid Rs1.2 billion! Another G2G agreement, this time with Mangalore, India where we paid 2 billion dollars for petroleum products and the Betamax saga! What has my colleague done? He called for tender. When he called for tender, he called for tender for black oil and white oil whereas the Red Eagle was carrying all the different types of petroleum products in one boat. It was unique in the world with all the risks of contamination! What have we done? He has been able to reduce the rate of freight from 30.75 dollars to 26 dollars and the country is saving 4 m. dollars for the period, Mr Deputy Speaker, Sir. This is good governance!

*(Interruptions)*

Yes!

*(Interruptions)*

What it has got to do with the Bill? Oh! You have been talking!

*(Interruptions)*

**The Deputy Speaker:** No interruptions! Hon. Minister, address the Chair!

**Mr Bodha:** Yes, but what I am saying is the Bill is on good governance and integrity reporting! Everybody is debating integrity reporting.

*(Interruptions)*

The Bill has to promote a culture of good governance which we are doing.

*(Interruptions)*

That is what I am saying. I will talk on integrity reporting later, but it is not because anybody has talked on good governance that we should not because good governance, Mr Deputy Speaker, Sir, as the IMF says -

“A poor governance environment offers greater incentives and more opportunities for corruption. Corruption undermines the public’s trust in its Government. It also threatens market integrity, distorts competition, and endangers economic development.”

When we talk about this Bill, it is not only about the denunciation of a certain number of people who have unexplained wealth. It is also the promotion of good governance and the promotion of integrity.

Mr Deputy Speaker, Sir, when it comes to integrity - we have been told that the MMM may not be voting this Bill - it comes blatantly to one thing. There is only one Government which is committed to fight fraud, corruption and unexplained wealth and it is this Government, Mr Deputy Speaker Sir.

*(Interruptions)*

Yes!

*(Interruptions)*

**The Deputy Speaker:** No interruptions, please!

**Mr Bodha:** In the Financial Times, on a report on Mauritius, I had an interview with the journalist and I said this -

“The clean-up will continue. Everything was dysfunctional; we never dreamt that cleaning would go so deep.”

This is what is happening at different layers, Mr Deputy Speaker, Sir and I am glad that the hon. Prime Minister is here - because of one thing, Mr Deputy Speaker, Sir. When we come to integrity...

*(Interruptions)*

In the report of the Drug Commission by Sir Maurice Rault in 1986, he described Sir Anerood Jugnauth, as a man of uncommon integrity. We need leadership of that calibre to fight what we are fighting, Mr Deputy Speaker, Sir. Let me pay tribute to that leadership. But at the same time, Mr Deputy Speaker, Sir, the hon. Minister, my colleague came with a Bill, which is a very complex piece of legislation because it addresses one of the fundamental rights, the right to property. It addresses the issue of confiscation without compensation. It addresses a number of issues, which are so close to our heart because it addresses the issue of what belongs to us. I must say that there have been a number of amendments. If Sir Anerood Jugnauth is a man of uncommon integrity, I can say that the Minister Bhadain has been a man of uncommon resilience to bring this law after a month after all the debates that we have had so far.

I say again, Mr Deputy Speaker, Sir, good governance, what have we seen in the last years? It is again an issue of culture. We come from a land where our forefathers had to toil hard and work hard and make every effort, be they from Africa or be they from India. We come from a culture of efforts, of work and there is no way for a country to prosper except

when you have hard work. This is what Sir Anerood Jugnauth has always said. That is why, we have to find a solution for that unexplained wealth because it is a question of two different cultures, one based on greed, at the expense of the nation and the other one is based on hard work, on effort, on discipline and on good governance. I gave two examples as regards this framework for good governance for the allocation of State land. I gave another example where you had a G2G agreement on petroleum products in the best interest of the country.

Mr Deputy Speaker, Sir, I said that we can have good governance and I mentioned the issue of procurement. Mr Deputy Speaker, Sir, under the name of emergency procurement, do you know what sort of abuse has been done? That company, Super Builders, over four or five years, had no credentials and they got contract for Rs1.2 billion. Under the emergency procurement now we have Rs500 m. of contracts which have been allocated. That is why I am saying that this Bill goes beyond the Integrity Reporting. It is implementing a culture of governance at all levels starting from the Prime Minister as a role model for what can be done and what should be done and what should not be done. That is why we have been elected in December last year, to put an end to all these.

This Bill is, in fact, a reflection of this commitment, a reflection of this bold move to clean up the country, Mr Deputy Speaker, Sir. I have talked about unsolicited bids, Betamax and how we have corrected it. We talked about the abuse of the State land and how we have corrected it. We have to see to it that there is no emergency procurement. You cannot start as a tender having a road starting at Rs2 billion and you end up at Rs4 billion, the coffers of Government. The good governance is two-way, it is the way you spend public money and the way you recover unexplained wealth. It has two limbs, Mr Deputy Speaker, Sir.

I mentioned the PNQ of 2006. Today the Agency will be able to take to task this copy of the cheque of USD3.8 m. which hon. Pravind Jugnauth laid on the Table of the Assembly. Today, all the cases of unexplained wealth could be taken up at the level of the Agency, Mr Deputy Speaker, Sir.

Now, at the Commission of Enquiry on Drugs in 1986, it helped to have the then drug mafia to uncover all the ramifications of the mafia. Following the Commission of Enquiry, Mr Deputy Speaker, Sir, there were a number of police cases and most of those heads of the mafia, *le roi du centre, le roi du nord, la tête*, all these people were in jail. But what happened to their assets? Today, on the findings of a Commission of Enquiry, the Agency can act. So,

Mr Deputy Speaker, Sir, it is an instrument to recover unexplained wealth, to discover malpractices and to recover what belongs to the State.

Mr Deputy Speaker, Sir, hon. Ramful said that he was in the dark, but the country is in the red as regards fraud and corruption after 10 years and something has to be done. I explained, you cannot start growing vegetables in Carreau Laliane and you end up having a villa in Floreal. So, Mr Deputy Speaker, Sir, the technicality of this Bill has been debated. What I wanted to say, Mr Deputy Speaker, Sir, is that this Bill is not only on integrity reporting, it is also on good governance and the imposing, promoting a culture of good governance at all levels and this is what we have to do to create the best business environment, Mr Deputy Speaker, Sir.

I will leave my hon. colleagues there, a number of issues which have been addressed as regards the practicability of the Bill. How the cases are going to be interpreted in Court? I will leave it to the hon. Minister who will be able to address these issues.

We have talked a lot about the role of the Agency. We have talked a lot about the role of the board. We have also said that we have created different levels of checks and balances so that there is no abuse and no malicious misuse. I hope that the amendment which is due will come as regards the nomination of the Director of the Agency and as regards the Chairperson and the other members of the Agency.

I am saying to the Opposition. *On est d'accord sur l'essentiel. L'honorable Leader de l'Opposition a toujours souhaité que Maurice soit le pays le mieux géré au monde. C'est l'occasion, M. le président.*

Merci.

(2.52 p.m.)

**Mr V. Baloomoody (Third Member for GRNW & Port Louis West):** Mr Deputy Speaker, Sir, this Bill has a fundamental objective, that is, to confiscate property which somebody cannot explain how he acquired. It is a Bill where we are confiscating property, where there is no link or whatever with any criminal offence or an unlawful act. So, it is a very important Bill because we have had to amend the Constitution to achieve that objective. Our Constitution guarantees certain fundamental rights and the right to property is one of them.



Now, the issue of unexplained wealth has been on the agenda for quite a long time. I am sure we are all here for the idea of confiscating wealth of those who enjoy a standard of living which they cannot explain. But, there should be the proper procedure. Those persons are normally persons in position of responsibility who soon after their appointment in public office suddenly become rich without their being any explanation of such accumulation of wealth. Like I said, this idea has been around for quite a long time.

In 1993, the Anti-Corruption Tribunal Act was voted and its main objective was to set up a tribunal to investigate into allegation of fraud. The Act went even further. Section 5(1) (b) also vested in the tribunal jurisdiction to investigate any allegation, and I quote –

“(…) that the revenue or wealth of any person who holds or have held office specified in Schedule 1(…)”

And Schedule 1 is namely those who have held public office.

“(…) the status of that person and is the consequence of that person being or having been involved in fraud and corruption”.

It was linked to fraud and corruption.

In 1993, that tribunal only investigated property or persons who had unexplained wealth or wealth which was accumulated, which they could not explain, but which was linked to fraud and corruption. It linked not only to that person who was working in a public office, but also people who dealt with that person. So, their property was investigated. And there, under that section, it was the Supreme Court that intervened. Whenever there is an allegation of unexplained wealth, you apply to the Supreme Court through the Solicitor General's Office and make an application for inquiry.

The same under the Economic Crime and Anti-Money Laundering Act of 2000. Section 25, which dealt with the freezing of assets, again talked about the Supreme Court. It is the Supreme Court that has that right, and here we are talking about assets, which we say are tainted by criminal offence. Either he has been convicted or there is a presumption that these assets were acquired through illegal means, through illegal transaction, and again it is the Supreme Court.

Section 25 makes it clear -

“Where a person is charged and about to be charged in any court with a money laundering offence or (...) the Supreme Court may on an application by the Director of Public Prosecutions make an order subject to the condition as to the duration (...)”.

That is, to freeze the assets or to have a prescription of the assets. It is the Supreme Court. Why do we go to the Supreme Court? Because we are attacking fundamental rights. We know the Supreme Court is an open Court, and an open Court is a fundamental principle in our judicial system, in a democratic society where witnesses are heard, evidence is being called, witnesses are being cross-examined. And if you can't prove it by documents, you can call witnesses to come and depone as to how these assets were acquired; you can cross-examine witnesses, put them to the test of cross-examination. It is only when the judge is satisfied that he makes an order. But here we are talking about confiscating assets which somebody cannot explain after seven years. There is no allegation of criminal activity or criminal offence, and we say we are going to a Judge in Chambers for that order! I am sure you are aware of the role of the Judge in Chambers; the Courts Act, sub paragraph 6 - Jurisdiction of Judge in Chambers. It is only for urgent matters, for provisional issues that you go to a Judge in Chambers and, before a Judge in Chambers, Rule 22 of the Supreme Court Rules 2000 is proceedings by way of affidavit only. There is no witness; it is done in Chambers and in an urgent manner, in a hasty manner. And here, for such an important issue, when in all the laws we have had, where there is confiscation, it is before the Supreme Court, now we are talking of somebody who has a property who is being questioned after seven years. It has to be done by only two affidavits; we know that for the Judge in Chambers you can have the first affidavit and a counter affidavit.

On two affidavits, you tell the Judge to confiscate a property which somebody cannot explain! I think we have to review this Judge in Chambers. It should be before the Supreme Court, in a proper Court of law, in an open Court of law, not in Chambers where witnesses can be called. If you lose my receipt, I can call somebody and come and depone and can be cross-examined as to the veracity. The Judge will have an opportunity to look at his demeanour, whether he is lying or not.

Do you know how we swear an affidavit today? As a barrister, I can say that many people are not even aware of the content of affidavits when they swear them. And the rush, the queue you have in the morning when you swear affidavits! You have been to the Intermediate Court; you know that, at the entrance of the Intermediate Court, there is a little room where you swear affidavits. There is a long queue; for two hours, they swear over 200

affidavits. There is no time to explain to the people swearing the content of these affidavits, and a Judge is going to confiscate property on these affidavits!

Is this what we call the rule of law? There is also a question of delay. Although we are talking about civil procedure, the sanction is criminal; it's forfeiture of assets. Now, in criminal cases, the Privy Council has, in many cases, said that two, four, or five years of delay is an abuse of process. The sentence is for fine, for conviction...

*(Interruptions)*

But now we are talking of confiscation of assets, which has no link whatsoever to any criminal activities. Seven years after, you call somebody and tell him to come and explain. Is that gentleman or lady going to have a fair hearing on an affidavit before the Judge in Chambers? This is the question we have to ask. Is that in accordance with the rule of law in a democratic State? I have much concern about that.

Now, let's come to that privilege which is attached. There has apparently been an amendment and it will be 42 days. Everybody believes that it is 42 days only. No! But 42 days as from when? Receipt of the report from the Board! *L'inscription* is 42 days after the receipt from the Board! If the Board takes two years! There is no limit! None! And one has reason to be worried when we look at that section which allows somebody from the Ministry to work with the Agency. With the permission of the Minister, a civil servant can assist the Agency and it is that Agency which will put that prescription on the property, awaiting the report of the Board! There is question for concern here, again. Why should the Minister send one of his collaborators to the Agency to assist the agency? We know, in the past, how there have been ministerial interferences in many cases, especially in ICAC - hon. Minister Sinatambou knows what I am talking about - where in certain cases, letters, instructions were sent by the then Attorney General to ICAC to open cases which were closed, and a case has even been dismissed before the Intermediate Court.

Now, we are going to have an officer from the Ministry of hon. Bhadain - of all people - to assist the Agency, who would put a *lien* on your property at the mercy of the Board. And you know how in a society like Mauritius the stigma attached to it, to a person, to a family, to an honest businessman, to an honest professional! I think we should look again at this section of allowing, by the permission of the Minister, somebody in that Agency, because it will not make that Agency independent and impartial; that's for sure. Also, it is

officialising political interference, legalising, I would say, political interference in that Agency if we have somebody with the permission of the Minister in that Agency.

There is also the question of liquidation which was raised by hon. Ramano. When the property is liquidated, we appoint a liquidator; what is the procedure that he will use? Is it inconsistent with the Insolvency Act? Which rank will be the bank which has had a first rank mortgage on that property? What is the rank of that liquidator? When we have that suspicion on people for seven years, do you think that the bank will now take as guarantee a property which somebody has bought for four years? And if in case he has worked hard to get that property for four years, he goes to the bank and says that he is going to give that property as guarantee, as he wants to send his son or daughter for further studies, they will say no, wait for seven years, then the bank can give a loan on that property because, Mr Deputy Speaker, Sir, they will fear that this property can be confiscated and this when honest people may have worked hard to have that property.

Mr Deputy Speaker, Sir, I will come to political issues, because there is a genuine fear outside that these institutions, especially when they learn that there will be somebody from the Ministry working with that Agency. There is fear outside, and it is genuine fear that it can be used to harass people. It has been done in the past. I have mentioned the Tribunal of Corruption which was done by one gentleman, P.B. - not Paul Bérenger, he is P.R.B. He was a friend of mine. Hon. Vice-Prime Minister Collendavelloo knows him very well. We know how much political intervention there were, how much political harassment there have been in the past.

The Rt. hon. Prime Minister himself, in this House, has said how ECO has been used to harass people when we voted the Prevention of Corruption Act, how ECO was being used as a political instrument even to overthrow Government. This was said in this House and urgently we had to vote. So, people are genuinely concerned, innocent people are genuinely concerned. Even now with the ICAC, we have heard one of the assessors, a lady, who resigned, saying that ICAC is not functioning as it should, that ICAC is not doing what it should do. But she was re-integrated again, after being told that '*direction vinn dépi la haut*'. That's what they said in Casernes: '*direction vinn dépi la haut*'. So, after *direction* has come *dépi la haut*, she was re-integrated. *L'ordre vinn dépi la haut*', they said at the Casernes Centrales, the Central CID! There is some heavenly order, somebody who gives order from heaven! *L'ordre vinn dépi la haut!*

So, we have had all these experiences of ECO, of ICAC, of the Tribunal for Corruption. I am sure there are some friends on the other side who know what I am saying. There were even in the past circumstances when the MRA was used to harass people.

*(Interruptions)*

I don't know whether my friend is saying ...

**The Deputy Speaker:** Please, address the Chair!

**Mr Baloomoody:** I know of cases where even the MRA was used to harass political opponents, people who do not believe in the policy of the Government. So, these are genuine concerns we have regarding this Bill. I note that the hon. Minister - when he introduced the Bill - has not addressed all the points raised by the Bar Council. And he has not been absent today - the whole day we have been debating...

*(Interruptions)*

There are many questions which have been raised by the Bar Council, pertinent questions for which we are still awaiting answers.

*(Interruptions)*

The amendment is coming piecemeal for such an important Act where we are amending the Constitution to confiscate property!

**The Deputy Speaker:** No interruptions, hon. Mohamed!

**Mr Baloomoody:** We are still waiting for amendments and the hon. Minister is not here! There are so many questions, legal issues which have been raised by the Law Society and other people outside there have not been addressed. This is why, on this side of the House, we say we need more time and this law does not meet the requirement laid down in the Constitution. It would not be a good law in a free and democratic society.

I have done, Mr Deputy Speaker, Sir.

Thank you.

**The Deputy Speaker:** Hon. Rutnah!

(3.11 p.m.)

**Mr S. Rutnah (Third Member for Piton & Rivière du Rempart):** Thank you, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, by this time last year we were in full swing in

an electoral campaign, negotiating the last lap of the election and the theme of our campaign was mainly to clean up this country and bring back morality into our country. It was the main theme, and I remember hon. Soodhun was even saying that we have to clean up the *gundaraj*. And as one people and one nation, our country voted for change, voted for a Government, plebiscite us, gave us the mandate to go and clean up the country!

And let me tell you one thing, Mr Deputy Speaker, Sir, insofar as the fight against drug barons, the fight against those who acquire money illicitly are concerned, all of us in this House agree that we have to put up a fight. All of us! But, where we defer, is in relation to some nitty-gritty. As one people and one nation we were voted to bring peace, justice and liberty, and how are we going to bring peace, justice and liberty in this country if we don't have a clean platform in our country to attract good moral values and good culture? How? It is the very basis of any society to have a clean country and to set example. I know that those sitting in the Opposition today, be it the MMM, be it the *Mouvement Patriotique* and be it on this side, people are not corrupt. The hon. Leader of the Opposition is not a corrupt man.

*(Interruptions)*

Hon. Alan Ganoo is not a corrupt man. Who is going to be hurt most in this country? Who? It is not *le Parti Travailleiste* of Maurice Curé, of Emmanuel Anquetil or of Renganaden Seeneevassen, not even the *Parti Travailleiste* of Sir Seewoosagur Ramgoolam or Sir Abdool Razack Mohamed, it is the *Parti Travailleiste* of Navinchandra Ramgoolam.

*(Interruptions)*

This is where it is hurting, and today it is sad for our country. Why it is sad for our country? It is because in the Labour Party today, we have got youths representing the Labour Party in Parliament today, and what they ought to have shown today is honour, integrity and respect.

**Mr Mohamed:** On a point of order! The hon. Member, Mr Deputy Speaker, Sir, has just pointed his finger at four hon. Members here, clearly mentioning us 'the four young Members of the Labour Party'. I thank him for his compliment at least!

*(Interruptions)*

But what I do find objectionable is that he has said that we should have shown integrity. We should have shown honour. We should have shown honesty. In other words, he is saying we have shown no integrity, no honour and no honesty.

*(Interruptions)*

This is what the hon. Member said!

*(Interruptions)*

**The Deputy Speaker:** Silence! Hon. Mohamed, I didn't hear the hon. Member point to hon. Members, but I can listen to the recording and see to it. Thank you.

*(Interruptions)*

Please continue!

**Mr Rutnah:** Mr Deputy Speaker, Sir, I can understand, it might hurt because the truth always hurts. But I am not making direct attack or any scathing attack against my friends on the other side. What I am saying is that we, as hon. Members of Parliament, we should set examples. We should set the high moral standards. We should set the high cultural standards in our politics. But unlike on the other side, I have learnt from my leader to be honest, to be a man of principle, a man of integrity. I am grateful that I learnt it at a very young age from my leader, hon. Ivan Collendavelloo.

*(Interruptions)*

And I am grateful that hon. Bodha referred earlier on to the Rt. hon. Prime Minister in the Rault Report, a man of uncommon integrity, a man of honour, Sir Anerood Jugnauth.

*(Interruptions)*

And this is what we need.

*(Interruptions)*

Hon. Soodhun! I started by saying hon. Soodhun said to clean up the *gundaraj*.

*(Interruptions)*

**The Deputy Speaker:** Hon. Rutnah, please continue!

**Mr Rutnah:** I am coming to hon. Xavier Duval, step by step.

*(Interruptions)*

**The Deputy Speaker:** Hon. Rutnah!

**Mr Rutnah:** During the electoral campaign, hon. Xavier Duval had the courage to come and form an alliance and kick the *Parti Travailleiste* of Ramgoolam and to come on political arena and to fight corruption and fraud and he made it today, as one of the Deputy Prime Ministers in this House.

*(Interruptions)*

Mr Deputy Speaker, Sir, I heard what the hon. Leader of the Opposition said the other day when we were debating the constitutional amendment. He said that the MMM was an *avant-garde* against fraud, corruption and illicit enrichment. *Avant-gardiste!* And set up the ICAC, but now after the election of 2005, the ICAC is *dénaturé* and the MMM has been and is always in favour of an unexplained wealth law and this is the opportunity today. This Government is bringing legislation in relation to unexplained wealth. We have now this opportunity. Yes, I agree there are a few nitty-gritties that need to be looked at and they have been looking at it and today, I am grateful and I support my very good friend, hon. Bhadain who brings this Bill into the House.

When this House was locked for almost a year...

**The Deputy Speaker:** Come back to the Bill!

**Mr Rutnah:** Yes, I am coming. When this House was locked for almost a year, hon. Bhadain and I, as Members of the Bar, we were airing our voice against fraud, corruption and illicit enrichment. Today, I am proud that he has had the audacity to bring this law into this House.

Mr Deputy Speaker, Sir, as I said, we have a mandate to clean up the country. What hon. Shakeel Mohamed said the other day? He said that the Good Governance and Integrity Reporting Bill is an invited guest of the Constitution.

*(Interruptions)*

No, you said it is an invited guest of the Constitution whereas others would be uninvited. But here, we are not dealing with like the nursery rhyme of the three blind mice who were running after the wife of the landlord and had their tail chopped with a carving knife.

*(Interruptions)*

We are not even dealing with the story of '*Rintintin est un petit pantin malin*';

*(Interruptions)*

what we are dealing with today is to make the provision of the law that we are going to legislate today compatible with the Constitution of our country. It is the principle of compatibility. It has nothing to do with invited or uninvited guest! And I heard quite a lot about 'on the advice of the Prime Minister with the consultation of the leader of the



Opposition, etc.’. Now, hon. Bhadain was the subject of scathing attack about the way he spoke and his understanding of the Constitution. Now, let’s look at it a little bit!

Let’s take, for example, section 77, to start with, of the Constitution which deals with the appointment of the Chief Justice. Now, who appoints the Chief Justice? It is the President of this country who is the Head of the State, acting after consultation with the Prime Minister. Then, if we look at who appoints the President. By virtue of section 28 of our Constitution, the President is elected by Assembly on a motion by the Prime Minister and supported by the votes of a majority of all the Members of the Assembly. Now, are we going to say that - if we use the reasoning of my very able and learned friends: hon. Ramful, hon. Baloomoody as well - the President is not as Head of the State an independent person just because she has been elected by virtue of the principle that is enunciated in this House? No!

*(Interruptions)*

**The Deputy Speaker:** Silence!

*(Interruptions)*

No interruptions!

*(Interruptions)*

Hon. Ameer Meea!

**Mr Rutnah:** No! Let’s again look at the provision. Let’s look at, for example, section 72 of the Constitution: the appointment of the DPP. Who appoints the DPP? The Judicial and Legal Service Commission! Who is the Judicial and Legal Service Commission? The Chief Justice, the Senior Puisne Judge and four other members and one Chairman of the Public Service Commission. Hon. Ramful, when addressing, stated: why don’t we leave it in the hands of the Judicial and Legal Service Commission, an independent body to appoint those in the Agency. But, at the end of the day, the Chief Justice, the Chairman of the Public Service Commission is appointed by whom? Section 77 is the President after consultation with the Prime Minister and the President is appointed by the House on a motion made by the Prime Minister. So, where is the problem? Why suddenly we say that the JLSC is more independent than the President? If the President, on the advice of the Rt. hon. Prime Minister with the consultation of the Leader of the Opposition, appoints the Agency. Why? So, these are matters that take us neither here nor there, Mr Deputy Speaker, Sir.

In relation to the point raised by my friend, hon. Baloomoody, he stated that in 1993, the Tribunal of Fraud and Corruption was dealing with matters arising out of illicit enrichment. He also referred to section 25 of the Economic Crime and Anti-Money Laundering Act. He said, according to the Tribunal and section 25 of the Economic Crime and Anti-Money Laundering Act, the Supreme Court was seized. But let's look at the Good Governance and Integrity Reporting Bill, what it provides for.

Firstly, there is a misunderstanding insofar as the role of the Executive is concerned in dealing with the good governance aspect. The role of the Agency and the Board is not to confiscate any assets. The role of the Agency and the Board is to carry out what we call preliminary investigation: ask for explanation, if you can't explain, it is only then that you are going to be referred to the Judge in Chambers.

I understand my very able and learned friend, hon. Baloomoody, who then said why two Judge in Chambers with two affidavits. A Judge in Chambers sitting as *Juge de référé* has normally options when he received application by way of motion and affidavit. He can either grant an order on the basis of affidavit evidence or he can reject the application in toto or the third option that he can summon parties to show cause why an Order should not be made. If the Judge in Chambers feels that, on the basis of affidavit evidence, he cannot decide the case, he is going to send the matter to the Supreme Court. What happens in the Supreme Court? In the Supreme Court, one can call live evidence, that is, evidence *viva voce* to explain and if you manage to explain your case at the stage where the matter is seized by the *Juge de référé*, that's the end of the matter. Even if you do not manage to explain and you get an Order against you and you are not satisfied with the Order of the Judge, you can appeal against that decision to the Supreme Court. Then, if still you are not satisfied with the Supreme Court, if the matter is sent by the *Juge de référé* to the Supreme Court, you can appeal. Even if you are not satisfied with the decision of the Supreme Court, a Court of Appeal (Civil Division), you can go up to the Judicial Committee of Privy Council. So, I don't understand how if the matter is seized with the *Juge de référé*, Judge in Chambers, why it is so drastic that we have to make great distinction between what was happening in relation to section 25 of the Economic Crime and Anti-Money Laundering Act.

Insofar as affidavit evidence is concerned, I have a judgment of the European Court of Human Rights, a 2006 judgment in the case of Walsh against the United Kingdom. In that case, there was a proceeding in relation to a civil recovery proceedings and the applicant, Mr Walsh, challenged the process used. I will read a little bit from the Judgment to give clarity:

the applicant, Mr Walsh, complained that he was denied the presumption of innocence in the recovery proceedings as the civil standard of proof applied and the proceedings could be conducted entirely by affidavit without the hearing of witness. And what the European Court of Human Rights held is that -

‘recovery proceedings are regarded as civil, not criminal.’

And went on to say -

‘court considered that the purpose of the proceedings was not punitive or deterrent but to recover assets which did not lawfully belong to the applicant’

A lot has been said since the inception of this Bill about presumption of innocence, about burden of proof.

Some have argued that this law is a colourable device, so to say, and it is, in effect, criminal rather than civil. But, no! The world is moving. The justice system is developing. We have to keep up with the development in the justice system to the international norms. If the proceeding is civil, never can the standard of proof be beyond reasonable doubt and never can there be a presumption of innocence. These are basics. It can only be on balance of probabilities.

It is not for the first time that there is what we call the reversal burden of proof. We have got FIAMLA, for example. If you are deemed to have money by virtue of proceeds of crime, it is your duty to come and prove it under FIAMLA that these monies were not derived from proceeds of crime. So, I don't see what the problem is when in this law there is provision that you come and explain that the wealth that you have acquired is not wealth as a result of proceeds of crime, that you are not a drug baron, that you have not obtained it by virtue of corrupt practices. Today is a day where we have to stand and combat fraud, corruption, illicit enrichment and money obtained by virtue of the sale of drugs, especially the drug barons.

Mr Deputy Speaker, Sir, a lot has also been said about the short time that was given to consider this Bill. It is for the first time in the political history of Mauritius that a Minister opened the debate months ago...

*(Interruptions)*

It is for the first any Minister...

*(Interruptions)*

**The Deputy Speaker:** No interruptions, hon. Baloomoody!

*(Interruptions)*

No interruptions! Hon. Rutnah continue!

*(Interruptions)*

Please continue!

**Mr Rutnah:** But, it is for the first time that hon. Bhadain went on TV with a team of lawyers, had consultations, opened the debate to the public, went to the Bar Council and everywhere and explained on the radio. Members of the Government went and defended the Bill, explained all the issues, all the nitty-gritty that needed to be explained. I am proud that I have got friends who sell *dholl puri* on the streets of Port Louis, I have got friends who sell peanuts in my Constituency, in Rivière du Rempart, I have friends who sell *cotomili* in Plaines des Roches in my Constituency, I have friends who are *marchands ambulants*. I am proud that they are my friends. I spoke to them and I said: “what do you think of this law”. Do you know what reply I got from most of them? *Bizin casse le rein banne voleurs*.

This is the reply I received from them! And the majority of people in this country are conditioned that this Government should act and should act very quickly in order to curb criminality, in order to curb illicit enrichment. Can you imagine, Mr Deputy Speaker, Sir, in 2005, a young man or a teenager who was about 15 years old, in nine years of the reign of Navin Ramgoolam as Prime Minister, he reached the age of 24 or a man who was 18 years old in 2005 and grew up for nine years with the culture of the former Prime Minister, when he is in nine years, 27 he grew up with the culture that he should make easy money, *tracer pou gagne la vie!* Or sell *cotomili* to become rich! Or *tousse sali* to become rich! Or to join a *nation de zougaderes!* We have given an undertaking to the people of Mauritius that we are going to clean up the country. Even if a Kärcher is needed, the Kärcher will be used!

Mr Deputy Speaker, Sir, insofar as the retrospective aspect of this law is concerned, much has been said. But, this is not for the first time in Mauritius law is being presented so that it would be applied *à l'effet rétroactif*. If I can refer to the Hansard of Monday, 7 July 2014, in relation to an exchange that was going on between the then Prime Minister and the Leader of the Opposition who is today the Leader of the Opposition. Listen to the question of the then Leader of the Opposition -

“Mr Speaker, Sir, as we know, the Constitution has it that we cannot create criminal offences *avec effet rétroactif*. This is the Constitution; this is the law of the land. Can I take it from the hon. Prime Minister that the new legislation that will come to set up the Serious Fraud Agency and strengthen our anti-corruption arsenal will have the power to investigate past or recent offences under the present legislation, especially cases of conflict of interest and *trafic d’influence*, that, indeed, that new Agency will have – because these are offences already existing – the power to look backwards over the recent years and enquire anew into any allegation of an offence having been committed?”

And what was the answer of the then Prime Minister?

“In fact, that is what we are proposing, because some offences are actually being investigated and we do not want to stop the investigation. They will follow up, even on the recent past. We have done the same with the Asset Recovery Act.”

We are now talking about the Asset Recovery Act of 2011 which came into force in February 2012 and then amended again in 2012!

“At the beginning, we had to bring an amendment, because it was not retrospective, but we found what the criminals were saying were - well, this was before the Act was followed. In fact, we were told that it should have been retroactive, but we decided when it came to Cabinet - maybe not - it might give the wrong signal. But we decided afterwards that it was a mistake, and we corrected it. This would be the same with the Serious Fraud Agency.”

Why on earth? Why? If we know that people have acquired wealth by way of proceeds of crime, why are we not going to legislate retrospectively in order to seize those properties by awful means? Why? Mr Deputy Speaker, Sir, it is our duty. Today it is what we owe to our people, to our nation, to our children who are growing for the future tomorrow, that we should not live in the past. The criminals work sophisticatedly and their crime has taken an unprecedented level of sophistication and we have to be a step ahead of us.

This is the duty today that we have been called upon. To legislate, so that Mauritius becomes a clean country and to set up an example at international level to bring back culture of morality so as to make Mauritius become a platform where there will be clean investment. Our people, our children in this country will get job and there will be diversification of economies and the country will progress because this is what, after all, we have been voted

for by the people who voted as one nation, as one people so that we can live in peace, justice and liberty.

On this note, Mr Deputy Speaker, Sir, I thank you, all Members and the hon. Minister.

(3.44 p.m.)

**Mr S. Mohamed (First Member for Port Louis Maritime & Port Louis East):** Mr Deputy Speaker, Sir, I shall start my intervention by saying that I listened with a lot of interest to my hon. friend, Mr Rutnah. May be he does not believe that I am saying that, but I did find him interesting. I do not agree with what he said, however. That also, I will explain and it will also be very interesting as to why I am not in agreement with him.

Yesterday, the Rt. hon. Prime Minister - when I intervened on the issue of the Constitution (Amendment) Bill - in response to my remarks and those remarks were only made as I had explained with the view of being constructive, with the view of coming up with suggestions as to how we could ensure that whatever there was in legislation, we could block all the loopholes in order to obtain guarantees through our concerted efforts that such legislation would not be turned down and cast aside as being in violation of certain fundamental rights of our Constitution by Courts of laws, be it the Supreme Court or the Privy Council. That was the intention of us for speaking through me yesterday. It is quite sad that the Rt. hon. Prime Minister thought that I had derailed. It seems as though, if I do not speak or see in the same direction as Government, the Government believes this is an event that they described as derailment. There is no one path that leads to the concept of democracy. It has never been the action of one man or the vision of one man that has led to truthfulness in a democratic society. It has always been the effort of one and all, sticking our minds together, putting our hands together to try to sculpt what becomes a formidable democratic State.

So, forgive me, Mr Deputy Speaker, Sir, if the Rt. hon. Prime Minister believes that if I view things differently, with the same objective, this is called derailment. Let me then say, yes, he is right. I would then enjoy being that person who is of little mind, he said, this little mind that has gone topsy-turvy. I enjoy this topsy-turvy attitude because in my humble mind - little mind he believes - I hope I am only contributing and if I am not, I apologise. The newspapers could not even understand what the Rt. hon. Prime Minister said because they thought he said his legal mind and they did not hear him saying little mind. I guess this was an honest mistake on their part. But what he said, in fact, was little mind. I am sure that he

does not mean wrong. I am sure he does not mean to attack me in any way personally, but it is a methodology of work that I have to get used to. I am convinced and I hope I am right that it was not meant to any way undermine the role of the Opposition or undermine the role of us, Members of the Labour Party, but it was the debate under the heat of exchange that this was said. Therefore, I shall not pay heed and take it badly. I hope that this time I shall not derail even though we do not see eye to eye.

Now, this reminds me of something else that the Rt. hon. Prime Minister said 'look at me in the eye'. I remember he says that when I just came in as Member of Parliament when he was Prime Minister in January, but anyway, let bygones be bygones for now, at least.

Let us come to what hon. Bodha said in his intervention. It is very important for us to cover those important aspects in this debate. It is quite amazing how people change their stance or their opinions depending on which side of the House they sit. I never expected that from hon. Bodha though. Because you see the first time that I went on TV- I always say that and you always say that to me as well, at least, for that we look eye to eye - to address a political issue was with the MSM with hon. Bodha and the Rt. hon. Prime Minister. It is amazing how a lot of things have happened since then. Time has gone by. We have been on opposite sides, we have been together and now we are on opposite sides again, but does that mean that we have to fight it out at every single moment? I hope not.

What is amazing is that how hon. Bodha said that in 2006 there was a PQ on Mr Hemant Bangaleea - I have had the honour of meeting that gentleman - and he talked about this issue of Rs200 m. and he said that nothing happened ten years later. But what did happen and how he takes strong objection to what happened in 2006 and Mr Hemant Bangaleea and Rs200 m. But four years later, what happened? I won't tell you what happened ten years later, but what I will tell you what happened, Mr Deputy Speaker, Sir, four years later, was an alliance between the MSM and the Labour Party. That is forgotten. How come he has forgotten about that alliance when we sat together in Cabinet and never did I hear hon. Bodha in those days talk about this Hemant Bangaleea. I did not hear. What was amazing is that we were in alliance. We stood together on electoral platforms. We talked with one voice. As hon. Rutnah says: one people, one nation. It was as though we were hand in hand, walking together towards this path that would lead us to electoral victory in 2010. But at no time then, I did hear - during the campaign, after the campaign, while we were in Cabinet, while we were in Parliament - the MSM talk about Hemant Bangaleea! Why is that when we were together, all of a sudden he went quiet? Why?

*(Interruptions)*

**The Deputy Speaker:** Hon. Minister, silence please!

*(Interruptions)*

Hon. Member, can you come back to the Bill.

**Mr Mohamed:** I am sorry, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, hon. Bodha opened the door when he said he referred to specific situations. He opened the debate and now he opened the door and I walk in.

*(Interruptions)*

Actually, I am an invited guest. Thank you, Sir.

*(Interruptions)*

And I am not leaving that soon. I am here to stay and to ensure that I make a bit of a mess.

Now, in 2012, he talked about something else. He said that the hon. Leader of the Opposition had also once again talked about Mr Bangaleea. He goes on to talk about Betamax.

*(Interruptions)*

Let us be serious. You see I stand here before you ...

*(Interruptions)*

**The Deputy Speaker:** Silence!

*(Interruptions)*

**Mr Mohamed:** You see how they are arguing now. I am enjoying that.

**The Deputy Speaker:** Please continue!

**Mr Mohamed:** Now, I stand here before you, Mr Deputy Speaker, Sir,...

*(Interruptions)*

**The Deputy Speaker:** Order!

**Mr Mohamed:** When he opened such a door, he never knew that I would run in this time. Why do I run in? Because I remember the good days – I still call them good days – I enjoyed every minute of the time that we were in alliance together.



*(Interruptions)*

I did.

*(Interruptions)*

I enjoyed it.

*(Interruptions)*

**The Deputy Speaker:** Hon. Jhugroo!

**Mr Mohamed:** Mr Deputy Speaker, Sir, I enjoyed. My good friend now, the Chief Whip, I only remember him sitting on this side, was it? This side then. But we were together. In those days I remember hon. Soodhun who was in Cabinet together with me and I remember the PNQ ...

*(Interruptions)*

Yes, whatever you say.

*(Interruptions)*

He is the great man behind me. So, I remember him standing and answering a question ...

*(Interruptions)*

Remember the PNQ! Yes! Whatever the hon. Member says!

*(Interruptions)*

And he is the great man behind me! So, I remember him standing and answering a question put by the hon. Leader of the Opposition and he was just behind, the second row. I remember the time when he defended everything to do with Betamax and ensured that no one could get away.

*(Interruptions)*

Did he not say, in those days, that everything was in order? Did he not say that he had verified and that everything was legally in order? That is what hon. Showkutally Soodhun said, and he is a good man. He is a good man. You know why I find this so entertaining, Mr Deputy Speaker, Sir? Because members of the public should be wondering. Wait a minute! When he was in Government with the then hon. Prime Minister, Dr. N. Ramgoolam, he said everything was legally in order. And in those days, the Rt. hon. Prime Minister was President of the Republic and, in those days, the hon. Leader of the Opposition put the questions and hit

his head against a wall that could not let anything in, and that wall, unbreakable, was hon. Showkutally Soodhun.

*(Interruptions)*

I am complimenting him on his strength!

Today, I find hon. Bodha come up with those things as though all those issues are so relevant to this piece of legislation! Let me say that hon. Bodha has got the art of communication. He is an expert in the field, but I have just discovered that he has another ability: of drowning the fish! Now, he has an excellent ability of drowning the fish. We say so in good mood, in banter, because we share amongst ourselves and we laugh amongst ourselves, but the objective is that we all want to find this common ground: how could we do better for the people out there? That is the whole idea of the debate because I am scared of saying anything wrong and I find myself arrested again. I mean that is what I am saying. So, let me just try put warnings there.

*(Interruptions)*

Now,...

**The Deputy Speaker:** No interruption, please!

**Mr Mohamed:** Let me come to hon. Rutnah! Hon. Rutnah entertained us as well. As I said, I found it very interesting and he referred to a judgement of 21 November 2006 of the European Court of Human Rights, which is the case of Cecil Stephen Walsh versus the United Kingdom. In that particular case, he referred to this case for only one reason. Because he tried to demonstrate through that case whether the issue of the right of silence was infringed or not, and he showed that the European Court of Human Rights in that particular case said there was no infringement against the right of silence. But what he failed to inform us - and it is his habit; a very intelligent man, cunning, not to say - for the purpose of Hansard, at least, is that this case refers to post-conviction situations. This case refers to someone after he has been tried, after he has been convicted, after he has been found guilty of certain crimes, and the reason why, Mr Deputy Speaker, Sir, *les éléments et la jurisprudence* that hon. Rutnah refers to is not relevant at all to our case is because nowhere in this Good Governance and Integrity Report Bill - welcome hon. Minister, you have been absent, we missed you -, nowhere in this piece of legislation - we have to have a good time, come on, let's be - do I find the word 'unlawful'. Nowhere in this Bill do I find the word 'crime', nowhere in this Bill do I find the word 'illegal', nowhere in this Bill do I find anything that

has anything to do with suspicion, with crime, illegality, unlawfulness, wrongdoing; nowhere! That is the difference between this Bill and what is provided for in all other jurisdictions. I have heard hon. Members talk of Ireland, I have heard hon. Members talk of Columbia, I have heard hon. Members talk of Australia as reference to what happens in other jurisdictions as though saying ‘well, it is being done in other jurisdictions. Halt! Let’s wait a minute!’ In all the brethren of countries, how come only three are referred to? Three! What about the other countries in the world? How come they are not coming up with such pieces of legislation and how come we are the only one in the world, right now, as we speak today, where nowhere, not a single place in this legislation is referenced to unlawful acts or offences or illegality or crime referred to? Why it is devoid of any such word? Why? Why is it that in Australia it is connected to crime? Why is it in Columbia it is connected to crime? Why is it in Ireland it is connected to crime? Why is it that it is only in Mauritius and in no other country in the world there is no need for it to be connected to crime, only to the element of it being unexplained and nothing else? Because there is nothing in section 2 of the definition that says that whatever is unexplainable is criminal.

Therefore, it is possible, Mr Deputy Speaker, Sir, that you cannot explain something though honest, but you will have it confiscated - even though you can’t explain totally; you can’t. And there, I would like to refer to what I have seen, that is, the object of this Bill. What should have been entered into the Explanatory Memorandum is something which I have heard between the lines, I have heard amongst the Members, but has not been inserted in the Explanatory Memorandum. I read a very interesting article in the newspaper *Le Mauricien*, and that article of 14 November 2015 talks about a *congrès du Muvman Libérateur*.

*(Interruptions)*

I don’t know why the hon. Member is getting worried. Don’t be scared, I am here! This ‘*Congrès Muvman Libérateur*’ is the title, and everyone knows that if the legislator comes to pass a Bill in order to attack itself to only one class of people and one class of citizens, this law is null and void and is a violation of the Constitution. One cannot do that; pass a law in order to attack oneself to a class of persons. This is precisely what this Bill is all about. I don’t need to go and look around and decipher any equation. I saw it in the Press.

The Vice-Prime Minister, hon. Collendavelloo, said this morning that he is not an inventor. He is but a lawyer who happens to be a Minister. And as a lawyer, when he says things like ‘*premier ki pou gagne bezé, c’est Parti travailliste*’...

(Interruptions)

Here we go! If only Hansard could record what is being said to what I have just stated, the answer immediately from the hon. Vice-Prime Minister from a sitting position was '*Mais oui. Vrai même!*' and what was said by hon. Rutnah was '*Mais oui!*' In other words, there is no need for any conviction; there is no need for anything. As we see here, what is worse, what the hon. Vice-Prime Minister said. He said here ...

(Interruptions)

**The Deputy Speaker:** No interruption, please!

**Mr Mohamed:**...*que la police avait trouvé des coffres-forts contenant R 220 millions ; ... a refusé de donner des explications. Refuser de donner des explications* is a right of silence that is a sacrosanct principle under our Constitution. *Refuser de donner des explications c'est notre droit de silence.* That exists under our law. This is a matter that seems to have irritated the hon. Vice-Prime Minister, and he goes on to say "*a refusé de donner des explications quant à la provenance de cette somme.*" As I have said, *qui est un droit, sacrosanct principle, right of silence.*

(Interruptions)

*Aussi, est-il d'avis que ce dernier doit le faire. Doit le faire!* In other words, simply because you cannot say that it is criminal, you cannot establish that it is unlawful, the only thing you can do is scream from rooftops that it is, without any evidence that it is; you cannot say that it is illegal, you cannot prove anything of what you scream from rooftops. But what do you do?

How do you manage to ensure that you go around that problem? What problem, the right of silence under our Constitution? What problem, our legal system? How do you go around it? Eureka! Let's come up with an Integrity Bill. Let's come up with this piece of legislation where we will not call it criminal, we will call it civil; where we will change the burden of proof; where we will say: "listen! We can't prove it, so we don't need to even establish crime." We don't even have to say it is criminal. Let's just say it is 'unexplained' and we will manage to get our paws on those Rs220 m. Contributions to a political party? You can't explain it; we will get our paws onto it - thank you very much! Because the rule of the game is what? That is where I believe we have to be very careful.

(Interruptions)

**The Deputy Speaker:** Hon. Jhugroo!

**Mr Mohamed:** This is a matter that has already been placed before our Supreme Court. This is a matter that has already started trial and proceedings before our Judicial System. There are Courts of Law that have already assumed jurisdiction in the case of Dr. Navin Ramgoolam. That is a fact! And, here, I speak to you as a lawyer.

*(Interruptions)*

So, while the Courts are already dealing with the matter, the legislature comes forward and decides, Government comes forward and say: “wait a minute, you may have started looking into the matter, the matter is *sub judice*. The matter is being looked into by Courts and Judges, but it doesn’t matter, let’s change the rule of the game while the game is being played.”

And this reminds me - and here, I refer to Basu’s Comparative Constitutional Law. The Rt. hon. Prime Minister, I am sure, knows this document very well because he is an experienced lawyer, and everything I am saying, he knows, he is not basically speaking out of my hat, but he is just referring to what the law says. I will not invent anything, I will just refer to what the legal principles are and that’s it! And I will try to be legalistic and not a little minded.

Now, here, I refer to what this case is all about. Mrs Gandhi - I read from this book –

“Mrs Gandhi’s election to the House of the people was challenged before the Allahabad High Court by the respondent. After the High Court by its decision of June 1975 set aside the election finding that Mrs Gandhi had been guilty of corrupt practice, Mrs Gandhi was by that time the Prime Minister; obtain from Parliament the Constitution (39<sup>th</sup> Amendment) Act of 1975 which came into force on the 10<sup>th</sup> August 1975. It is evident that the italicised words in Article 329A, as quoted above, sought to directly supersede the finding and decision of the High Court by the amendment of the Constitution in question. The three Judges in the majority: Khanna, Mathew and Chandrachud agreed that Parliament has usurped a function which essentially belongs to the Judiciary, namely to decide particular cases upon pleadings and after hearing of the parties.”

And now, why do I refer to this? It’s because I have gone through this particular legislation. And when I said yesterday that there is an issue with regard to separation of powers, I was very serious. Separation of powers, why? Because this legislation permits and allows this new Agency that is being created, to stop proceedings and ask all other

enforcement authorities to halt proceedings, stay proceedings and take over and pull it out from where it is and decide to give it its own direction. This is what it is stated in the law and this is not something I am inventing.

Now, it is stated here –

“Where the Board determines that the Agency shall initiate action on a complaint, no further action for the confiscation of property shall be taken thereon by an enforcement authority”.

‘Other enforcement authorities’ defined in section 2 of this law. Other institutions!

Donc, il est nécessaire, M. le président, de comprendre ce qui se passe. Ce qui se passe c’est qu’il y a une instance judiciaire, précisément la Cour Suprême de notre île, et devant cette Cour Suprême, l’affaire de l’ancien Premier ministre s’y trouve. Le juge de cette Cour Suprême *has assumed jurisdiction. But this legislation*, cette proposition de l’honorable ministre, et le contenu de ce qui est proposé ici, vient mettre en péril la séparation de pouvoir ; et je m’explique, parce que de par la clause 8(4) et de par la clause 8(4) (c), c’est permis, et ce sera totalement légale pour que l’autorité, et l’agence concernée, demandent à prendre contrôle de cette affaire et à diriger les opérations parce que cela aussi concerne une affaire *of confiscation of property, which is Rs220 m.*

Therefore, under this law, there is a direct attempt and violation of the separation of powers. It is possible that the Rt. hon. Prime Minister and other Ministers of this Government did not realise that it could go as far as that and I believe that they did not realise it. But this is what happens! I would like to hear from the hon. Minister - and come and tell us, if this is not the case, amend the law to say that you cannot change the course of the game when proceedings are already starting before Court of laws. Because if it does not say it here, this means, even though a case has already started before a Court of law, you can intervene and interfere and take control. This is what it means. If this is not as was explained in Basu, as had Mrs Gandhi, then Prime Minister tried to do, as condemned and found a violation of the separation of powers by three Judges of Allahabad, this is what?

Therefore, it is very important to say: “Yes, fight corruption. Yes, unexplained wealth”. But I fail to understand, Mr Deputy Speaker, Sir, why is it that we happen to be the only jurisdiction to have a few pages, where not a single line there talks of crime and unlawful or illegal. *En d’autres mots, il n’est pas nécessaire pour que l’agence vienne dire que quelque chose est illégale. Il ne sera plus nécessaire pour que l’agence ou le conseil d’administration*

*vienne établir quoi que ce soit d'illégal ou un délit quelconque. Il sera suffisant, M. le président, pour que l'agence, ou même le conseil d'administration de cette instance vienne devant une Cour, un juge, et vient dire: "Voilà, on vous demande un ordre pour unexplained wealth. And we don't have to tell you anything else! And why I believe this also to be wrong is for the following reasons.*

Mr Deputy Speaker, Sir, there is something else that happened in Australia and I will read here a document from Lund University, written by Helén Örnemark in 2012, and it is 'Sweden's Forfeiture Regime in a Time of Change.' It is a comparative study of Swedish and Australian law regarding forfeiture of unexplained wealth. And, in Australia, this is what happens and this is precisely what will not happen in Mauritius. In this piece of legislation proposed by the hon. Minister, when we start out, we see – *parce qu'il est nécessaire que tous ceux présents à cette Chambre puissent comprendre how it works Parce que tout ce temps-là, vous avez écouté qu'un seul son de cloche.* Now, let's listen to the other one! And what you are voting for, don't just vote blindly! Know what you are voting for! Because what starts, here, is this –

"An application made under this Act shall constitute civil proceedings."

*Ça, ce n'est pas un problème. Il n'y a rien de nouveau dans cela* that it will be civil, as we have heard. In other laws, we have civil process. No problem! But where it hurts, *là où le bât blesse, c'est que -*

"The onus shall lie on the respondent to establish on a balance of probabilities that any property is not unexplained wealth."

From the word 'go', the burden, *la responsabilité de la preuve, ça incombe à ce citoyen qui doit venir s'expliquer comment* he has purchased and acquired his property.

I read from this document -

"The crucial issue for the deponent is therefore to specify the reasons, source, basis for the suspicion."

Therefore, in Australia the authorised officer which is the Agency or the Board that goes to the Judge in Chambers and says I want an Unexplained Wealth Order, in Australia, he does it by affidavit, as is proposed here and the affidavit - there are reasonable suspicions. He has to say in it that I have reasonable suspicion. *Mais il n'est pas suffisant qu'il dise au juge "I have reasonable suspicions".* But, he has to say that the value of the person's wealth

exceeds the value of person's wealth that was lawfully acquired. His affidavit must also include the grounds on which the officer holds the suspicion. If this is done, the Court must be satisfied that the authorised officer has reasonable grounds to support his/her suspicion.

*Alors, M. le président et les honorables membres, ce que j'aimerais vous faire comprendre c'est qu'en Australie il est nécessaire, mandatory for you to go and tell the Judge that I have reasonable suspicion. Therefore, case law indicates in the case of International Finance Trust Company v New South Wales. The Judge stated that the authorised officer must explain why the suspicion is held by specifying the reasons, sources and basis for the suspicion. Ce n'est pas suffisant pour qu'il vienne simplement dire : 'Donnez-moi le Unexplained Wealth Order'. Ce n'est pas suffisant de venir dire au Juge 'Donnez-moi ça et c'est à lui de venir s'expliquer.' Non!*

*En Australie, il est nécessaire pour que cet officier de l'Agence ou de l'instance concernée vienne démontrer au juge that he has reasonable suspicion, not simply say it but demonstrate it, in what way. And this is what the Judge in the Courts of Australia says –*

*“The deponent must state why he or she has the suspicion that the person in question has engaged in serious criminal activity. The important thing is to find relevant proof to base the suspicion on. Not until grounds for this are clearly set out. The Court can move on to ascertain whether the deponent's suspicion is reasonable or not.”*

And this is provided for by the Prevention of Crime Act in Australia section 179 (b) (ii) and (b) (i). The law provides that it is not simply for the asking that you get, it is to protect abuse from authorities that they have to go before the Judge and explain what is reasonable suspicion, why do they want the Unexplained Wealth Order.

Then it says here, it is from that moment – *C'est de là une fois que l'officier en question, M. le président, est allé voir le Juge, a expliqué le Juge, voilà les soupçons que j'ai et ces soupçons sont basés sur les éléments qu'il définit comme raisonnable et seulement là , à partir de ce moment précis que la preuve, the burden and the onus moves to the other party where the other party now will have to say : “ Okay, you have established the foundation to the Judge, now I come and tell you if the burden is on me.”*

*With that, I would have no problems. But what this legislation says – there is no obligation on the proposal of hon. Bhadain. Il n'y a pas d'obligation pour que l'Agence démontre quoique ce soit au Juge. Il n'y a pas d'obligation pour que l'Agence explique quoique ce soit au Juge. La loi a dit simplement que cette agence et ce conseil*



d'administration doit simplement venir dire au Juge : « donnez-moi ce que je veux » et le Juge doit simplement dire : « *Okay*, il s'agit de demander qu'est-ce que vous avez à dire ». Immédiatement, sans que le fondement ait été préparé, la fondation, la base ait été préparée ou expliquée devant le Juge, c'est le citoyen qui doit venir s'expliquer. C'est un système qui n'existe même pas en Australie. C'est un système qui n'existe même pas en Irlande. C'est un système qui n'existe même pas en Colombie. Unique ! Et ces pays-là n'ont même pas une Constitution écrite et nous on l'a et en sus de cela on a l'impression qu'on oublie simplement les éléments de notre Constitution écrite.

Mr Deputy Speaker, Sir - and this is where it is quite amazing – clause 16 of this Bill

–  
 “Where the Agency makes an application for an Unexplained Wealth Order and the Judge in Chambers is satisfied that the respondent has unexplained wealth, he shall make an Unexplained Wealth Order.”

*En Australie, ce n'est pas comme ça. En Australie*, it is where the Agency makes an application for Unexplained Wealth, the Agency must explain to the Judge what is the reasonable suspicion and what are the elements upon which they base themselves to say that there is reasonable suspicion and it is provided for in the law in Australia by section 179 (b)(1)(ii). But in Mauritius, there is no need to provide for reasonable suspicion and that is the danger because – and I say here to hon. Rutnah who always tells me that he is also someone who qualified at the New York Bar. He always tells me that he practised law in the States, and therefore, he will understand what I say when I talk of civil liberties. Civil liberties are not limited to matters of criminal law. Civil liberties are also in matters of civil rights. Civil liberties are also with regard to civil remedies. The right of the citizen is not limited only when you have got human rights only when it comes to criminal matters but not civil law? This is a new concept altogether! Civil liberties are what we are talking about.

Civil liberties, Mr Deputy Speaker, Sir, are we to go and give a new definition to it? What I am talking about here is that finally, even to go to the Judge in Chambers what the legislator is saying, what is proposed in this Bill is a violation of separation of powers because we are not giving this person any discretion. Are we giving the discretion to the Judge? Are we telling him: “Listen, we have to convince you first; we have to give you the foundation first; we have to explain to you what we are basing ourselves upon; what is our reasonable suspicion, we cannot just knock at your door and simply say well, because we

don't like the political party he belongs to or we don't like his opinion or we don't like the speeches he makes or he attacks us too much or he speaks against us that much! Just because of that we come and ask you for an Unexplained Wealth Order!" Is that what the framers of our Constitution wanted or is this what they wanted to avoid? Civil liberties! When you talk in the name of liberty and One People and One Nation, that does not mean that we forget *les éléments principaux de notre* Constitution. Civil liberties! In the name of civil liberty, we can't forget and we should not forget, we cannot curtail and we should not curtail those civil liberties.

Why is it, Mr Deputy Speaker, Sir, and I read here –

“Even though the reverse onus has been justified by Judges around the world, it has been questioned in doctrine.”

And I am not questioning the reverse onus. In actual fact, I have done enough reading to say: “Why should I question the reverse onus?” I believe it is totally acceptable, in my view, provided that the onus starts with the applicant for the Order. The applicant for the Order, the Agency, must ask and explain why they wanted and this must be provided for in the legislation. Is this too much what I am asking, Mr Deputy Speaker, Sir? Is this too much to simply add here that the Agency must establish what the reasonable suspicion is in order to come and ask for the Unexplained Wealth Order under clause 16? Is that so unfair? Because what we are saying here is that you simply ask for it.

Why is it that the Australian legislators thought it was important to put it in their law? Why is it that our legislators don't think it is important to have it in our law? Why? What makes us so special? Why do we have to be so different? If the intention is not to harm, if the hon. Prime Minister says outright that he wants to go with honour, I have no reason to doubt what he says not an iota of a second. I have no reason to doubt the words of the Rt. hon. Prime Minister. But I'll join him on one thing, it is not a question of speaking only, it is a question of acting. This does not apply to me only, but applies to him as well. If we have to do it and I have no reason to doubt your words, I have no reason to doubt your resolve, I have no reason to doubt your commitment, but here, the only thing I am asking for is let us not violate the separation of powers. Let us make it at equal arms. Let us create a situation where there is not *une situation de dominé et de dominant*. Let us make a situation where you want to go back in seven years, go back in seven years, but let us go before a Court of law at equal arms where no one can simply go and tell the Judge: “Give.” And I don't even have to

convince the Judge for anything else: “Les Australiens sont tombés sur la tête ou le ciel leur est tombé sur la tête.” Je ne sais pas pourquoi eux, ils demandent qu’ils doivent convaincre un juge des éléments élémentaires – the foundation. *Pourquoi eux ils doivent le faire*, down under? Maybe they just got a bad dream and are doing it there. They are wrong! They have started it long ago. We keep on talking about Australia, but we don’t do what they do. We follow exactly what they don’t do and then we talk ourselves what *novateur*, modern State! We want to fight corruption.

You cannot fight corruption with a hand that harms the innocent. You cannot fight corruption if your own legislation does not talk of corruption. This Bill does not even talk of corruption. It does not talk about crime. It does not talk about unlawful elements.

*(Interruptions)*

Exactly!

*(Interruptions)*

Now, allow me to say simply something here. I would like to address...

*(Interruptions)*

I am happy that my words are provoking this exchange because that’s the whole point.

I would like to address a very important part of this whole issue. We started out as the hon. Leader of the Opposition said: “*On a commencé il y a très longtemps.*” Even though it has been only maybe a couple of days or months less, but it seems that we have been discussing for years. Why it does not feel that it has been going on for a long time is because we have been going round and round. Let’s not cry over spilt milk. I would have preferred the hon. Minister to start consultations before the First Reading. He has decided otherwise. I have no reason to doubt that it was for any other reason maybe. This happened to be the case. So much the better! We have had this discussion yesterday; legal research has been carried out on both sides.

We still have not seen the proposed amendment circulated with regard to the method of nomination, be it of the Director or the Head of the Board. When I read section 64 of our Constitution and when we talk about the powers of the President and I had exchanges with friends from the other side where, with a view of finding a solution, I have explained to some friends who will recognise themselves, but I don’t want to embarrass them by mentioning them by name. I have suggested something and I believe this is the case.

Some hon. Members of Parliament who are all friends of mine, it is important - well, all of them are friends really, sometimes less than others, but then we are friends again after a few hours of discussion, it is like that. All of us have to understand one thing. There is a difference between consultation and advice. It is not innocent that, in the second draft proposed by hon. Bhadain, there is a difference between who is consulted and who is giving him advice.

My personal point of view and my reading of the Constitution says if the President is under advice of the Prime Minister, she has to follow that advice. Her Excellency, the President of the Republic, when taking advice from the Rt. hon. Prime Minister must follow that advice, but, after consultation, there is no obligation for Her Excellency to follow that view of the hon. Prime Minister because it is consultation. This is what is provided for under sections 61(1), 64(1) and 64(4). That's different. There is a difference in other words between consultation and advice because I heard certain hon. Members saying : *c'est la même chose, mais ce n'est pas la même chose*. Consultation and advice are different and provided for under two different subsections of section 64.

However, the Rt. hon. Prime Minister said that he wants to go out with honour and it is not at this age that he is, in any way, going to *bafouer la démocratie*. He also added and I said it just now and I repeat it that one cannot just talk about things, but one must act. I humbly request the Rt. hon. Prime Minister to act here. I believe that my request is not unfair. It is very fair.

*(Interruptions)*

I have not seen it. So, please, if I am just filling space and talking. Maybe if I had seen it I would have not said, but what I am suggesting is the following, there are views...

*(Interruptions)*

**The Deputy Speaker:** No interruption, please!

**Mr Mohamed:** My hunch says that I totally agree with views expressed by various Members of this House where they say that democracy is evolved. True it is that once upon a time a lot of the powers were in the hands of the Prime Minister, but the hon. Leader of the Opposition was right and I learn from his experience, and I have to bow to the knowledge he has. We all learn at all ages, that things evolved and gradually, as in other countries of the world, but through the political parties with their own ideologies at the time, they thought it was necessary to give more powers to the President and this is precisely what has kept on

happening over the years. This is a good direction that this country has taken whereby we remove decisions from members of the Executive, not because the Executive would necessarily make wrong decisions, but precisely because we want to give the perception that it is correct. We may have whatever views about the President, but the fact remains is we have all respect for the presidency. That is a fact!

So, what I say and what I believe we should do is continue in that same *lignée* and ensure that whatever proposal is made and I am sure my hunch says it's not there that the specific words in her own deliberate judgment should be in that amendment. Why do I humbly suggest that it should read 'in her own deliberate judgment' is precisely because those are the words in our Constitution. What is quite sad is that the framers of our Constitution section 64(1) already provided for that. Why? Because they thought that there are certain instances where *on doit donner une indépendance totale à madame la Présidente ou la Présidence. On doit non seulement le donner dans les actes, comme le Premier ministre a dit qu'il faut qu'on le fasse non seulement parler mais il faut aussi envoyer un message fort aux membres du public que ce n'est pas dans nos mots.* There is an ambiguity as to what exactly would be the power. There is a fear. It is here in the Constitution and the thing is, in my humble view, when I read section 64(1) and (4), it is clear that if it is in this Bill, it is provided here, there is no need to amend the Constitution. It is simply to use the same words in her own deliberate judgment. Section 64 says where the President is directed by this Constitution to exercise any function after consultation with any person or authority, he shall not be obliged to exercise that function according to the advice of that person. So, here, the authority would be also in a piece of legislation where the words of the Constitution would be imported and placed there in order to ensure there is no ambiguity. Believe me, Mr Deputy Speaker, Sir, that this would send a very a strong and very good signal to the members of the public out there. This is a humble suggestion that I had to make.

Now, I would like to taper off on this particular issue. I have talked about separation of powers.

*(Interruptions)*

Yes, I know. I am happy that the Rt. hon. Prime Minister listens and remembers. He is one of the few who does listen actually.

*(Interruptions)*

Whenever I spoke, he does!

With regard to the disclosure order, the Deputy Speaker, hon. Duval, said that he was happy that there is a change in the law. *Mais est-ce qu'il y a vraiment eu un changement dans la loi? Oui, il y a eu un changement que maintenant le refus de quelqu'un de jurer un affidavit et de venir de l'avant avec une explication quelconque* does not put him in a position where he will be prosecuted for that. However, when he is ordered by a Judge in Chambers to come and give his explanations and he does not follow that order - I see hon. Rutnah acknowledging - it is contempt.

*(Interruptions)*

When there is an order for you to come and give it, it is contempt.

There is another element. I have gone through all the research. In a roundabout way, all research that I have gone through clearly says - and I say it again - it is not because you call a civil that it is civil. Hon. Gayan said that you are restituting whatever you are taking to the rightful owner, that is, Government. It's wrong! If it was a civil remedy, he would retribute it to the person who had been prejudiced. It is not the State that suffered prejudice. The person the money belongs to *originalement*, that is the person whom the money must be returned to. Then it would be civil.

*(Interruptions)*

It is not civil. So, the whole issue is what exactly will be the stands before the Judge in Chambers. You are obliged, therefore, to come and put in an affidavit and this legislation says there can be exchange of information between agencies, not only can they stop other agencies from investigating. The Prevention of Corruption Act, Mr Deputy Speaker, Sir, section 58, talks of seizure of movable properties. Do you know because of this legislation the hon. Minister, through his officers that he sends to work at the Agency, has the right to order the Director-General of ICAC - if this becomes law - to stop proceedings that concern confiscation. He has the right to stop proceedings that concern confiscation because this is what the law says.

*(Interruptions)*

It says exactly that!

*(Interruptions)*

Come on!

“Notwithstanding any other enactment, the Board shall in case of concurrent jurisdictions, with an Enforcement Authority - that includes ICAC - prevailed in relation to any action relating to the confiscation of property.”

So, this is the organisation that shall prevail in relation to confiscation, and seizure is confiscation.

*(Interruptions)*

Oh, I am sorry with your retire!

“(...) may request from an Enforcement Authority any information it considers relevant for the purpose of discharging the duties (...)”

And we go on -

“When an Enforcement Authority has already instituted any proceedings in connection with confiscation, the Board may, after consultation with the Authority, request the Enforcement Authority to take action.”

Let us analyse the supremacy. Which of those institutions do the Enforcement Authorities - ICAC and all the others - will now have supremacy over everyone else? It is this institution because this is what we are asked to vote. So, it is important, *M. le président, que chaque Membre de l'Assemblée nationale sache exactement* what are they going to vote. They are voting powers to a new agency that will have the right, after speaking to them, to ask the other agencies. Which are the other agencies? I will tell you. Section 2 clearly talks about the other agencies. The other agencies, you will have the right to tell them to stay action. Did you all know that this was not going to happen? This is what is in the law. Because this is not what the hon. Minister said when he came to the Bar Council. This is not a subject of debate because this has *tranquillement passé inaperçu*. I am not the only one who says that. Hon Ramano was the first one who drew my attention to it because I, myself, did not realise it. I admit I did not even realise it. Yesterday, he made an excellent intervention in this august Assembly. I sat there and listened to him and I realised that I should go to each and every clause of this Bill to find out what exactly we are asked to vote and what exactly I would refuse to vote.

When I see here the Enforcement Authority - section 2 - means that the Enforcement Authority under the Asset Recovery Act, the Mauritius Revenue Authority, the Independent Commission Against Corruption, the Financial Intelligence Unit and such other Body as may

be prescribed. *Alors toutes ces autorités, cette nouvelle instance aura le droit de venir dire en ce qui concerne la confiscation des propriétés.* Stay, I will take control! Stop, I will take over! What is quite funny about it is that the Prevention of Corruption Act gives security of tenure. It is a constitutional appointment to the Director-General. But now, this Director-General where the law says - the Prevention of Corruption Act - that he should not be under anyone's control, he shall be independent, we will have to listen to this Agency. I am sure and I hope that this was not the original intention of Government.

Let me finish on a lighter note. I hope I can only pray that each and every Member of Parliament, now that you have listened to what exactly this Bill contains, it is not simply about fighting corruption. It is the formidable powers that are going to be given to an institution, the formidable powers that are given to an institution whereby it can even violate, in the whole process, the separation of powers. This maybe was not the original intention, but maybe, through drafting this has happened. But I do not believe it is through drafting because I have a lot of respect for drafters.

*(Interruptions)*

Alright, we will look at section 8 (5) (b), we will give you another chance –

“Where the Board determines that the report submitted by the Agency discloses reliable evidence of underlying criminal activity - this is what - it shall refer to another Agency (...).”

But then, when it comes to confiscation, that other Agencies can do? It shall take over. It can direct the other Agencies. So, it shall stay there as a control tower looking at all the other Agencies down there and say: now, I decide. And it shall share information.

*(Interruptions)*

So, please! But anyway, honestly, I don't expect the hon. Minister to see what I am seeing. It does not matter. But then, again I do not believe that he is in any way invested with wrong intent or otherwise. Not at all! But I look at it differently and I am only sharing.

Let me say it on a different note. As lawyers, I think, I have to laugh about something. Let me say it on a lighter note. As lawyers, I said to myself since Government decided that this law shall not apply to foreigners, non-citizens, even though you got a residency, even though you got a PR, it shall not apply to you. I understand. Fair enough! You want to ensure that investors do not run anyway. Fair enough! As a lawyer, I think that I have got a loophole



now. If you have a wife who is a foreigner, get everything on her name; and if you are Muslim, you are even luckier, you can marry four. Others would think discriminately that you do not have that chance, but there is a loophole. This law is so ridiculous that basically the loopholes themselves are getting funny.

Thank you very much.

**The Deputy Speaker:** I suspend the sitting for half an hour.

*At 4.42 p.m. the sitting was suspended.*

*On resuming at 5.25 p.m. with Madam Speaker in the Chair.*

**The Minister of Foreign Affairs, Regional Integration and International Trade (Mr E. Sinatambou):** Madam Speaker, may I first start by commending the hon. Minister of Financial Services, Good Governance and Institutional Reforms for this radical piece of legislation. Radical, not in an adverse sense, but radical because of the origin of the word. Radical because this word stems from the Latin “radix” which means the root and this law is radical because it goes to the roots of the fight against the scourge of unexplained wealth and ill-gotten gains.

Madam Speaker, I wish to highlight at the very outset that I listened, I won't say I heard, I listened because hearing means it comes into your ears, but it can go out. I listened because I wanted to ascertain with interest the contributions which my friend, the hon. Member for Port Louis Maritime and Port Louis East had to say about this law. Unfortunately, Madam Speaker, even if he is a very good friend of mine, I must say that I have been disappointed. I have been disappointed because for nearly an hour I listened carefully to what is, to my mind, with all due respect, a very theatrical and histrionic performance. I am now getting used to...

*(Interruptions)*

No, histrionic. Historic is the law, historic is the opportunity which is being given to the other side of the House to participate in an unprecedented moment for this country, the fight against the scourge of unexplained wealth and ill-gotten means and why am I, with all due respect, aiming particularly to my good friend is because he is one of the four Members on the other side of the House who failed, in my view, lamentably yesterday to vote in favour of the Constitutional Amendment which forms the basis, which forms the cornerstone of

today's Bill and I am here, I will not take much of the time of this House, but I need to highlight some of the reasons for which I am not satisfied with what I have heard.

Let me start, first of all, Madam Speaker, with this constant harping I have heard for an hour from the hon. Member, but who was, to a large extent, repeating some of the qualms I heard earlier from the hon. Member Baloomoody about this alleged failure to allow the separation of powers to prevail in this piece of legislation. I must confess that I am surprised because hon. Baloomoody is a very seasoned lawyer and his reference to the Judge in Chambers alone is, to say the least, misleading because this Bill does provide that if the Judge in Chambers is not satisfied, on the basis of the affidavits provided before him, he shall refer the matter to the Supreme Court.

Now, I see that my good friend is looking for his copy of the Bill. That is to be found - if my memory is right - in clause 14 where we see that the Judge in Chambers has the powers I have stated under clause 14 (1) and under clause 16 (2). I repeat it, it is stated there, I quote -

“Where the Judge in Chambers considers that an application for an Unexplained Wealth Order cannot be granted on the basis of affidavit evidence, he shall refer the matter to the Supreme Court.”

So, at all times, judicial intervention is possible and this was unfortunately not mentioned when he was addressing the floor today. And the same thing applies to - by *ricochet* - my good friend hon. Mohamed who felt that, compared to the Australian jurisdiction, there was nothing in this Bill about the reasonableness of referral for confiscation orders. Yet, Madam Speaker, the Bill is quite clear. At page 10 of the Bill, that is at clause 14 (1), it is stated very clearly, I quote -

“Where the Board has reasonable grounds to believe that a person has unexplained wealth, it shall (...).”

Then, and only then -

“(...) direct the Agency to apply to a Judge in Chambers for an Unexplained Wealth Order (...).”

So, I have heard for an hour here and for quite some time there that: “oh, what a breach, what a violation of the fundamental rights of the citizens of this country because our Courts of law were not being able to look into the matter, because it was going to be a closed shop with the Judge in Chambers listening to only affidavits, because there was never any

possibility of having the power to question the reasonableness of the referral.” Yet, it is all there.

*(Interruptions)*

I just gave the page, the clause, the sub clause, I would appreciate...

**Madam Speaker:** Hon. Mohamed, please, do not interrupt! Allow him to make his point. You had the opportunity of making your point.

**Mr Sinatambou:** Yes. Now, what is even worse, apart from his constant breach, every time I am speaking, of Standing Order 39, which I keep mentioning, I gave the page, I gave the clause, I gave the sub clause and I read it, and he will still say it is not there.

*(Interruptions)*

Now, I was going to spare him one comment which, unfortunately, I will have to make. I can now realise why the Rt. hon. Prime Minister says that he derailed. I mean, if every time the obvious is being shown to him, everything is being given to him on a plate, he will still not accept what is obvious. Now, if it is the case...

*(Interruptions)*

... Madam Speaker, that my good friend, hon. Mohamed is doing that because he is misled or because he is tired, I can appreciate, I will not say anything. But if he is doing it consciously, then I will agree even more with the Rt. hon. Prime Minister when he said “He is a little man, not a legal man”. So, let us agree to disagree, and I am sure the debates will have the right level.

Let me now say something else, Madam Speaker, which bothered me, which I believe is also very important. So, the first two important things we have found is that, first of all, even if the onus, the burden of proof lies on the person who is suspected of having unexplained wealth, there is a due process to the extent that there can only be referral upon reasonable grounds of the existence of such unexplained wealth. Upon referral, there is then the possibility of challenging those grounds for referral by way of affidavit; written evidence. And if the affidavits are convincing enough, the matter will go to open court. So, the scene is set for the right judicial approach. The scene is set for the proper respect for the separation of powers, as envisaged in our Constitution.

This side of the House is standing by the fundamental rights of the citizen. What, however, is happening, is that this country is faced, unfortunately, and tragically with a

scourge. This scourge which we have named is called 'unexplained wealth', 'ill-gotten means'. You have many or far too many people today who, apparently, have been accumulating unexplained wealth and this cannot - and other jurisdictions have shown it - be fought. This battle, this war cannot be won by traditional means where the burden remains on those who assert. This fight can only be won by transferring the problem into a civil situation. That is why, as my good friend, the Minister of Health, said yesterday, the format which has been adopted is a situation of civil confiscation. That is why everything I have heard on the other side of the House is misconceived, if not misleading.

Speaking of the burden of proof, speaking of a criminal offence, speaking of everything that actually comes under criminal law has nothing to do with the current Bill before the House today. And this is why I would respectfully suggest that all those who address the House later on stop saying the same things, knowing that they are either being misled themselves or they are misleading others. People outside have trust in us, even if they voted for only a few of them on the other side. Some people still trust them and, therefore, they ought not to be misleading the people.

Why my address is much more to the four hon. Members who didn't vote for the constitutional amendment yesterday, is because when I look at the way they were behaving, it reminded me, Madam Speaker, of a comment I was asked to make, about more than 30 years ago, when I was sitting for the Oxbridge entrance exams and was given a citation from William Wordsworth to comment upon. It was in three words and three dots: words, words, words and an ellipsis. Indeed, when I look at what I heard yesterday and today from the side of those who did not vote for the constitutional provision, I realise something very important. The hon. Member for Port Louis Maritime and Port Louis East was saying "we are all for the fight against corruption", and that all four of them have nothing to fear. All they allegedly want is to rough out the edges to reach consensus and win over the scourge of corruption, and they said they are assuming their responsibility. But how can they be assuming their responsibility if, when we look closer at what they are saying in their speeches, we find out that these are so many inaccuracies, if not fallacies?

Madam Speaker, what is damning about this is the fact that we are here in a momentous event. The event is about taking one of the most courageous decisions which a Government can take. Every single person of this country, henceforth, has to make sure that he can explain where his wealth comes from, and what also bothers me is that at one stage

my good friend, hon. Mohamed, on the other side of the House, said that this was a law which was actually targeting one class of people and that, therefore, it is unlawful.

*(Interruptions)*

Yes, correct!

Well, I believe that this side of the House will make no apology for actually targeting...

*(Interruptions)*

*Bizin aret volere coquin! Bizin aret volere coquin!* This is what this law is about. Every time I was asked, in the course of the last four weeks - because some people outside were flourishing on the idea that our side of the House could be divided on some issues in the legislation. So, they would not miss an opportunity to ask us, including myself, "what do you think of this law? Every time I said, "*Bé pé aret volere coquin! Mwa mo d'accord!*"

*(Interruptions)*

I am so happy that today it looks very probable that it will win the day, that the attempt will become successful. And I think we have to be proud of that. I think we have to congratulate the hon. Minister for that. We have to congratulate not only the Minister, but the very able leadership of the Rt. hon. Prime Minister without whom all this could not have become possible.

Let me also add something, Madam Speaker, which I believe I should add, because hon. Mohamed is a former Minister. He has been in Parliament before, but his three other colleagues are newcomers like we were once. I wanted to take this opportunity to share with them the view that we ought not to allow ourselves to be intoxicated by things which are irrelevant. If I say that, Madam Speaker, it is because I was very impressed by the start of hon. Jhuboo's address to the floor. He explained : « *nous sommes en faveur de la lutte contre la corruption. La Bonne Gouvernance ne devrait pas avoir de seuil.* » He was even in favour of not having a threshold of Rs10 m. He did say: « *ne sombrons pas dans la démagogie purement politicienne.* » Yet, after hearing the three Members on their side who addressed us it seems to me that whatever piece of legislation that would have been brought here to fight that scourge against unexplained wealth and ill-gotten means, they would not have voted. That is the impression that I am left with. When having heard what they have said, I could see how inaccurate, imprecise or false the things that were being put across. I heard one of the Members on this side of the House say - he was very brief, but so concise –

“I have reservations, but I will vote this Bill because I cannot miss the opportunity of voting this major piece of legislation, whose aim is to fight against corruption and create a culture of good governance, and which constitutes a courageous move against the powerful group of fraudsters and corrupters rotting our country.” I cannot see him here today, but that is what one of the Members on this side of the House - having reservations - said. Because this is exactly what this law is about.

*(Interruptions)*

I was paying homage to the hon. Member.

That is exactly what we have to do and what we are doing. We have to stop this powerful group of fraudsters and corrupters who are or have been rotting our country.

Madam Speaker, I must also say that I was surprised when I got the impression that the other side of the House was telling us that anyone could now be the subject of this confiscation order; but that is not true. I do not understand! Do they read the Bills before they address the House? It is so clear that every single person has the right to give an explanation. It is quite clear that, if an Agency receives a report, or by its own initiative sends a document to someone, asking: “You know, you have this asset, can you explain where it comes from. You know whatever you did, if you can say what you did to purchase the property you have explained your wealth.” I cannot understand why this insistence. There is here something very disturbing.

*(Interruptions)*

They are disturbed as usual.

*(Interruptions)*

Something sinister, yes, something so sinister in the motives of Government! There is nothing! You see, there is another *citation* in French which says: “*Il n’y a pire sourd que celui qui ne veut entendre*”. So, we might speak - not only these two days - for weeks here. I believe that *il n’y aura pire sourd que celui/ceux qui ne veut/veulent entendre*. What however I can say is that, certainly, as was said by a previous orator, *les gens honnêtes de ce pays peuvent dormir tranquille; les gens honnêtes n’ont rien à craindre !* I do not think there is more to say about all this. I cannot understand, Madam Speaker, - I must tell you with all my heart – how, with such a law to stop ill-gotten gains, to stop unexplained wealth, there can still be opposition to voting it.

Madam Speaker, I would end here because I do not want to take the time of the House. I would like to finish on something which I believe is very revealing because it is something which, I think, no one has mentioned up to now and it concerns the Prevention of Terrorism Act. I would like to go back nearly a decade ago. I recall that these were my first years in politics and I had a live debate with the now Minister of Health, hon. Gayan, and we were in a similar situation like here. The Government of the day was in favour of passing a severe piece of legislation after the 9/11 catastrophe and the then Opposition, to which I belonged, felt that this law was too extreme in its severity. Government was adamant that the extreme measures were necessary for the prevention of terrorism in Mauritius and I, together with others in the Opposition, we felt that this was unacceptable in a democratic society. I will explain this a bit more, but what I would like to highlight is that the measures prescribed in the Prevention of Terrorism Act are more extreme than any measures that I have found in the current Bill before this House.

The measures that I was really objecting to were that the parent Minister could allow an intrusion into any one's privacy, whether it be by tapping their phones, probing into their emails or opening their letters - and this, for everyone in this country - just on the Minister's suspicion that this person may be dealing in any act which involves an aggression on a person - because terrorism had been very widely defined - and that involving an attack against a person was an act of terrorism just as an act of carrying a weapon was an act of terrorism. So, on that basis, the parent Minister could allow anyone to probe into our e-mails, our telephones and our letters.

Now, when there was a change of Government in 2005 - the law was passed in 2002 - and until 2014, the very Government which was the then Opposition and which was against this alleged abusive intrusion against the privacy of our citizens did not change one comma in that law. That is why I am saying, especially to the four Members who did not vote in favour of the Constitution (Amendment) Bill yesterday - especially the three younger ones compared to hon. Shakeel Mohamed - please, do not be intoxicated by whatever may have prompted you to object to this law. I am of the view that this piece of legislation, Madam Speaker, is one of the boldest and one of the most far-reaching pieces of legislation which has ever been proposed in this country for cleaning up the mess, the dirt and the rottenness of corruption and for stopping all those who are corrupting it.

I thank you, Madam.

(Interruptions)

**Madam Speaker:** Hon. Ganoo!

(5.53 p.m.)

**Mr A. Ganoo (First Member for Savanne & Black River):** Thank you, Madam Speaker, for allowing me to make a few comments on this very important piece of legislation.

Madam Speaker, I can understand why we are in a *dialogue de sourds* because to me the issue before this House today is such a complex issue. Terms have been bended around from the Government benches and from the Opposition benches against each other *dans le souci de comprendre* the other side and there are complex terms. Illicit, anti-illicit enrichment statutes or laws which have existed in the world for many years now, 40 years perhaps, back in the 60s. But, from this anti-illicit enrichment laws or statutes, other varieties of legislations have branched off or branched out, Madam Speaker. Conviction based asset recovery, non-conviction based asset recovery, actions *in personam*, actions *in rem*.

So, it is a bit normal that we are today trying to find our way although I agree that all of us in this House have the same objectives of curbing illicit enrichment, unjust enrichment, ill-gotten gains. The objective of the Bill is laudable, no doubt about it and we are all bent on continuing this process of fighting against corruption in this House. But then, on the one hand, there is this will, this desire to curb corruption, to thwart corruption but, on the other hand, there is this issue of guarding against the trampling of civil liberties and human rights. This is the right balance that we should find and strike between these two fundamental issues. So, needless to say, Madam Speaker, in all other countries where such type of laws have been presented, have been proposed, there has been a lot of debates, a lot of controversies, a lot of fury, a lot of *levée de boucliers*, as we say in French.

This issue, as I just said, Madam Speaker, has been with the world for long years, since 1964, Argentina and India enacted the first anti-illicit enrichment statutes. Because there came a time in the world when opinion leaders, when experts have found out, in fact, that embarking on combating serious organised crimes and other transnational offences, be it corruption, economic crime and drug trafficking, the way to do that more effectively was to deprive those - prevent the fraudsters, the drug barons, the Mafiosi from benefiting from their acts of criminality, from benefiting from the financial rewards they would have otherwise derived. Thus, came this process of seizure of instrumentalities to commit crimes. And, it started by seizing the articles in fact in the first stage, seizing the drugs, seizing the weapons,



seizing the ships and so on. But they could still enjoy the fruits of their offences even after they had served their sentences.

So, the philosophy of the criminal justice sectorised came to the stage that they decided to hit the true aim of criminality, that is, the wealth and the ill-gotten gains. Then, we started to hear from the international instruments, the 1988 Vienna Convention, the UN Convention of Transnational and Organised Crime (UNTOC) and then in 2003 the famous UNCAC. Then came the Council of Europe with all the framework for the restrained seizure and confiscation of illicitly obtained assets.

But civil forfeiture, Madam Speaker, which is a wide term encompassing many larger concepts, has been operative in a number of States today all around the world. It has been used as an effective tool to combat organised crime, drug trafficking and other crimes. It has gained popularity, Madam Speaker, in many countries, much more than three countries because I am talking of civil forfeiture. I am not coming to Unexplained Wealth Order as the Government is proposing today to the House. Civil forfeiture *dans le sens large du mot*, based on convictions, *in personam* actions, that is, against the individual, became very popular and penetrated in many countries including common laws and civil laws jurisdictions.

Today, before this House, the Good Governance and Integrity Reporting Bill is being debated, Madam Speaker. It has been the subject of intense debate in recent weeks and although we have in our country the Asset Recovery Act which was introduced in 2011, amended in 2012. The Asset Recovery Act, Madam Speaker, in fact, in the Explanatory Memorandum talks of conviction and non-conviction based asset recovery. Therefore, we do have in our legislation already this concept of asset recovery, be it conviction based or non-conviction based to be found in this Asset Recovery Act, introduced by the previous Government.

But, today, to Government this legislation is a way forward towards the fight against unjust acquisition of wealth. This Bill has awakened interest and controversy in the country and a lot has been said about its desirability as well as its undesirability. Some other quarters, Madam Speaker, although they agree in principle that a fight against illicit enrichment is necessary, have expressed concerns as to what they perceive as anti-democratic features in the legislation.

Some have gone as far as questioning the real motive behind this Bill and expressed concerns on the fairness of the mechanism that will set up its implementation. We have seen how among those who have participated in the debates regarding the implications of this proposed legislation, the Bar Council especially expressed its concerns over some aspects of the Bill namely, the power given to the Agency to pursue criminal activities in a civil arena. So much controversy has been fuelled and so much outcry, as I just said, around this legislation.

The Unexplained Wealth Order, Madam Speaker, which is the central feature of this legislation, which can be issued by the Judiciary although there is no nexus, no link between the suspected wealth and any act of criminality, is without doubt the most recent development in confiscation and forfeiture jurisprudence.

The Unexplained Wealth Order (UWO) to which some countries already have recourse and, to my understanding, there are more than three countries. This UWO is, in fact, at the heart of today's legislation and, as I said, it is a recent development in forfeiture laws and jurisprudence. It differs from traditional forfeiture laws, Madam Speaker, in many aspects with respect to other accompanying features, for example, the shifting of the burden of proof to the owner of an ill-gotten property and the other points that have been raised by hon. colleagues on the benches of the Opposition.

Although, as we all know, already in our legislation, the Asset Recovery Act of 2011, as amended by 2012, has already introduced in our law this concept of reversal of the onus of proof. The retroactivity of legislation in the the Asset Recovery Act - the law was passed, in fact, to be retroactive as from 10 years. The onus of burden of proof was already introduced in this legislation, Madam Speaker.

As hon. Sinatambou has said, if I understand him properly, in fact, today, this new legislation is precisely not concerned with the fundamental principles and safeguards what obtain in criminal law because what this law is proposing is precisely the confiscation of wealth not related to any criminal activity. I will refrain to go into the debates of whether it is a criminal process or civil process. I think many before me have already addressed this issue.

There is also with this regard a lot of jurisprudence, especially, from the European Court of Human Rights. I will not go into the debate. We must know, Madam Speaker, that several countries have reflected upon the possibility of introducing the UWO into their legal system, but, after a lot of debates, they decided to maintain traditional confiscation regime *in*

*personam* following conviction and *in rem* proceedings targetting property. This is because there has been widespread concern that recourse to civil process would allow the State to circumvent procedural protections inherent in criminal proceedings such as the presumption of innocence and the right to silence.

Other countries, Madam Speaker, who have ventured into the UWO like we are doing, some of these countries have faced constiutional and legal challenges in their jurisdiction. But, on the other hand, there are some countries who have adopted only part, somes aspects of the Unexplained Wealth Order: in South Africa, in New Zealand. France, for example, has, under the imbrella of the UN Convention against Corruption, enacted illicit enrichment offences, targetting the proceeds of corruption where the reverse burden of proof is part of the offence, but it only applies to public officers and to political officials.

Finally, a few countries, Columbia Island and Australia have adopted the UWO with all its drastic features such as non-confiscation and restraint order. But I must say, Madam Speaker, it is a question of policy, it is a political decision, in fact. In the light of the variety of legal mechanism which exists to curb illicit enrichment when Government of Mauritius today is, in fact, opting for the most lethal weapon to fight agaist illicit wealth and has preferred to align itself on the other countries which have adopted this model. I must say, right at the start, that the success of such a measure does not depend solely on the power of the weaponry, but the expertise behind the handling of such weapon. The objective should be clear and there must be a careful selection of targets, Madam Speaker. It would be in the interest of our country that such a powerful weapon is not placed in the hands of a unskilled team without a clear objective and guidelines.

Among the countries, Madam Speaker, which have carried out the effectiveness of the Unexplained Wealth Order comes out Ireland, to a lesser degree Australia; two countries which have a strong reputation for the protection of rights. In the case of Australia, we note that the results have not been totally positive because what has worked for one country does not necessarily work for another country.

Research has shown that what matters most in achieving such success with the UWO is not the letter of the law itself, but the mechanism that has been put in place for the implementation of the law. Ireland's success, for example, Madam Speaker, has been mainly attributed to the effectiveness of the Irish Criminal Asset Bureau which is the body responsible for the implementation of the law, namely the Proceeds of Crime Act 1996 which

has just been referred to by an hon. Member. This Criminal Asset Bureau (CAB) is a body composed of an elite well resource unit with staff, not only from the Police and the Prosecutors, but also from Tax and Social Welfare Agency and the secret of its efficiency lies in the combination of resources, skills and experience of various stakeholders in this Agency where each player compliments each other rather than works in rivalry with each other. The judicial system in Ireland has been adapted to handle this aspect of the law with the Irish High Court appointing a Special Judge to work solely on forfeiture cases.

Another important aspect that has contributed, Madam Speaker, to the success of the Irish case is that the Criminal Asset Bureau has been selective as regards the cases it has decided to pursue choosing those cases which garnered public support. As for Australia, we cannot say the same thing. There have been relatively fewer forfeiture cases and there are several factors into which I would prefer not to go into which have been responsible for the low rate of success in Australia.

Madam Speaker, this shows that the mechanism for the implementation of the law is important and the success of the law can only be guaranteed by this efficient mechanism.

Let me now come to the Bill before this House: the Good Governance and Integrity Reporting Bill. I say it again, the issue is not how good the law is - I will come to the law in a few minutes – but how strong, credible and efficient is the mechanism provided by this very law. We must draw lessons from the Irish practice and experience to ensure that the chances of success will be on our side.

Madam Speaker, the party to which I belong, the Mouvement Patriotique is, I think, the only political party to have submitted a written document listing several proposed amendments to different clauses of the Bill. Not now but some one month ago, Madam Speaker, we circulated that document to the Press, we sent it to the Attorney General, we sent it to Minister Bhadain. This is a copy of the document, our proposals in five pages. We went through all the clauses of this Bill which we thought should be amended to make this Bill a better piece of legislation. The Bill has been constructed as it is and for such a Bill to garner public support it should contain safeguards and we very humbly try to add up certain additional safeguards in this Bill and that was the purpose of us circulating this document, Madam Speaker.

We are comforted that some of our proposals have been taken on board and we thank the hon. Minister for having done that. For example, as far as I remember, the hon. Minister,

*dans un premier temps*, came with three proposals and we had drawn his attention to these three proposals. The question of the appointment although we were not satisfied with these counterproposals because we proposed that the President should appoint the Director of the Agency or the Chairman and the other Members of the Board after consultation with the hon. Prime Minister and the hon. Leader of the Opposition. We will come to that in a few minutes. The hon. Minister made a counterproposal which is still, unfortunately, I think the amendment proposed as at now and the hon. Minister also proposed something regarding the time frame and the inscription of privilege and the hon. Minister came with the third proposal about the Rs10 m. which we did not propose. Then, came our document, some two weeks ago. I was just looking at the Press conference that we gave which reproduced more or less faithfully what we had proposed to the hon. Minister in the Press conferences. Madam Speaker, after having placed on record our appreciation for the hon. Minister for showing his openness and fairness by taking on board some of our proposals, but also engaging in dialogue with different public stakeholders including the Bar Council, I will make a few comments on the clauses of this Bill. And not to take a lot of the time of the House, I will go very briefly.

Madam Speaker, the first proposal we made was about the question of property. What is the meaning of property? It should have been defined perhaps in the law, but we have jurisprudence also in our country. The Judicial Committee of the Privy Council in the case of *Hawoldar v the State*, in fact, has defined what property means. This is section 2 of the Bill. Then, section 3 of this Bill -

“This Act shall apply to citizens of Mauritius.”

We made the point which has been made by some other colleagues in the House as to why should the Act apply only to Mauritian citizens? We gave the reasons. We highlighted the issue about property acquired at any time not more than seven years before the commencement of this Act. The actual wording suggests that at any given time an enquiry can be carried out into property acquired seven years before the commencement of this Act. The words “before the commencement of this Act” must be replaced by “before the commencement of any enquiry or investigation by the Agency”. I thank the hon. Minister for taking this on board. Section 4 - the issue of nomination, we proposed that the appointment of the Director must be made by the President of the Republic in consultation with the Prime Minister and the Leader of the Opposition. Section 4 (7) –

“The Agency may, with the approval of the Minister, make use of the services of an officer of the Ministry to assist the Agency (...).”

The Mouvement Patriotique also took this point. This section opened the door to perception of suspicion of political interference. We came to section 5 - Powers of Agency. This is very important, if the hon. Minister can give me his ear. The law says -

“The Agency shall, on its own initiative or where a report has been made in respect of a person under section 9 (1) or (2), require, in writing, any person to explain the source of any funds which the person owns, possesses, has custody (...).”

At that time, the amendment was not yet proposed, the question of affidavit. But at that time we said and we still maintain that. We will ask the hon. Minister to give some attention to this proposal. We said: we propose that given that it is a person's wealth that is at stake, any person under an investigation must be given the opportunity to be heard in person or to be accompanied by his Counsel of his choice or his accountant when the Agency calls him. Not only that he should give explanation right back or now by way of affidavit, but we suggested that he could have been given the choice of coming in person, of explaining to the Director *viva voce* about any queries the Director of the Agency might require.

Section 5 (8) is the famous section, and we are happy and proud that we drew the Minister's attention to that. This is the question of any person who contravenes subsection (1) (b), that is, to whom a request has been made, shall comply with the request within 21 days of the date or any longer period the Director might determine and if the person contravenes this section, he will commit an offence liable to a fine of Rs50,000 and an imprisonment for a term not exceeding one year. This is what we said. We said why should the Bill provide for a fine and a term of imprisonment and the Government keeps insisting that this is a legislation in a civil matter and the action is *in rem* and not *in personam*. Our proposal was that this subsection must be deleted as it has been done by the hon. Minister and I suppose with the advice of the Attorney General. We said in the absence of any explanation from a person there, the Agency can still proceed with its enquiry and report the matter to the Board.

The hon. Minister has come up with the proposal that a Disclosure Order will now be applied for when that person who has been asked to give information and so on. We are happy that we had proposed that this section imposing the fine and one year imprisonment should be ‘*caré caré*’ deleted and this has been done.

(Interruptions)

This has been taken on board, Madam Speaker.

Section 7 - the Board, the Chairman and the other Members concerning this issue of nomination, we made the same proposal. The other fundamental proposal which we made and which has just been raised by hon. Shakeel Mohamed, he said that this point clicked when he heard hon. Ramano talking yesterday was about this section of the supremacy of the Board over other enforcement authorities. This question of primauté, this question of why should the Board, in the present legislation, be allowed to supersede, to prevail - this is the word used in the legislation, “prevail” - over other enforcement authorities, and we say prevalence over other enforcement authorities, might create confusion, conflict among the different enforcement authorities will bring an air of uncertainty, will act as a demotivating factor for the enforcement authorities, a waste of public funds, render other authorities insignificant, the element of unfairness to the person under investigation whose case will move from a criminal to civil jurisdiction, thus losing all his safeguards, create suspicion of interference, and so on. We raised that matter.

We raised that matter not to do politics, Madam Speaker, but I just gave you the example of what obtains in Ireland. There is a centralised body, the Criminal Asset Bureau, I think, the CAB as I just alluded to a few minutes ago, and this was the point of drawing the hon. Minister’s attention to section 8 (2) about the supremacy of the board, the prevalence of the board.

We, also Madam Speaker, came to the point that - there is another clause which I drew the hon. Minister’s attention to - the Board in this Bill, Madam Speaker, 8(2) (c) –

“Notwithstanding any other enactment, the Board –

(c) may call from any person for the communication or production of any relevant record or article”

So, we thought that this power was far-reaching – 8(2) (c) –

“(...) the Board –

(c) may call from any person for the communication or production of any relevant record or article”

That is the Board can call somebody and ask him to produce his bank statement or his title deed or any document to be produced and any relevant record, any document or any article.

We had proposed that this can be done, but should be done by going through the proper channel by applying for a Judge's Order. This was not the Agency, but the Board's power to do that. We drew the Minister's attention to that also, Madam Speaker.

The question of inscription which has been amended about the 42 days, but we still have *un désaccord*, a difference, a disagreement with what has been proposed, Madam Speaker and I would appeal to Government, to the Rt. hon. Prime Minister, to hon. Minister of Justice, to the hon. Minister Bhadain. These 42 days cannot be made to become operative after the Board as it is proposed in the legislation, that is, now the inscription will lapse 42 days from the date of receipt of the report by the Board. This point has been made before me, but I will repeat it, Madam Speaker, to highlight how unfair this measure can be because if this enquiry takes six months, eight months, one year, the inscription of the privilege will work, will be operating through this long period and it will lapse only 42 days when the Board will receive the report from the Agency. To us it defeats the whole purpose and for all the reasons given by hon. Ramano and hon. Shakeel Mohamed, I think we should review this. We still have time to review this, Madam Speaker.

As we know, in the Assets Recovery Act, there is no inscription there, but there is a Restraining Order in section 9 of the Assets Recovery Act. And what the hon. Minister is proposing today, even through the amendment, the inscription by the State over a person's property has far-reaching consequences, especially if the property was already mortgaged in favour of other creditors, for example, financial institutions. Hon. Ramano made the point very clearly yesterday and we appeal to Government to review it because it will work so many injustices to people who have been called for enquiry or for investigation.

Madam Speaker, the last point we made in our document was the question of time frame and also the question of compensation. We also raise the issue of declaration of assets by the Director or the Chairman. This is a very simple issue, Madam Speaker. I think I told that to the Minister. The FIAMLA legislation imposes upon the Director of the FIU to declare his assets. Now, we know that recently the Assets Recovery Act has been amended in this very House. This was the first piece of legislation. We have debated the second one yesterday and the third one today. In the FIAMLA law, the Director of the FIU is made to declare his assets. And we know now that the FIU has taken over the Assets Recovery Unit, so, why is it that the Director of FIU, by law, is bound to declare his assets and since we are setting up such an important body today as the Agency and also the board, I think there should have been a specific provision requiring the Director of the Agency? This is our



proposal, the Chairman of the Board and high-ranking officials to declare their assets prior to assuming their functions.

In fact, I am sure when the Rt. hon. Prime Minister will come with a new Declaration of Assets Act, as he has pledged to the House, will also - as we know - legislate so that high-ranking public officials are also made to declare their assets and we know that in specific pieces of legislation, different Acts compel the different incumbents responsible, the CEOs and the Chairman of the board to declare their assets in many Acts. This is the case. I just gave the example of the FIAMLA legislation. So, we propose also that this present Bill also imposes on the Director of the Agency and the Chairman of the Board that they are made to declare their assets.

Lastly, Madam Speaker, about this question of compensation, I will come to that...

*(Interruptions)*

Madam Speaker, section 60 of the Assets Recovery Act talks of Compensation Order. The Court may make a Compensation Order where, in its opinion, it would be in the interest of justice to do so and the applicant suffered a loss as a result of the operation of the Restriction Order. The Court may make a Compensation Order on application by a person where an application for a Confiscation Order was not granted or was withdrawn, the order was revoked or an application for such an order was never made because in that case the defendant was acquitted. There was a serious default consisting of gross negligence or intentional misconduct on the part of the person involved in an investigation or prosecution and the investigation would not have continued or the proceedings would not have started or continued had the default not occurred and the person suffered a loss as a result of the operation. In our case, it should be the inscription of the privilege and in that case it is the Restraining Order.

We can imagine, Madam Speaker, that the privilege is inscribed on the property of somebody. The enquiry or investigation takes – let's say – six months. The enquiry is referred to the Board. After 42 days, the inscription will lapse, but during that time of six months and then it comes out that the suspect has discharged the onus of proof that rests on him, that is, there is no case against him. For six months, eight months, one year the inscription has been there and he has been trying to sell that property. He found the buyer and he could not sell it because there was an inscription, especially in a period where we know the situation in terms of property, Madam Speaker. So, this person has clearly suffered

prejudice. I think that, in the law, the issue of compensation should have been addressed. Although it should not have been elaborated as it is in the Asset Recovery Act, I think mention should have been made that compensation would be due to somebody if he has undergone the circumstances I have just listed, elaborated upon.

Madam Speaker, these were the points we made constructively. We are not the official Opposition, but we thought that this was an important piece of legislation which will, in fact, arouse a lot of interest and a lot of outcry in the country. We tried, in our humble ways, to better it and we came with these proposals. Some of the proposals have been taken on board but, of course, we are not satisfied with many clauses of this Bill.

We appeal to the Rt. hon. Prime Minister and Minister Bhadain. I know that amendments have just been circulated. I did not have so much time to look at the new proposals in the amendments which have been circulated, but we still have time until the Minister will sum up the debates. We appeal to him to reflect upon the proposals that have been made in this House, not all of them, but to take on board some of the most fundamental proposals.

This brings me to the question, Madam Speaker. We proposed a Select Committee when this Bill was circulated; not to *mettre les bâtons dans les roues*. This Bill has been circulated some six weeks ago, I think now, eight weeks perhaps. We have suggested that it be a Select Committee with a defined time frame, one month - let everybody come. The Minister or some other Minister or the Attorney General could have presided over that Select Committee, made up of Members of the Opposition, of course, and everybody could have come and made their suggestions. I am sure we would have been in presence of a better piece of legislation. The Select Committee was not agreeable to Government, but I hope one day, Madam Speaker, under your speakership, our Standing Orders will be amended to provide for Parliamentary Standing Committees, so that important pieces of legislation like we are having today be dealt with in Committees of the House, not in plenary sessions, as we are doing today.

As you know, most Parliaments in the world, including the Commonwealth countries, have evolved and they have a system of Parliamentary Committees. This system of Parliamentary Committees helps, especially in case of legislation, when we have complex legislation, as we have today. This, I am sure also would have done a lot of good to the debate today, so that in a Parliamentary Committee, we would have, all of us, brainstormed

and listened to other experts for the good of the country and Government, improved this legislation and prevented the risk of this legislation being challenged before the Supreme Court. Although it will be voted by a three-quarter majority, complying with the provisions of the Constitution, we don't know whether somebody will, in the near future, go before the Supreme Court and challenge this piece of legislation, despite the provisions in our Constitution.

This brings me to another suggestion, Madam Speaker, which at one time, I think the MMM/MSM Government or the hon. Leader of the Opposition made it, that we should perhaps inspire ourselves from India, South Africa, Ireland, from other countries, from France with its constitutional code, where the President of the Republic has the power to refer a controversial piece of legislation before it is adopted by the House to the Supreme Court. They call it the President referral, I think, in India. For years now, this proposal has been made in the country. In the case of Ireland, France, the Republic of India, South Africa, the President has the power to refer a controversial piece of legislation, a complex piece of legislation which impinges on human rights, civil liberties and which is proposing an innovative measure like the Bill is proposing today. So, *serenement*, the Supreme Court, in its serenity, in its sovereignty, can decide whether that piece of legislation meets the tests of constitutionality, is compliant with the provisions of our Constitution and the debate will be over and the Government can come, once we receive the advice of the Supreme Court, the ruling of the Supreme Court, with the Bill before this House.

I end up, Madam Speaker, by asking another question to the hon. Minister - it is good he is back. There is one question which has been left unanswered in this Bill. Can Unexplained Wealth Order be issued on illicit property, unexplained wealth abroad, for example. If there is evidence that there is a mansion in London, England, Italy or anywhere in the world and there is clear evidence that this is unexplained wealth and the Agency has undeniable evidence of this illicit property, what happens? Why no provision has been made for the recovery of such an asset, Madam Speaker?

Unfortunately, I am a bit lost in my papers. I have two Acts to which I will refer. This is section 64 in our PoCA. The hon. Minister came lastly with the monetary equivalent, but this is already in our PoCA which, we, MMM/MSM Government adopted in 2002: Payment in lieu of forfeiture. So, under the PoCA legislation, section 64 is addressing the case when the Supreme Court is satisfied that the order for the forfeiture should be made, but it cannot be enforced because the property has been transferred to a third party, etc, or the property is

located outside Mauritius. So, at that time, in 2002, I remember the Prime Minister, the Deputy Prime Minister, hon. Collendavelloo were all engaged in the drafting of this legislation but, as *visionaire*, in fact, this law did think about property locating outside Mauritius. In the PoCA, the Supreme Court may, instead of ordering the property to be forfeited, order the person to pay an amount equal to the value of the property, part or interest. This is what was proposed in the PoCA.

There is another section in the Asset Recovery Act, Madam Speaker, which talks also about property situated outside Mauritius, extraterritorial. In this case, the Board or the Court, the Judge in Chambers could be asked to make an Order, of course, in consultation with the authorities in the UK or Italy for the seizure of that property outside our jurisdiction. Section 61 states –

“The Attorney-General may initiate legal proceedings in a court of a foreign State (...) in order to establish title to, or ownership of, property acquired through the commission of an offence which is also an offence in accordance with Part III of the UN Convention against Corruption 2003, and to seek recovery of that property.”

So, the Attorney Genral, under the Asset Recovery Act, by section 61, may initiate legal proceedings and seek recovery of the mansion which is to be found in the UK, Italy or France or wherever if the Board has evidence. In the case of this legislation, this is an unexplained wealth, Madam Speaker.

Madam Speaker, as you can see, we have expressed a lot of reservation about this Bill; we endorse the laudable objective of this Bill which tantamounts to an extension of the fight against organised crime, against corruption, against money laundering. The fight against fraud and corruption is indeed complex, tedious, protracted and perpetual, Madam Speaker. We have chosen to be part of this war against the accumulation of illicit wealth. The choice for us was whether we should allow the proceeds of criminal activities to be enjoyed by the malefactors and criminals or to support a new framework and innovative platform which would permit the deprivation of ill-gotten gains to those who have been selfish and anti-patriotic in their conduct. But I think we should issue also a word of caution to the present Government by opting for this most radical version of forfeiture law as I have just explained earlier. The Mauritian Government, the Executive has taken upon itself a very daunting challenge, Madam Speaker. A very daunting challenge because this legislation can cut both ways. It could give credibility to this Government in terms of its declared intention to wage

war against unjust enrichment but it could also open the way to frustration if the mechanism is not implemented with fairness and effectiveness and the appropriate safeguards do not operate as expected.

Madam Speaker, the entire notion of controlling crime by taking away ill-gotten gains and by taking away these illicit assets is very appealing in terms of motivation, but in practice the exercise must work without posing any threat to civil liberties. This proposed legislation, if adopted, will put this Government under heavy scrutiny on the national and international level in terms of how this new legislation will be used and I think, Madam Speaker, the Minister must today when he sums up take a pledge before the House that no investigation or enquiry will be triggered by base political motives.

To conclude, Madam Speaker, I would wish good luck to the hon. Minister and this ambitious piece of legislation. We will wait for the reaction of Government on the amendments we have proposed, especially on this issue of the 42 days, Madam Speaker, and in the light of how Government will react to our proposal. In fact, we appeal to Government to review this question of the nomination, the question of the appointment of the Director and the Chairman and also this issue about the inscription of the privilege for the 42 days. And to conclude therefore, the onus of proof is now on the Government to prove how Mauritius can succeed on the path where many countries have chickened out and have not dared to tread.

Thank you, Madam Speaker.

(6.47 p.m.)

**The Vice-Prime Minister, Minister of Energy and Public Utilities (Mr I. Collendavelloo):** Madam Speaker, this is a new Bill to entrench in our law something which did not exist before, a new concept, a new context. It is therefore not surprising that so many points have been made all around within Government, outside of Government, in the Opposition and in civil society. That is not surprising at all.

Some of the points were fanciful, that is not surprising as well! Some of the points were serious. No law is perfect, let alone a law which introduces a new concept. How many times have we had to amend our Constitution to change, to adapt it to the changing of times? So many laws need amendment as we progress but I am not in a Court of Law. I've heard very learned legal arguments sometimes coming from non-lawyers and being of importance based on solid research, going to cases before the European Court of Human Rights such as

my very good friend, hon. Boissézon on the Moroccan Castle in Lourdes and there was no case on any Croatian castle, but we have heard cases cited by hon. Mohamed.

This is as if we are hearing the submissions before the Supreme Court whenever there will be a case. I don't know whether I will have the chance to be in that panel of lawyers who will argue these cases. As the hon. Leader of the Opposition said, there are going to be challenges to these laws. Ordinary laws have been challenged in the Supreme Court. In Khoyratty, it went up to the Privy Council. So, it would not be surprising, but that is not to stop us from doing what we feel we have to do.

The question is fundamental. What happens if somebody has got wealth? I will say wealth not a certain amount of money, not a bicycle, a van nor whatever as has been suggested, but wealth which after representations have been capped at Rs10 m. I was of the opinion that it should have been left to the Judge to decide whether this amounted to wealth or not because wealth is also a relative concept but never mind, it is now Rs10 m., above Rs10 m. you are wealthy, below Rs10 m. you are not wealthy. That does not mean you are poor! That is how it is and I will, of course, have to agree with this.

People say: 'How can it be that I will have to explain my fortune or my way of life, etc.?' Let me say one thing! Every day in Mauritius, in civil cases, people have to explain their way of living. In all alimony cases, the husband is cross-examined and he is asked how much money he earns and how come he can buy a motorcycle to run and how come he pays an air ticket, etc. Ordinary factor graph, of course, is not a property, not confiscated because of this, but he is ordered to pay money as a consequence of his inability to explain his way of life and that is how it should be. Let us not forget apart from civil cases, you have cases like *donation déguisée*. People pretend that the land is theirs. So, the question is: 'How come you had money to pay the land? Every day in our Courts to prove one point only, that Judges of the Supreme Court are well equipped to assess the explanation of persons with regard to their wealth. It is not as if it is a demon that is coming over Mauritius. If we go back at the time of the Commission on drugs chaired by Sir Maurice Rault - Sir Maurice Rault had adopted what at that time was a very new principle. He would call people and he would tell people: 'Please explain how you got this, how so much money in your bank account?' And he irrationally said: 'You can't explain your money, therefore you are a drug trafficker.'

Of course, that was quashed in the Supreme Court because the fact that you are unable to explain the source of your wealth may mean that you are in, I don't know, all sorts of

traffic, that you are part of another mafia, but not dealing in drugs. So, that was quashed because there was no legal basis and, at that time, Government was in agreement with the Supreme Court, that we could not just hold people before a Commission of Enquiry and come to the rash conclusion that he was a drug trafficker just because he could not explain his wealth.

Time went by, then, in the year 2000 as today, the Government was elected with a mandate to do something about fraud and corruption - I am using words which would be as neutral as possible in order not to offend anyone. A Select Committee - which I had the honour to chair - was set up. I seem to recall hon. Baloomoody, I know hon. Dulloo was there because he was very vociferous, and hon. Bodha. We had a long discussion about many things, but then, there was one thing, possession of unexplained wealth.

People talked of Australia, New Zealand etc. We took two cases, Hong Kong and Botswana, where, if you are in possession of unexplained wealth, if you are a civil servant, a public official - which is the difference with today's law - and you are in possession of unexplained wealth or goods or property, not only is your property confiscated, you go to jail. Hong Kong and Botswana! That is the state of the law there. And in Hong Kong, three months ago, the No. 2 of Government - and there we are talking of very, very high official - was trapped and they found out that through a mechanism of trusts he had amassed a fortune. They suspected that this fortune came from leaking Cabinet secrets to businessmen, say, there was going to be a development, so they would buy land and their fortune would increase and they would take a cut. They were not able to prove that thing about the cut, but they were able to prove that he was in possession of wealth and that he could not explain it. He was defended by a counsel - whom I know - and he went to jail. He was jailed, he was made bankrupt so that neither he nor his family, nor his descendants would profit from these crimes. And what was his crime? He was unable to explain where he got that money.

Here, we are not sending people to jail; here, we are saying, for seven years ago you were, as we call it in Mauritius, a '*lapo touni*', now, you have a yacht, you have horses which you carry to the stables, you gamble huge amounts of cash, your house is a mansion, you travel by first class and you have no lawful income to explain it. In the state of our law, there is nothing we can do and we shall come back to this case with the new law to see what will happen.

The Select Committee discussed about it, but we found that would have been dangerous at that time. Soon after that, the United Nations Convention against Corruption their work was progressing and, after the Colombian Chairman died, I was given the honour of chairing this Ad Hoc Committee of the United Nations, and there surfaced that question of possession of unexplained wealth. To my surprise, what I thought was something so foreign to my culture, burden of proof, reversal of burden of proof, right of silence etc., I saw all countries saying yes without any problem, without any discussion and, today, it is part of the Convention that we have to criminalise possession of unexplained wealth. It is, therefore, an international obligation; we are not criminalising, we are bringing about confiscation proceedings. All right, there is a fair point made by hon. Shakeel Mohamed that this is a disguised criminal case. Judges will have to decide all this, but we have to take the law as it is now. One day perhaps, we shall follow American judges. I think that he dealt with American judges - seemingly good judgements. I don't know whether he read the judgement the way he read the law, because the way he read our law was not the way it is written; that is another matter.

But, forget about all these points. The point is that, today, the world over, possession of unexplained wealth is a problem. But forget about the world! In Mauritius, all of us MPs, we know, we go to our Constituencies. And what do people tell us about those who have suddenly enriched themselves? People say: 'Send the Police on them; we don't know how they have enriched themselves'. To clean up society, this is the only way! Because then, people will stop enriching themselves from criminal activities. Now, after the Select Committee, the PoCA came and the compromise solution was that although it would not be made an offence, it could be used as evidence to support a case of corruption. It has never been used; ICAC never even tried to make enquiries on property, they stopped at bank statements etc., and we don't know how it would have been used. It is a section which has fallen in *désuétude* completely with a Prevention of the Corruption Act (POCA) which admittedly needs to be overhauled and this is the Parliamentary Committee which will have to do it. I take the opportunity of throwing this in now.

After that, we had the Assets Recovery Act. Ah! That was a step forward because, for the first time in our law, it was not necessary to prove a conviction before confiscating assets. That was a giant step but, nevertheless, the enforcement authority could have a Restriction Order if it showed that the property is proceeds or an instrumentality or terrorist property without having to show that the property was derived directly or indirectly from a particular



offence or that any person has been charged in relation to such an offence. This could probably answer the point made by hon. Ameer Meea because he was of the view - very retrograde, I think - that you had to prove a criminal activity before you triggered on the Confiscation Order. That was a giant step backwards from what we heard from other Members of the MMM and we shall come to these points later. He seems to be joining the bandwagon of hon. Mohamed, but he was a lonely voice in the MMM's point of view. Certainly, this is not what we heard from hon. Baloomoody, for instance.

The amendment to the Asset Recovery Act was passed in 2012, and that allows me to deal with the point of hon. Mohamed about the seven years. What we are doing is that, at the time that the Agency makes an order, say we are in 2018, the Agency asks for an explanation, it can go back seven years, that is, it goes back to 2011. Under the Asset Recovery Act, it was 10 years prior to the commencement of the Asset Recovery Act. In other words, even now you go back to 2002; even in 2020, you go back to 2002. So, what is all the fuss about? When this came out in the Asset Recovery Act of 2012, I did not hear the Bar Council saying 'oh! Our civil liberties, our human rights are being attacked; going back in time, retrospective legislation!' I did not hear all that. On the contrary, Ministers like hon. Mohamed gleefully voted for the Bill. So, today, we hear retrospective! Then, burden of proof. Let me read an extract from the speech of hon. Varma, the then Attorney General -

“Indeed, Mr Speaker, Sir, under our law, as it presently stands, it is for the Enforcement Authority to satisfy the Court that property or benefit was not derived from an unlawful activity, which is in sharp contrast not only with the practice in other jurisdictions, but also with other pieces of our own legislation dealing with asset recovery like the Dangerous Drugs Act, the Financial Intelligence and Anti-Money Laundering Act and the Prevention of Corruption Act, which all provide for the reversal of the burden of proof. This does not, however, mean that the Enforcement Authority does not have to prove anything because it will still be for the Enforcement Authority to satisfy the Court that a Confiscation Order is justified on a balance of probabilities.”

We have walked just one step further, and see what hon. Varma had to say in 2012! The burden of proof was reversed, the Enforcement Authority did not have to show much, but it had to show a few things. What is going to happen in our law? I mean, it is an easy piece of law to read! The Agency asked for somebody to give an explanation and, at that same time, it can put an inscription. About the inscription, I personally agree that it is a very

fair point made by hon. Ramano. The 42 days should, in my humble opinion, run as from the date that the Agency starts the proceedings. I don't know what the hon. Minister will do about it; I am not going to create a fuss with this as well neither. Then, it sends it to the Board. The Board is a Judge, a retired Judge, but somebody must appoint him! I shall ask hon. Mohamed to appoint the Judge?

*(Interruptions)*

And then, I can say he is independent!

*(Interruptions)*

Of course, the hon. Member would not mind! Let me say that for PoCA we had an Appointments Committee. Don't we remember how the then Leader of the Opposition boycotted sittings which had been called by the President and the Prime Minister at that time and it paralysed the Appointments Committee? Well, let us have something.

A lot has been said about the method of appointment. I am all for finding a method. But, up to now in Mauritius, what do we have? We have powers of the Prime Minister and we have powers of the President. True it is that there has been an evolution whereby we have tried to give increased powers to the President, but when we come to the present law, I have looked at section 64 which is: Exercise of President's functions -

“In the exercise of his functions under this Constitution or any other law, (...)”

And that is the general rule whenever the President exercises functions under a law -

“(...) the President shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet (...)”

That is the rule. He must follow what Cabinet says.

“(...) except (...)”.

And since there are exceptions, to my mind, exceptions are to be interpreted strictly and do not allow for any other extension.

“(...) except in cases where he (...)”, the President, “(...) is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet (...)”

Therefore, that is the first exception where the Constitution says the President must act on the advice of that person or whatever, or where the Constitution says -

“(...) in his own deliberate judgement.”

I have always had doubts about the constitutionality of simple Acts of Parliament which stated that the President shall appoint the Ombudsperson, for instance - forget what there is in that Act - in her own deliberate judgement or in consultation with, etc. This is why I have taken it myself and I have tried to convince the Minister - which is not an easy thing to do - that these provisions, with these new attempts to try and make way for what the Opposition was saying, could open the door to a challenge. And then, we would have appointed somebody in that Agency, the Agency or the Board has taken steps and people go and challenge and say they were wrongly appointed. Are we prepared to take the risk now? That is the point that I am making. I am sure hon. Uteem will have things to say about it.

My colleague, hon. Baloomoody, seems to have no problem about the fundamentals of the law - seems! - except insofar as concerns the procedure.

He found fault in the fact that the law is going to give added jurisdiction to the Judge in Chambers. I have lots of respect and friendship, of course, to hon. Baloomoody, but I am afraid I cannot agree with what he said. It is perfectly within our powers to confer jurisdiction on the Judge in Chambers.

Why do we go to the Judge in Chambers? For precisely the reason that was invoked on the inscription; in order to preserve confidentiality. Because if we would go direct to the Supreme Court, then what would happen? Everybody would know that somebody's property is being under investigation. The first step is you go to the Judge in Chambers. Now, the Judge in Chambers - political tool, again! He has two versions before him either the Director or the Board has put up sufficient grounds to show that it is unexplained property and when he looks at the affidavit of the other party, without hearing witnesses, he finds the case so clear that he makes a Confiscation Order. But that happens every day! Judge in Chambers do that every day. They look at two affidavits and they take a decision, but if they find that there is a difficulty, that the case is not clear, then the Judge in Chambers goes to the Supreme Court. And when he goes to the Supreme Court, when he makes that order, then he can appeal against the decision of the Judge in Chambers. So, what political tool? What political vendetta?

The Labour Party talks that politicians are going to be attacked. So what? Politicians are immuned from the law? There has been a tendency now: so and so is above the law, he cannot be arrested. So and so, why are we going to attack him? They are raising a hue and

cry about political vendetta. It is not political vendetta. It is self-defence in words. That is what is happening. I have no problem. What political vendetta? It will stop at the Judge. They will come and say: “this is a political vendetta”. And then if the Judge thinks that it is so, the Judge will say: “Go to Court, be cross-examined, let a full Court decide”. And the Judge will decide whether it is political vendetta or whether it is really unexplained wealth that he has by millions and millions and millions. And then because he would have looked for it, the hearing will be public and the public will know what is happening. As hon. Rutnah said, we all know, I mean we are not talking of MSM, PMSD, let alone *Movement Liberator*, we are not talking of MMM or *Mouvement Patriotique*. We only want – not the present Members, I concede that – the party to which all eyes are looking at. It’s Labour Party. Why do we have to be shy about it. Saying that at a Congrès I have said: “the Labour Party is the one to be scared of that law”. Of course! The evidence is before us.

*(Interruptions)*

Yes, the evidence is before us. We all know, I know my friends from *Mouvement Patriotique*, they may have made their money. People in the MMM, they are professionals, they made their money with their work and I don’t know anyone who is so wealthy and all that. Hon. Rutnah, I don’t see him as a very wealthy guy.

*(Interruptions)*

I am sorry, hon. Rutnah! Let us face the reality! There has been a problem in Mauritius. Some people were taken in. The MMM was taken in last year by a sort of, called by the then Prime Minister. I don’t know what the Prime Minister of the day told them or whatever happened! But almost they became the innocent shields of the corrupt activities of the Labour Party. God helped us and helped Mauritius to have the results that we had. But then, it is not only this. Today, we are facing a specific situation and everyone has got to decide where to vote. The four young Members of the Labour Party have already committed political suicide yesterday when they decided to vote ‘No’ for the Constitution (Amendment) Bill. I think they are dead again today, again tomorrow, they are dead! I am sorry, they listened to their leader. They had, at least, the chance of abstaining. No! Their leader publicly said: “don’t vote for this law”. Well, they took their responsibility and they will have to explain for years and years to come why they did not vote a constitutional amendment. Voting against the law, that law perhaps you can put reasons forward. But why you did not vote for a constitutional

amendment which would allow Parliament to pass laws? I would not like to be in their place at any debate or any Constituency?

Today, with this law, we have to decide now. Do we want to be the objective ally of corruption, of traffickers by voting 'No' for that Bill? With all its imperfections, I grant it? But are we going to go out and say: "we don't agree on Unexplained Wealth Orders". Alright! Try it, then, don't cry! The issues are simple. There are certain matters which hon. Rutnah called nitty-gritties.

I almost forgot this; there was an interview of Raymond D'Unienville, QC in BIZweek No. 71. I urge each and every one of us to try and read this interview.

*«L'idée d'arrêter l'enrichissement de certains par des moyens illégaux et même criminels est excellente. On ne peut pas continuer à vivre avec d'autres Mauriciens autour de nous dont la fortune a une source illégale, voire criminelle comme je disais. Il faut absolument prendre le taureau par les cornes et faire quelque chose »*

This comes from one of the most conservative lawyers I have ever met in Mauritius. And then -

*« Il faut voir de quoi il en retourne. Si ce qu'ils ont l'intention - that is Government - de faire est de saisir des biens, selon les apparences qui sont des biens mal acquis. C'est un sujet extrêmement délicat parce que d'un côté vous avez la protection de l'article 8 et de l'autre part vous avez cette nécessité d'arrêter absolument cette vague d'enrichissement de certaines personnes, principalement par la drogue. C'est plus que scandaleux ; cela va en sens contraire de tout ce que nous avons cru et préconisé jusqu'à présent. Toute cette civilisation anglaise avec ses respects des droits dans la procédure dans la tenue des cours de justice que nous avons héritée des Anglais. Aujourd'hui, tout ça paraît impuissant devant ce scandale permanent de gens qui s'enrichissent en secret par des moyens illégaux. »*

Be careful! We want to show and prove criminal activity. Try it! How do you prove corruption? How do you prove drugs? But you can prove wealth. This is visible. You can prove standard of life. You can prove *signes extérieurs de richesse*. This is possible! Mr d'Unienville went on to say on the question of appointment –

*« Si on nomme des personnes qui vont se mettre à tort et à travers à saisir des biens sans aller au fond des choses, sans s'assurer au moins d'une apparence d'illégalité, ce serait dramatique. Je suis tenté de vous dire que vous aurez une révolution sous les*

*bras, mais il n'y a aucune raison de penser que ce soit comme ça. Que voulez-vous ? C'est un chapitre nouveau, mais nécessaire. A partir du moment qu'on est satisfait de cela, c'est-à-dire, que c'est une initiative indispensable dans les circonstances, il faut bien laisser ceux qui ont la responsabilité du gouvernement faire. On ne peut pas passer son temps à les arrêter quand ils se lancent dans des initiatives pareilles. Il faut les laisser faire, puis on va voir comment ça marche en pratique. »*

This is common sense ! Therefore, let us not stop at puny obstacles. Let us inspire ourselves from one of the great Mauritians of this country, who, unfortunately, has not been well read because it is an online magazine to which I am *abonné*.

The Opposition has, finally, three choices. The first choice is to vote for the Bill, that if they want to decide and then with all the reservations, but that will be a sign that the Opposition, each and every one of them, is not an objective alike of traffickers, whatever you call it, corrupt people, etc. or to vote against. The Labour Party, at least, is frank about it. They are ready to face the consequences. From then, you have the other, I don't think, I hope the Opposition will not use these tactics, such as walking out or finding a pretext, etc. so as not to be present at the time of the vote. The die is cast. In 15 minutes, we will need to show our hands. And if our hands are clean, what are you scared of? That is the point! And my prayer is that we get a unanimous vote. To my friends of the Labour Party, I urge you, think well! You have a future of 40 years ahead of you. Let it not be said that young people like you, committed political suicide, in order to protect the corrupt of this country. Thank you, Madam Speaker

**Madam Speaker:** Hon. Uteem!

(7.27 p.m.)

**Mr R. Uteem (First Member for Port Louis South & Port Louis Central):** Madam Speaker, ever since this Bill was circulated, it has come under attack. This Bill has come under attack, not only from the Opposition, but from the Government ranks themselves.

The Bill has been attacked by ordinary citizens, law abiding citizens, honest citizens. The Bill has been attacked by the Bar Council, by people who are not defending any corrupt persons, who are not defending any criminals, but who have at heart, the rule of law, justice and the Constitution. There is no disagreement in this House. We all are in favour of hitting the criminals, the corrupt people by seizing their wealth, but there needs to be safeguards.

The proof that we were right is that the Government started by coming forward with three amendments. Three amendments, we commented on them. We told the Government it was not enough, we wanted further amendments. Then, on Saturday, Government circulated a new series of amendments to the Bill. We held a Press Conference. We applauded the Government for its effort in accepting our amendment on the Constitution (Amendment) Bill and this is why yesterday we voted in favour of that Bill. We welcome the proposed amendments made by the Government on Saturday, but we also stated that we have one serious reservation when it comes to the appointment of the Director of the Integrity Reporting Services Agency and the Integrity Reporting Board. Why? Because as the hon. Vice-Prime Minister just reminded the House, it is the first time we are having this legislation. It is the first time we are going to confiscate wealth, money, property, without proving a crime, without any averment of crime, without any allegation that this is derived from a criminal activity, criminal proceeds of crime. First time.

The Agency will be given huge powers to make investigation, investigate in your personal affairs and then come to a conclusion that you have unexplained wealth, then give it to the Board. The Board will look at all the evidence and then the Board, if it has reasonable suspicion, will tell the Agency: "Go to the Court and get whatever Order you need." So, we are giving tremendous power to this Agency and to this Board. As the hon. Vice-Prime Minister said: new powers. Something that has never happened before. So, legitimately, we wanted to ensure that this person, the Director, that Board would not be a political appointee, but also be seen to be independent from any political interference. This is why we proposed that the power be given to the President of the Republic to appoint the Director and the Chairperson and members of the Board after consultation with the Rt. hon. Prime Minister and the hon. Leader of the Opposition.

When the Minister of Financial Services, Good Governance and Institutional Reforms, hon. Bhadain, moved at Second Reading, he clearly showed that in his mind the Rt. hon. Prime Minister is all powerful and the President has to do whatever the Rt. hon. Prime Minister wants. So, for him, whether it is consultation, whether it is advice, it does not matter, the President has to act upon whatever the Rt. hon. Prime Minister suggests, recommends, names for appointment.

The hon. Leader of the Opposition correctly set the record straight and read the Constitution and explained to the hon. Minister that he was wrong. He was wrong. There is a distinction between provisions of the Constitution which provide, for example, that the

President may act in her/his own deliberate judgment, but she does not have to take into consideration anyone's views. If the provision of the Constitution mentions that the President has to act on the advice of, she/he does not have any say in the matter, she/he must act in accordance with that advice. But there is also a third scenario where the Constitution provides that the President would act after consultation with such and such person. Article 64 subsection 4 of the Constitution makes it clear that in such circumstances, the President is not bound to follow the recommendation, the advice given that these people with whom she/he holds consultation. So, that is why for us, on the MMM side, it was very important to determine the power of the President in relation to the appointment. It would have made all the difference in the world if the appointment was made by the President after consultation with the Prime Minister and the Leader of the Opposition.

After the intervention of the hon. Leader of the Opposition, the hon. Minister, together with the Chief Whip, went to see the Leader of the Opposition, took on board his comments and said: "Yes, we are going to come with amendments." In fact, last night, Government even sent a fax to the hon. Leader of the Opposition with the suggested wording of the amendment, which would provide that the President would appoint the Board, the members, after consultation with the Prime Minister and after consultation with the Leader of the Opposition. This morning, the hon. Minister asked me: "What are you going to do? Are you going to vote?" And I said: "We are still concerting". We concerting among ourselves and we found out that there was one provision of the Constitution, which is Article 8 (4A) subsection (a). What this provision of the Constitution effectively said, is that notwithstanding any other provision of the Constitution, if a law, which is passed and which has the effect of compulsory acquisition, any law under section 8 of the Constitution, if that is passed by a majority of three-quarters in the House, that law will not be called in question before the Courts.

So, we sat and collectively thought. We know that there are a lot of shortcomings in this law. We know that tomorrow the Supreme Court will have to determine on the constitutionality of retrospective application, on the constitutionality of the burden of proof, on the constitutionality of confiscation without guilt. We know there are a lot of elements which, undoubtedly - as rightly pointed out by the hon. Vice-Prime Minister, we all know that this law will probably end up before the Supreme Court and before the Privy Council. So, we, as the Opposition, what do we do? Do we give three-quarter majority, so that there is a bar to any right-minded citizen who feels aggrieved by any provision of the law to



challenge that law? Or do we say: “okay, we don’t have to vote, you have the majority, you pass the Bill. You don’t need our vote to pass the Bill. So, you have the majority of the House, you pass the Bill, and then if anyone is aggrieved let that person go before the Court and let the Court decide.” But we don’t want to oust the jurisdiction of the Supreme Court. We don’t want to have to put any constitutional hurdle before any aggrieved party.

As rightly pointed out by the hon. Leader of the Opposition, this Article 8 (4A) (a) was introduced in 1983 for a very specific purpose. That was done at a time when nationalisation was *à la mode* and the Government of the day wanted to ensure that they could pay compensation in tranches over a certain period of time and, therefore, in order not to each time having to come to Parliament and amend the Constitution, there was this all-encompassing Article 8(4A), whose constitutionality has never been tested before the Supreme Court.

So, we informed the hon. Minister that we are not going to vote in favour of this Bill so as not to bar any aggrieved party from seeking redress before the Supreme Court, and we held a Press conference so that no one be taken by surprise. We held a Press conference during lunchtime and made our position clear on why we are taking that position. What is the reaction of the Government? The Government circulates an amendment, and now for the appointment of the Director, for the appointment of the Board, it will be done by the President on the advice of the Prime Minister. Out you go, Leader of the Opposition! Government themselves on Saturday circulated an amendment stating that the President shall appoint on the advice of the Prime Minister, after consultation with the hon. Leader of the Opposition. Now, this Government shows we don’t...

*(Interruptions)*

...on the advice of the Prime Minister, after consultation with the hon. Leader of the Opposition. That was the first amendment that they circulated on Saturday.

So, when they themselves circulated this amendment, they had put ‘after consultation with the hon. Leader of the Opposition’, and now, today, the hon. Vice-Prime Minister wants us to believe that, when he sat in Cabinet, when they decided to have this amendment, he was sleeping and he did not say anything! Or he raised his voice and said: “No, that’s anti-constitutional!” And everybody else told him: “No, sit down, we have decided that the President can appoint after consultation with the Leader of the Opposition”! Today, the hon. Vice-Prime Minister tells us in this House “Oh! I have had reservations all this time about all

these laws which allow the President to appoint someone after consultation with the Leader of the Opposition”!

When he was a member of the MMM, he knows that before every Bill was debated, we, in the MMM, being a most democratic party, every week...

*(Interruptions)*

...we discussed the Bill. At no point in time, has the hon. Vice-Prime Minister ever even hinted that it could be unconstitutional for the President to appoint someone after consultation with the Prime Minister after consultation with the hon. Leader of the Opposition. Never! And he is saying it today...

*(Interruptions)*

Yes, at no point did he ever raise any objection to any provisions of our law which allows the President to appoint anyone after consultation with the Prime Minister and after consultation with the hon. Leader of the Opposition. Never!

But we all see today that the only reason that the Government is going back on their own amendment is because we, the MMM, want to give the chance to every aggrieved citizen who feels aggrieved by this law to be able to challenge this law before the Supreme Court! And that is what history will remember! That is what history will remember, today, in this House, there is absolutely no iota of doubt. The Director who will be appointed to head this Agency, the Board, the Chairman, the members of the Board will be political appointees! They would be...

*(Interruptions)*

... appointed by the President acting on the advice of the Prime Minister!

*(Interruptions)*

That is the case!

And to add insult to injury, for the first time, at the eleventh hour, they had the nerves to come with another amendment in clause 8(A) to entrench this political appointment. This political appointee, this Director, these members of the Board will not be able to be removed even for gross negligence, even for incompetence. We will now have to go through a Judge for their removal. So, today, there is no doubt, this Body that is going to be appointed will be a political Body!

Worse, this Body, this Director, the members of the Board will have protection against criminal and civil prosecution. This is part of the law. They are not accountable for anything that they do in the exercise of their function. Hon. Ameer Meea pointed out, hon. Baloomoody said so, hon. Ganoo mentioned how, without going through Court, without going through the Board, this Director can make an inscription. Without the Court protection, without the Board protection, the Director can go and make an inscription.

Here also they came and said that it is a temporary measure only for 42 days. But we are trained to read the small prints and when we read the small prints, we found out that it is not 42 days. It is 42 days after the Agency informs the Board that there is sufficient evidence for an unexplained wealth. The Agency can take years and months before they finish their enquiry and give that report to the Board. In the meantime, this property is subject to a lien. There is stigma. Everybody knows because it goes on the public record, in the register kept by the Conservator of mortgages where anyone can see. You are suspected of unexplained wealth, therefore, you are a criminal and we have put a seizure on your property.

This is how dangerous this law is and now we are putting this into the hands of political appointees. Why do we need this agency, Madam Speaker? We already have under the Prevention of Corruption Act, ICAC, which investigates corruption offences. We already have under the Income Tax Act, the Mauritius Revenue Authority to investigate people whose standard of living is not commensurate with their declared income. Under the Income Tax Act, the MRA can go and make an inscription. The MRA can go and seize your property to satisfy any tax that is not paid for. Under the Assets Recovery Act, which we voted a few weeks ago, the Financial Intelligence Unit under the Assets Recovery Investigation Unit also has the power - whether it is confiscation based on criminal conviction or civil asset recovery - to seize proceeds of crime.

So, we already have so many agencies doing more or less the same thing. There is bound to be inconsistencies. There is bound to be overlapping. For example, if a person has accumulated wealth by not paying tax, who should sue that person? Should it be the MRA? Should it be the Integrity Reporting Services Agency? According to the law, it will be this Agency because it has overriding powers. But is the people at that Agency better trained than MRA to go after fraudsters, after people who did not pay their tax?

Same thing if there is unexplained wealth which are proceeds of a crime, who is better equipped? Is it the Agency who is better equipped or is it this Financial Intelligence Unit and

Assets Recovery Investigative Unit? And if both are competent why duplicate expenses? If the unexplained wealth is also a corruption offence, should it be ICAC which investigates or should it be the Agency? So, there was absolutely no need to create new Bodies except if you want to have political appointees to dance to your tune.

Now, when it comes to recovery of the fund, what do you do after you have recovered the funds? If it is done by the MRA, it goes to the Consolidated Fund. If it is done by the FIU, 80% goes to the Consolidated Fund and the rest you can use to pay victims of the crimes. But under this law, the money is used either to pay reward or payment to alleviate poverty. So, when you recover this money, are you going to pay it to the Consolidated Fund? Are you going to pay it to victims or are you going to use it to alleviate poverty? So, there is so much of overlapping. Here on this side of the House, we believe that you need everything to be under one control, under one roof. Maybe when we come to the Financial Crime Commission, there would be some new organisations because you cannot have overlapping, you cannot have so much duplication of cost, you cannot have so much inconsistency in law enforcement agencies.

Madam Speaker, when I intervened yesterday and this is a point that has been taken again by other hon. Members. Our problem with the definition of unexplained wealth is that there is no concept of unlawfulness. Instead we have in the definition that confiscation is permitted where you cannot satisfactorily account for the wealth or the property you have. What is the meaning of 'satisfactorily account'? Is it sufficient that you prove that the property was acquired by lawful means? If you are able to show that it is lawfully gain, is that sufficient? What if it is a politician who has received political donation? Over the years he has accumulated political donation. Is that satisfactorily accounted for? If he can show that I am the leader of a political party and I have accumulated all these money from donation, from members of the public or whoever who gives me, there is nothing unlawful about receiving political donation. Will that be sufficient accountability? If I have received a property by way of donation or inheritance, is that satisfactory account or do I have to go and prove that the person who donated me that property or that inheritance, has himself lawfully acquired that property? If I won at the casino, if I won at the horseracing and I did not keep my betting receipt, then I just go and say that I have got all this money through gambling. Is that a satisfactory account? Or do I have to show the receipt? If I do not have the receipt will it be sufficient if I just come and bring evidence that I am a compulsive gambler? So, these

are all real issues that are likely to crop up when we do not have a clear definition of what this unexplained wealth is.

Hon. Ramano did a very good speech and explained the dangers that are linked with co-ownership. This is the reality, Madam Speaker, that very often you will have someone who, when he acquired a house, he would put part of his money in that house and he will take a loan and the loan would be secured on the house.

Now, if it is established that the source of his income did not justify the amount he used to buy this house, then under the law, the Judge can order confiscation of that property. Now, what happened to the property? Is it sold? If it is sold who gets paid first? Is it the Government who takes the money or is it the bank who takes the money?

Similarly, if you have co-owners, joint ventures, two companies, two people came together and brought a property. One used unexplained wealth and one used legitimate money. But the person who has unexplained wealth does not have the money to pay for the order made by the Court, what do you do? Do you sell the property? Does the Government realise what this means in terms of foreign investors who are coming to Mauritius? Previously, whenever a foreign investor comes and invests in Mauritius, he has to ensure that the wealth that his counterpart has is not derived from any crime. That was easy to check. You go and see if this person has been convicted of any criminal offence, has been involved in any offence and there is public record for that. There is no evidence of illegal activities and, therefore, you give a clean opinion that he can invest. But now how are you going to give an opinion that the money which the Mauritian counterpart is coming with is clean money, is money that can be justifiable? It is not unexplained wealth. How can you establish that? What is the means that investors have to be able to ascertain that his co-investor, his Mauritian partner, the money that he is putting is not unexplained wealth?

I would also like to raise another point about this definition of unexplained wealth and that is the third leg. The third leg is where a person holds property on behalf of another person, he must ensure that that property also is not unexplained wealth. Now, I understand fully the logic behind this. It will be too easy for someone to use a *prête-nom* and hide all his properties, all his assets behind this *prêt-nom*, behind this nominee.

I totally agree with that. But have we thought about the consequence of this legislation on our offshore sector. Our offshore sector deals with foreigners but once the foreigners have transferred the property onto a trust in Mauritius, once they have invested

their money onto a global business company that property belongs to the Mauritian trust, which is property of a citizen in Mauritius. That money belongs to the global business company which is again property of a citizen of Mauritius.

So, it is not good to just have a line in this Bill saying that this Bill will apply only to the property of a citizen. The reality is we have an offshore sector which deals in wealth management. What is wealth management? What we do in offshore? Very rich individuals, high-net-worth people, high-net-worth families transfer their assets to be held in a Mauritian trust either for estate purposes or for tax purposes. Now, the Mauritian trustee will have to enquire from all these investors, from all these clients: 'Where did you get your money? Can you explain your wealth?' Can you imagine asking clients to come and justify where you got all your money? Do we realise that we are killing the offshore industry, the wealth management sector of Mauritius?

Madam Speaker, I could not help but have a sense of *déjà vu* when I heard several hon. Members intervening on this Bill. A sense of *déjà vu* because the very same arguments that I heard today, were extensively rehashed and debated three years ago when this House voted the Asset Recovery (Amendment) Bill; issues about constitutionality, issues about retrospective application of the law, issues about presumption of innocence, issues about reversal of burden of proof. They were all discussed in this House and we, in the Opposition, criticised the Bill. We stated that there are genuine concerns about the constitutionality of this Bill. The then Government at that point also came with the same arguments which we heard today that: 'No, we are dealing with civil proceedings, constitutional matters are not relevant'. We heard the same arguments: 'No, we are dealing with right *in rem* not *in personam*'. Right *in rem*! But all the hon. Members who intervened keep saying that they are bringing this law to target certain people. Is that right *in rem*? It suffices that anyone before the Supreme Court goes and cites what has been said today in the '*Travaux Préparatoires*' for the Judges to have a clear idea that this law is nothing about right *in rem*, it is about right *in personam*, it is about right against criminal ill-gotten wealth, to go after the people who have benefited and can't justify their earnings, it is right *in personam* not right *in rem*.

The hon. Vice-Prime Minister cited the former Attorney General, Mr Varma. I think it is fair that I should cite what hon. Pravind Jugnauth, Leader of the MSM stated when he intervened on that Bill. On the issue of constitutionality of the retrospective application, this is what he said, and I quote -

“So, again, I will join my colleagues, my friends who have spoken on the issue of constitutionality. I also have doubts whether this will stand the test of constitutionality. In trying to combat people involved in such a criminal and unlawful activity, I hope we are not going to end up with a situation, hon. Baloomoody has clearly described where there would be a standstill because I can bet that amongst probably the first few cases that will arise, we will have a case before the Supreme Court and probably that will go up to the Privy Council where the issue of constitutionality will be questioned”.

So, that is what hon. Pravind Jugnauth said. He has doubt about the constitutionality of going back retrospectively. Then, when he talked about the definition of unlawful activity, this is what he said -

“Therefore, widening that definition to such an extent might lead to abuse.”

I am not saying it, he said it.

“Be that as it may, this all-embracing definition will certainly infringe the principle of proportionality enshrined in section 7 of our Constitution. It is trite law that there is no need to use a sledgehammer to crack a nut and such a definition will, according to me, not be justified because the impact on the individual is so severe.”

I could not use better words, Madam Speaker, to describe exactly what I feel about this definition of unexplained wealth. We are using a sledgehammer to crack a nut and in doing so, we are putting a lot of honest, ordinary citizens at risk. This is totally disproportionate to what is being sought to be achieved.

So, it is funny, Madam Speaker, how the language of hon. Members change depending on which side of this House they sit. When they are in the Opposition retrospectivity is anti-constitutional, and even hon. Bodha also challenged the constitutionality. He also raised questions about section 8, but, today, he did not say anything; today, he did not say anything about the constitutionality, about the same principles: standard of proof, burden of proof, presumption of innocence.

Today no! We are presenting the Bill, we are in a Government, everything is fine! When we are in the Opposition, everything is bad, but, at least, I am clear with my own conscience because when I was in the Opposition, I raised doubt about the constitutionality of the Asset Recovery Act and today, I am raising the same doubts about the constitutionality of this Bill. Why am I raising this issue, Madam Speaker?

*(Interruptions)*

**Madam Speaker:** Order, order please!

**Mr Uteem:** Because, and that is what I have stated -

“Although there were authorities in European Courts to the effect that retrospective legislation will not infringe European Convention on human rights (...).”

I added –

“But will that carry the day in Court in Mauritius? Unfortunately, Mr Speaker, Sir, nothing can be less certain.”

And then I went on to cite the case of International Financial Services Ltd v/s Mauritius Revenue Authority where the Mauritian Supreme Court, in its wisdom, held that a particular section of the Income Tax Act to the extent that they purported to impose a tax on the applicant’s income with retrospective effect was violating sections 3 and 8 of the Constitution. There was already a case where the Supreme Court had stated that a provision of the Income Tax Act which had retrospective effect, taxing effect, confiscating effect, was in breach of sections 3 and 8 of the Constitution.

Today also I maintain, Madam Speaker, that the retrospective law applicable to asset acquired seven years before the commencement of this Bill is not constitutional. The more so that yesterday when we voted the amendment to the Constitution, we did not provide for any retrospective application of that law in that provision of the Constitution we voted yesterday.

On the issue of reversal of burden, Madam Speaker, I stated that it will depend on proportionality. It must be a proportionate response to the social problem being addressed. The long and the short of it, Madam Speaker, is that I have no doubt that this piece of legislation, this Good Governance and Integrity Reporting Bill will end up before the Supreme Court and possibly before the Privy Council. This is why it was very important for the MMM to take the decision that we took this morning, that we will not vote this Bill to give it three-quarter majority which would be a bar, a constitutional hurdle for any aggrieved party who tries to seize the Supreme Court for redress.

Thank you, Madam Speaker.

**Madam Speaker:** Yes, hon. Prime Minister!



(8.03 p.m.)

**The Prime Minister:** Madam Speaker, I am afraid that hon. Uteem is mistaken when he says that after their request the hon. Minister Bhadain proposed an amendment to the effect that the appointment should be made by the President on the advice of the Prime Minister and in consultation with the Leader of the Opposition. This is completely wrong. It was not this. In fact, in that original amendment it was stated that the President would appoint in consultation with the Prime Minister and the Leader of the Opposition.

*(Interruptions)*

Well, this is what I have been told.

*(Interruptions)*

**Madam Speaker:** Order!

**The Prime Minister:** But in any case, we came to the conclusion that under section 64 (1) of the Constitution which provides an umbrella provision to the effect that in the exercise of his functions, the President shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet. This is why we are going for an amendment which provides that the appointment would be made by the President on the advice of the Prime Minister in accordance with the provisions of that section.

But in any case, we wanted to please the MMM at all cost, but even then the MMM had already decided that they are not going to vote for this Bill. So, it was useless for us to try and please them.

Madam Speaker, the presentation of the Good Governance and Integrity Reporting Bill indeed marks a milestone in the history of this country in terms of the efforts made to promote transparency and good governance.

In our Government Programme 2015-2019, we have pledged for a more just and equitable society, based on the principles of fairness and transparency. It should be recalled that we made this pledge in the wake of the last general elections and mainly in the light of the numerous cases of malpractice recorded during the mandate of the previous Government.

We promised to clean up the country and restore the rule of law. During the last ten months, no effort has been spared in that regard.

This is ongoing and will certainly be pursued for quite some time in view of the scale of the malpractices and other illegal acts committed by the previous regime and their cronies.

Madam Speaker, the House is today in presence of unprecedented proposals to uphold the image of Mauritius as a clean jurisdiction, guided by the principles of transparency and fairness. For too long now we have been witness of the ineffectiveness of the laws, procedures and institutions set up to address the corruption and financial crimes.

At the recent Conference of State Parties on the UN Convention against Corruption held at St. Petersburg, one of the issues raised by SIDS which are party to the Convention, is the ineffectiveness of the provisions of the Convention which have been transposed in domestic legislation. All the SIDS and other states are unanimous on the urgent need for a change in strategy to tackle corruption and financial crimes.

Madam Speaker, in Mauritius, the situation is not so different.

In our arsenal to combat illicit enrichment or unexplained wealth, we have the Financial Intelligence Unit, the Independent Commission against Corruption, the Enforcement Agency under the Asset Recovery Act, the Drugs Commissioner under the Dangerous Drugs Act (insofar as pending investigations under section 45 of the Dangerous Drugs Act are concerned), the Mauritius Revenue Authority and the Mauritius Police Force. Can we, in 2015, be satisfied that what has been done and achieved so far to tackle unexplained wealth and restore the faith of our population on the merits of hard work has been enough? I very much doubt so, Madam Speaker.

And let me be clear, when I say so, it is not meant to be a criticism of the institution concerned but it is rather a reflection on the missing piece of the puzzle in our legal jigsaw to combat unexplained wealth. This is what precisely this Bill purports to do.

This Bill will be a game-changer as, if it goes through, people holding unexplained wealth will have to provide explanations and the signal will be sent to our citizens that Government will not allow dishonest citizens to prosper.

We are duty bound to come with such a legislation as it would be criminal on our part to allow those who have illegally enriched themselves and their cronies at the expense of the taxpayers to go free with impunity.

This is simply unacceptable. It would be the worst example that we could show to the young generation.

Madam Speaker, we cannot continue to live in a society where the standard of accountability and governance varies from one person to another. We keep insisting on the need of a level playing field without really being determined to do so.

This was the state of things in the past which we propose to change as from now on.

Madam Speaker, the mere mention of the Good Governance and Integrity Reporting Bill has, over the last few days, sent waves of shock in the obscure quarters of those who used power for their own greedy interests. Many have started finding the arguments to demonstrate that this legislation has sinister motives and, according to them, have been designed to target opponents of the present regime and to protect those in power today.

Quite a lot has been said on the potential of this legislation as a political tool against opponents.

All these are mere rubbish and nothing has been stated to ascertain what has been adduced.

I have listened attentively to the Leader of the Opposition but he has not actually set out what are the dangerous aspects of this Bill.

Madam Speaker, the Bill has the merit to vest the power to issue Unexplained Wealth Orders in the hands of the Judge. The agency does not have any coercive powers.

Madam Speaker, let me reassure that the Bill presented today on behalf of this Government has very clear objectives. There is nothing sinister and more importantly there is no targeted approach as some would want people to believe.

It is not a surprise that unexplained wealth is not a matter of concern for the Labour Party which is the prime force to resist this legislation. I need not mention the crimes that they committed on the back of the Nation and the number of coffers they have filled with even unused and brand new dollars.

The population is well aware of what had happened under the reign of the Labour tsar and his cronies. If these same people fear the proposed legislation, I believe they have reasons to try to save their skin. However, I want one thing to be clear: we are targeting unexplained wealth and ill-gotten gains, not individuals.

Madam Speaker, if the MMM does not vote the Bill, the proof will be made that they are simply not serious and they want the state of affairs as regards unexplained wealth and ill-gotten gains to remain like it is now.

That the Labour Party would not vote the Bill does not really come as a surprise to us. Corruption is in their culture...

*(Interruptions)*

.... or I should say, now, in their DNA. For them, any lame excuse is enough not to vote the Bill. But when it comes to the MMM, I just can't believe it. The MMM is refusing to vote an anti-corruption legislation! And this, in spite of amendments made, following their own suggestions.

Where are the lofty ideals which this Party stood for? On ground of which high-minded principles are they refusing to vote? Their persistent reluctance only smacks of bad faith and petty politics. One is entitled to ask where were those grand principles when they gave their approval to the Machiavellic plan for a second-Republic, concocted by two persons in a bid to secure personal power and immunity.

*(Interruptions)*

**Madam Speaker:** Mind your language, hon. Rutnah!

**The Prime Minister:** Madam Speaker, the Leader of the Opposition has suggested that this Bill be deferred for further examination. I too, I believe in dialogue and consultations. But I think we have had enough of talking and discussing. What we need now is concrete action, and not "*koz kozé*"

Madam Speaker, the Good Governance and Integrity Reporting Bill is indeed a landmark for the country.

For the first time in our history, we are coming up with a legislation that would make all those who have, through illicit means enriched themselves, account for their deeds and misdeeds.

As I explained yesterday during my speech on the Constitution (Amendment) Bill, what we intend to do is simply to request those who have acquired property which is disproportionate to their income and emoluments to explain the source of funds used to acquire such property.

Madam Speaker, I have mentioned earlier the standard of accountability and transparency that has to be upheld at all times irrespective of party politics and affiliation.

No one should be allowed to act with impunity and there should not even be any whisper of impunity. This is the golden rule which we should all embrace.

The public has, at all times, been the proponent of accountability and has a legitimate locus to demand full disclosure and transparency.

Madam Speaker, it was generally believed that in order to defeat organised crime it was necessary to adopt a repressive approach which envisaged prison sentences up to life imprisonment. Such a strategy had the advantage of reassuring the population and creating a consensus regarding action taken by the executive which preferred tough actions against criminals.

The downside of this approach was that beyond arrests and convictions, the problem was far from being resolved.

Madam Speaker, with time it became clear that money and the rapid creation of enormous wealth were common objectives of any kind of criminal activities worldwide.

It equally became clear that any imprisoned criminal having illicit wealth is able to rule from jail, to have the economic capacity to corrupt and recruit people to carry on his illicit business.

Confiscation of unexplained wealth through civil recovery procedures has changed the landscape and is today a more lethal threat for the criminals as opposed to a prison sentence.

It is a new vista to our endeavor to promote a fair and just society.

Madam Speaker, the assets originating from crimes affect the economy and society as a whole and constitute a threat to democracy as they alter the basic rules and impose non-democratic behaviour. Compared to the past, today's criminals present different features and they are increasingly white collared, businessmen as well as public and private sector individuals.

Madam Speaker, unexplained wealth has distorted our values and created a culture of immorality, indecency, irresponsibility, defiance, injustice, impunity and dishonesty.

The conventional way to progress through hard work and honest means has been set aside by some as the bad example was coming from the top. A new convention had been established where the rule of law, morality, ethical conduct and accountability were no longer the guiding principles.

Madam Speaker, the rustling of dollars, Euros or other currencies is not as noisy as a gunshot. It is discreet, silent, devious and sneaky. So is unexplained wealth.

It does not create the glamour of an armed robbery, and it does not bother to the same degree as the discovery of large amounts of drugs or arms.

However, the social risk they represent should not be underestimated.

Madam Speaker, I am determined, more than ever before, to address these issues in a resolute and effective manner and restore our national values and nothing will stop me in this endeavour.

When it comes to fighting fraud and corruption, my motto is “*no retreat no surrender*”, especially when the superior interests of the country are at stake.

I thank you, Madam Speaker.

(8.23 p.m.)

**Mr Bhadain:** Madam Speaker, we have come to the end of a long process. Throughout this process we have been opened to debates and many suggestions have been made. Until the very last minute, Madam Speaker, we have welcomed consultations, views and suggestions. Unlike other legislation, I believe that this is the first time that a Bill has been opened for public consultation for more than six weeks after First Reading.

Stakeholders in civil society and members of the Bar have also had an opportunity of expressing their views and suggestions. And I am grateful, Madam Speaker, for their contribution which has added value to this Bill.

Madam Speaker, as the mover of the Bill, I have not spared any effort to encourage a participative approach and to respond to all requests for clarifications on the provisions of this Bill. I wish to, personally, thank in particular two persons, the Deputy Prime Minister, hon. Xavier Duval and also, the hon. Leader of the Opposition, for their valuable contribution and advice throughout this process.

Madam Speaker, this is a Bill meant to track down the dishonest few and not the honest majority of hard working citizens of our society. Nevertheless, a perception of climate of fear and confusion has been engineered to defeat the true purpose of this law which is meant to create a level playing field for all Mauritians.

Madam Speaker, unexplained wealth has been discussed before this House and the hon. Leader of the Opposition rightly put the question in July last year when the Declaration of Assets Act was subject to his PNQ which was put to the then Prime Minister. And he actually asked the question as to whether assets being held through nominees or *prête-noms* would be part of the legislation that was then being proposed. And the answer by the then Prime Minister was –

“It is so easy today to just use somebody else’s name and then acquire assets and all these. This will definitely be in the law when we bring it.”

The whole concept of *prête-nom* has been enshrined in our Constitution now because the Constitution (Amendment) Bill has been voted yesterday and it is also in the Good Governance and Integrity Reporting Bill in relation to unexplained wealth. Another question which is rightly again put by the hon. Leader of the Opposition as regards unexplained wealth states -

“Another issue that has been raised is the issue of holding somebody holding assets disproportionate to known income.”

This is actually the definition which is in the Constitution disproportionate with known income.

“Elsewhere, it has been called *signe extérieur de richesse* shown by either Members of Parliament or anybody, including Civil Servants. Will that aspect be covered in the new legislation to come?”

And the then Prime Minister answered and I quote -

“That will definitely be the case, Mr Speaker, Sir. We have nothing against people being rich, but they have to explain how they became rich.”

That was in July last year, Madam Speaker.

In all humility and due respect, Madam Speaker, we have listened to the suggestions which have been made from various quarters and we have brought amendments to the proposed Bill. The new system with those amendments will work as follows –

An Agency is set up with a Director which receives reports and those reports are processed and at the end of that administrative review which is done by verification with other institutions like Registrar, Mortgages, companies and public data basis, then, it is established as to whether somebody is in possession of unexplained wealth or not and a letter

is sent to that person for him to reply within 21 days. All such number of days depending on a case to case basis if there are some reasons as to why, maybe, the person is not in the country, for instance. The person now has to reply by way of affidavit and if he so chooses he can also not put in an affidavit and in that particular case then the Agency will apply for a Disclosure Order from the Judge in Chambers. That is what the Agency does. If there is nothing which merits any further review, then it is discontinued. On the other hand, if there is a case of an unexplained wealth which is detected, then the Agency may come up with an inscription on that property.

We have circulated an amendment. That was the last amendment which was circulated this afternoon at the suggestion of hon. Ramano. And I very much believe he had a point there because the law as it was stated that when the Agency reports to the Board, then there are 42 days from that moment where the inscription would lapse. The point which was raised was what if the Agency takes whatever number of weeks before actually sending the report to the Board, then it would defeat the 42 days. So, we've changed that. It will be from the moment that the inscription has been made 42 days later, it will lapse and the Conservator of Mortgages will do the needful. So, this is the only thing that the Agency can do, reporting to the Board finally, and then the Board which is chaired by an ex-retired Judge or a Commonwealth Judge with two persons of substantial experience and the whole professional people – because it is described in the law as to what their qualifications should be – have to make a decision.

Before they make that decision, they can exchange information with other organisations in Mauritius and then they can also call for production of documents. When they get the information they need, then they make a decision as a Board with the Commonwealth Judge and the other two persons sitting as to whether this case should go to Court or not. If it does not need to go to Court it stops there. That's the second safeguard in the system. Then, it is referred to the Court. When it is referred to the Court, to the Judge in Chambers, it is done on notice. The person knows that it is being sent to the Judge in Chambers, it is *inter partes*, it is not *ex parte*, like for instance, the ICAC does when they go and apply for Attachment Orders or Disclosure Orders or even Freezing Orders. So, once the Judge in Chambers has got the affidavit, then the other party would also come with his affidavits and a decision is made. Now that decision can be three-fold, either to reject the application if it is not *meritus* or he can make the order if he believes that there is a clear-cut case before him and that is done by the Judiciary.



That's why at the beginning, in my speech at the Second Reading, I actually said that it is only the Judiciary which can confiscate an asset, the Executive cannot. The Executive is just running an administrative process as to whether a case should go to Court or not and then the Judge decides. Now if the Judge decides that the affidavit evidence is not sufficient for him to take a decision, then of course, he can send it to the competent Court which is the Supreme Court and then there is a proper hearing, witnesses are called, examined, cross-examined and then the Court decides. It is the Supreme Court which decides whether a Confiscation Order must be made or not and an Unexplained Wealth Order.

Another thing we have introduced in relation to what the Judge in Chambers of the Court can make as an order, Madam Speaker, is the monetary equivalent when it is established that you cannot seize a property because it is not completely generated from an unexplained wealth. So, if a property, for instance, a plot of land belongs to somebody and then there is a mansion which has been built on it, the mansion is an explained wealth, but the land is not, then it gives the Judge that liberty to decide.

The other thing which is interesting, and again, it is a point raised by hon. Ramano, is in terms of what happens when the property has changed hands and it is in the name of a *bona fide* purchaser, somewhere down the line. He referred to that as *le droit de suite*, I believe. This is exactly why we have brought that amendment, Madam Speaker, the monetary equivalent, so that the Judge can decide. The Judge being a Judge of the Supreme Court - and we all vow to the Judiciary, we know how diligent they are when they do their work - they will actually decide what is the best order to give in whatever circumstances. This is not in the hands of the Executive at all.

Now, in terms of other issues which have been raised, Madam Speaker, hon. Ganoo mentioned about declaration of assets and whether those four persons, who are appointed, will have to declare their assets. We have taken good note of that, Madam Speaker. Of course, there will be discussions with the Rt. hon. Prime Minister, but I personally see no reason as to why when we will include public officials and other senior people in society why we are not going to include those four people. I believe it should be there in the Declaration of Assets Act which is going to be amended very soon. I also wish to make a clear statement, Madam Speaker, having heard my friend, hon. Shakeel Mohamed, and also hon. Ganoo, as to whether we are going to use this structure as a political tool. During my speech at Second Reading, I stated that it cannot be used as a political tool and I explained why; because the process itself prevents it.

At the end of the day, there is no power in the Executive hands, and when you look at writing a letter to ask somebody to file an affidavit or an inscription which is going to lapse in 42 days or a Board deciding whether to send a case to Court, I can't see how this can be used as a political tool to cause harm or undue prejudice to any citizen, let alone political opponents, but any citizen. Madam Speaker. Hon. Ganoo asked me to make a statement to that effect. So, I am making that statement. This law, this structure is not going to be used by anybody on this side of this House for political motives. It will not. And now it is in Hansard.

Now, Madam Speaker, in relation to other points which have been made by my friend, hon. Ramful, I join the Vice-Prime Minister, hon. Collendavelloo, when he basically says that the four young representatives of the Labour Party are going to be here for many years probably. I very much believe that especially people from our generation should see that what is being done for Mauritius, for our country today is creating a level playing field, so that people who have unexplained wealth would not distort the economic dynamics of Mauritius going forward. All the economic development which is going to be brought by this Government and probably other Governments should go to people who believe in certain principles, certain values, people who are working hard in society and not people who are abusing the system.

So much has been said about criminals and the law requiring some kind of criminality. But, again, this is the new concept. This is how the world is evolving, and the whole concept of civil orders is being established worldwide because you have problems with criminal systems and you cannot recover assets through those systems. I explained during the debates on asset recovery what happened in the UK and what happened in Mauritius. But it is not only Mauritius and the UK! There are also many other countries where the system basically does not work.

My friend, hon. Uteem, referred to Hansard and the speech of hon. Pravind Jugnauth and also of hon. Bodha with relation to retrospective law. But I must state that his view was not totally what he has stated to Parliament. He also stated, when the debates were going on on the asset recovery law that this aspect of the constitutionality of retrospective legislation has been considered in several jurisdictions, including England, which has a similar provision for their Proceeds of Crime Act, and it has been held by the Court of Appeal in England that retrospective application of the law does not offend the notice of retrospectivity prescribed by Article 7 of the European Convention on Human Rights, which states –

“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.”

And the rationale, my friend, hon. Uteem, says, for them holding that is not against the Convention, is that we are dealing not with a criminal offence but with a civil proceeding. I am sure he understood it then; he must still understand the concept now. Then, he goes on to say -

“So long it is civil proceeding, there are authorities in the European Courts to the effect that it will not infringe the European Convention on Human Rights.”

Then, with regard to the criminality aspect, Madam Speaker, again, when they were talking about unexplained wealth at that time, my friend, hon. Uteem, had this to say -

“Why limit this to unjust enrichment, illicit enrichment, unexplained wealth (...)”

The words are there!

“(...) to only a civil proceeding to recover assets? Why not criminalise it?”

And then he explained the ‘Gro Derek’ saga and said that he was enjoying a standard of living which was not commensurate with his declared income. This is exactly the definition that we have brought into the Constitution: ‘disproportionate with income and emoluments’!

But the view at that time was to make it a criminal offence, and if somebody has unexplained wealth, then it is not the system here, which is the Agency and the Board and the civil proceedings before a Judge in Chambers. The proposal then was to send the person to jail because he has done a criminal offence by having unexplained wealth. That was then in 2012!

What we are doing, whether it is what the Labour Party was proposing in 2014 or what hon. Uteem was saying should happen in 2012, in fact, the system that we have brought is not only a simple system, but it is also an effective system where rights are protected. We have worked very hard to basically make it happen in that particular manner.

In terms of the apprehensions which are there, I can understand that there are apprehensions. But we cannot legislate for every situation, Madam Speaker. We just can’t! We will have to let the law, when it is enacted, work! We will have to set up the Agency, we will have to set up the Board, and then we will have to let them work. If there are issues, then

we will have to deal with those issues, as a responsible Government, and if there is a need to come and make amendments to the law, then we will certainly have to do that.

But all this prophecy of doom and gloom that the law is going to fail before the Supreme Court would be entering the realm of speculation at this stage, I very much believe. I don't think that after all this careful consideration that we have given - and the officers of the State Law Office have also been working very hard, and I must thank them for their input, also the Solicitor General himself, Sir Victor Glover also as consultant and, of course, so many lawyers in Cabinet, Senior Counsels, we have looked at it as well and we can't all be wrong, Madam Speaker. We can't all be wrong!

I do understand that there are issues which probably can be looked at in two different ways. Fair enough! We accept that. But that is not a reason for not voting this law today, especially when we look at how we are going to change Mauritian society; when we look at how we are going to tell this mother who is basically telling the kid to study and he will get a good job and then he will buy a property and form a family, whereas next door you have people who are abusing the system, fraud, corruption, drug trafficking or simply not paying taxes, cheating by doing other things and then going and investing in even more property, creating even more wealth out of the unexplained wealth already there. If we were to accept a situation like that, then we would not be a responsible Government. Then, we would be letting things happen the way they have always been and we would just carry on with our normal day-to-day activity.

So, we decided that we were going to lead by example. We were going to come and change. We want Mauritius to show to the world what kind of law we can bring, how can we change society, and we had the support internationally on that. The Commonwealth Secretariat has decided to make Mauritius a case study on good governance only after one year of us being here and this new Ministry on good governance being created. The United Nations has decided to make Mauritius the platform for anti-corruption reforms for all Small Islands Developing States. A resolution has been voted in the United Nations Convention against Corruption to that effect, and these are all international support that we are getting from high-calibre organisations like the UN and the Commonwealth Secretariat. We must be doing something right, I very much believe. If we were going to go and target political opponents, come with all these vendetta scenarios, then I don't think we would get that kind of support. In fact, I believe that those organisations would then blame us for doing these things, and this is certainly not the intention when we are bringing this Bill to the House.

With regard to everything which has been said on burden of proof, on retroactivity - we have already talked about - but also in terms of right to silence, presumption of innocence and all that, we have to be honest with ourselves, Madam Speaker. The Asset Recovery Act has gone through this House three times with all these things in there and it has always been voted; 2011, 2012 and only a few weeks back and none of these issues were raised. But in this Bill, those issues are being made. Well, for reasons I do not believe, excuses probably, for not voting today. But we are changing society, Madam Speaker; we want Mauritius to be different. We are taking all the right steps to go in the right direction and we need support for that, even from the Opposition and even from my friend, hon. Shakeel Mohamed.

I have to be very honest, Madam Speaker, so much has been said about the previous Prime Minister. The previous Prime Minister whatever he has done, is done. He is not on our agenda. It is not our priority to go and legislate it before this House today to go and harm the previous Prime Minister. That is not our goal. That is not our objective. We have got bigger and better things to do.

*(Interruptions)*

**Madam Speaker:** No interruptions, please!

**Mr Bhadain:** Well, I can assure the House that all discussions which have taken place, whether it is in Cabinet or with my good friend, the Deputy Prime Minister, hon. Xavier-Luc Duval or with the Vice-Prime Minister, leader of the ML, hon. Collendavelloo, or with my leader, hon. Pravind Jugnauth - I mean, never ever have we even mentioned or thought about Dr. Navin Ramgoolam in relation to this law. Why would we do that?

*(Interruptions)*

Maybe, Madam Speaker, ...

**Madam Speaker:** Order, please!

**Mr Bhadain:** Maybe, sitting in his house, he is thinking about us a lot! That probably would be true, but we have work to do. We are going to our office every day and we are doing a lot of work. And at the end of the day, Madam Speaker, when I mentioned economic development, probably it has been taken lightly, but when I mentioned the Smart Cities that the Minister of Finance, hon. Lutchmeenaraidoo, has announced in the Budget and how we want to go and develop these projects, we do not want people with unexplained wealth to come and benefit from that kind of development, certainly not, because then, we

would be working for the wrong people. By creating these opportunities, we would then be putting those opportunities into the hands of people who can avail themselves of those opportunities with unexplained wealth; we do not want to do that.

Madam Speaker, there are other issues which have been raised. I am not going to go into great detail on all the different aspects but, I think, our intentions are clear. I think, even the hon. Members of the Opposition do realise that our intentions are good. We want to do good to society. In fact, I have been working very hard for the last ten months to show to Mauritius - and everybody - that we are going in that direction.

Madam Speaker, the last issue that I want to mention before I stop is in relation to the nomination of those four persons: the Director of the Agency, the Chairman of the Board and the two other members of the Board. Yesterday, after having listened to the speech of the hon. Leader of the Opposition, I took it upon myself to speak to the Rt. hon. Prime Minister, to the Deputy Prime Minister and the Vice-Prime Minister, and also to the leader of the MSM to see whether we could accommodate the suggestions of the hon. Leader of the Opposition.

In fact, the hon. Leader of the Opposition had asked for the Chairperson of the Board to be appointed by the President in consultation with the Prime Minister and the Leader of the Opposition. I actually proposed for all four to be appointed in the same manner and we all agreed. I personally went to see the hon. Leader of the Opposition together with the Chief Whip to propose that. He accepted. I thought it was great because we could unite both sides of the House, in terms of a transparent process of appointment, even though we know that we do not have any motive to go and appoint any person politically who is going to do the job badly, but for perception sake, we said ok, if we can have this consensus that would be great for our country - not for us. I personally asked my staff to fax those amendments to the hon. Leader of the Opposition. I think, it was done probably at one o'clock in the morning. He must have received it early morning.

However, when I came back here today, I was told by the State Law Office that we have an issue in relation to section 64 (1) of the Constitution, I am entitled to make one mistake, Madam Speaker. So, 64(1) of the Constitution basically says -

“When it comes to a law – not the Constitution – which is empowering the President to appoint, it is basically in terms of Cabinet’s decision and the President shall follow that advice of Cabinet or a Minister who is acting under the authority of Cabinet.”

Now, that section 64 (1) applies to this law, the Good Governance and Integrity Reporting Bill. When we look at the other sections of the Constitution, it starts by saying: ‘When the President is directed by this Constitution’; then you can do what was suggested and what was agreed between us, in terms of the consultation process being with the Rt. hon. Prime Minister and the Leader of the Opposition.

So, the State Law Office had this to say -

“This Office has been requested by the Ministry to amend clauses 4, 5 and 7 (1)(a) and (b) of the Good Governance and Integrity Reporting Bill to provide that the Director of the Agency and the members of the Integrity Reporting Board will be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

You may wish to note that section 64 (1) of the Constitution contains an umbrella provision to the effect that in the exercise of his function, the President shall (and it is underlined) act in accordance with the advice of Cabinet or of a Minister acting under the general authority of the Cabinet.

Further pursuant to section 64 (1) it is only where the Constitution requires the President to act in accordance with the advice of or after consultation with any person or authority other than Cabinet or in his own deliberate judgement that the President may do so. Accordingly, the Good Governance and Integrity Reporting Bill being an ordinary law, its provision cannot overwrite section 64 (1) of the Constitution which is the supreme law of Mauritius.

You may wish to refer to the earlier advice tended by this Office regarding the interpretation of section 64 (1) of the Constitution, the judgment of Dayal v/s His Excellency the President and others 1998 SCG 21, at page 3, and the judgment of the Singapore High Court in the case of Yong Vui Kong, the Attorney General 2010 SGHC235.”

So, in light of that, Madam Speaker, we could not knowingly go ahead with a section of the Good Governance and Integrity Reporting Bill, which was going to fall foul of that provision of a Constitution. And I personally apologise to the hon. Leader of the Opposition for that, because I thought we could do it.

*(Interruptions)*

There was no bad intent. We honestly, genuinely wanted this to work and it has to work.

Madam Speaker, I will just finish by saying the following. I believe that we all should unite in our mission to prevent the core principles of honesty and integrity be outshone by selfishness and greed. It is high time for the blood, sweat, tears of our hardworking citizens to be given their true value. They are worth it and they deserve it.

Madam Speaker, the Good Governance and Integrity Reporting Bill will create a new way of democratic life and also a fair Mauritian life. I would like to express my thanks to the Rt. hon. Prime Minister, Sir Anerood Jugnauth, the Deputy Prime Minister, hon. Xavier-Luc Duval, and the Vice-Prime Minister and leader of the ML, hon. I. Collendavelloo and last, but not least, my thanks to a remarkable person, my friend, my leader, hon. P. Jugnauth.

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

*Question put and agreed to.*

*Bill read a second time and committed.*

## **COMMITTEE STAGE**

*(Madam Speaker in the Chair)*

### **THE GOOD GOVERNANCE AND INTEGRITY REPORTING BILL**

**(NO. XXX OF 2015)**

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

*Clause 3 (Application of Act)*

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move for the following amendments in clause 3

—

“(i) in sub clause (2), by inserting, after the words “apply to”, the words “property of”;

(ii) by deleting sub clause (6) and replacing it by the following sub clause

—

(6) This Act shall not apply to —

(a) any property acquired or having come in the possession or under the custody or control of a



person more than 7 years before the commencement of this Act;

(b) unexplained wealth of less than 10 million rupees.

(iii) by inserting, after sub clause (6), the following new sub clause –

(7) No application for an Unexplained Wealth Order shall be made under section 14 in relation to any property acquired or having come in the possession or under the custody or control of a person more than 7 years before the date on which the application is made.”

*Amendments agreed to.*

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

*Clause 4 (Integrity Reporting Services Agency)*

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move for the following amendments in clause 4(5) –

“By deleting the words “, subject to the approval of the Prime Minister, by the Minister on such contractual terms and conditions as he may determine” and replacing them by the words “by the President, on the advice of the Prime Minister, for a period of 3 years and on such terms and conditions as the President may determine”;

**Mr Bérenger:** Madam Chairperson, I was going to speak when we reach clause 7, but, I think, I better do it under clause 4, if I have the floor.

**The Chairperson:** Yes.

**Mr Bérenger:** Of course, it is on this issue of the appointment this afternoon a fourth version of how the Chairperson and Members of the Board and the Director will be appointed. So, I think, I am entitled to go back why we have reached a stage where there has been a fourth and a back-peddalling from Government on this section which relates to how the Chairperson and Members of the Board and the Director of the Agency will be appointed.

If you will allow me, Madam Chairperson, to go backwards, we voted yesterday for the amendment to the Constitution because for that Bill presented by the Rt. hon. Prime Minister to go through, there was need for a three-quarter majority. We voted with Government and we obtained a three-quarter majority for two reasons, as I have said – if you

will allow me to repeat – firstly, we have always been in favour of the law to combat illicit enrichment, and secondly, we obtained the safeguard that whatever we do, after we have amended the Constitution, must be reasonably justifiable in a democratic society. That was yesterday. Now, on the Bhadain law, he has been...

*(Interruptions)*

He said he is pleased when we call it the Bhadain law, I am pleasing him.

There have been very important amendments. *J'ai salué cela*, but we are still not fully satisfied in the Opposition. Not at all, Madam Chairperson! But in the case of this law, today's Bill, there is no need for the three-quarter majority for this Bill to go through. This Bill goes through with the simple majority. Therefore, our vote for this Bill to go through, is not required and we have never said that we are going to vote against. We have never said that! We have never said we will vote against, but what has cropped up is this paragraph, section (4A) (a) of the Constitution going back to 1983, allow me to read –

“Notwithstanding subsection (1) (c), section 17 or any other provision of the Constitution, no law relating to the compulsory acquisition or taking of possession of any property shall be called in question in any court if it has been supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly”.

I repeat, for this Bill to go through, there is no need for a three-quarter majority, a simple majority and we have never said that we will vote against. Now, as I said, this paragraph (4A) (a), Madam Chairperson, brings us back to 1983. This section was put to the Constitution with one purpose only – to allow for nationalisation with compensation spread in time. It was voted for that purpose only, by both sides then. The context today is totally different. We are not talking about compensation spread in time. The context is completely different, Madam Chairperson.

Therefore, when this idea of we must vote ‘yes’, it can only be to use that section of the Constitution and we are not prepared; we are not voting against the Bill, but we are not prepared to give our vote to take out the Judiciary in this context. This is the *l'effet de* what is going to happen. If we vote and there is a three-quarter majority, the Judiciary is out. I consider that it is a mere contempt of court. If we vote, the Judiciary is out, using a piece of legislation which amended the Constitution in 1983, which has nothing to do with what we are discussing and doing today. We will not vote to have the Judiciary out of the whole debate, but, at the same time, we never said that we will vote against the Bill.

Madam Chairperson, if you will allow me, there have been four versions, the fourth one this afternoon, on how the Board and the Agency are appointed. First version, the Agency is appointed by the Minister and the Chairperson of the Board by the Prime Minister. We said 'no'.

So, there was a second version that they will be appointed by the President on the advice of the Prime Minister, which means by the Prime Minister, under our constitutional arrangements, our Constitution and so on. So, that was the second. We said 'no' again and we proposed that they be appointed by the President after consultation of the President with both the Prime Minister and Leader of the Opposition. This was agreed upon, as the hon. Minister himself has said. The Minister and the Chief Whip asked to see me, we discussed, they stayed there and in the middle of the night, a fax came putting that into the law. So, that was the third version.

And today, a fourth version, this time worst. Now, it is appointed by the President on the advice of the Prime Minister, full stop. What I have heard that it is because of the State Law and so on, it is a pretext, it is an excuse.

Madam Chairperson, can I make reference to the dozens of pieces of legislations that we have voted over the past years? Never have the State Law Officers of those days told us this can't be done under the Constitution. This is *une nouvelle découverte*. This is an excuse, Madam Chairperson. This is an excuse. I repeat, we have voted dozens of pieces of legislation. This has never been taken up by either the State Law Office or by hon. Ivan Collendavelloo. Never! We have dozens of precedence, Madam Chairperson.

So, again, we are not voting against the Bill. We are not satisfied with the Bill in spite of all the amendments. We are not voting against the Bill, but we will not give our vote for the Judiciary to be thrown out of the whole process, of the whole issue that we are discussing. I appealed to the Rt. hon. Prime Minister yesterday, and from his body language, I thought we were on the same wavelength. When I appealed to the Rt. hon. Prime Minister, I said: don't ask for a Division. Because there is no need for the Bill to go through if a Division is asked, the only purpose is to throw the Judiciary out of the picture. I appealed and, if tonight a Division is requested, the only reason is to get the Judiciary out of the picture, out of the way. We are not voting against the Bill, but we will not, if a Division is asked, give our vote to get the Judiciary out of the picture. And if a Division is requested, those who give their vote for Government to have under that section that throws out the Judiciary, approve, they will take their responsibility. We are not prepared...

*(Interruptions)*

We are not prepared to give our vote to get the Judiciary out of the picture. Thank you, Madam Speaker.

**The Chairperson:** Hon. Minister, do you want to reply?

**Mr Bhadain:** Yes, Madam Chairperson. Madam Chairperson, there is no way in the whole world that section 8 (4) (a) of the Constitution will throw the Judiciary out. There is no way. The reason for that is because when the hon. Leader of the Opposition himself proposed an amendment initially to the constitutional amendment to say ‘except insofar as it is justifiable in a democratic society’, those particular words were in section 8 (4) (a) but not to be found in the original Constitutional Amendment Bill which was circulated. Because we introduced 8 (4) (aa) after section 8 (4) (a) but we took on board the suggestion of the hon. Leader of the Opposition by inserting those words after the definition of unexplained wealth and when we amended that Constitution (Amendment) Bill, it starts by saying that: “or the provisions of Part II of the Constitution”. Part II of the Constitution is in relation to sections 3 to 16, not Article 1 of the Constitution. So, we put that as suggested by the hon. Leader of the Opposition, ‘except insofar as it is justifiable in a democratic society’, because we were aware that section 8 (4) (a) could, if we were not to do that, prevent somebody from going to Court. Anybody can go to Court, anybody can seize the Judiciary if he so wishes to contest this legislation as being not justifiable in a democratic society. On top of that, Madam Chairperson, Article 1 of the Constitution cannot be derogated from because Article 1 of the Constitution is the Constitution itself. Mauritius is a sovereign democratic State; any law which is passed in this House which fails that particular provision of Article 1 can always be challenged in the Judiciary. So, it is certainly not correct to say that we are ousting the jurisdiction of the Judiciary. The Parliament cannot do that!

**The Chairperson:** So, can I ask the question?

**Mr Ganoo:** Can I just intervene on the same clause?

**The Chairperson:** Hon. Ganoo, the hon. Minister has already replied. You should have made your point. You are referring to clause 4?

*(Interruptions)*

**Mr Ganoo:** It is to put a question to the hon. Minister on clause 4 (5) before it is approved.

**The Chairperson:** Well, I allow you to do that, but you should...

**Mr Bérenger:** On a point of order. We have a number of cases by all the Speakers before you took the Chair, which says that, at Committee Stage, a rigid rule of everybody speaks, the Minister sums up, does not hold. Sometimes, one hon. Member speaks, the hon. Minister replies, another hon. Member speaks, the hon. Minister replies and, at other times, the Speaker asks everybody whether and then, the hon. Minister replies, but there has always been that flexibility under all the other Speakers.

**The Chairperson:** This is so. I allow the hon. Member to do so, but he should have done it before the hon. Minister's reply. Go ahead!

**Mr Ganoo:** Madam Chairperson, you will understand why I am intervening now after having allowed the hon. Minister to reply to the hon. Leader of the Opposition, because my point is not on the same point as raised by the hon. Leader of the Opposition. My point is as follows, the amendment now being proposed is -

“by the President, on the advice of the Prime Minister, for a period of 3 years and on such terms and conditions as the President may determine.”

As far as I know, this is the first time that a law is being presented before this House where the President is being asked to determine the salary, the conditions, in that case the Director of the Agency. Section 28 of the Constitution defines the functions of the President. There shall be a President - what is the role of the President? So, I am just asking the hon. Minister to check with the Attorney General or with his officers from the State Law Office whether it should have been the President or the Prime Minister rather or the Minister himself, but it is not up to the President to decide, to determine the conditions, the salaries, the wages of the Director of the Agency. This is another point.

**Mr Bhadain:** Madam Chairperson, I very much thank the hon. Member for pointing this out. In fact, I missed it out during my Summing-up. When we decided that section 64 (1) as per the State Law Office advice stated as it is stated, we wanted to introduce new safeguards, we wanted to make it transparent as far as possible. So, we thought that when the terms and conditions are determined by the Rt. hon. Prime Minister, that might give the perception that the Rt. hon. Prime Minister is determining how much this person who is going to be appointed will be paid and also all the different things.

*(Interruptions)*

Yes, I will. I am tabling a copy of the advice of the State Law Office, Madam Chairperson.

So, in trying to bring in this level of transparency, we wanted it to be clear that the Rt. hon. Prime Minister has no control on the terms and conditions of appointment and, in fact, Madam Chairperson, I must thank the hon. Deputy Prime Minister for that, he basically stated: 'No, what we have to do also is to put a security of tenure into that appointment process and then we introduce that term of three years. So, there is security of...

*(Interruptions)*

**The Chairperson:** Hon. Members, allow the hon. Minister to make his point. Don't disturb him, please.

**Mr Bhadain:** There is security; so that we could add additional safeguards and to eliminate that perception of lack of transparency only because we could not go ahead with the 'President consulting the Prime Minister and then consulting the Leader of the Opposition'. That is why those two safeguards have been introduced.

**The Chairperson:** Yes, the hon. Member has a point as well?

**Mr Mohamed:** Well, I would like to just thank hon. Ganoo for the excellent point that he has raised. Hon. Ganoo raised a very important point and, just to simplify - I mean, I understand the hon. Minister's explanation, to ensure that there was this transparency, this independence and what not, but, unfortunately, in spite of all good intentions, it is quite simple: the President of the Republic is not the employer in this particular instance and, therefore, legally cannot be the one to dictate and determine the terms and conditions, because the President does not have the legal authority to employ and, therefore, cannot determine the terms and conditions.

That is outside the parameters legally allowable for the President of Republic. That is a fact in spite of all good intentions and this, therefore, cannot be proceeded with.

*(Interruptions)*

**The Chairperson:** Yes, hon. Minister!

**Mr Bhadain:** Madam Chairperson, of course, the State Law Office was there when they drafted it for us when we said we wanted additional safeguards. There has been no legal issue raised whether in the Constitution or otherwise to say that the President of the Republic cannot determine the terms and conditions, and in any case the point of my friend, hon.

Shakeel Mohamed, is that the employer becomes the President. I don't think the employer becomes the President when she determines terms and conditions.

*Amendments agreed to.*

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

*Clause 5 (Powers of Agency)*

*Motion made and question proposed: "that the clause stand part of the Bill."*

**Mr Bhadain:** Madam Chairperson, I move for the following amendments in clause 5 –

“(i) in subclause (1) –

(A) in paragraph (a), by deleting the words “The Agency shall, on its own initiative or where a report has been made in respect of a person under section 9(1) or (2), require, in writing, any person to explain” and replacing them by the words “On receipt of a report under section 9(1) or (2), or on its own initiative, the Agency may, in writing, request any person to explain, by way of affidavit within 21 working days or any such longer period which the Director may determine,”;

(B) by deleting paragraph (b) and replacing it by the following paragraph –

(b) Where the Agency does not receive a reply within the period specified in paragraph (a), it shall apply for a disclosure order under section 13.

(i) by deleting subclause (8);”

*Amendments agreed to.*

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

*Clause 6 ordered to stand part of the Bill.*

*Clause 7 (Integrity Reporting Board)*

*Motion made and question proposed: "that the clause stand part of the Bill."*

**Mr Bhadain:** Madam Chairperson, I move for the following amendments in clause 7 -

“in clause 7(1) –

- (i) in paragraph (a), by deleting the words “Prime Minister” and replacing them by the words “President, on the advice of the Prime Minister”;
- (ii) in paragraph (b), by deleting the word “Minister” and replacing it by the words “President, on the advice of the Prime Minister”;
- (iii) by deleting the words “on such terms and conditions as the Prime Minister may determine” and replacing them by the words “for a period of 3 years and on such terms and conditions as the President may determine”;

*Amendments agreed to.*

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

*Clause 8 ordered to stand part of the Bill.*

New Clause 8A

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move that a new clause 8A be added as follows -

**“8A. Termination of appointment**

(1) The appointment of the Director or any member may be terminated by the President for inability to discharge the functions of his office, whether arising from infirmity of body or mind or from any other cause, or for misconduct, and shall not be so terminated except in accordance with subsection (2).

(2) The appointment of the Director or any member shall not be terminated except where the question of terminating his appointment has been referred to a Judge, to be appointed by the President, and the Judge has, after giving a hearing to the Director or member, advised that the appointment of the Director or member ought to be terminated for inability or misconduct, as the case may be.”

**The Chairperson:** The question is that new clause 8A be read a second time.

*Question put and agreed to.*



*New Clause 8A ordered to stand part of the Bill.*

*Clauses 9 to 11 ordered to stand part of the Bill.*

*Clause 12 (Privilege)*

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move for the following amendment in clause 12 -

“in clause 12(5), in paragraph (a), by deleting the words “be erased by the Conservator of Mortgages at the request of the Agency” and replacing them by the words “lapse 42 days from the date of the deposit of the memoranda at the Office of the Conservator of Mortgages and shall accordingly be erased”;

*Amendment agreed to.*

*Clause 12, as amended, ordered to stand part of the Bill.*

*Clause 13 (Disclosure Order)*

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move for the following amendment in clause 13 -

“In paragraph (b), by inserting, after the word “acquire”, the words “, possess or control”;

*Amendment agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

*Clause 14 (Application for Unexplained Wealth Order)*

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move for the following amendments in clause 14

“By adding the following new subclause –

(3) Where an application is made under subsection (1), the Agency may apply for an order prohibiting the transfer, pledging or disposal of any property.”

*Amendment agreed to.*

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

*Clause 15 ordered to stand part of the Bill.*

*Clause 16 (Unexplained Wealth Order)*

*Motion made and question proposed: “that the clause stand part of the Bill.”*

**Mr Bhadain:** Madam Chairperson, I move for the following amendments in clause 16

“in clause 16 –

- (i) in subclause (1), by adding the words “or an order for the payment of its monetary equivalent”;
- (ii) in subclause (2), by deleting the words “Unexplained Wealth Order” and replacing them by the words “order under subsection (1)”.

*Amendments agreed to.*

*Clause 16, as amended, ordered to stand part of the Bill.*

*Clauses 17 to 24 ordered to stand part of the Bill.*

*The title and enacting clause were agreed to.*

*The Bill, as amended, was agreed to.*

*On the Assembly resuming with Madam Speaker in the Chair, Madam Speaker reported accordingly.*

### *Third Reading*

*On motion made and seconded, the Good Governance and Integrity Reporting Bill (No. XXX of 2015) was read a third time.*

**The Prime Minister:** Madam Speaker, I move for a division of votes.

**Madam Speaker:** I allow the division of votes.

*(Division Bells were rung)*

*On question put, the House divided.*

**AYES**

Hon. K. Teeluckdharry

Hon. K. Tarolah

Hon. Dr. M. R. Sorefan

Hon. Ms M. Sewocksingh

Hon. D. Sesungkur

Hon. Mrs M. D. Selvon

Hon. S. Rughoobur

Hon. K. Ramano

Hon. G. Oree

Hon. Mrs M. C. J. Monty

Hon. G. P. Lesjongard

Hon. J. C. G. Lepoigneur

Hon. J. B. Leopold

Hon. P. Jugnauth

Hon. A. B. Jahangeer

Hon. M. Gobin

Hon. A. Ganoo

Hon. S. Fowdar

Hon. J. C. Barbier

Hon. P. K. Armance

Hon. J. N. A. Aliphon

Hon. R. Rampertab

Hon. S. Ramkaun

Hon. T. Benydin

Hon. Mrs D. Boygah

Hon. M. S. Abbas-Mamode

Hon. J. C. S. Toussaint

Hon. Mrs R. Jadoo-Jaunbocus

Hon. J. F. François

Hon. M. C. E. Boissézon

Hon. J. H. T. Henry

Hon. S. Rutnah

Hon. S. Hurreeram

Hon. P. Jhugroo

Hon. A. C. Duval

Hon. S. Callichurn

Hon. M. R. A. Wong Yen Cheong

Hon. J. R. Dayal

Hon. P. Koonjoo

Hon. Mrs F. Jeewa-Daureeawoo

Hon. S. Bholah

Hon. S. Bhadain

Hon. Mrs M. A. M. J. Perraud

Hon. A. K. Gungah

Hon. S. Baboo

Hon. M. Seeruttun

Hon. M. J. N. E. Sinatambou

Hon. P. Roopun

Dr. the hon. A. Husnoo

Hon. A. Gayan

Hon. Mrs L. D. Dookun-Luchoomun

Hon. N. Bodha

Hon Y. Sawmynaden

Hon. S. Lutchmeenaraidoo

Hon. I. Collendavelloo

Hon. S. Soodhun

Hon. Xavier-Luc Duval

The Rt. Hon. Prime Minister

**NOES**

Hon. D. Ramful

Hon. S. A. Y. A. R. Mohamed

Hon. M. O. C. Mahomed

Hon. E. S. Jhuboo

**ABSTENTION**

Hon. M. R. C. Uteem

Hon. J. P. F. Quirin

Dr. the Hon. Z. H. I. Joomaye

Hon. V. V. Baloomoody

Hon. S. M. A. Ameer Meea

Hon. R. Bhagwan

Hon. P. R. Bérenger

**Ayes: 58      Noes: 4      Abstention: 7**

**Madam Speaker:** The Ayes have it.

*The Bill was read a third time and passed.*

**ADJOURNMENT**

**The Prime Minister:** Madam Speaker, I beg to move that this Assembly do now adjourn to Friday 11 December 2015 at 3.00 p.m.

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

*Question put and agreed to.*

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

*At 9.28 p.m. the Assembly was, on its rising, adjourned to Friday 11 December 2015 at 3.00 p.m.*