

ORAL ANSWERS TO QUESTIONS

CUNNINGHAM, MR BERT – MRA - ALLEGATIONS

The Leader of the Opposition (Mr P. Bérenger) (*By Private Notice*) asked the Prime Minister, Minister of Defence & Home Affairs, Minister of Civil Service & Administrative Reforms and Minister of Rodrigues & Outer Islands whether, in regard to the allegations made by Mr Bert Cunningham that there exists an institutionalised mafia in the country and at the Mauritius Revenue Authority, he will state if –

- (a) he has been made aware of –
 - (i) the speaking points left by Mr Bert Cunningham with Dr. the hon. Deputy Prime Minister, Minister of Finance & Economic Development, in mid December 2007;
 - (ii) the content of a memorandum dated 25 March 2008, addressed to the Financial Secretary, and
 - (iii) the content of an email dated 23 June 2008, copied to Dr. the hon. Deputy Prime Minister, Minister of Finance & Economic Development, and
- (b) he will agree to the setting up of a Commission of Inquiry.

The Prime Minister: Mr Speaker, Sir, with your permission, I will reply to this question as well as to Parliamentary Questions B/1143, B/1144 addressed to me and to Parliamentary Questions B/1160 and B/1169 put to the Deputy Prime Minister, Minister of Finance & Economic Development, as they relate to the same subject.

Mr Speaker, Sir, I should like to state at the very outset that the allegations of Mr Cunningham that there exists an institutional mafia in the country is unsubstantiated and is highly prejudicial to the image and sound reputation that so many people in this country have worked so hard to establish over the years. As a country where there is a firmly entrenched rule of law, with well respected institutions and where the principles of separation of powers are scrupulously observed, we should not allow our institutions to be subjected to such gratuitous attacks.

Our constitution provides for the presumption of innocence, and the process requires that any allegations made must be substantiated and be able to stand in a court of law according to the rule of evidence.

Mr Speaker Sir, Mr Bert Cunningham was recruited as Comptroller of Customs in Mauritius on 15 October 2002. He became Director of Customs in the Mauritius Revenue Authority on a 3-year contract with effect from 01 July 2006, that is, when MRA became fully operational and the post of Comptroller of Customs was abolished. It may be noted that Mr Cunningham also applied at that time (i.e., in 2005) for the post of Director-General of the MRA but his candidature was not retained by the selection panel that was headed by the then chairperson of the MRA, who is now a Member of the National Assembly.

I understand that, before taking employment in Mauritius, Mr Cunningham had been working as an independent Customs consultant and had undertaken a number of assignments in Africa, Asia and the Middle East. Mr Cunningham was also among the team of consultants that was selected in 2000 to investigate the feasibility of establishing as a body corporate a Revenue Authority grouping all revenue departments, including the Customs Department, as an agent of the State and with a degree of autonomy from Government. I am saying 2000, Mr Speaker, Sir, under my own Government. It was the first time Mr Cunningham was approached when I was Prime Minister, to investigate this feasibility of establishing this body corporate as a Revenue Authority.

The contract of employment between Mr Cunningham and the MRA was put to an end with effect on 08 August 2008 through mutual consent between the two parties. The reasons why the MRA – I am just reporting what I have been told, Mr Speaker, Sir - Board has unanimously deemed it in the best interest of the institution to part with the services of Mr Cunningham are now of public knowledge through the press conference held by the Board on Thursday last. I think that afterwards, some people have also spoken.

These are basically -

- (i) gross and repeated insubordination and serious misconduct;

- (ii) incapacity or unwillingness to work within the MRA structures, and operate according to new process and lines of authority
- (iii) persistent non-respect of public institutions and organs of the State;
- (iv) resistance to abide to orders of the Court, and the provisions of the MRA Act;
- (v) making unsubstantiated public allegations and accusations;
- (vi) tarnishing the image and credibility of the MRA as a law-enforcement agency;
- (vii) cause of embarrassment and conflict in top management level and at the Board;
- (viii) representing serious risk of instability to the young institution, and to recently gained momentum.

This is what has been reported.

It is clear that the decision of the MRA Board to do way with Mr Cunningham has - according to the records again, Mr Speaker, Sir - absolutely nothing to do either with the complaint relating to his importation of a TV or with alleged cases of fraud and corruption. This is a separate issue, and people have tried to mingle it.

It is a purely administrative decision between an employer and his employee. In fact, relations between Mr Cunningham and the MRA management and Board have not been quite easy, to say mildly, Mr Speaker, Sir. Since the MRA became operational some two years ago and new management and reporting lines put in place, relations have been deteriorating.

I am informed, Mr Speaker, Sir, that another of divergence between the MRA Board and Mr Cunningham was about the terms of contract of his employment. Mr Cunningham has repeatedly threatened to leave the MRA at very short notice unless his salary package is substantially increased, on the basis that, as a consultant, he would have earned more.

Unfortunately, over the years, the relations between Mr Cunningham and the Board have not been improving.

Indeed, at the request of the Deputy Prime Minister and Minister of Finance, the Financial Secretary and other high officials of his Ministry have had to convene conciliation meetings, on at least two occasions this year, to try to smooth out differences and arrive at an agreement on how to work together as a team. However, at that last meeting held in July, it became quite evident that those efforts were failing and would fail.

I gather that the MRA Board has finally reached the conclusion that it has become virtually impossible for the two parties to work together, and that the only viable option would be a separation.

Mr Speaker, Sir, I should like to point out that the MRA Board as it is presently constituted was appointed in 2004 and all the members, except two, continue to serve on that Board. This is one of the cases where, in fact, we have not changed the Board; the new Government did not change the Board.

(Interruptions)

I have said only two persons are not on that Board. One of the persons was the Chairperson who resigned to join politics and another member had resigned and replaced by a member, they say, from the private sector but, I think, it is a bit of everything. By and large, the Board is composed of a fairly balanced mix of public officials and private sector members.

The allegations of Mr Cunningham essentially hinged on five cases. So, I am going to go through each case, one by one, to explain what is the position, Mr Speaker, Sir.

The Customs Officer posted in Rodrigues - Ms S. L., a Customs Officer employed in Rodrigues, which was under the administration control of the Island Chief Executive, was accused of facilitating the entry in Rodrigues of one Mr Mookan, an alleged drug smuggler, on 28 January 2004. This was when the allegation was made.

According to the information of the Director of Customs she –

- (i) left her place of duty and met this gentleman at the airport;
- (ii) escorted him through customs clearance procedures while he was carrying narcotics;
- (iii) accompanied him in her own vehicle to a hotel room, and
- (iv) was found by Police officers in the hotel room with the gentleman as he was in the act of consuming heroin.

These are the four things.

However, the case was investigated by the Police and no criminal charges were made against the lady. I must say that a fresh enquiry has been conducted, but again no evidence has been able to be put forward, that is, reliable evidence that will be accepted in Court.

Now disciplinary proceedings were also not initiated by Customs Department against Ms Lamto as she was an employee of the Island Chief Executive and the powers to initiate disciplinary proceedings rested with him.

After the establishment of MRA, disciplinary proceedings were initiated on her transfer to MRA by the Director of Internal Affairs. The first investigation was conducted from 24 to 28 November 2006 and since nothing tangible was found, another investigation was conducted from 22 to 31 October 2007. The investigations report was referred to the legal adviser of the MRA and the State Law Office.

The advice was that no disciplinary action could be taken on the basis of the evidence that was available, that is, lack of evidence in other words. MRA Board decided, owing to the lack of evidence, no disciplinary actions could be inflicted on Ms Lamto, but the Director of Customs should closely monitor her conduct.

It was then decided at Board level that Ms Lamto be transferred to another MRA Support/Corporate Division/Department in Mauritius.

The decision of the Board was communicated to Ms Lamto but she claimed that she would not be able to work in Mauritius as she could not deprive her son (who was formerly living with her) from his father's weekly visit. Ms Lamto also hired a barrister for that purpose and a meeting was held on 21 July 2008 between the barrister and the Director-General of the MRA and the Director of Human Resources and Training where the MRA made it clear that Ms Lamto would have to work in Mauritius.

The barrister took note of the MRA's position and agreed to revert back once he meets his client in Rodrigues and finalise the future course of action. Mr Speaker, Sir, I can say that even leading members of the Opposition also asked - without casting any aspersions - to see to it if it was possible for her not to be transferred to Mauritius for the very reason that she has given.

The second case is the case of undervaluation of whisky. MBL Trading/MBL Distribution Ltd is an importer of whisky. In November 2000, following an investigation on the importations of bottled whisky from the UK, 7385 cartons of whisky of various brands (mostly High Commissioner Scotch Whisky), imported by the above named importer were seized by Customs on the ground that their prices were undervalued. The amount short paid was Rs15,668,494. I know the Director of Customs is saying that the amount, in fact, should be, from the information I gathered - I did not hear it myself on the radio - Rs300 m. It is most unlikely, Mr Speaker, Sir. I don't know whether anyone has heard of that brand of whisky, High Commissioner; even our agents won't take that whisky.

(Interruptions)

I think it is unlikely that it is Rs300 m. They have evaluated it as Rs15,668,494.

A notice of seizure was issued on 27 November 2000. The case was referred to Police enquiry by filing a report on 28 June 2002. DPP, on 27 January 2006, advised that in respect of that report no further action could be taken for lack of evidence.

The Director of Customs in a letter dated 24 September 2006 informed the Director-General that DPP had advised him that no further action in the case of evasion of payment of duty and taxes on whisky imported by MBL Trading/MBL Distributions Ltd could be taken for lack of evidence, and requested advice.

MRA Legal Adviser on 28 September 2006 concurred with the advice given by the Director of the Legal Services as well as the opinion of the State Law Office on 25 May 2006 and 23 June 2006 that the whisky be released as DPP had held that there was not sufficient evidence.

The Director of Customs contended that the decision of the DPP should be subjected to Judicial Review as the Customs Officer from UK was willing to adduce evidence about undervaluation. This was referred to the Legal Adviser. The advice of the Director of Legal Services Department dated 12 September 2006 indicated that the decision of the DPP could not be subjected to a new judicial inquiry. The Legal Adviser in his letter dated 28 September 2006 informed that the advice of the State Law Office dated 25 May 2006 and 23 June 2006 were sound and no Court in Mauritius would act on hearsay evidence to convict and punish a citizen of this country. He also stated that the MRA could not report to ICAC or the Minister of Justice and Human Rights if there was no reasonable suspicion of any act of corruption or misconduct having been found. He further advised that since the DPP had found that there was no further action, that he had a constitutional authority to decide whether to prosecute or not to prosecute an alleged offender, further detention of the goods would attract a case for civil damages against the MRA.

In view of the opinion of the Director of Legal Services Department and Legal Adviser based on earlier advice from the SLO, the Director of Customs was authorized to effect the delivery of the goods. Regarding the inability to utilize the evidence collected through U.K Customs and expert witnesses to testify, he was requested to prepare for an amendment in law or regulations to ensure that we do not face similar situations in the future.

Another COR 258/2000 is pending with the DPP. No action is pending at the level of the MRA. Director of Customs still insisted for an independent Judicial inquiry. The opinion of the Legal Advisor and the SLO is that there is no provision in law for independent judicial inquiry as such.

A Complaint with Summons, filed by the importer, has been served on the Director General claiming for damage amounting to Rs302.3 m. The matter is fixed for hearing on 18 September 2008.

It would thus be seen that the case was detected before the present Director of Customs was in place. One report has been disposed by the DPP and the other is still pending.

The Director of Customs has never requested to follow up the case. MRA has been sued for damages and refund of duty. There is thus no connection whatsoever of this case with the termination of an agreement with Mr Bert Cunningham.

The third case is the smuggling of cigarettes by a broker. Customs Department investigated alleged dubious activities of a Customs Broker relating to the importation of container of goods arriving in Mauritius on 19 April 2002. The examination of the container revealed the presence of undeclared cigarettes and other items. The Comptroller of Customs at that time, Mr Gunnoo, in a letter dated 11 October 2002 requests an explanation from Mr Nanhuck as to why action should not be taken against him to revoke his licence as Customs House Broker.

Mr Nanhuck provides written explanation in a letter dated 24 October 2002. The Comptroller of Customs (new incumbent - Mr Cunningham) in letter dated 20 November 2002 acknowledges Mr Nanhuck written explanation and informs that these are being examined through a departmental investigation, and he will be apprised of their findings shortly.

An enquiry is carried out by the Police and ICAC into cases of smuggling related to this case. There is a gap in the correspondence with Mr Nanhuck by Customs for 3 years and 4 months.

Following the conclusion of the Police and ICAC cases, the Comptroller of Customs in a letter dated 22 March 2006 writes to Mr Nanhuck asking once more for written explanation as to why action should not be taken against him as provided for under Section 119 of Customs Act 1988.

In a letter dated 03 April 2006, the legal representative of Mr Nanhuck informs the Comptroller of Customs that his client has nothing to add to the previous statement made on 24 October 2002. A number of other issues are highlighted including his view that there would be a glaring violation of his client's constitutional right to a fair hearing within a reasonable time.

The Comptroller of Customs in a letter dated 30 May 2006 recommends to the Financial Secretary that the authority of Mr Nanhuck to act as a broker be revoked.

The MRA becomes operational on 01 July 2006 and the power to revoke the authority of a broker is now provided to the Director General of the MRA. In a letter to the Director-General dated 26 July 2006, the Director of Customs explains the case and that no response has been received to the letter of 30 May 2006 to the Financial Secretary.

In the meantime, the power to revoke authority to brokers has been provided to the Director-General of the MRA; therefore, the Director of Customs recommends to the Director-General that he revokes the authority of Mr Nanhuck with immediate effect. The Director-General of the MRA seeks legal advice from the Director of Legal Services of the MRA. The Director of the Legal Services in a letter dated 26 July 2006 requests certain clarifications from the Director of Customs including whether a fraud or misconduct has been conducted by the broker and the reasons for the time delay in the case. As I said, Mr Speaker, Sir, the time delay is three years and four months.

The response from the Director of Customs is provided in a letter dated 08 August 2006, in which it is stated that no fraud was committed by the broker and that the time delay in the proceedings was caused by the need to wait for ICAC to complete their investigation; and then forward details of D30/IF/P03/2 relevant statements made by Mr Nanhuck as part of that investigation. These statements were only received by Customs from ICAC on 15 February 2006.

The Director of the Legal Services of the MRA in a letter dated 26 August 2006 provides the Director of Customs her opinion that the findings of ICAC were immaterial for the purpose of the action that the Comptroller of Customs could have taken, (i.e. revoke the authority of Mr Nanhuck as a broker), and that it served no purpose for the Comptroller to await the conclusion of the inquiry conducted by ICAC. Further, the Director of the Legal Services view is that it would constitute an abuse of process for the Director General to now, after nearly four years, act on the findings of the departmental inquiry conducted by the Customs.

In a letter dated 06 September 2006, the Director of Customs provides details of new elements to case found on scrutiny of statements provided to ADSU and ICAC by Mr Nanhuck; it mentions its special nature and gravity and requests that in the circumstances the Director General revokes the authority of the broker, that is, Mr Nanhuck. Again, the Director General requests legal advice based on this new information.

The Director-General informs the Director of Customs in a letter dated 21 November 2006 that in spite of previous clear legal advice by the Director of the Legal Services; given the Director of Customs view that this advice should be reviewed, the Director-General requests legal opinion of the Legal Adviser of the MRA Board in a letter dated 21 November with a copy to the Director of Customs.

The legal advice is provided in a letter dated 27 December 2006. This advice confirms and is in agreement with the previous advice provided by the Director of the Legal Services that any proceedings taken on the facts submitted would constitute an abuse of process. This advice is forwarded to the Director of Customs by the Director-General in a letter dated 28 December 2006.

Further proposals in the case of Mr Nanhuck were received from the Director of Customs in a letter dated 01 March 2007. This is forwarded by the Director-General to the Director of the Legal Services on 15 March 2007 with a request to advise on what action, if any, may be taken and by whom.
D30/IF/P03/3

In a letter dated 04 April 2007, the Director of Legal Services provides advice that maintains previous advice given on 26 July 2006 that the broker's authority cannot be revoked, it would be and abuse of process.

As regards action against the officers involved in this case, ICAC completed its investigation on the four officers and submitted the case to the DPP. On 06 October 2004, the DPP advised no prosecution against them. However, he recommended the Comptroller of Customs to initiate departmental disciplinary action. The officers were reinstated. The disciplinary action is to be taken by the PSC on the recommendation of the Financial Secretary as these cases were never referred by the Comptroller of Customs to the PSC.

The other case is the Mauritius Turf Club case. Customs initiated investigations into possible undervaluation of horses for the period 2002-2007 purchased from South Africa. A letter was sent to the Mauritius Turf Club on 16 May 2007 requesting supporting documents.

The MTC submitted the documents and sought time for furnishing additional documents. Several meetings were held between the MTC and the Customs Department for fixing the valuation of the horses. South African Revenue Service was also contacted for furnishing the valuations. This information was not furnished.

A meeting was held on 04 February 2008 which was attended by the Director General of the MRA, the Director of Customs and the responsible officers of the Customs, the President of the MTC, the General Manager of the MTC, the Financial Manager of the MTC, the Chairman of the Gaming Regulatory Authority (GRA) and the Chief Executive of the Gaming Regulatory Authority.

Both the parties, i.e., the MRA as well as the MTC submitted proposals. The Director of Customs was requested to hold a meeting and find out a reasonable basis of valuation which could be applied in future.

The Director of Customs held a final meeting with the MTC on 09 May 2008 and furnished a proposal on 23 May 2008 of payment of Rs15.2 m. as additional VAT which was agreed by the Director-General of the MRA as well as the MTC. I say again it is the Director of Customs who decided on that sum to be paid.

The amount of additional VAT, i.e. Rs15.2 m. has been paid by the MTC and there is no pending issue in that case.

The last one is Mr Jugessur, the bank guarantee case. On 15 October 2003, Mr Jugessur, a registered importer of spare parts at Customs, was found to have committed the offence of under valuation and submission of false invoices with regard to his consignment of spare parts from Singapore, which is a breach of Section 158 of the Customs Act 1988.

The case was compounded by Mr Cunningham and was ratified by the Revenue Board that Mr Jugessur had to pay duty and VAT short-paid to the amount of Rs695,319 and a penalty of Rs1,663,365 to Customs.

According to Mr Bert Cunningham, Mr Jugessur proposed to tip off on other spare parts importers who were presumably committing undervaluation if the Director of Customs was ready to consider reducing his penalty to which Mr Cunningham agreed and made him an informant without apparently any authority from the Revenue Board. Mr Cunningham reduced his penalty from Rs1,663,365 to Rs695,319 without approval of the Revenue Board.

Mr Jugessur paid the customs duty and VAT amounting to that sum and submitted a bank guarantee amounting to the same sum representing the reduced amount of the penalty imposed on him.

On 09 August 2004, Mr Jugessur produced the original bank guarantee to the MCB and instructed them to cancel it, which the MCB did presumably, it appears, without the authorisation of the Customs Department.

Mr Jugessur confessed to the Comptroller that in return for the Rs125,000 to a Customs Officer, he had exchanged the original bank guarantee against a scanned one, that is, in the file itself.

Disciplinary proceedings were initiated by Customs against that officer. That officer was alleged to have made an attempt of murder on the person of Mr Jugessur and the case is pending. The officer is under interdiction. The Director of Internal Affairs, MRA, conducted an enquiry and came to the conclusion that -

- (a) without the concurrence of the Revenue Board, the penalty of Mr Jugessur was reduced from Rs1,663,365 to Rs695,319;

- (b) he also came to the conclusion that without appropriate authority from the Minister or from the Revenue Board, Mr Jugessur, an offender, was used as an informant, and
- (c) Mr Cunningham did not refer the matter to Police for forging of the bank guarantee and causing loss to the Public Exchequer.

The Director of Internal Affairs recommended to send the case to ICAC as the matter was pre MRA on the following grounds -

- Mr Cunningham may have used his office to offer favourable treatment to Mr Jugessur – this is what is being said, Mr Speaker, I am just saying that - without the approval of the Revenue Authority to the detriment of Customs Department and which may not be the case for other importers - I don't need to state what section of PoCA it is.
- Other Customs Officers involved might have been bribed and taken bribes to commit the massive fraud.

On 12 August 2008, ICAC informed the MRA that, following its investigation, prosecution was recommended, but DPP has advised that Mr Cunningham -

- failed to seek the concurrence of the Revenue Authority prior to deciding whether Mr Jugessur could obtain a lesser penalty, and
- failed to refer the matter to the Police despite the fact that he was advised to do so following an internal enquiry initiated by himself on the faked bank guarantee which was subsequently discovered.

Disciplinary action could have been advised in view of the act of gross mismanagement identified above, if the latter was a public officer. This is what the letter says. However, since this was not the case, no further action was advised against Mr Cunningham.

The last case which is the case of the importation of Dangerous Drugs (Hashish and Cannabis) and the arrest of Malagasy nationals. And I must say this, Mr Speaker, Sir, without going into details. This was one of the effects of this new team that we have put which had information. They had gathered information from outside Mauritius. These people were being tracked and, therefore, ADSU, on the 08 December 2007, assisted by the joint Port Drug Unit and the Customs, arrested six Malagasy nationals at Port Louis Harbour with about 25 kg of Hashish and Cannabis concealed in the frames of tables and suitcases. The Malagasy nationals had travelled by Mauritius Trochetia

from Madagascar via Reunion Island. I can even go further. I think I will not prejudice anything by saying that the information was received, as I said, through information gathering; officials were put on that ship to ensure that nobody tried to throw the drugs above board while the ship was coming to Mauritius. They were being tracked actually on the ship. That is how these drugs were seized, Mr Speaker, Sir, otherwise they would not have been seized.

Following an investigation, three other Malagasy nationals who had already arrived in Mauritius were also arrested in connection with the case.

On 10 December 2007, a provisional Complaint for Drug Dealing to wit “Importation of Dangerous Drugs with averment of trafficking” was lodged against them before the District Court of Port Louis against the nine Malagasy nationals. I must say, Mr Speaker, Sir, they were all remanded to jail and are still in jail. I don’t know where the information is gone that they left the country, they are still in jail.

Further investigation led to the arrest of a Mauritian national on 17 December 2007. A provisional charge for “Causing the Importation of Dangerous Drugs” was lodged against him. He was remanded to Police cell. On 29 April 2008, he was released on bail by the District Court of Port Louis (North) upon furnishing a surety of one million rupees cash, one million as recognizance on his own name and he also has to report to the nearest Police Station every Saturday and to be available through a mobile phone at any time.

Mr Speaker, Sir, as regards part (b) of the question, I should point out that it would not be in the public interest or appropriate to set up a Commission of Inquiry to inquire into the allegations of corruption in connection with the specific cases widely publicised in the media for the following reasons –

- (a) ICAC is the body set up by law to investigate such allegations; if it is investigating, that is, the allegations against other people, it is certainly also capable of investigating any allegations. There are people, who have been appointed by this Government, who are being investigated by ICAC.
- (b) It will be a massive waste of public funds to set up a Commission of Inquiry to investigate these allegations whilst

Government is spending over Rs100m. yearly on ICAC to precisely investigate such allegations.

- (c) Section 12 of the Commission of Inquiry Act prohibits the admissibility of evidence given before the Commission in either criminal or civil proceedings against any person where evidence given before ICAC can be used in, and directly lead to prosecution;
- (d) after a Commission of Inquiry completes its inquiry, no prosecution or disciplinary action can directly result from its findings: ICAC or the Police or other bodies will have to start a new investigation all over again into the alleged acts of corruption and considerable delay, protracted litigation (invariably, Mr Speaker, Sir, Commission of Inquiry findings – I should not say invariably, but very often, they are challenged before the Courts; I, myself did that) - and considerable public expenditure will be involved;
- (e) such unavoidable duplication of the Commission of Inquiry investigation by ICAC of Police will imply months, if not years, of institutional destabilisation, possibly fuelled by a certain section of the press or certain purely politically motivated persons seeking to play politics, as too often is the case in Mauritius; considerable unwarranted prejudice may thereby be caused to the smooth running of the State machinery while ICAC could have itself directly investigated into those cases;
- (f) ICAC has more powers than a Commission of Inquiry, Mr Speaker, Sir, while both can summon witnesses, to call for books, documents, compel witnesses or suspects to answer questions put to them save for the right to remain silent due to the privilege against self incrimination and have access to suspects' bank accounts, ICAC can cause suspects to be arrested and provisional charges laid against them while its investigation is ongoing; the Commission of Inquiry will not be able to do that.
- (g) Any person who disagrees with the DPP's decision not to prosecute somebody may lodge a private prosecution; he may also do so even where there has not been any decision on the DPP's part; there is no need for a Commission of Inquiry before he can do so. In fact, I am told, Mr Speaker, Sir, that it might

not even be constitutional to have a Commission of Inquiry on the DPP himself.

- (h) The DPP's conduct, Mr Speaker, Sir, as you know, under the Constitution, is reviewable by the Supreme Court only and not by any other person or authority; furthermore, I am informed that the DPP has reported a case of criminal defamation to the Commissioner of Police following public allegations of corrupt practice in his office; he did this yesterday, I am told. Mr Cunningham will, if the matter goes to Court, have an opportunity to prove the truthfulness of the allegations made by him.
- (i) Furthermore, Mr Speaker, Sir, like Commissioners of Commission of Inquiry, ICAC staff enjoys immunity for good faith acts done by them and there is no reason therefore to presume that they will fear the consequences of any investigation they carry out into these allegations.
- (j) ICAC has been intended to be, in fact, a standing Commission of Inquiry and every public officer (and Mr Cunningham was a public officer also) had a legal duty under section 94 of the Prevention of Corruption Act, to report to it any suspected act of corruption; he may still do so.
- (k) We should therefore, I think, allow duly empowered institutions to play the role they were intended to play; to say that one does not trust ICAC or the Police is tantamount in saying that one should be free to pick up the Judge or the Magistrates he wants to try his case; no responsible State can allow its institutions to be trivialised in this manner and no one can be allowed to, as if, choose his own Judge or Magistrate.
- (l) I am, accordingly, and in the public interest, referring the cases publicly commented upon by Mr Cunningham and which he raised at the meeting with me to ICAC and Mr Cunningham and any other witnesses should call on ICAC to give any evidence they have to ICAC.

In any case, Mr Speaker, Sir, as I explained, of the six cases I mentioned, I think three have already been dealt with.

Mr Speaker: There are four parliamentary questions which have been answered together with the PNQ. The nature of the questions is such that it has resulted in a long and extensive reply from the hon. Prime Minister and keeping in mind the past practices, I will allow some more time for supplementary questions.

Mrs Hanoomanjee: Mr Speaker, Sir, can I have a point of personal explanation?

Mr Speaker: Yes, the hon. Member has made a request. I have looked at the request and I do not think that the Prime Minister has said anything controversial.

(Interruptions)

According to Erskine May, it is not controversial. A personal explanation must result as a point - in any case, the hon. Member has made her point, I will look into the matter during the recess and I'll come back to it later.

Mr Bérenger: Mr Speaker, Sir, I took note that, on not less than three occasions, the hon. Prime Minister said: "I am only saying what the MRA has informed me about." But, nevertheless, he decided to stand by the MRA with a lot of conviction, apparently, and to justify totally what has happened in the case of Mr Cunningham. Can I ask him how does that tally with the fact that a week ago, on Monday 11, he received Mr Cunningham for three hours - apparently, he was angry at learning a number of things - and immediately, in the presence of Mr Cunningham, phoned the Commissioner of Police to give him back the security that had been removed from him?

The Prime Minister: There is no contradiction in that, Mr Speaker, Sir. Mr Cunningham has said on radio that he would have liked to meet me to inform me of certain things that are very grave and this web of Mafiosi which is operating in Mauritius. Of course, as Prime Minister, I wanted to meet him. When I heard him on the radio - I was in the car - I rang him on the same day and I told him that I would give him an appointment to tell me what information that he has, that maybe I have not been told. But he did not answer his mobile phone. Apparently, he had changed his mobile phone. So, I could not get him on Saturday. I did not try on Sunday, because he was

not responding. And then, on Monday, through my office, I tried to locate him, talked to him and gave him the appointment on the same day. In fact, I also asked the hon. Deputy Prime Minister and Minister of Finance to come in my office because if these allegations are made - I did not know what has been going on at the MRA or the Ministry of Finance - I wanted to have all the information as I could maybe to tell him what is happening. In fact, when he came, he made these allegations that have been enumerated. He told me that he would be able to send me files on these, documents that he had secured, because he did not trust anyone. He had secured them somewhere else. I asked him to have these documents sent to me. In fact, if he could photocopy them, because I do not want him to say one day that the documents he sent me have been lost. So, I said if he could photocopy them, it would be an advantage and then he could keep his own documents and I get the photocopies. He told me that he was worried about his own safety.

Mr Speaker, Sir, as I said, in 2000, in fact, I did not know him, but, through the different contacts, he was recruited here to do this feasibility study. When there was a question of appointing him, I can say – and I think the House knows and I am sure the hon. Leader of the Opposition knows – both myself, as Prime Minister, and the hon. Deputy Prime Minister and Minister of Finance, stood all sorts of criticisms and pressures not to appoint him. But we stood firm because we thought he had done a good job and we needed somebody like this to be here in Mauritius. When he came to see me with all these allegations, I was shocked - I am surprised he actually said it that public - and I did ring the Commissioner of Police in front of him, to ask that he be given security because we did not want anything to happen to him. I even intervened so that he could keep his revolver, if it is possible, because the revolver is given to him by the MRA. I said, maybe, if he says he is driving his car himself alone, apart from the security that the Police give, it would not be a bad idea if he was allowed to keep his revolver. That also I told the Commissioner of Police to allow him to do that. I also asked him to give me all the documents he had and I said - like anybody who would read this - it looked shocking and, in fact, I was annoyed. The hon. Leader of the Opposition has been Prime Minister also knows that sometimes we learn of things that it appears a lot of *magouilles* has gone out. Therefore, I wanted these to be investigated and to know the results. When we investigated the results, from what we heard from the MRA, the Ministry of Finance, the State Law Office and all this, we have documented fully what is, in fact, the truth. As I said, in cases that have been started, the DPP has decided that there would be no case in 2004, Mr Speaker, Sir; it is not happening now. I

myself did not know this, I must say, at the time, that the case has started in 2002, that the DPP had already said that there was no case to answer, there was not enough evidence. I think out of those five cases, three have been disposed of. In the case of the Malagasy nationals, in the papers, I believe it has been said that there was interference to allow them to leave. In fact, never! As I explained, the Police has, in fact, done a very good job, the ADSU had got information, they had put people on that ship, as I said; I should not maybe give all the details. Before these people boarded the ship, they were already on the ship, they were being trapped on the ship to make sure that they did not dispose of the drugs and, as soon as they came down, they were arrested. They had made a case, they have seen lawyers, they had no money, they have no place to stay or whatever and that they should be allowed to leave. But this was not accepted. In fact, they were remanded to jail and as I said, they are still here. When Mr Cunningham spoke to me, I was not aware that there was this case in 2004 which has been set by the DPP and all these things. When I see all these cases, I find that there are two versions to the same story.

Mr Bérenger: Mr Speaker, Sir, I am particularly shocked by the fact that the Prime Minister has taken up what the MRA said and which is a blatant lie that Mr Cunningham has gone as a result of mutual consent. Mr Cunningham - I am sure the hon. Prime Minister will not challenge me - came here on the direct and personal appeal of the Prime Minister; and over the past months, he has had his life threatened, he has had to send his wife and his daughter back to Canada, he has had his security withdrawn - driving security, at the office and at his place. Not only the security withdrawn, his driver withdrawn so that he would travel alone, driving at any time at night and so on. He has been harassed, threatened, forced to go and I find it shocking that the Prime Minister takes up that story that it is mutual consent that has resulted in his departure. In fact, I understand that three Customs Officers are now being looked after by the Police for conspiracy against Mr Cunningham himself. Can I ask the hon. Prime Minister how can he justify all out all that has taken place?

The Prime Minister: I am not justifying all this, Mr Speaker, Sir. I said, when I was informed, I took the measures that I mentioned. We wanted to know what has happened to these cases that he is mentioning. As I said, I think, three out of these cases had been disposed of. Secondly, as to the mutual agreement, as I said, at the very beginning, that relations were not at all at the level best that it could be, to put it mildly, Mr Speaker, Sir. I

think I mentioned that it was clear that the relations had been deteriorating and were deteriorating. When I said they agreed about mutual agreement, in fact, I did mention that even the hon. Deputy Prime Minister and Minister of Finance, we had supported him in the past. I must say that quite plainly. We wanted to see with the higher officials at the request of the hon. Deputy Prime Minister and Minister of Finance to have conciliation meetings. This had been done, at least, on two occasions this year to see whether they could smooth out the differences and arrive to work as a team. It was clear that this was not possible, that they would not be able to work together, that complete trust had broken down. MRA finally decided that since it is virtually impossible for them to work together, to try to come to terms and both of them accepting on agreement. Because in his contract, for example, it is said, if I am not mistaken, that it can be within one month notice, it was decided that this should not be so, should be conciliatory, but let it be on a mutual agreement. This is the context in which this has been done. I am reporting what has been said, Mr Speaker, Sir.

Mr Bérenger: The hon. Prime Minister has referred to some of the big cases, as Mr Cunningham calls them. The Rodrigues Customs Officer, 7,000 cases of whisky, one container of cigarettes illegally imported, 26 kilograms of Hashish seized at the port, the Mauritius Turf Club decrease in the *amende*. Of course, on all these, Mr Cunningham says that there has been cover up, that is his whole point. The hon. Prime Minister has not mentioned two cases. Can I refer to them? The case of Customs Officers at SSR International Airport, caught on CCTV going out to welcome regular passengers - I mean, going in and out of the country regularly - and bringing them through in Customs Officers' uniform. And in that case, what Mr Cunningham says is that the whistle blowers names have been communicated to the guilty persons, their security has been threatened and so on. The other case where Mr Cunningham objects to is the Assets declaration of the Customs Officers. This was supposed to be used to establish illegal *enrichissement*. In fact, Mr Cunningham says that it has been a system for whitewashing, for money laundering and not one single officer pinpointed by Mr Cunningham over the recent years has run into any trouble. So his whole point is that all this there is massive cover up and today, I must say, I am really surprised to hear the hon. Prime Minister, word for word, reproduce what the MRA has said.

The Prime Minister: Mr Speaker, Sir, there are two things. Concerning the case of what happened at the airport - in fact, there was a question I think last week - I myself said that it appears on the camera, they have picked up these Customs Officers. I must say that these cases are being investigated, and thoroughly investigated. I know that the Police are doing an extra work on the pictures to be able to identify and be sure. Very often, Mr Speaker, Sir, you must be able to identify. This is what I say, the evidence must be reliable and must be able to be proved in Court. That is what they are doing actually. This case is not forgotten, but it is still being investigated.

The other case of the officers or the assets declaration, I think this is also being looked into, not at the level of my office, but at different levels.

But, as I said, Mr Speaker, Sir, I am not saying that I am just reading what the MRA has reported to me. This does not fall under my Ministry, Mr Speaker, Sir. I must gather the information. When Mr Cunningham told me all these allegations that were made, I was shocked like everybody else, I am sure, was shocked. But when we investigated and tried to gather all the information that we could this is what has happened. In so many of these cases, it is not actually the same story.

Mr Speaker: I will have another five minutes. I request brief questions and brief answers.

Mr Bérenger: Mr Speaker, Sir, I have two last questions for my part.

Is there any reason why the hon. Prime Minister has not referred or answered at all to part (a) of my question? I made reference to three documents where all these allegations were referred to by Mr Cunningham and more, three documents that have been sent to either the hon. Minister of Finance or to the Financial Secretary. Has the Prime Minister been made aware of the contents of those documents?

The Prime Minister: In fact, I must say, Mr Speaker, Sir, that the speaking points left by Mr Cunningham with the hon. Deputy Prime Minister in 2007 concerned these cases, that is what I have been told - that I have mentioned. That is why I mentioned them without seeing the speaking points.

As for the contents of a memorandum dated on 25 March 2008, I think he referred to the same points, that is what I have been told.

As for the content of an email dated the 23 June which is meant to have been copied to the Deputy Prime Minister and Minister of Finance ...

(Interruptions)

I am sorry, it is the content of the memorandum, I am told, that is dated 25 March 2008 addressed to the Financial Secretary. The Financial Secretary is not in the country. No such memorandum has been found in the Ministry of Finance. But the third one is relating to the same five cases that I have mentioned.

Mr Bérenger: Mr Speaker, Sir, the hon. Prime Minister has stuck his neck out to deny very serious allegations, that there is *une mafia institutionnalisée*, which is a very serious allegation, and what Mr Cunningham has in mind are persons, not everybody, at MRA and Ministry of Finance, including one Adviser, State Law Office and DPPs Office - of course, not the DPP, State Law Office and DPP Office - Police and ICAC. These are very disturbing. I mentioned that to the hon. Prime Minister, if we do not clear the air, the country is going to go through a very difficult time because fundamental institutions have been shaken, including ICAC. Now, ICAC's behaviour in the case of Mr Cunningham himself has been shocking and now the hon. Prime Minister tells us Mr Cunningham, everybody, to go to ICAC. ICAC has no credibility left, especially after Cunningham affair.

Mr Speaker: The hon. Leader of the Opposition cannot make comments on ICAC.

Mr Bérenger: Therefore, can I insist - and I told the hon. Prime Minister - that these allegations are so serious that we should have a Commission of Inquiry with two ex-Judges of the Supreme Court, not even one, to clear the air on all these very serious allegations?

The Prime Minister: The problem is, Mr Speaker, Sir, as I said, at the beginning of my answer, we have institutions in this country. It is not just officers that he has attacked. He has also accused members of the Judiciary. He has also said directly to the DPP...

(Interruptions)

Yes, he has. He has letters. The letters are there, Mr Speaker, Sir.

(Interruptions)

Mr Speaker: Time is running out, let the hon. Prime Minister answer, please.

The Prime Minister: How can I investigate all the Judges, the DPP and everybody else? That is the first point.

Secondly, when we look at the cases, Mr Speaker, Sir, there are lawyers on the other side of the House. They all know, Mr Speaker, Sir, when you decide to prosecute, it must pass the evidential test, that is, the evidence must be able to stand in Court and it must be reliable evidence. Even though the evidence appears important, the Court sometimes excludes the evidence because it feels that the evidence is not proper or not properly gathered or it is hearsay evidence or it is not in the public interest to have the evidence. All this happens. All this we have to take into consideration.

Mr Speaker, Sir, I must again point out that most of these cases happened before I came to Government and I tell the hon. Leader of the Opposition that he himself had inquired into things. In fact, I am informed that, at least, one, probably two meetings, was chaired by him when he was former Minister of Finance. Rightly so, I am not saying that he should not have had, but I suppose he must have faced the same legal constraint and that is why this has gone on, because most of these cases pre-dated this Government coming into power.

Mr Speaker: I will allow only three more questions to three hon. Members who have put their questions.

Mr Guimbeau: Mr Speaker, Sir, the Director-General of MRA stated that Mr Cunningham has been asked to resign because he was always attempting to sabotage, insubordination and misconduct. Can we know, Mr Speaker, Sir, with such gross misconduct, how is it that Rs8 m. of our tax payers' money are being given to Mr Cunningham? In this case of such gross misconduct, Government should not give a penny, Government paid Rs 8m.

Mr Speaker: I have said brief questions and brief answers.

The Prime Minister: Basically, as I said earlier, Mr Speaker, Sir, when we came to power, we had a lot of pressure not to have Mr Cunningham. I think that I mentioned in my answer some time, that he feels he is being paying less, that he would have got if he was a consultant in some other country. In other words, he thinks we are not paying him enough, but we have made an effort to pay him. Some people have criticised us, not only the former Government, for giving him so much; it

was the trade unionists and all this. But myself and the Deputy Prime Minister and Minister of Finance insisted, against all these pressures and lobbies and all those things, that we should keep him because we think he can deliver and give a good job.

What the hon. Member is saying is that we should therefore give him one month notice, one month pay and finish with it. If he says so, I will ask the hon. Ministry of Finance to do that.

(Interruptions)

Mr Speaker: Order now!

Mr Jhugroo: Can the hon. Prime Minister confirm whether the Secretary of Interior has made any report to Government to combat fraud and corruptions at the level of Customs?

Mr Speaker: Whether the Secretary of Interior has made any report to the Prime Minister to combat fraud and corruption?

Mr Jhugroo: Yes, Mr Speaker, Sir.

The Prime Minister: Not such report! We are trying to combat fraud and corruption daily, but there is no formal report on this.

Mr Guinness: Can the hon. Prime Minister assure the House that a 24-hour security service will be provided until the time Mr Cunningham will be in Mauritius, because we heard yesterday that he was supposed to go for an interview on radio, but he was advised, for security purposes, not to go there and to give the interview by phone?

The Prime Minister: I just mentioned it at the beginning. He obviously had spoken to the hon. Leader of the Opposition and it is true that, in front of him, I asked the Commissioner of Police to give him all the security on a 24-hour basis.

Mr Speaker: I have to inform the House that I have given one hour for this PNQ, because four questions have been answered. Time is over! Questions addressed to the hon. Prime Minister!

The Table has been advised that PQ Nos. B/1146 and B/1147 have been withdrawn. PQ No. B/1136 addressed to the Dr. the hon. Prime Minister will be answered by the hon. Deputy Prime Minister and Minister of Finance.