



SIXTH NATIONAL ASSEMBLY

PARLIAMENTARY

DEBATES

(HANSARD)

FIRST SESSION

WEDNESDAY 02 DECEMBER 2015

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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
Hon. Charles Gaëtan Xavier-Luc Duval, GCSK	Deputy Prime Minister, Minister of Tourism and External Communications
Hon. Showkutally Soodhun, GCSK	Vice-Prime Minister, Minister of Housing and Lands
Hon. Ivan Leslie Collendavelloo, GCSK	Vice-Prime Minister, Minister of Energy and Public Utilities
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Hon. Nandcoomar Bodha	Minister of Public Infrastructure and Land Transport
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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

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Hon. Premdut Koonjoo	Minister of Ocean Economy, Marine Resources, Fisheries, Shipping and Outer Islands
Hon. Jayeshwur Raj Dayal, CSK, PDSM, QPM	Minister of Environment, Sustainable Development and Disaster and Beach Management
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Hon. Soodesh Satkam Callichurn	Minister of Labour, Industrial Relations, Employment and Training

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MAURITIUS

Sixth National Assembly

FIRST SESSION

Debate No. 42 of 2015

Sitting of 02 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)

PAPERS LAID

The Prime Minister: Madam Speaker, the Papers have been laid on the Table –

A. Office of the Speaker –

The Annual Report and Audited Accounts of the Independent Commission Against Corruption as at 31 December 2014.

B. Ministry of Finance and Economic Development -

- (a) The Digest of Crime, Justice and Security Statistics 2014.
- (b) The Digest of Labour Statistics 2014.
- (c) The Digest of Agricultural Statistics 2014.

C. Ministry of Education and Human Resources, Tertiary Education and Scientific Research –

- (a) The Education (Amendment) Regulations 2015. (Government Notice No. 227 of 2015)
- (b) The Private Secondary Schools (Amendment) Regulations 2015. (Government Notice No. 228 of 2015)

D. Ministry of Business, Enterprise and Cooperatives –

The Annual Report and the Audited Financial Statements of the Small and Medium Enterprises Development Authority for the year ended 31 December 2010 and 2011.

ORAL ANSWER TO QUESTION

TRIPARTITE COMMITTEE – WAGE COMPENSATION

The Leader of the Opposition (Mr P. Bérenger) (*by Private Notice*) asked the Minister Finance and Economic Development whether, in regard to the annual wage compensation payable to employees for loss of purchasing power due to inflation, he will state –

- (a) why tripartite meetings for discussion thereof have not been held to date, indicating if same will be held urgently and, if so, when and if not, why not, and
- (b) if same will be paid to the employees of both the private and the public sectors, as from 01 January 2016.

Mr Lutchmeenaraidoo: Madam Speaker, the Tripartite Committee usually meets annually a few weeks before the Budget exercise is completed. This year is exceptional because the budget covers a period of eighteen months ending June 2016. The next budget exercise is expected to be completed by May next year. In years when the fiscal year begins on 01 July, the Tripartite Committee Meeting was held in the month of May and the Additional Remuneration Bill was introduced in the National Assembly after the Appropriation Bill has been passed.

As regards part (a) of the question, Cabinet has decided that a Meeting of the Tripartite Committee be convened for determination of the payment of salary compensation on Thursday 03 December.

Madam Speaker, I wish to remind the House that the policy priority of Government this year has been to improve the purchasing power of the most vulnerable families and deal with the issue of absolute poverty. To this end, we have taken several measures.

First, we granted a salary compensation of Rs600 across the board, with effect from 01 January 2015 to all employees which was well over and above the inflation rate of 3.2 percent. This has cost Rs1.3 billion to the public sector and Rs3 billion to the private sector for a total of Rs4.3 billion.

Second, Government has also increased, under the Marshall Plan announced by the Prime Minister, the Basic Retirement Pension substantially, from Rs3,623 monthly to

Rs5000. This has cost the Budget an extra amount of Rs4.7 billion, bringing the annual budget for Basic Pensions from Rs11.7 billion to Rs16.4 billion, that is, an increase of 40 percent.

Third, we have lowered the price of mogas at the pump from Rs45.95 to Rs41.35 per litre, that is, by 10 percent.

Fourth, we have lowered the price of diesel from Rs37.80 per litre to Rs32.75, that is, by 13.4 percent.

Fifth, Government is subsidising basic commodities like cooking gas, flour and rice at a cost of Rs810 m.

Sixth, Government has extended the Youth Employment Programme (YEP) to the public sector, thus employing an additional 1,000 youths.

Seventh, as announced last week, Government is introducing a new social electricity tariff for some 70,000 low-income households that will be effective as from January next year.

Concerning the inflation rate for the year 2015, it is estimated to be around 1.3 percent. This would be the lowest inflation rate over the past 28 years. Government policies and measures aimed at improving the purchasing power of the population have contributed significantly to bringing down the inflation rate to such a low and stable level.

I must stress that if we want to join the league of advanced countries, it is imperative that increases in the wage bill is matched by increases in labour productivity. This is crucial to improving the competitiveness of the country, attracting more investment and creating more jobs.

I wish to inform the House that a 1% increase in wage bill will cost the economy around Rs1.3 billion, that is, 0.3% of GDP.

As regards part (b) of the question, the issue of salary compensation will be addressed by the Tripartite Committee which will make recommendations to the Cabinet.

At this stage, it is premature to pre-empt the decision of Cabinet on this matter.

Mr Bérenger: Am I given to understand since the hon. Minister has made reference to the fact that it is *sans précédent*, that it is on the eve of Christmas that the Tripartite Meeting is being called? Is it not a fact that, in fact, it is being called because in a letter dated

26 November, *ne voyant rien venir*, all the trade unions wrote to the Minister of Finance to request that this Tripartite Meeting should take place?

Mr Lutchmeenaraidoo: The Tripartite was scheduled to take place this year. So, there was this question of when. Well, Cabinet has decided that we are meeting tomorrow. The Tripartite will be meeting tomorrow afternoon and any decision to be taken will be taken by Cabinet.

Mr Bérenger: The hon. Minister wants to make us believe that a meeting was to take place in December, we beg to doubt that very much, Madam Speaker. I heard the hon. Minister say that the Tripartite Meeting will be held tomorrow, if I got him right, whereas Cabinet announced, after Cabinet met last Friday, that it would meet on Friday and then a second time on the 8th and it was even announced that Parliament would consider the Bill to implement whatever decision is taken, that Parliament would meet on 11th to vote the required Bill. Is that still on?

Mr Lutchmeenaraidoo: Well, what is still on is that we are meeting tomorrow; we are listening to the various parties as usual. If we need to meet a second time, we will meet. We can make formal proposals. I will go to Cabinet with the proposals and Cabinet will decide on the quantum.

Mr Bérenger: I heard the hon. Minister insist that it is the lowest rate of inflation that we have this year, for many years, but the tone adopted could be interpreted as meaning that there will be no wage compensation as from 01 January, being given this rate of inflation. Can I ask, therefore, the hon. Minister whether the principle that there will be a wage compensation as from 01 January is on?

Mr Lutchmeenaraidoo: The principle of a wage compensation is on, though we all know that, in one PRB Report, it was agreed that for the public sector when inflation rate is less than 5%, there would be no compensation. We also realise that when it comes to decision making, we have to see and listen to everyone. So, the meeting with the unions tomorrow and the employers will allow us to make a clearer picture of where we are going and where we should go.

Mr Bérenger: Regarding part (b) of my question, the hon. Minister has just come back to the country, I think, but I am sure he must have had time to feel the frustration, the concern in the public sector, being given that information is circulating that if there is a wage compensation in the private sector, there might not be one because of the PRB considerations.

Now, can I know whether the trade unions from the public sector will be present at the Tripartite Meeting that has been called for tomorrow and, if not, whether this is not sending the wrong signal to the public sector?

Mr Lutchmeenaraidoo: The public sector trade unions are being invited for tomorrow.

Madam Speaker: Hon. Uteem!

Mr Uteem: Thank you, Madam Speaker. The hon. Minister of Finance mentioned that we have a Budget for 18 months which will end in June of next year, 2016. So, may I know from the hon. Minister of Finance whether there would be a second exercise of compensation carried out in July 2016?

Mr Lutchmeenaraidoo: When we come to the bridge, we will decide.

Mr Bérenger: My last question: being given that the Minister has said the principle that there will be a wage compensation to compensate for inflation is on, can I know at this stage whether the Minister has any *ordre de grandeur* that would be suggested to the trade unions tomorrow?

Mr Lutchmeenaraidoo: Well, I cannot pre-empt on the outcome of the Tripartite Meeting. We are four Ministers present there, we have the private sector, we have the trade unions and I want to listen to them - listen and come with proposals.

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.

(11.46 a.m.)

STATEMENT BY MINISTER

STC – PETROLEUM PRODUCTS - TRANSPORTATION COST

The Minister of Industry, Commerce and Consumer Protection (Mr A. Gungah): Madam Speaker, with your permission, I propose to make a statement with regard to the

costs incurred by the State Trading Corporation (STC) for the transportation of petroleum products for the country from May 2011 to July 2016.

On 08 September 2015, I informed the House that in November 2009, the STC signed a Contract of Affreightment (COA) with Betamax Ltd for the transportation of petroleum products over a period of 15 years at an estimated minimum cost of Rs10 billion, excluding the cost of bunker fuel, demurrage fees, port dues, and the element of escalation rate. The COA became effective in May 2011.

Towards the end of January 2015, the STC stopped having recourse to the services of Betamax Ltd.

From May 2011 to January 2015, Betamax Ltd had transported 4,067,703 tons of petroleum products for the STC for which the STC had paid the sum of 125,244,128 USD to Betamax Ltd, that is, an average of 30.79 USD per ton.

For the period February to November 2015, the STC had recourse to spot charters for the transportation of 859,486 tons of petroleum products and has paid freight and demurrage amounting to 22,383,358 USD, that is, an average rate of 26.04 USD per ton. Thus, the STC has saved 4.75 USD per ton, representing a total amount of 4,082,559 USD for the said period.

(Interruptions)

Madam Speaker: Hon. Jhugroo, please, don't start interrupting!

Mr Gungah: In the meantime, the STC has carried out a tender exercise for the award of Contracts of Affreightment to cover the period December 2015 to July 2016, that is, the end of the current contract of supply of petroleum products between the STC and the Mangalore Refinery Petrochemicals Ltd. The STC had enlisted the services of an international consultant, Ocean 5 GmbH, for that purpose.

I am informed by the STC that on 26 and 30 November 2015, it has proceeded with the award of two Contracts of Affreightment for the transportation of white oils and black oils respectively for the period December 2015 to July 2016.

As per these COAs, the STC estimates that 786,000 tons of petroleum products would be transported to Mauritius with freight costs amounting to 17,910,480 USD, that is, an average of 22.78 USD per ton, excluding demurrage fees.

In this context, when making provision for two days of demurrage per trip, the average cost for freight and demurrage would amount to 23.79 USD per ton.

Thus, when compared with the average rate of 30.79 USD per ton paid to Betamax Ltd, it is estimated that the savings to be made by the STC would range between 7 to 8.01 USD per ton, representing a total amount between 5,502,000 to 6,295,860 USD for the period December 2015 to July 2016.

Consequently, for the period February 2015 to July 2016, the STC would make savings of not less than 9.5 m. USD.

I thank you, Madam Speaker.

PUBLIC BILLS

Second Reading

THE CONSTITUTION (AMENDMENT) BILL

(NO. XXIX OF 2015)

Order for Second Reading Read.

The Prime Minister: Madam Speaker, I move that the Constitution (Amendment) Bill (No. XXIX of 2015) be read a second time.

Madam Speaker, the object of this Bill, as stated in the Explanatory Memorandum, is to amend section 8 of the Constitution so as to provide for the taking of possession of property –

- (i) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
- (ii) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
- (iii) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person, by way of confiscation.

Madam Speaker, as the House is aware, the Constitution (Amendment) Bill (No. XXIX of 2015) is intrinsically linked to the Good Governance and Integrity Reporting Bill which equally appears on the Order Paper of today's sitting and which seeks to promote a culture of integrity and good governance in the country.

Madam Speaker, on 10 December 2014, the people of the country voted massively for a change of Government. They wanted to put an end to a period that was characterised by widespread fraud and corruption, and where accumulation of wealth from illicit gains had become the norm.

People were fed up with the unbridled malpractices and abuse of positions and power in the public domain and they finally expressed their disapproval and resentment by booting out a political establishment that was rotten to the core.

The message that the people sent was very clear. They wanted a society free from the shackles of corruption, mafias and political interference. They wanted a fairer society, where there are opportunities for all and not for a privileged few. And this is precisely what we promised to the nation. They expressed their overwhelming support and faith in our *projet de société*, which rekindled their waning hope in the future of this country.

We pledged to conduct business on the principles of discipline, transparency, accountability and exemplary governance. We took a firm commitment to act decisively to address the social and economic problems that have plagued our nation for nearly a decade. We have a clear mandate from the people to bring about meaningful change. And good governance is a prerequisite for meaningful change. We will therefore remain steadfast in our commitment and relentlessly fight fraud, corruption and financial crime. We will leave no stone unturned to eradicate malpractices and irregularities from all aspects of public life and restore our national values.

The scourge of grand corruption is a cancer that is at the root of many of our problems. I have, therefore, made the fight against fraud and corruption a high priority for my Government.

Madam Speaker, the questions that the proposed Constitution (Amendment) Bill seeks to address go to the heart of what type of society and economy we want to have in this country. As we all know, there has been a lot of hue and cry over these two Bills. Let me most emphatically state what this Bill does not intend to do.

The Bill is not making everybody a prime suspect of illicit enrichment. We are also not implying that getting rich is a sin.

We are not against the rich or the accumulation of wealth *per se*. Honest people have nothing to fear. Whatever they may have earned rightfully and lawfully will be theirs to enjoy. The aim of Government is to check accumulation of wealth through backdoor mechanisms. And there is nothing wrong with this.

This is the reason why the majority of the people of this country support this initiative of Government. Besides, in an interview given on a private radio in the context of the introduction of these two Bills, a former Chief Justice (Sir Victor Glover) stated, and I quote -

“Vous et moi, nous savons qu’il y a des gens autour de nous et nous demandons comment ils ont reçu cet argent-là. Ce n’est pas une mauvaise chose de savoir où ils ont eu cet argent-là”.

He added, in the same vein, that the proposed new Bill is tenable and will be useful if it is applied properly.

Madam Speaker, the new Bill provides for a confiscation mechanism to allow the Integrity Reporting Services Agency to proactively question suspicious unexplained wealth and to start proceedings for the confiscation of the relevant assets.

Of course, we do have the Assets Recovery Unit and also had the defunct Drugs Asset Forfeiture Office.

But as you all know, the rate of asset recovery by these two agencies has undeniably been very low, compared to the suspected scale of the problem. Building strong and effective institutions is, therefore, key to fighting grand corruption. The experience of Ireland with confiscation of unexplained wealth has confirmed its effectiveness in depriving criminals of their ill-gotten gains.

The confiscation mechanism has been so designed, so as to make it easier to target criminals who have connections with organised crime.

As you all know, it often takes years to build a case against people involved in organised crimes because it is hard to connect money to crimes and when you consider the scale of the problem you realise that we are indeed lacking from a law enforcement perspective.

Madam Speaker, corruption will not be overcome if preventive measures are not accompanied by effective deterrents. Confiscation of the proceeds of crime constitutes an important additional deterrent that often has a greater impact than fines or prison terms. The threat of confiscation also entails preventive effects, as it makes the commission of the crime less attractive.

I find it useful to again quote here, as I did in my reply to the PNQ from the Leader of the Opposition on 17 November last, the following extract from the Report of Booz-Allen—Hamilton under the Comparative Evaluation of Unexplained Wealth Orders, and I quote -

“The importance of confiscating proceeds of crime has long been recognised as an effective tool in disrupting the activities of organised crime. The underlying reason is that profit or financial gain is the main motive for criminals to engage in criminal activities. This profit is used to fund lavish lifestyles, as well as invest in future criminal activities. Indeed, removing the profit motive is considered to act both as a preventive and a deterrent to criminals by diminishing their capacity to invest in future criminal activities.

The strategy of hitting criminals where it hurts most, “their pockets”, is regarded as an effective strategy by law enforcement agencies for organised crime. While organised crime has shown resilience and a high level of adaptability to other law enforcement strategies, removal or reduction of assets is considered to have an impact on their operations. Thus, confiscation of criminal proceeds is embraced by many countries through conviction and non-conviction based confiscation mechanisms”.

Madam Speaker, the concept of asset confiscation is not totally new in our jurisdiction. It also exists in our body of law.

As a matter of fact, the Asset Recovery Act already introduced in the Mauritian law the concept of a non-conviction based recovery of assets. The amendment which is now being proposed constitutes an important additional arsenal in the hands of the State to track down and recover ill-gotten gains.

Madam Speaker, as the House is aware, section 1 of the Constitution provides that “Mauritius shall be a sovereign democratic State (...)” and section 2 provides that the

“Constitution is the supreme law of Mauritius and if any other law is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency, be void”.

Madam Speaker, Government is mindful and respectful of the provisions of sections 1 and 2 of the Constitution and is aware that the Supreme Court, acting within its constitutional powers and functions, is empowered to strike down any law which breaches the Constitution.

Government fully endorses that right and is committed to ensuring that any proposed legislation passes the test of constitutionality.

We are also aware that Constitutions, insofar as rights are concerned, have to be interpreted generously.

As a matter of fact, in the case of Attorney-General of The Gambia v/s Momodou Jobe – (1984), Lord Diplock, dealing with the Constitution of The Gambia observed, and I quote -

"A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled, is to be given a generous and purposive construction."

It is with this perspective in mind that Government decided to come up with an amendment to section 8 of the Constitution in order to ensure that assets which are confiscated pursuant to the proposed Good Governance and Integrity Reporting Bill, when enacted, are confiscated pursuant to a law which meets the test of constitutionality.

The Constitution (Amendment) Bill (No. XXIX of 2015) purports to introduce a new paragraph (aa) in section 8(4) of the Constitution. The new paragraph will be inserted after section 8(4)(a) and is a standalone paragraph which will read as follows -

“8(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) –

(aa) or any other provision of Chapter II of the Constitution, to the extent that the law in question makes provision for the taking of possession of property -

(i) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;

- (ii) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
- (iii) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person, by way of confiscation, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.”

The underlined has been added to the initial amendment.

Madam Speaker, this new section will allow property to be seized, but is not a section which will allow an action *in personam* against a person who holds unexplained wealth.

Let me again put it clear that it is only wealth that cannot be explained that will be open to confiscation. Wealth that can be explained will not be the subject matter of any confiscation. Our proposed amendment to the Constitution, in my view, should dispel any lingering doubts about whether the confiscation procedure provided for in the Good Governance and Integrity Reporting Bill meets the test of constitutionality.

Madam Speaker, this proposed amendment to the Constitution is being brought before this House for the following reasons -

- (i) it ensures that assets will only be confiscated pursuant to the exception provided for by section 8(4)(aa) of the Constitution;
- (ii) if section 8(4)(aa) is not adhered to by any law which provides for the confiscation of assets, that law will be unconstitutional;
- (iii) section 8(4)(aa) of the Constitution, when enacted, will protect the rights of our citizens.

It should also be highlighted that it is the judiciary which will be empowered under the proposed Good Governance and Integrity Reporting Bill to make any order to “confiscate” someone’s property. Hence, there is no violation of the doctrine of separation of powers. We are also not narrowing down our democratic space.

Democracy is, in fact, weakened by grand corruption. By building strong institutions and stepping-up our fight against corruption, we are, on the contrary, strengthening our

democracy. We must not be oblivious to the fact that those who are involved in unlawful wealth accumulation are seeking to take the law into their own hands.

Their ultimate objective is to put themselves above scrutiny and above the law so that they can continue to indulge in illicit enrichment with impunity.

I wish to underline that my Government stands committed to protect the fundamental rights of our citizens and to widen, not restrict, the contours of our democracy.

Let me also remind the House that it was my Government which, in 1991, solidly entrenched section 1 of our Constitution in order to ensure that Mauritius remains a democratic State.

This is what I had stated in this Assembly while presenting the constitutional amendments, I quote -

“Mr Speaker, Sir, the opportunity has also been taken to make some other amendments to the Constitution. Members of the House will recall that a number of legislative measures have been introduced over the past twelve months in order to consolidate the democratic foundations of our society.

Today, we are taking that exercise a little further ... the present Government also wants to establish firmly the democratic basis of our Constitution by making it practically impossible to amend section 1 of the Constitution. Let it not, therefore, be said that this Government does not cherish democratic principles.”

It is also apposite to note that, during the course of the same debates, hon. Alan Ganoo, then Attorney General and Minister of Justice stated, and I quote -

“Mr Speaker, Sir, I will now come to a last point of my intervention. It concerns the first section of the Constitution, Sir. If the prospect of acceding to the status of Republic arouses, as I just said, a feeling of pride and dignity is in all of us today.

I think the thought of amending section 1 of our Constitution to render this clause practically unamendable should rejoice all of us who are true democrats in this House.

On a philosophical level, Sir, and globally, if you look at all the proposed amendments, you will see that the common feature, the thread which ties most of those principal amendments to our Constitution today is the consolidation of the democratic foundation of our country (...).

I think that there are very few countries in the Third World with a written Constitution like ours which have achieved what we are achieving, Sir.

We are deciding that to amend the democratic nature of the State, you will need a referendum and you will need the approval of all the Members of the House. I do not know of any other country which has done this!"

Moreover, Madam Speaker, the highest Court in our legal system, the Judicial Committee of the Privy Council, in the case of *Khoyratty vs The State of Mauritius* (2004), placed on record the exceptional degree of entrenchment of section 1 of the Constitution and this should bear testimony to my credentials as a democrat.

It is certainly not my Government that will today do anything that will alter the democratic character or any of the fundamental principles of our Constitution.

Madam Speaker, soon after the presentation of these two Bills, the hon. Minister of Financial Services, Good Governance and Institutional Reforms initiated wide public debate and encouraged a participatory approach on these proposals.

We have been attentive to the views and genuine concerns expressed by responsible and credible persons. Some, however, had a different sinister agenda altogether.

A number of valid proposals were made and at the same time clarifications were provided on the different provisions of the Bills, mostly those related to the Unexplained Wealth Orders and the confiscation of property.

In order to show our good faith and reassure those who have genuinely expressed their concerns on certain aspects of the Bills, Government has agreed to bring certain important amendments to the two Bills.

As requested previously by the Leader of the Opposition, the proposed amendments have already been circulated.

An additional safeguard has been introduced in the Constitution (Amendment) Bill No. XXIX of 2015, which requires that the new provision for confiscation of unexplained wealth or the things done under the authority of that provision, will have to be reasonably justifiable in a democratic society.

I spelled out the whole new proposed section earlier that takes on board the suggestion from the Leader of the Opposition.

Madam Speaker, we have seen that our existing legislation has not allowed for the forfeiture of ill-gotten assets of individuals nor has it curbed unexplained wealth in Mauritius.

With this proposed amendment to the Constitution, the message that is being sent is that it will no longer be business as usual for individuals who have disproportionate wealth with regard to their declared income and other means.

We do not wish the property market in Mauritius to be distorted by persons who have unexplained wealth and prevent hard working citizens from being able to compete with them on a level playing field on the property market.

We want hard work to be recognised and valued and we want to curb dishonesty in all walks of life. What we are doing with this amendment is to simply set out the legal basis in our Constitution for confiscatory action with respect to unexplained wealth and we are doing so for the benefit of all law-abiding, decent and honest citizens of Mauritius.

Madam Speaker, I therefore urge every Member of this Assembly to put the country first and support this Bill which is in the national interest.

We have a choice – either condone unexplained wealth, or curb it. We have chosen to curb it and I trust that Members of the Opposition will, when the time comes for voting, assume their responsibility towards the citizens of this country.

Madam Speaker, when Act No. 33 of 1986 was passed before this House on 24 October 1986, every single Member present, out of the 62 Members of the House, had voted in support of the legislation that I brought before the House to enable the forfeiture of ill-gotten property in possession of drug traffickers.

Now, in 2015, crime has become more complex and drug trafficking is not the only scourge of our country. It is in this context that the present amendment to the Constitution assumes all its importance.

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

The Deputy Prime Minister rose and seconded.

(12.18 p.m.)

The Leader of the Opposition (Mr P. Bérenger): Madam Speaker, as I stand to speak on these two Bills, but, on the constitutional amendment first, I need not remind the

House that our party, the MMM, has always been à *l'avant-garde* of this struggle against fraud, corruption, money laundering, illegal enrichment, ever since its creation, and something that made me very sad was that we proved that when we were in Government in 2000, we came with the *avant-gardiste* piece of legislation that created the ICAC, the Prevention of Corruption Act. That was really *avant-gardiste*, that broke new ground, but that, unfortunately, was *dénaturé* after the elections of 2005 and stands *dénaturé* to this date, Madam Speaker.

But let me place what we are called upon to vote today, and probably tomorrow, in a historical and global context, Madam Speaker, and I will argue that Mauritius should and must follow global approaches that have been adopted these past years to combat crime, but, at the same time, providing for the necessary constitutional and legal safeguards.

Madam Speaker, political, social and economic considerations in the increasingly tough fight against crime have compelled legislatures worldwide to adopt innovative approaches to tackle criminals and the proceeds of crime, including shifting standards and burdens of proof and moving from criminal to civil confiscation. Anti-money laundering legislation, proceeds of crime legislation allowing for civil asset recovery whether conviction or non-conviction-based, have included in Mauritius since quite a number of years back, being given that we passed the Financial Crime and Anti-Money Laundering Act as far back as 2000.

It was followed by the Financial Intelligence and Anti-Money Laundering Act and Prevention of Corruption Act (PoCA) in 2002 and the Asset Recovery Act in 2011. And, in fact, the Rt. hon. Prime Minister did not say it, but the concept of unexplained wealth is already present and was already present in the Prevention of Corruption Act that we introduced.

However, Madam Speaker, a more recent approach to combating illicit wealth, money laundering and so on, has been the unexplained wealth approach, rather recent, as a weapon to tackling crime with the idea - as the Rt. hon. Prime Minister said - to target the pockets of criminals and confiscate their property in a civil proceeding by doing away with the need to establish a link between property and wrongdoing and reversing the burden of proof.

Apart from what we are introducing more in detail, only a few countries like Ireland or Australia have adopted this new unexplained wealth approach. The need for effective

crime-fighting has to be balanced, Madam Speaker, by respect for fundamental principles of justice and fairness and respect for the rights of defendants, innocents and third parties, and it is quite a difficult task to find the right equilibrium.

In some jurisdictions, Madam Speaker, in Australia itself such as Western Australia and Northern Territory which were, as far as I am aware, the first to adopt unexplained wealth laws, there has been constitutional and legal challenges that have led to the restoration of a nexus between property and unlawful activity as minimal evidence by the State. Subsequent federal unexplained wealth legislations in Australia have clearly specified the need to establish a link between property and an offence.

Madam Speaker, we believe that Mauritius cannot remain isolated from the global trends in the legal and legislative actions taken to address crime and this is why the MMM is in favour of unexplained wealth laws and in favour of amending the Constitution to allow for confiscation of unlawfully acquired wealth. We have always been for that and, today, more than ever, being given that the systems that are set up by those benefiting from unexplained wealth get more and more complicated, Madam Speaker.

But the Mauritius Bills before us, the Good Governance and Integrity Reporting Bill, I will talk more at length when we reach that, but that Bill - from my point of view - is an extreme form of legislation that will inevitably be subject to legal and constitutional challenges as in Australia. We must, therefore, act with every caution and take the maximum and put in the maximum of safeguards and precaution when we come to that Bill. That is why - and I will come back to that in due course - we have given ourselves time to do this and this is why we have proposed that the debate on the Bill be postponed to give more time to one and all to do their work properly. I will come back to that later on, Madam Speaker, but let me come back to Mauritius.

At first, we said we were not going to vote the amendment to the Constitution and we were dead against the Good Governance and Integrity Reporting Bill in its initial form. The main thing we were against was the fact that there was some resistance from the part of the Rt. hon. Prime Minister to repeat in that new paragraph - because we are introducing a new paragraph - that provides in our Constitution, for the first time, for confiscation of unexplained wealth.

We are in favour, we are going to vote, but we pleaded that the same paragraph that is in other parts of section 4, should be repeated there, that is, whatever legislation we vote later

on - not in the Constitution, but whatever legislation, in our case the Good Governance and Integrity Reporting Bill - must be reasonably justifiable in a democratic society and whatever is done - not just the law - must also be reasonably justifiable in a democratic society.

I thank the Rt. hon. Prime Minister and I appreciate a lot the fact that he has agreed to come with an amendment that includes that safeguard, that possibility of appeal against any Government, not necessarily this Government. Any Government! Therefore, we are going to vote, in its amended form, for the constitutional amendment.

As far as the Good Governance and Integrity Reporting Bill is concerned, we will have the opportunity of discussing more at length, but there were, from our point of view, certain very dangerous aspects. The main one being that laws that said that: “the agency to be created looks for information from anybody and if that person refuses to provide information, then it becomes a criminal offence and it can land up in prison.” We were dead against that. And, again, I appreciate a lot that this is gone. We will talk more at length when we will reach that Bill, but that is a big objection that we had and it is gone. Now, the agency to be created will ask for information. If information is not forthcoming, the agency will go to a Judge in Chambers to ask for an order and we know that the Bill provides for the Judge, if he feels that it should be referred to the Supreme Court instead of taking issues in Chambers, it can refer it to the Supreme Court.

There are other issues on which we are still in disagreement, but we move forward. I must say also that at one point - and it is still my conviction, I referred earlier on to the Prevention of Corruption Act, *avant-gardiste* that we voted and that was *dénaturé* after 2005 and that remains *dénaturé*. And this is why I believe that instead of coming with a new piece of legislation – I am talking about the Good Governance and Integrity Reporting Bill - it was and it still is that we should have taken time to amend existing legislation, consolidate institutions that already exist instead of creating new institutions and coming with a new Bill.

I had, therefore, suggested that the Prevention of Corruption Act, that the MRA Act and the Asset Recovery Act should be consolidated, amended and the institutions created under those Acts, consolidated and amended instead of going, as I said, through a new piece of legislation and new institutions. That was our opinion and it remains our opinion, but the Bills are before us and, in particular, the Good Governance and Integrity Reporting Bill is before us. Therefore, I wish to *saluer le progrès que nous avons fait*, especially on these two points: the constitutional amendment, and, secondly this idea of when somebody refuses

information, *direction la prison de Melrose ou de Beau Bassin*. It is a big step forward that these two issues have been settled, Madam Speaker. But as far as the Good Governance and Integrity Reporting Bill is concerned, we are still not fully satisfied. Far from it!

We have just received the recommendations of the proposals of the Bar Council, of the lawyers. They have had to work under intense pressure. It is not normal. They should have been given more time. It is not normal that they should have to work under such pressure and we have to consider their recommendations under intense pressure also. I believe that, as the Bill stands, there are several clauses that will be challenged successfully before the Supreme Court and maybe higher up, if I may say so, Madam Speaker. That is why we believe, the MMM believes that we should take more time to try and read the same, more than consensus, unanimity, I believe, apart from some in the Opposition.

(Interruptions)

I am not making a joke! I am saying that on the constitutional amendment, I would have been happier - I am happy that this amendment has been approved - if it was unanimous. But the official Opposition and the Government, on the constitutional amendment, are moving forward together. On the constitutional amendment! But it would be ideal if we could do the same thing on the Good Governance and Integrity Reporting Bill. We are fully satisfied with the constitutional amendment. We are going to vote as amended, but we are not fully satisfied – far from it - as far as the Good Governance and Integrity Reporting Bill is concerned. Especially, I am very uneasy because it took us some time to realise that Government was looking for a three-quarter majority, not just to amend the Constitution, but to use this hammer on property. The section 8 (4A) (a) which reads, as we know -

“Notwithstanding (...) or any other provision of the Constitution, no law (...)”

We are talking about the kind of legislation that is before us, that is, the Good Governance and Integrity Reporting Bill -

“(...) 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 members of the Assembly.”

It took us a little while to realise, therefore, that Government was after a three-quarter - if I get the message right – majority not just to amend the Constitution, not hide, but to protect

itself behind that clause that has never been challenged since 1983. I was Leader of the Opposition when that was voted in Parliament, but we voted. We had prepared it together when we were all in the MMM.

So, it was required with what we had in mind in those days. It is a long time past 1983, it was approved and it was never challenged. I ask myself, up to this date, whether it cannot be challenged before our Supreme Court and even the Privy Council. It is a long debate. In India, it is a long debate whether there are certain aspects of the Constitution that cannot be amended in any way. Here, you could have the Supreme Court or you could have the Privy Council say: “okay, not because three quarters of the Members of the Parliament have voted this, that this is in line with Mauritius being a sovereign democratic State and whether this is reasonably justifiable in a democratic society.” This clause has never been challenged, but, as at now, we are not voting. We would wish to be able to vote, under this paragraph, the Good Governance and Integrity Reporting Bill, like we are going to vote the constitutional amendment, but, at this stage, we cannot do it.

That is why I suggested that we vote the constitutional amendment today and then we postpone the debate on the Good Governance and Integrity Reporting Bill. We digest what the Bar Council has just submitted, other ideas, we take time and then we try to reach the same unanimity – well, unanimity again is not the word - but the same large consensus that we have reached on the constitutional amendment. Some - the PMSD, the OPR, everybody will be called upon to take our responsibility.

I repeat, what I would wish to see happening is we adopt in a large consensus the constitutional amendment and then we postpone the debate. We take time and see whether we can reach the same large consensus on the Good Governance and Integrity Reporting Bill. I say that *je salue les progrès faits*. It is not often - especially that we each have our own personality - that we make concessions in that way. Very Good! It is very good for our Constitution, but for the country at large, Madam Speaker.

I will end with two points. One, which I mentioned when we discussed recently. I think the level of the debate - unfortunately, the Rt. hon. Prime Minister was not here - when we debated the Asset Recovery (Amendment) Bill was great, *un bon moment de nos travaux parlementaires!* What I said then, I would wish to repeat: there is *une multiplication des institutions*. I am sure everybody will agree it can't go on like that. We have l'ICAC (the Independent Commission Against Corruption), we have the FIU and now the FIU includes

the Asset Recovery Unit, but tomorrow no! Tomorrow, there will be a unit separate from the FIU. There is agreement on that as in the UK, today. Now, we are going to have an agency under the Bill and then a Board, two other bodies. I forgot to bring his speech, but when the Minister made his speech, he said our law is strong on corruption and money laundering, but weak on fraud. Therefore, he announced that we are going to amend the legislation to provide under our legislation for fraud to be well targetted and he announced another body, an Anti-Fraud Unit.

Tomorrow, when I hope we vote the new Declaration of Assets Act, there will be another body responsible to receive the declaration of assets, keep them and do whatever the law provides that it must do with them. So, we are having a multiplication of institutions and I think the time will come when we consider the Financial Crime Commission, we all agree on that, then we can sort it out, because all this costs money also. I am sure the Rt. hon. Prime Minister realises, we are going to create a new agency, we are going to create a new Board, permanent people and all this costs money.

Therefore, I appeal to Government that as soon as possible because that also in your absence, Rt. hon Prime Minister, we agreed that this Financial Crime Commission will be a vital institution; it won't be simple to work it out, but we all agree that it should be done as soon as possible.

I end, Madam Speaker, by saying the real test, according to me - because today we are going to amend the Constitution and there is before us, the Good Governance and Integrity Reporting Bill. We are targetting the assets, ill-gotten assets, unexplained wealth. How do things get started? This agency - we are just looking at how big a car, how big a house and so on. I believe that the real test will be when we do adopt – and I hope we do adopt – a new Declaration of Assets Act that will be made public. Government has a commitment to do that and I hope it will provide for prison sentences if the people concerned by the Declaration of Assets Act lie or hide things, then this will be the real test. We can vote what we are called upon to vote these days and if we don't vote this new Declaration of Assets Act, we won't progress really. Therefore, I think this will be the real test. But also, the Party Financial Bill, because otherwise we are going to have either: “This is not my money, that's my party's money.” It is like that across the world.

Therefore, to complete the panoply to really combat unexplained wealth, ill-gotten wealth, we need that amendment to the Constitution, we are for it in its amended version. We

need a much improved Good Governance and Integrity Reporting Bill, but we need also a new Declaration of Assets Act and a law controlling party finances in general.

Thank you, Madam Speaker.

Madam Speaker: Hon. François!

(12.44 p.m.)

Mr F. François (First Member for Rodrigues): Thank you, Madam Speaker. Madam Speaker, today, there is a good call for the right step in the right direction for the proposed constitutional amendment for taking possession of property by way of confiscation.

One will agree with me that there is nothing wrong in acquiring property and improving the material well-being by any person and that is well-protected in our Constitution as per section 8. However, this must be done legally and lawfully. This protection does not include property acquired by illicit enrichment or unlawfully.

Madam Speaker, I am not a learned lawyer neither constitutional one. However, my contribution today, will focus on the philosophy behind the constitutional concerns and its impact on our fragile democratic society. My position towards the Bill is not how I interpret the amendment, rather it will be how we all shall commit ourselves to make this legislation work as being proposed in the best interests of one and all without any contentions and being consistent with our societal values, human dignity and liberty.

Madam Speaker, I have read so many articles in the presss, various reports, listening to debates on radios on this moving Constitution (Amendment) Bill and associated Bill. One common thing, I have noted and experienced once the Bill was made public is that a majority of people out there want a clean society for our republic, but they are rather skeptical of how to get it done. Others are arguing about the dangers and political vengeance by politicians. I, myself, have been pressured as a Member of the OPR party from Rodrigues forming part of Government, but it is quite interesting.

Madam Speaker, allow me before going further to seize this opportunity to reiterate in this august Assembly the fundamental freedom of OPR party in the context of national political arena.

Since 1976, OPR party under the leadership of Mr Serge Clair, who is my leader, has always taken the position that OPR never contracts any alliance with any political party which sits for national elections in the 21 constituencies of our Republic. OPR has always

been driven by the fact that when we are in power in Rodrigues, OPR will always work with the Government of the day at national level and I want to make it clear that this is not conditional. Throughout its 39 years of existence, OPR supports what is in the interest of our Republic and what is in the interest of Rodrigues as well.

Madame la présidente, pour ceux qui ont critiqué notre positionnement stratégique de garder le silence durant ces dernières semaines, je voudrais leur dire ceci: que le silence est une parole. Il n'y a pas de concession pour notre liberté de pensée et d'action. Et en fonction de notre conscience de soi, c'est-à-dire mon collègue, l'honorable Léopold, et moi-même au niveau de l'OPR, nous savons très bien notre responsabilité, notre mission et action idéologique dans la construction de notre société républicaine étant très consciencieuse de la cause et spécificité de Rodrigues.

Permettez-moi, Madame la présidente, de rappeler à la Chambre que le peuple à qui je suis redevable est plus grand que celui qui gouverne notre société. Je suis un mandataire de ce peuple admirable.

Madame la présidente, je voudrais aussi exprimer haut et fort ici que l'enrichissement illicite, *unexplained wealth, pe pourri et ruine nou société* et ça c'est dangereux pour l'avenir. C'est maintenant qu'il faut agir pour combattre ce mal. Mais la question reste comment agir. Est-ce agir avec fermeté ou agir en mode *mollo mollo* ?

(Interruptions)

C'est ce point fondamental qui nous interpelle tous ici aujourd'hui dans notre société républicaine métamorphosée et qui est en décomposition et en recomposition.

Madam Speaker, coming back to the constitutional amendment itself, it is clear that the amendment reveals some factors that require our attention in as far as its relevancy for sufficient importance to justify constitutionally the protected right of property of any person to achieve the objectives of the constitutional amendment together with associated Bills as debated or to be debated.

We are now debating on the constitutional amendment, section 8 - to provide for the taking of possession of property by way of confiscation, to deal with ownership, possession, custody or control of property that cannot be reasonably explained in relation to a person's lawful income or emoluments.

Madam Speaker, this is a very strong, courageous and moving decision by Government to make things happen for our society! However, how is our society deeply viewing this move at the present material time that I am addressing this House?

Madam Speaker, the proposed constitutional amendment is, in fact, a vital and powerful tool to target and disrupt unexplained wealth, including any property as described in the amendment. One fundamental principle I believe in is that any constitutional amendment shall not only shape the outcomes in the interest of whoever is in power, but shall be rather in the interest of the whole nation as rightly pointed out by the hon. Prime Minister. That is difficult when political parties, within our country, have different views on an issue that binds us all.

Madam Speaker, you will agree with me that Government is here to promote greater stability and efficiency of institutions, strengthening elements of our democracy while defining what type of society we want to live in and legate to our future generations. I have to question: shall the amendment we are debating today be subject to any controversy and of high contentions? Madam Speaker, any constitutional amendment should not be of general controversy. It should bear the character of unanimity or large consensus of most Members as we have witnessed down the track of history of various constitutional amendments. For example, amendment to the Constitution of Mauritius, section 75, so as to provide for the establishment of the Rodrigues Regional Assembly, passed in this august Assembly on 20 November 2001 unanimously.

Madam Speaker, it has been so long since I heard the buzz words that: *ena trop boucou l'argent sale ek l'argent mal gagner pe circuler dans nou République*. We all know how detrimental *l'argent sale* can be transcribed in acquiring property and assets in our society. I have always asked myself: how do we get rid of this monster from our society? What is required is that all our citizens need to be disciplined and shall enjoy a living through honest and hard work and not through *magouille*, corruption and criminal activity.

Madam Speaker, allowing people to create enormous unexplained wealth is a very dangerous thing. When wealth creation by any means becomes the norms of a society, my question is: should any person with clean hands, deep sense of morality and integrity feel afraid of this constitutional amendment? My answer is “no”.

Madam Speaker, although there are the protections of property rights in our Constitution, it is important to note that such protections are not absolute. Allow me to refer, Madam Speaker, to a study made by the Council of Europe on the Impact of Civil Forfeiture in March 2015 prepared within the framework of Criminal Assets Recovery Project in Serbia. It was reported, and I quote -

“The European Court of Human Rights and many other States’ Constitutions that permit civil forfeiture consider that civil forfeiture is compatible with property protection and the right to own property contained in their Constitutions and with Human Rights laws, the right to property on the basis that the right is a restricted, not absolute right and is capable of being subject to interference provided such interference is provided by law, that is, legally, pursues a legitimate aim that is necessary and proportionate.”

This is the essence of what we are debating right now.

Madam Speaker, in Ontario, Canada in 2005, the Ontario Superior Court of Justice revealed that there was a consulted constitutional challenge for *in rem* proceedings, that civil forfeiture does not infringe the Charter of Rights and Freedom. And the outcome was that the challenge was dismissed. This is encouraging for us to benchmark on international trends as well, as rightly pointed out by the hon. Leader of the Opposition.

Madam Speaker, our country needs innovative and up to standard new legislations to face the demons of our society. As the constitutional amendment provides for confiscation of property, I think it is a legitimate aim and it is in the interest of the general public for any person to be deprived of any illegitimate property.

Madam Speaker, let me say a few words concerning Rodrigues. There are fishy enrichment or unexplained property transactions. *Pou bizin met l'ordre contre banne requins deux la tête ki croire zotte l'intérêt conquiz et capav fair seki zot envi.*

(Interruptions)

It is worth noting that I have put questions in this House in the past to request a Commission of Inquiry in Rodrigues or to send the former Officer of Good Governance there with regard to certain situations prevailing - especially for the period between 2006 and 2012 - to raise

public concerns on certain malpractices and suspected illegal enrichment, transactions in property.

(Interruptions)

With this present legislation, people in Rodrigues will be able to watch a happy ending of the too many stories that are on the lips of many Rodriguans being amazed by the state of luxury in the life of certain persons in Rodrigues, disproportionate to their emoluments and other incomes!

(Interruptions)

How did they attain their wealth in a short period of time, disproportionate to their salary? One will agree that in the local context, it is not selling on a small scale, agricultural products, in addition to one normal salary that one can acquire considerable disproportionate amount of wealth.

Madam Speaker, with the coming into force of this Constitution (Amendment) Bill together with associated laws, those who have their property, worth a few millions of rupees, which are proportionate to their emoluments and income will have to explain and account for.

For my part, I am confident that this legislation will serve its purpose for our Republic. As in my party, the OPR, we want to see a clean Republic and a clean autonomous Rodrigues society as well.

To conclude, Madam Speaker, unexplained wealth is a national problem. This Constitutional amendment will provide a consistent legislation to disrupt enrichment through unexplained wealth. I congratulate Government, in particular, the Rt. hon. Prime Minister, in bringing this legislation forward. It is a step in the right direction for a cleaner society and I do support the Constitutional (Amendment) Bill (No. XXIX of 2015).

I thank you for your attention.

Madam Speaker: I suspend the sitting for one hour.

At 12.58 p.m. the sitting was suspended.

On resuming at 2.09 p.m. with Madam Speaker in the Chair.

Mr S. Mohamed (First Member for Port Louis Maritime & Port Louis East):

Madam Speaker, I was thinking very deeply and hard at all those issues pertaining to this constitutional amendment being proposed. I must say that it has been - I will not say haunting my mind – on my mind for quite a while. This morning, as soon as I came in, I said to myself, I will start on a lighter note. I think that this is the right attitude because this has nothing to do with any party politics as far as we are concerned on this side. I am sure it should not be that on the other side. I am so happy to have come in today to see that Members of the Government are wearing red; that is what I wanted to say. You are wearing the colour of our party and I feel so happy about that. Congratulations!

So, let us start on that lighter note. It is sad though that the Rt. hon. Prime Minister does not do it, but again, I must say that it would suit his complexion, the colour red. So, having said that, let us break the ice and start with this whole process.

Madam Speaker, I was trying to think what would be our position with regard to this particular piece of legislation. It is not every day that one comes ahead with amendments to the Constitution and whenever one comes with such amendments, one cannot take it lightly. I understand for sure. This is why the Rt. hon. Prime Minister has, without any doubt, asked and required with reason that all Members of the Government should be present at the time when this matter is going to be voted because it is not only important, in terms of figures as provided for by the Constitution, but also because it goes without saying that it concerns the very fundamental issue in the Constitution and it concerns the future direction that this country will take. By ensuring that everyone is present, you ensure that there is collective responsibility outside the parameters of Cabinet also, which is very fair.

If we are to invite someone - let me use this parallel - at home and very often that happens when you have a wedding. You invite people to a wedding and all of a sudden you open the door and you let people in, but if you see someone who is not welcome, for whatever reasons, the first thing you should do is close the door and not let it open. The reason why this constitutional amendment provision is being proposed, Madam Speaker, is precisely to open the door to a guest that Government wants to invite in. Let me use this parallel. So, the guest they want to invite in is no ordinary guest, it is a guest that is being called the Good Governance and Integrity Reporting (GGIR) Bill. So, that is the guest that Government wants to allow in. *La raison pour laquelle* there is this constitutional amendment being proposed is precisely, as I say again - let us use the parallel - opening the door through the Constitution to ensure that this guest is welcome in. *Non pas par* – as we

say in Creole – *l'imposte*, but by the open door, the front door. Not the backdoor as hon. Ganoo rightly said.

(Interruptions)

Hon. Ameer Meea has got some experience that we should always allow things from the front door and not from the backdoor.

So, what I am saying is the following: why do we leave a door open? I am getting to what the hon. Leader of the Opposition has said. That the position of the MMM has been that they will vote the constitutional amendments. He has strong reservations with regard to proposals in the Good Governance and Integrity Reporting Bill. So, if I have strong reservations with regard to the guest or the uninvited guest or that the person is not proper and I do not want to welcome him in my home, I shut the door. That is precisely what is going in my mind. I cannot and we cannot reasonably accept to open the door, hold it wide open and let something in that should not be allowed in. So, if we are to accept to vote this provision, then what we are doing is allowing an unwelcome guest in. That is what we cannot stand for.

As I have said, at the very outset, Madam Speaker, it is not solely for political reasons and let me go further not for political reasons at all. Because for one thing, all four Members present here from the Labour Party, we sat down and thought very carefully. We said to ourselves, let us analyse what exactly is in there that we are not compatible with because whatever we do today has repercussions tomorrow. I remember, as soon as the Rt. hon. Prime Minister was talking about the constitutional provision that he made amendments to, be it in 1983 or 1986 or even that the laws pertaining to dangerous drugs that were amended at some point in time under his Prime Ministership, the intention there was undoubtedly good in those days. The intention was what? In order to curb the scourge of drug traffickers or to curb the scourge of proliferation of drugs, we all remember - and I will get into that in a few moments, Madam Speaker - is whenever we want to do something and our intention is right, we have to ensure and this is where I join the hon. Leader of the Opposition. We have to ensure that whatever we do brings results and whatever we do is not simply as a matter of process but not *dans le fond*; there can be issues that can be challenged, and whatever we would have done here would be to no avail and finally we would be taking a few steps or several steps backwards instead of moving forward.

So, let me, therefore, add that the Mauritius Labour Party and more so all of us here representatives, Members of Parliament of that party, we are all for the fight against corruption, we are all for measures that have to be taken in order to curb the scourge, we are

all for constitutional amendments that take into consideration very important remarks of Law Lords of the Privy Council, of Supreme Court Judges, precedents that show us the way and that also show us that this will not be the way. We are all for it. And what we are saying here today and what I will try to demonstrate is the reason why we believe that what is provided for in the Constitution itself not only makes it that the Good Governance and Integrity Reporting Bill will be challenged without any doubt successfully in Courts, but even the Constitution itself, the proposals, the amendments, unfortunately, hold certain *lacuna* that I will draw the attention of the House to, Madam Speaker.

My intervention will be centred solely on legal issues, and what I would also like to say before I embark upon that is the following: people have said that if you are not scared you have no reason not to vote the law.

Let me also say, I personally and all of us here in this august Assembly representing our party, have nothing to fear. Not at all! But we are duty-bound to address certain important legal issues. I have heard the hon. Leader of the Opposition say that it would be better that all of us achieve consensus on the Constitution (Amendment) Bill and the Good Governance and Integrity Reporting Bill. But then, when I've gone through all the judgements of the Supreme Court, I've gone through all the judgements of the Privy Council, the judgements of Australia, the judgements in the United States of America, what I have found is that even Judges of those institutions do not necessarily come to a consensus. This is what we call dissenting judgements.

So, the whole thing is that you can always pretend to be right about what you want to do. Intentions may be good, Madam Speaker, but what I would like to pray for today is to ensure that there is no window that we keep open that makes this whole process *caduque*, simply because the Court turns it down when we can and should avoid that a Supreme Court or a Privy Council turns it down. So, let us try together, draw our minds and bring our attention to all those possibilities. And if we are to address our minds to it, I say at the outset there would be no reason why we cannot reach consensus, because this is what we want.

The Rt. hon. Prime Minister will recall that, not very far back, I, myself, as representative of the Mauritius Labour Party, did speak to him about this provision in the Constitution. I spoke to him about the Good Governance and Integrity Reporting Bill. What I wanted is only one thing and what we want is only one thing: that we try to rough out the edges with one objective; that there is consensus and that, as one nation, we achieve a great

victory against this scourge that we all want to fight. As far as this objective is concerned, there is consensus, but the methodology of reaching there is where we differ, and I am of the humble view, Madam Speaker, that we can find common ground provided those issues are looked into very carefully.

Let me address some very important points: first, the concept of separation of powers and second, the concept of the right of silence. Is what is provided for by this Constitution opening the door to civil process or is it a disguised way to cover up the criminal process? What about the right of silence, as I have said? What about the reversal of the burden of proof? What about this agency? Can it impose punishment? Those are issues that I believe we should address, and I will address.

The Rt. hon. Prime Minister said that we, Members of the Opposition, should assume our responsibility. I am in total agreement with him. Assuming one's responsibility does not necessarily mean we have to agree, Madam Speaker. Assuming one's responsibility means that we are duty-bound, if we honestly believe so, and I do believe so, to draw the attention of Government to certain issues and this is what I am trying to do, and this is for us also assuming our responsibility in a constructive manner.

I am obliged, therefore, to go also to what the Bill that has to come afterwards provides, because as I have said it is opening the door to this Bill; one is connected to the other. Before I go to the Bill, let me talk about what is provided for in the Constitution itself. I believe that there are certain amendments that should have been brought in to the Constitution but that are not there.

Madam Speaker, the Bill in itself talks about certain issues of utmost importance. Let me talk about clause 12. Clause 12 of the Good Governance and Integrity Reporting Bill talks about privilege. It says here that –

“(1) The Agency may, before submitting a report to the Board under section 5(2), inscribe a privilege in favour of the Government on the property in respect of which the person is unable to give a satisfactory account of his unexplained wealth”.

This clause in itself raises two issues. One issue that it raises is that the Agency, which is a body that is created by the Executive - that is a fact - will be a body without any judicial function. This will be a body devoid of any judicial discretion; this will be a body that is devoid of even any quasi-judicial powers, but this will be a body that will be allowed

to inscribe a privilege in favour of Government. Now, some people may say that this is neither here nor there because this is done by other authorities such as the Mauritius Revenue Authority. But the fact remains that, for any one moment, for any one second, for any moment in time when such an authority that is not empowered by law to act quasi judicially or otherwise can inscribe a privilege in favour of Government, it is tantamount to this organisation punishing. This is punishment, and such a punishment, in my humble view, cannot be in the hands of an organisation that is not empowered to do so by law. That is one thing.

I have come across a certain *ouvrage* and the title here is ‘The Compatibility of Unexplained Wealth Provisions and ‘Civil’ Forfeiture Regimes With Kable’, written by Anthony Gray and dates back to 2012. In that document, Madam Speaker, I have come across very interesting notes and I shall refer to that. I read here in that document, I quote –

“There are numerous examples where, in applying these types of principles, the United States Supreme Court has determined that civil forfeiture provisions were in substance criminal in nature”.

So, that’s what it brings me to here: is this criminal in nature or civil in nature? But the Supreme Court in the United States has determined that civil forfeiture that is provided here under this piece of legislation that we have to debate upon later on, was in substance criminal in nature. And there is a case that is referred to here, the case of *Calero-Toledo versus Pearson Yacht Leasing*. The Court found that civil forfeiture provisions proceedings considered in that case fostered the purposes served by the underlined criminal statutes, both by preventing further illicit use of the things seized and by imposing an economic penalty, and in the case of *Boyd versus the United States*, the Court was adamant, proceedings instituted for the purpose of declaring the forfeiture of a man’s property by reason of offences committed by him, though they may be civil in form, are in their nature criminal. So, here, there is judicial precedent to establish that we may call something civil, we may call it not criminal in order to avoid issues such as the burden of proof, the standard of burden of proof beyond reasonable doubt, we can call it civil simply to reduce the burden of proof; we can, through the back door, as certain hon. Members referred to, try to introduce some facility in order to achieve the objective, but, as I have seen here in that very document which I will quote -

“The fact that the only penalty is a financial one does not preclude a finding that the provision is punitive in nature. Courts in the United States and Europe have considered the purpose of the legislation.”

Same as here, Madam Speaker! Courts in United States and Europe have considered this whole element of civil forfeiture. And I go on -

“If legislation serves a remedial purpose (...)”

I repeat -

“If legislation serves a remedial purpose only, it is more likely to be truly civil in character.”

And that is where it is important.

“However, where it truly serves retributive or deterrent purposes, it is more likely to be seen as criminal in nature. An important consideration here is whether the fine imposed (or confiscation of property) is done with the intended purpose of returning it to its rightful owner.”

Here, the purpose of this law, that we want to open the door to allow in, is not to return the property to its rightful owner, but, had it been to return the property to the rightful owner, Madam Speaker, then it would have been civil in nature. The very fact that it is not the case is described therefore in judicial authorities and precedence, both in the United States and Europe, as being criminal in nature and not civil.

(Interruptions)

Criminal! It is not because you say it is civil that it is civil. Judges have the right to look into it, they have looked into it, they have analysed it and they have defined it very clearly. It is not civil simply because you call it civil, it is criminal in nature, and if it is criminal in nature, the burden of proof should be therefore beyond reasonable doubt and no other way.

“Sometimes (...)” - I read here.

“(...) Government has argued that the laws (...)”.

And finally, here, Madam Speaker, it is exactly as we are having it in Mauritius and this is not a criticism that I am laying at the footsteps of Government, this is only a

constructive assessment with a view to trying to block all the loopholes and getting to a law that cannot be challenged. So, it says here -

“Government has argued that the laws were passed for a preventative, rather than punitive purpose.”

I have heard the hon. Minister of Financial Services, Good Governance and Institutional Reforms out in public, even at the Bar Council, on television - I have followed him with a lot of interest and I am sure he has followed my remarks with interest as well - and that is the whole purpose of a democracy. He has said that the whole purpose is not to punish a person. He has said it! He has very clearly defended his brief, that it is not punitive, but when you look at it very carefully, in spite of what he says, and I re-join what the author says here -

“The water is somewhat muddy here, given that both criminal and civil remedies can have the purpose of ‘deterrence’, (...).”

Clearly!

Madam Speaker: Hon. Mohamed, can I just interrupt you to tell you that for sure there is an overlapping in the two Bills. We are now debating the Constitution (Amendment) Bill and you will have the opportunity to go in-depth in what you are proposing at the level of the Good Governance and Integrity Reporting Bill; you will go in-depth. You can, from time to time, when referring to the Constitution (Amendment) Bill, refer to the other Bill briefly, but not in-depth as you are doing, because when you start talking about civil and criminal, then, obviously, it comes to the analysis of the other Bill. Please!

Mr Mohamed: I stand guided by the Chair and I also appreciate that you understand that they are inextricably linked, but allow me to go further. I can assure you, Madam Speaker, I am trying to be very, very limitative, otherwise I would have gone for ten hours, but I am trying to limit it.

Now, let me come back to what I was talking about. When one looks at this Constitution - and I say it again what it is opening the door to - it reminds me, and here, I pick up where the Rt. hon. Prime Minister himself referred to a speech that he, himself, had made in this august Assembly and he talked about Hansard of December 1991 where he quoted his own speech, he said -

“Mr Speaker, Sir, the opportunity has also been taken to make some amendments to the Constitution. Members of the House will recall that a number of legislative measures have been introduced over the past twelve months in order to consolidate the democratic foundations of our society.

Today, we are taking that exercise a little further. The present Government also wants to establish firmly the democratic basis of our Constitution by making it practically impossible to amend section 1 of the Constitution.”

He also referred to the intervention of the then hon. Attorney General and, in that particular case, those were the words that were referred to by Lord Steyn in a very important case that was heard at the Privy Council that moved from the Supreme Court and went over to the Privy Council and there is also another good case of the Public Prosecutions of Jamaica versus Mollison of 2002 to appeal cases 411.

Now, this all starts, and it is important here to talk about the separation of powers once again, because the Rt. hon. Prime Minister rightly said that. This Constitution is allowing a piece of legislation in, but the piece of legislation, as I said just now, it is as I have explained, criminal in nature, not simply civil but the separation of powers is important here, because it talks about another important element of clause 16.

Whatever you may do to change section 8 of the Constitution, Madam Speaker, you have to be very careful because what you are allowing, in fact, is that the legislature, through a decision of the Executive, is making the same mistake that it had done in the past. You will recall at the time when, as I said, the Rt. hon. Prime Minister leading a Government, wanted to curb the scourge of drug traffickers and drugs, came up with legislation that said that while you are on bail for drug-related matters, you shall not be given bail for whatever reason. This was turned down by the Privy Council and the Supreme Court as being unconstitutional. So, the intention, as I said, may be good, the intention must be right but what the Law Lords of the Privy Council said and the Supreme Court Judges is that the legislature cannot come and tell the Judges what exactly they should do. Discretion should always be left to the Judges of the Supreme Court, our Courts - precisely the concept of separation of powers that I had referred to earlier.

Now, this constitutional amendment does not make provision for the separation of powers concept. I will explain. Because clause 16 of the other Bill, basically, does not give

the discretion to a Judge in Chambers what to do when there is an application for an Unexplained Wealth Order. What to do? Normally, when you go to a Judge in Chambers, the Judge in Chambers can make the order that is prayed for and all Solicitors, Attorneys at Law and Lawyers present would realise that there is also the possibility for a Judge in the Supreme Court to decide not only to allow the prayer that you have asked for or deny the prayer or turn it down, but also to make such order as he deems appropriate in the circumstances; to make any such order that he decides to be appropriate in the circumstances. *C'est cela avoir un respect pour l'indépendance du judiciaire. C'est cela que le conseil privé de la reine avait condamné dans le jugement où ils ont dit que la section 5 était au fait in violation of the relevant sections of our Constitution.* But this is precisely what we are doing again and what this constitutional amendment has forgotten to take on board because when one reads clause 16 of the Bill which is connected to the constitutional amendment, it clearly says here that if the Judge is satisfied, he shall have only one option and this is what the legislature is imposing on him - one option - to make an Unexplained Wealth Order.

(Interruptions)

That is important! This is not something which we can ignore. *Ce n'est pas un respect de la séparation des pouvoirs* when you say that you have only one option. The Judge should be given the discretion and what I would prefer to see here - and then it would be in line with the constitutional provisions - is give the discretion any other such order as the learned Judge deems appropriate in the circumstances, not only that you shall, because here the words are: 'you shall mandatorily come up with an Unexplained Wealth Order.'

(Interruptions)

Ça c'est imposer cela, when you look, that is clause 16.

Clause 16 (2) talks about that –

“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.”

Madam Speaker: Hon. Mohamed, you are going again in-depth into the other Bill. Please, you can refer to it. You can make your comment briefly on it, but you can't go in-depth in the other Bill. You will have ample time to talk on the other Bill. Your name is already on the list. You can refer to it, but please, be brief when you refer to the other Bill.

Mr Mohamed: Thank you once again, Madam Speaker. So, as I was saying, it is very important for us to realise that it is not simply a question of coming up to vote a constitutional amendment because that constitutional amendment addresses and opens the door to fundamental issues, in the other piece of legislation, that are in violation of the fundamental principles and protection afforded under our Constitution: separation of powers, as I have said and explained, right of silence because we shall no more have a right of silence because it is said - and I am going on it briefly, Madam Speaker - that this constitutional amendment will open the door to a situation that a Bill will come in where if you do not make an affidavit to explain yourself *devant le Juge en Chambre*, if you don't make that affidavit, everything will be allowed in against you and it will be deemed as unrebutted and unchallenged whatever the agency says. Therefore, you have to make an affidavit, otherwise you will lose your case. So, this is something else that the constitutional amendment is allowing in.

It also, therefore, Madam Speaker, allows the possibility where no longer do you have the protection under the Constitution that talks about the burden of proof where now you will have to come and justify yourself. This constitutional amendment, Madam Speaker, allows something else in; a situation where you are obliged to swear an affidavit to explain your wealth, but, at the same time, this document can be communicated to other agencies, this document which is before the Judge in Chambers can be communicated and once it is communicated, other agencies can make use of that against you in a Court of Law, whereas the right of silence, in fact, does not and would not allow them to do that. Yes, through the backdoor, Madam Speaker, this constitutional amendment is allowing a lot of violations of the sacrosanct principles and protection that the citizen of this country is afforded under our Constitution.

Now, how can we, therefore, allow such an issue? How can we vote a piece of legislation that allows such violations to come in? My plea, today, Madam Speaker, to hon. Members of this National Assembly, as I said at the outset and you would have noted the tone and tenor of my intervention; it is *vraiment apolitique*. It is not adversarial. It is not, in any way, adversarial. It is very simply me drawing the attention of all hon. Members of this National Assembly, Madam Speaker, that if you vote this constitutional amendment, what you are unknowingly maybe allowing in, are a series of violations of constitutional principles and freedom and protection that you should always try to preserve for the citizens of this country. Not because you are scared or you have anything to hide, simply because when we come to this august Assembly, we swear on the Constitution to uphold it. So, if we are to

swear that we are going to uphold the Constitution, it is, Madam Speaker, that we are going to uphold each and every protection and freedom that is provided for in that Constitution. Because if you, Members of this National Assembly, go against this oath that you have taken, it is not done *méchamment*, I am sure; it is done maybe because you honestly believe, Madam Speaker, that this is something right. The intention is right, but the results will not be. Just like the Privy Council turned down the excellent intention of the hon. Prime Minister to fight the scourge against drugs, that law was turned down. It was done in order to ensure that people could not keep on being bailed out when there were continuing to commit drug-related offences. The Court said that it was wrong according to the Constitution.

So, *l'intention pourrait être bien*, but the end result is what? Do we want to be in a situation, Madam Speaker - and this is a message through you that I send to each Member of this august Assembly - where we come with the law, *l'intention est bonne* and in two, three months, six months down the line, we find ourselves in a situation where the Privy Council or the Supreme Court turns it down? We can easily turn round and say: “yes, but let the Court decide!” But the problem is we would have been losing six months of valuable time to fight against the scourge and how do you believe we could really put – if we don’t put our minds together to address those issues, we would be doing wrong to the country. So, I am praying.

I, myself, remember, as backbencher here between 2005 and 2010, the then Deputy Prime Minister and some former colleagues of mine would remember, when the Road Traffic (Amendment) Bill was brought here to this august Assembly by former Deputy Prime Minister, Dr. Beebeejaun, where he had made provision, in those days, that a Police Officer could suspend the driving licence of someone pending the determination of the matter before a Court of Law. He had brought this to this august Assembly that the Police could suspend the driving licence before the Court had decided, pending the determination.

A Police Officer does not have the right to suspend and inflict any punishment. An agency does not have the right to freeze even for one second because it is the right of a judicial body. What happened? I stood up in this august Assembly, and I was criticised then, I was criticised and Members from my party, Government was not happy because I was a backbencher who stood up and even went against the proposal of the then Government that I belong to. I said: “No, this will be turned down in a Court of Law. The Supreme Court will turn it down. Let us not be embarrassed! Let us do things right! Let us ensure that this does not blow up in our face. Let us ensure that we do not waste time!” And this is exactly what

happened; it was turned down. The Supreme Court decided that it was wrong. Hon. Ganoo said that I was right in those days. He also spoke in that direction. So, once again, we meet *à la croisée des chemins*. What we do? Intention, there is consensus on it.

So, what I am asking in conclusion is the following: let us not for once, if that is possible – and this is not what I am saying, everyone else is doing, Madam speaker – but let us put the result in priority. What do we want to achieve? If we want to achieve it, we can stand together, but not at any price because I do not have a crystal ball, I cannot read in the future, I am no soothsayer, but, in my experience as a lawyer, I have said it before in this Assembly, between 2005 and 2010, when there is something that I believe could happen at the Supreme Court, it happened and it was quite embarrassing.

This Government is at the beginning of its mandate, soon it will be one year. It can avoid any embarrassment by putting aside political issues and address those issues. So, we cannot, therefore, vote for a constitutional amendment if this opens the door to issues of such vital importance that could eventually, highly probable be turned down as unconstitutional by our Courts. It is not a solution to simply get three-quarters because some friends, on the other side, have said that to me: “But no, we will get three-quarters and it cannot be challenged in a Court.” Wrong! The hon. Leader of the Opposition said that and thought: “No, it is not because simply you get three-quarters that it cannot be challenged in a Court.” If it is in fundamental opposition to section 1 of the Constitution, a democratic and sovereign State, you still can challenge it before a Court of law and it stands the chance of success, and if it does succeed, let avoid the embarrassment. That is what I am asking for. So, we will not vote that amendment because we are assuming our responsibility...

(Interruptions)

We will not vote that amendment...

(Interruptions)

... because we believe that there are ways to easily correct those things. I join the hon. Leader of the Opposition to say that those things that can be corrected *doivent être faits à tête reposée, et on peut le faire*. The ideal situation will be that we do put our minds together to continue the working sessions in order to find ways that it cannot be contested in Court and we act as one man, as one woman, as one nation. We can do it and I only pray that we do it. Now, I will not say that those who believe I am wrong, criticising me and laughing at what I am saying are simply doing it because they are scared of what I am saying.

(Interruptions)

I respect their views.

Madam Speaker: Order!

Mr Mohamed: I have respect for their point of view and I am humbly saying that I may not hold the monopoly of knowledge, but I am only making a humble proposal.

Thank you.

Madam Speaker: Hon. Gayan!

(Interruptions)

Order!

(2.50 p.m.)

The Minister of Health and Quality of Life (Mr A. Gayan): Madam Speaker, let me, first of all, say that I need to express to the Rt. hon. Prime Minister the appreciation of Government and of the House at large for bringing this Constitution (Amendment) Bill for us to debate on and for us to vote on later today.

“The object of this Bill is to amend the Constitution to provide for the taking of possession of property –

- (a) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
- (b) the ownership, possession custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
- (c) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person,

by way of confiscation.”

Let me say, right at the outset, Madam Speaker, that no Government, whether this one or any other Government, will legislate in vain. A Government brings a Bill to the House after having ensured that all the constitutional provisions and all the legal provisions have been looked at and addressed before the Bill is finalised and comes to the House.

I am very happy that the Leader of the Opposition mentioned that in the Government of 2000-2005, lots of decisions were taken with regard to the dismantling of corruption and other frauds. There was the FIAMLA that was passed, the PoCA and we also had the Terrorism Bill, etc., and it was all with a view to ensuring that the Constitution remains the citadel for the rule of law and for all fundamental rights and freedom.

I have said that no Government legislates in vain, but we are also conscious of the fact that when a constitutional amendment is brought to the House, it is not a simple matter. We do not amend the Constitution at any stage. We amend a Constitution because there is need and there is urgency in amending the Constitution. We are not the only country in the world to amend the Constitution.

Constitutions exist all over the world and they are amended as and when they are required. We, ourselves, have had lots of amendments and it is to the credit of the Rt. hon. Prime Minister that he has been the trigger for many constitutional amendments which have moved the country forward, which have consolidated democracy and which have ensured that the rule of law prevails at all times.

We have heard hon. Mohamed speak about criminal law and how we are undermining the fabric of the Constitution. One thing we need to remember, Madam Speaker, is that this Bill is inevitably connected with the Good Governance and Integrity Reporting Bill that will be debated later today, hopefully. But we must bear in mind that when we are looking at the Constitution, there are certain fundamental requirements that we need to observe and when we are looking at the other Bill, we have to look at it that way. But to say that when we are amending the Constitution, we are opening the door to an abuse of constitutional provisions, that is going too far and it is not right.

What the Good Governance and Integrity Reporting Bill is saying is that if you have unexplained wealth and it looks like it is disproportionate to your emoluments, then there is a duty to explain. It is an action which goes against the property of the person, not against the person. No person is being taken to Court as an accused party. It is an action *in rem*, not an action *in personam*. So, all the other provisions in the Constitution, for example, section 10 of the Constitution which deals with provisions to secure protection of the law -

“(1) Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing (...).”

There are other rights which are mentioned in the Constitution like presumption of innocence, the right to be informed as soon as reasonably practicable, in a language that he understands and, in detail the nature of the offence, to be given adequate time and facilities for the preparation of his defence, etc. But we are not in that situation at all. We are in a situation of civil confiscation and we are in a situation where after this amendment to the Constitution is passed and after the other Bill is passed, somebody is found in possession of unexplained wealth, he must account for it. There are procedures which have been set out in the other Bill which, I think, guarantees to any person who has unexplained wealth, the protection of the Judiciary.

We have heard about the separation of powers. Of course, we have the separation of powers. Of course, we have the Judiciary which is independent, not only do we have a Judiciary which is independent in Mauritius, but we also have the highest Court to appeal for Mauritius, the Privy Council which always scrutinises whatever the Supreme Court does and probe whatever will be challenged should somebody decide to challenge this Constitution or whatever.

But what is important, Madam Speaker, is to say that we have in the other Bill set out the Integrity Reporting Services Agency which reports to the Integrity Reporting Board and then a decision is taken, either by the Board to reject or to refer to the Judge in Chambers. So, the Judiciary is at the centre of the whole process. We are not denying to the Judiciary the right that it has and that it should have.

In fact, we, in Government, are very jealous of the prerogatives of all the institutions in this country. We believe in institutions. We believe that institutions must be allowed to work and to work independently because that is the way freedom is preserved and that is what makes the rule of law. It is not the rule of men. We want the rule of law to prevail at all times. And should the Judge in Chambers decide that he cannot address the issue, then, he can refer the matter to the Open Court and there is the appeal procedure and all that.

When we hear that what we are trying to do is akin to a situation where we are reversing the burden of proof, this is a disguised way of bringing the criminal law into the civil law or the right to silence is being adversely affected. All this, Madam Speaker, is neither here nor there regarding what is being proposed in the amendment to this Bill. In fact, this Government has been open. In the first version of the Bill there were safeguards. Although I consider that the additional amendment which has been proposed by the Rt. hon.

Prime Minister goes to buttress even more the safeguards in the Constitution, still we must not forget that section 1 of the Constitution remains the foundation of democracy. And this has been the subject of lots of pronouncements in our Courts and also in the Privy Council in the case referred to by the Rt. hon. Prime Minister and also by hon. Mohamed, the case of *The State v. Khoyratty* which is the Privy Council Judgment No. 13 of 2006.

One thing I must say, at the outset, is that this is a criminal case. The pronouncements that are made here relate to the right to deny bail to a person who is charged with an offence and the Privy Council looked at the issue and asked the question: should this right be removed from the Judiciary and be vested in the Executive? That was a different situation. But, still, the Privy Council looked at section 1 of the Constitution and made the following remarks, and I quote from paragraph 24 –

“The State of Mauritius shall be a sovereign democratic State which shall be known as the Republic of Mauritius.”

And then, after the amendment, at the same time, by section 9 of the 1991 Act, the Assembly amended section 47(3) of the Constitution by inserting a reference to section 1. Thus, amended section 47(3), Madam Speaker, deals with the mode of amendment of the Constitution.

Since we are dealing with the Constitution, you will allow me to refer to the Constitution. Section 47 deals with the alteration of the Constitution. There are various majorities provided for altering various sections of the Constitution. But with regard to section 1, the Privy Council spoke about a degree of entrenchment which is unmatched in other Constitutions and the effect of that amendment in 1991 of the Constitution. Hon. Ganoo was the Attorney General then, it said that –

“The effect is to entrench section 1 very deeply indeed.”

Whatever we do in this House, whatever law is passed, must be subjected to the test of section 1 of the Constitution. Section 1 is the major section in the Constitution. That is why I say that although the amendment brings another safeguard - the amendment proposed by the hon. Leader of the Opposition - I still think that section 1 of the Constitution is something that one should never forget. This is why I say that not only are we enacting this piece of legislation in the light of the pronouncements of the Privy Council, but we are also aware that whatever we do in this country, we have to remember that we are being

scrutinised, we are being observed not only by our people here, but by the whole world. In this digital age, whatever we do is known all over the world. And, as a Government which wants to attract investment, that wants to be a model of democracy, we are not going to do something which is going to damage our image and our reputation. I think this is something that we must always bear in mind that we need to give to our democracy the content that it deserves and that it has.

In fact, if I refer again to that judgment of *The State v. Khoiratty*, Madam Speaker, and I quote from paragraph 29 –

“Giving content to the term “democratic state” in section 1 is part of the task of judges who are called upon to interpret the Constitution. Garrioch SPJ, giving the judgment of the Supreme Court recognised this, for instance, in *Vallet v Ramgoolam* [1973] MR 29, 40. Having regard, in particular, to the specially entrenched status of section 1, in my view it would be wrong to say that the concept of the democratic state to be found there means nothing more than the sum of the provisions in the rest of the Constitution, whatever they may be at any given moment. Rather, section 1 contains a separate, substantial, guarantee. On the other hand, what matters is the content of the concept of a democratic state as that term as used in section 1 and not just generally. That said, the Constitution is not to be interpreted in a vacuum, without any regard to thinking in other countries sharing similar values. Equally, experience in Mauritius is likely to prove of value to courts elsewhere. Therefore, the decisions cited by Lord Steyn do indeed “help to give important colour” to the guarantee that Mauritius is to be a democratic state. In particular, it is a hallmark of the modern idea of a democratic state that there should be a separation of powers between the legislature and the executive, on the one hand, and the judiciary, on the other.”

Now, interpreting Constitutions is something which is known to Judges. They do it every day and I myself, I think, in this House, I must be the one barrister who has taken more constitutional challenges to the Supreme Court than anyone else. And, in fact, I was the one who took the National Residential Property Tax (NRPT) while some people stated it is the Navin Ramgoolam Property Tax.

(Interruptions)

We challenged it in the Supreme Court. We lost in the Supreme Court. We went to the Privy Council and then, fortunately, we got what we were looking for at the Privy Council.

So, we have a system of law. When we say a system of law, Madam Speaker, anybody who considers that a constitutional wrong is being done to that person, that person has a constitutional right to seek the help and to seek a remedy from the Supreme Court. Let me refer, Madam Speaker, to section 17 of the Constitution. Section 17 is the enforcement of protective provisions. I am referring to this because the amendment that we are making is to section 8 which is under chapter 2 and which deals with fundamental rights and freedoms. If somebody who is taken to task or who is called upon to explain unexplained wealth under the Good Governance and Integrity Reporting Bill, that person has a right under section 17 to claim enforcement of the rights. Let me quote from section 17 (1) –

“Where any person alleges that any of the sections 3 to 16 has been, is being likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.”

Then we have section 17 (2) –

“The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection 1, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the sections 3 to 16 to the protection of which the person concerned is entitled:”

But, of course, there is a proviso under section 17 (3) that if he has other means of redress, that is, something else -

“The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that court to exercise the jurisdiction conferred upon it by this section more effectively”.

This provision in the Constitution, which guarantees to any person the right to seek a remedy in the Supreme Court is not being removed and is not being amended at all. So, any person who has unexplained wealth and who has a sense of grievance, he can always go under section 17. He will have to show how the Act that is being done or the thing that is

being done has been, is being or is likely to be contravened in relation to him. So, he has the burden of establishing that whatever is being done is something in contravention of the Constitution. This is something that the Judges have been doing all the time. They are interpreting Constitutions. We have a lot of cases where the Judges have been interpreting Constitutions. The challenge will be under section 1 even if other avenues are closed.

This is not something new, but what we need to bear in mind, Madam Speaker, is that when we speak about the separation of powers, we must always bear in mind that the Judges are independent. They have security of tenure. No one can give them orders or no one can direct them to decide one way or the other. I think the concept of the independence of the Judiciary is a concept that transcends the edifice of the Constitution. It is the very foundation of democracy because ultimately any person who has a grievance must go to the Courts that are the guardians of the Constitution. They are the guardians of the freedom of the individuals. They are the ones that spell out whether the Executive or the Government has acted in conformity with the Constitution or outside the Constitution.

The rule of law is central to this constitutional protection. It is the Judiciary that is entrusted with the task of keeping every organ of the State within the law and they are the ones that give meaningful content to the rule of law. The Judiciary stands between the citizen and the State and should there be any excess use of power or abuse of power, the Judiciary will always be there to set it right. In fact, we have seen recently in Mauritius, people have been arrested or detained then the Courts come in and say: "No, please release under conditions". This is what the Judiciary is all about. Whatever Judiciary we have, must always be jealous of the powers that it has under the Constitution. This is necessary for everybody, for you, Madam Speaker, for us in Government today and maybe in some other capacity, but this is something that we must always bear in mind that there should be no pressure, no influence of any kind brought upon the Judiciary, they should be free to decide without fear or favour. Of course, when we take a decision in Government, the right to challenge will always be there. When you go to Court, you always say that we run the risk of losing 50% because somebody has to win and somebody has to lose. Most of the constitutional cases are cases which address the fundamentals of rights and freedoms. This is why I say that we should never do anything or say anything regarding the institutions in this country because then we are destroying the architecture of democratic scheme and system.

Let me say, Madam Speaker, and I will quote from Lord Wilberforce who was a famous Judge in the UK. I am saying this regarding the interpretation of the Constitution because whatever we write today in the law, whatever we vote today will be interpreted by the Judges. This is what he said –

“A Constitution is a legal instrument; its language must be respected. If the language used by the Constitution is ignored in favour of a general resort to values, the result is not interpretation, but divination.”

So, when we say that the Supreme Court or the Privy Council or whatever judicial body will be called upon to look at these things, we have to remember that there are safeguards being provided in the Bill that is in front of us.

Apart from the safeguards in the Constitution, in sections 1, 17 and 8 itself in this Bill, Madam Speaker, we have provided for the disproportionate nature of the wealth with regard to emoluments. And who is in a better position to decide whether the explanation is right or not or who can give the explanation? It is the person in possession of the unexplained wealth. But then it goes on, apart from the safeguards I mentioned, even this section – and this has been taken on board by the hon. Leader of the Opposition – said that after the word ‘confiscation’ we should add ‘except so far as that provision or as the case may be the thing done under its authority is shown not to be reasonably justifiable in a democratic society.’ I think this is an additional safeguard. With this safeguard, any person who has a sense of grievance can go to Court and ask them to decide whether what is being done, whether the provision itself or the law itself or the thing done under the authority of that law is reasonably justifiable in a democratic society. So, the first test for the Court will be the reasonableness. So, the test of reasonableness will be there.

Then, there is the test of justification and then there is a third test of democracy. So, before anything is done against anybody, these are the safeguards already provided in the law, already existing in the Constitution, but additional safeguards are being brought to give more protection to anybody who claims its protection because the Constitution is the fundamental foundation for the rule of law and for the protection of anybody. So, when I hear hon. Mohamed speaking about his qualms and all these, I am really at a loss to understand what is the problem.

Madam Speaker, there is a book in Sanskrit which speaks about fish justice. What fish justice means is that the big fish will eat the small fish. That is what happens in the ocean. We are not in that situation. We are in a system of laws, system of procedures and system of guarantees. We are speaking about the rights of individuals. We are talking of an amendment which is going to attack not the individuals, but the property, the assets, the unexplained wealth and then we hear that this is punishment. This is punishment. This is criminal. But, Madam Speaker, my understanding of criminal is that you are accused; you are arrested; you are taken to Court. A charge is being brought against you. Then, a case has to be established against you. This is not what is happening. This is a case of civil proceeding and this is why it goes before the Judge in Chambers.

So, I would like to say that we have seen, Madam Speaker, the excessive wealth of some people. In fact, the Rt. hon. Prime Minister quoted from Sir Victor Glover who said that sometimes looking at neighbours or looking at anybody, questions can be asked about how come this person has so much of assets and legitimate questions must be asked.

According to a study carried out by the United Nations, the amount of money that goes into corruption represents about 20% or 30% of any project. That is a huge amount of money. But hon. Mohamed asked whether the money that you are going to confiscate is going to be returned to the rightful owners. Of course, it will be returned to the rightful owner. The rightful owner will be the State because we are talking of corruption. We are talking about unexplained wealth.

If you can explain your wealth, then there is nothing to worry about, but if you cannot explain it, then you must have got it somewhere, unless somebody were to get the lottery every month or every week. But that is also an explanation! As long as somebody has an explanation, nothing will happen to that wealth. It is only with regard to unexplained wealth that the confiscation procedure will step in. So, I fail to understand why anybody in this House could be against a piece of legislation, a constitutional amendment which goes in the direction of cleaning up the country, ensuring that all Mauritians will live according to norms of probity and integrity. I fail to understand why anybody would not vote for this law.

This is why, Madam Speaker, I don't want to travel outside the Constitution (Amendment) Bill. I am sure my colleague, the hon. Minister of Financial Services, Good Governance and Institutional Reforms, will be addressing some of the issues, but as far as I

am concerned, this is something which is very important and it is timely that this Bill has come to this House.

Thank you.

(3.15 p.m.)

Mr A. Duval (First Member for Curepipe & Midlands): Madam Speaker, first of all, let me say I am deeply honoured as the youngest Member of Parliament of this august Assembly to contribute myself to the debate today, which touches at the backbone of the country, that is, our Constitution. I will mainly focuss on the Constitution for now and then, later on, debate on the Bill itself, which the hon. Minister is bringing.

The Constitution (Amendment) Bill will enable for a stronger legislation to combat possession and custody of property derived from unlawful means. Madam Speaker, we are putting the country first, indeed, as the Rt. hon. Prime Minister said earlier, and we support this Bill. We support it because, firstly, there is a real *fléau* in our society today, there is an upsurge of white collar crimes, which is difficult to investigate, to prosecute under the present state of law and let alone to confiscate when these are derived from unlawful activities. And Parliament is, today, coming to the nitty-gritty of this issue, to put a stop to illicit enrichment *qui gangrène notre société*.

I will refer to the mischief rule, that is, that the legislator may legislate where a mischief has not been dealt with so far and which allows us to make exceptional legislation to address this particular mischief, in that case wealth which has been obtained and kept secret and which cannot be explained satisfactorily. In French, we say '*ce qui est inavoué et qui est inavouable sera passible d'être attaqué sous cette loi*'. It is, therefore, Madam Speaker, a major step forward for our country in addressing the issue of unexplained enrichment in a manner that has never been done before in Mauritius.

Secondly, we also see - as my friend, hon. Minister Gayan, has said - the last paragraph in the Bill, the reasonably justifiable in a democratic society. I have a Supreme Court judgement actually which defines this. It is the judgement of Madhewoo M. v The State of Mauritius and Anor of 2015. It is a very recent judgement and it defines reasonably justifiable in a democratic society as follows –

“An interference will be considered necessary in a democratic society for a legitimate aim if it answers a pressing social need and in particular if it is proportionate to the legitimate aim pursued and if the reason adduced by the national authorities to justify it are relevant and sufficient”.

Therefore, the greater good of society shall always prevail over the interest of one person and it is, in our view, reasonably justifiable and necessary in helping the fight against unlawful enrichment.

Madam Speaker, I have to say that my party, the PMSD, has always been at the forefront whenever there has been a necessary amendment to be brought to the Constitution for the good of the people. *Comme Jules Koenig, comme Sir Gaëtan Duval à l'époque, nous apportons aujourd'hui, nous aussi, notre pierre à l'édifice qui est notre Constitution*”.

The Bill, Madam Speaker, to conclude on this, is necessary and unobjectionable. We have a crime to fight. It is, however, our only issue and will always be the civil liberties. We should never forget that one of the greatest assets that this country has is freedom and the right to property. How we pursue this valid good of combating unlawfully acquired wealth should be in line with the protection of our civil liberties. The law that will put this constitutional amendment, that is, the Good Governance and Integrity Reporting Bill, in practice must contain sufficient safeguards, and I have to say that we are happy that a number of our suggestions have now been taken on board. I will elaborate on this later on, Madam Speaker.

Thank you.

(3.22 p.m.)

Mr A. Ganoo (First Member for Savanne & Black River): Madam Speaker, I thank you for being able to intervene on the Constitution (Amendment) Bill which is before the House today.

Madam Speaker, I will try to refrain from repeating what has already been said in the course of the debates. This Bill proposes to amend the fundamental right enshrined in our Constitution. So fundamental is it that all States with written Constitutions invariably protect property rights and prohibit the State from interfering with those rights, and so do the various

international instruments such as the European Convention of Human Rights and other international instruments.

In fact, there is no democracy anywhere in the world where, as a matter of constitutional law or practice, the right to property is not recognised and respected. Article 1 of Protocol No. 1 of the European Convention provides for a general protection, prohibiting the State from interfering with all rights. I think someone before me had reminded us, Madam Speaker, that even though the right of property is enshrined in all our Constitutions - Article 8 talks about protection from deprivation of property - we all know that these protections are not absolute. Written Constitutions, international instruments, all qualify that right, so that these protections afforded in our Constitutions are not absolute. The Article to which I have just referred reads as follows –

“Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possession except in the public interest and subject to conditions provided for by law and by the general principles of international law”.

This right to property, Madam Speaker, is essentially the right in a democracy which allows us to march forward. Property is necessary for the subsistence and well-being of man and no one would become a member of a community in which he would not enjoy the fruits of his honest labour and industry. This is why the preservation and security of property is one of the primary objects of the social compact that induce man to unite in different societies.

Madam Speaker, this right to property has existed since the Magna Carta in 1215, since the French Declaration of the Rights of Man in 1789, since the U.S. Bill of Rights in 1791 and, as we all know, the more recent conventions, the International Covenant on Civil and Political Rights, have inspired the drafting of the fundamental rights in our Constitution, hence Article 8, which we are amending today and which provides this protection from deprivation of property. But, as I said, Madam Speaker, when a general protection to property rights is guaranteed, it is subject to certain conditions which we are all familiar with when we read section 8 of our Constitution, when we go through the certain derogations, the compulsory acquisition possibilities, for example, the payment of taxes, penalties for breach of the law, etc.

This particular section in our Constitution, section 8, Madam Speaker, was amended on two occasions since independence in 1983 and in 1986 when the Rt. hon. Prime Minister

was himself occupying the seat of Prime Minister. And, in 1986, we will remember that when the Dangerous Drugs Act was introduced in this House and for the first time provided for the forfeiture of ill-gotten gains of the drug traffickers and those indulging in fraud and corruption, Section 8 of our Constitution was also amended by Act No. 33 to ensure the compliance of the 1986 Dangerous Drugs Act with Section 8 of our Constitution. This is why in 1986, section 8 of the Constitution was amended and this was just referred to and I will come to that particular provision in a few minutes.

So, we are today, in fact, following the same pattern and we are being guided by the same reasoning in further amending today section 8(4) of our Constitution to ensure that the Good Governance and Integrity Reporting Bill, which will be debated later in this House, is compliant with the constitutional provisions with regard to property rights. Therefore, as the Rt. hon. Prime Minister explained, Madam Speaker, the exercise that we are doing today falls on all fours with what happened in 1986. I repeat, the Dangerous Drugs Act was introduced in the House; this Act provided for the forfeiture of ill-gotten gains of the drug traffickers and, therefore, in order that this law should pass the test of constitutionality in those days, in 1986, section 8 of the Constitution was therefore amended and this is what was introduced in the Constitution at that time, that is, nothing contained in or done under the authority of any law shall be held to be inconsistent with section 8(1), to the extent that the law in question makes provision for the taking or possession or acquisition of property by way of penalty for breach of the law, etc., or in consequence of the inability of a drug trafficker or a person who has enriched himself by fraudulent and/or corrupt means to show that he has acquired the property by lawful means.

So, therefore, there are derogations to the right to property, Madam Speaker, and one of these was introduced in 1986, which I have just mentioned. Today, therefore, the amendment before us is proposing the confiscation of property in the possession or under the ownership or in the custody or control of somebody who cannot satisfactorily account for that property in view of his disproportionate emoluments and income. The issue, therefore, before us which we are all debating around is whether this Bill, which is plainly a civil forfeiture law and which allows forfeiture of suspected proceeds, would be inconsistent with section 8 of our Constitution had we not brought this very amendment before the House today, Madam Speaker.

I would, therefore, answer this question by reminding the House, Madam Speaker, that the European Court of Human Rights has a rich jurisprudence with regard to forfeiture laws created by Statutes in the different European countries. The approach of this Court in determining the constitutional compliance of these forfeiture laws has been to apply the test of the lawfulness of the measure, the legitimacy of the aim of the Statute and the proportionality of the measure and the jurisprudence has been that forfeiture of proceeds or instrumentalities is legitimately directed towards the legitimate aim of crime prevention. The Court, ECHR has applied this test and held that assets, forfeiture laws are in general compliant with Article 1 which deals with property rights.

Therefore, Madam Speaker, when we analyse the proposal before this House today, the proposed amendment, especially the new provision which has been added, the new amendment which will be moved at Committee Stage which provides that the law to be reasonably justifiable in a democratic society, to my mind, this is another very pertinent safeguard. True it is, Madam Speaker, the question has been raised outside this House recently, whether there was need, in fact, for this present amendment. I have read a few articles, a few commentators who have some lawyers who had even gone as far as saying that there was no need for the Government to even come before this House and bring this amendment in view of the already existing provisions in our Constitution. Firstly, the one which I have just read to the House, which was introduced in 1986, and which I repeat -

“(...) in consequence of the inability of a person who has enriched himself by fraudulent and/or corrupt means to show that he has acquired the property by lawful means.”

This is already in our Constitution, but there is more than this one, Madam Speaker. In our Constitution, section 8 (4) (iv) also talks about, I read -

“Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Section 8 (1) (a) to the extent that the law in question makes provision for the taking of possession or acquisition of property - (iv) in the execution of judgements or orders of courts;”

So, if it is in the case of executing a judgement or guided by an order of the court, the law cannot be held to be inconsistent with the provisions of section 8 of the Constitution if

the law in question has made provision for the taking of possession of the property by virtue of an order of the court.

Now, what is the Good Governance and Integrity Reporting Bill proposing, Madam Speaker? What is the essence of this Bill? I am sure on this we are all agreed, there is no difference of opinion although we might have different views on the Bill which will be debated in a few hours, but what does the law essentially say? Clause 16 of the Bill reads as follows -

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

This is an order of the court.

So, this is the first scenario, the first option when the agency has applied for a UWO, it goes before the Judge in Chambers, the Judge is satisfied that the respondent has unexplained wealth, the Judge makes an order and this is what precisely the Constitution talks in the execution of judgments or orders of court.

Now, suppose the Bill provides also where the Judge in Chambers considers that the application for the UWO cannot be granted on the basis of the affidavit evidence which is before him, the Judge then refers the matter to the Supreme Court. Then, it will be up to the Supreme Court to decide whether to issue the UWO or not. This is my understanding of the Bill as it is. So, suppose it is not the Judge in Chambers who issues the UWO and the Judge considers the application cannot be granted and refers the matter to the Supreme Court, it will be up to the Supreme Court to decide whether to grant or not. So, when the Supreme Court grants the order, it is a court order. It is a UWO which fits in precisely with what this provision in our Constitution is providing for, that anything done under the law shall be held to be consistent with section 8 of our Constitution provided this has been done in the execution of a judgement or an order of the court.

So, probably those who have been canvassing the fact that we should not have amended our Constitution today are right in their proposals. But, of course, Madam Speaker, it would be up one day for the competent court or the Supreme Court to decide whether, in fact, this amendment was necessary or whether it is a mere *surplusage*.

Madam Speaker, in spite of what I have said, in spite of what I have reiterated, I have repeated, in spite of the fact that I have reproduced the arguments of certain commentators, we must admit also that the objective of the present constitutional amendment is to introduce in our Constitution the new concept of property confiscation of unexplained wealth which I think is different from what already exists in our Constitution. So, in proposing this constitutional amendment, in fact, the Government is playing safe, is ensuring that this law will pass the test of constitutionality because when the debate will take place in a few hours regarding the other Bill, we will then go through the debates in more details about this new concept of civil forfeiture, illicit enrichment and whether, in fact, what the Bill is proposing, the process is by way of civil proceedings or not.

I do not intend to go in this debate at this stage, Madam Speaker, but what is true is that the concept that we are introducing in the Constitution by way of this constitutional amendment is a novelty. It is a different matter altogether to what is to be found in our Constitution when the Constitution was amended in 1986 to cater for drug traffickers, ill-gotten gains or corrupt means to show that somebody has acquired property by unlawful means. So, this is why I say in spite of some people arguing that there was no need to come with this present constitutional amendment, I think Government has rightly taken the decision to present this constitutional amendment, since the objective of this Bill is, as I said, introducing in our Constitution a novel, a new concept, that of property confiscation of unexplained wealth by way of civil proceedings.

Madam Speaker, in spite of the fact that section 8 has been properly amended, Government has played safe; in spite of what already existed in our Constitution that by an order of the court, property could be taken possession of; in spite of the fact that in 1986 the then Government introduced an amendment with regard to taking possession of the property of drug traffickers or a person who had enriched himself by corruption; in spite of the fact that Government has taken up on board the proposal made by the hon. Leader of the Opposition about this question of reasonable, justifiable in a democratic society; we all know that this Bill, when it will be adopted by the House - can be and will be probably, I don't know - could be challenged before the Supreme Court because we are a democratic State where the rule of law prevails.

The Government cannot prevent anybody from going to the Supreme Court and challenge this Bill and if this will be done, it will certainly be done on this question of

whether this Bill is, in fact, compliant with section 1 of the Constitution. Mauritius is a democratic sovereign State and many hon. friends have referred to the famous judgement of *Khoyratty v The State* where excerpts of the speeches made by the hon. Prime Minister and of my speech, when we amended the Constitution in 1991, that was Act 48 of 1991 to make of Mauritius a Republic and we amended certain important clauses of our Constitution, for example, section 1 and section 47 which have just been referred to by hon. Gayan and other friends.

So, *la question reste posée*, Madam Speaker, whether this Bill is challengeable by virtue of the contents of section 1 of the Constitution. The question that the Supreme Court will have to answer is that: 'Are we - by way of this constitutional amendment that we are proposing to the House today or even by way of the new Bill, the Good Governance and Integrity Reporting Bill - undermining the democratic nature of our State which Mauritius is a sovereign and democratic State according to Article 1 of the Constitution? Are we undermining, transforming essentially the democratic nature of our State? Is this amendment that we are proposing violating in any way the principles of separation of powers, thus in opposition to section 1 of the Constitution?' These are the questions that one day the Supreme Court will have to answer, will have to rule upon, Madam Speaker.

Suffice it to say that the benefits of the law against illicit enrichment for curbing corruption, for thwarting corruption have been criticised, Madam Speaker, in other jurisdictions although laws against illicit enrichment have yielded many benefits for the different authorities in the different countries in terms of curbing corruption. These laws have also been criticised for violating fundamental rights, for infringing human rights and the debates, the case laws, the authorities, the jurisprudence exist in all these countries, Madam Speaker.

In fact, what we are doing today and what we'll be doing in a few hours, we will be examining the dynamics between corruption and human rights with this new mechanism, Civil Forfeiture, Non-Conviction Based Forfeiture, Madam Speaker, in other countries. I have addressed the question, the obstacle of the different agencies and authorities in combatting corruption. In fact, somebody has talked of corruption in terms of the paradox of corruption, Madam Speaker. Corruption is universally disapproved, but it is universally prevalent because it is an issue of complex crime which is difficult to uncover, as we all

know. This is why this new mechanism of Civil Forfeiture to combat illicit enrichment is now being proposed in this Bill which we are going to debate in a few hours.

I will end by saying, Madam Speaker, that, to me, in my humble opinion, I will repeat what I have said, I think that the Government has done the right thing by proposing this amendment today, in spite of the fact that there is an argument to the effect that the Constitution already catered for the situation we are talking about today - illicit enrichment, but the stronger argument, according to me, is that this is a new concept, the concept of unexplained wealth, the concept of illicit enrichment which is, in fact, a new concept. Madam Speaker, when we will debate the other Bill in a few hours, I am sure, we will discuss how new, relatively new, is this concept which has been adopted by a few countries and which has worked well in some countries, less well in other countries; which has known a relative success in some of the other countries, but which has been an effective instrument in other countries. To me, Madam Speaker, I think the right thing has been done, the right safeguard has been introduced in our Constitution by this proposed amendment today and this is why we are going to vote for this constitutional amendment.

Thank you.

Madam Speaker: Hon. Bhadain!

(3.49 p.m.)

The Minister of Financial Services, Good Governance, Institutional Reforms, Minister of Technology, Communication and Innovation (Mr S. Bhadain): Madam Speaker, let me first start by showing my appreciation to the views of hon. Ganoo. I believe he has rightly understood, not only the spirit behind the Bill, but everything that we are doing in terms of the amendment to the Constitution which relates to that Bill as well. He has clearly explained that what this constitutional amendment is doing, Madam Speaker, is, in fact, empowering the Judiciary. That's all.

If we look at the Explanatory Memorandum –

“The object of this Bill is to amend the Constitution to provide for the taking of possession of property (...) by way of confiscation.”

By whom? By a Judge of the Supreme Court! Therefore, what this constitutional amendment is doing is it is giving further judicial powers to a Judge in Chambers and if he so chooses to refer the matter to the competent Court, to the Supreme Court. This is why I strongly disagree

with my friend, hon. Shakeel Mohamed, because everything he has said is in relation to what he believes would be powers in the hands of the Executive.

This Constitution (Amendment) Bill is not giving any power whatsoever to the Executive. He mentioned the inscription. The only thing that the Agency can do under the Good Governance and Integrity Reporting Bill which can, let's say, affect the life of a citizen of this country, is to write a letter and to ask for explanations on suspected unexplained wealth within 21 days or such number of days as may be determined and that person may reply by way of an affidavit or he may choose not to reply by way of an affidavit also, in which case, the Agency will then apply for a Disclosure Order, again, from the Judiciary, from the Judge in Chambers. The Judge in Chambers, in his wisdom, will decide whether to grant that Disclosure Order or not.

The second thing that the Agency can do is to put an inscription on that property and the amendments which are being brought to the Good Governance and Integrity Reporting Bill specifically states that within six weeks from the date that the Agency has reported the matter to the Board, that inscription will automatically lapse. When we will come to that Bill, I will also explain that the Agency, having inscribed a property, shall without delay report the matter to the Board so that within six weeks that inscription lapses. That's all, Madam Speaker, in terms of the Executive's powers.

Now, when we come to the Board, what can the Board do, chaired by this Commonwealth Judge or ex-retired Judge with the Assessors? The Board can only ask for exchange of information from other organisations, institutions and also ask for production of documents. No coercive powers whatsoever! Then, the Board decides whether an application should be made to the Judge in Chambers for an Unexplained Wealth Order. This is the process. There are no coercive powers whatsoever in the hands of the Executive, either through this Constitutional (Amendment) Bill which is proposed or the next Bill which is going to come - the subordinate legislation which is going to give effect to this supreme legislation - the Good Governance and Integrity Reporting Bill. It is high time that we set the parameters so that the debates can be confined to what these two amendments are in truth. Everything else *est de la pure démagogie, Madame la présidente!*

Having said that, Madam Speaker, I now go back to the speech that I had prepared.

Madam Speaker, the Constitution of Mauritius was originally published as a Schedule to an Order in Council of Her Majesty the Queen in the Mauritius Independence Order GN 54 of 1968. It is stated, Madam Speaker, I quote –

THE MAURITIUS INDEPENDENCE ORDER 1968

AT THE COURT AT BUCKINGHAM PALACE

The 4th day of March 1968

Present,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, by virtue and in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows –

- (1) This Order may be cited as the Mauritius Independence Order 1968.
- (2) This Order shall be published in the Gazette and shall come into force on the day on which it is so published:

Section 2 subsection (1) then states, Madam Speaker –

In this Order –

“ the Constitution" means the Constitution of Mauritius set out in the schedule to this Order;

" the appointed day" means 12th March 1968;”

Madam Speaker, it appears that our then rulers had little choice in accepting this Schedule which was attached to an Order in Council of Her Majesty the Queen as our supreme law. Nevertheless, this Constitution has been a document of admiration and reverence over the last five decades. Both its letter and spirit have stood the test of time.

Madam Speaker, the great Greek Philosopher, Aristotle, stated 350 years BC, and I quote –

“Constitutions which aim at the common advantage are correct and just without qualification, whereas those which aim only at the advantage of the rulers are deviant and unjust, because they involve despotic rule which is inappropriate for a community of free persons.”

Madam Speaker, on each occasion that our Constitution has been amended, it has been for the greater good of our society. Chapter 2 which deals with our fundamental rights has been amended on not less than 7 occasions in order to, *inter alia*, restrict the right of liberty of drug traffickers and terrorists, forfeit property of drug traffickers and other criminals, allow for the compulsory acquisition of property for the social as well as the public benefit and to enhance gender equality in our society.

It is commonly believed, Madam Speaker, that the spirit of our Constitution prevents its letter to be altered when the interests of the people are not best served.

Indeed, when the previous Prime Minister tempted fate by attempting to become an all-powerful President with executive powers, immune from investigation, prosecution, public scrutiny and accountability even from this Parliament, his proposal was rejected - *Vox populi, vox Dei*.

The sacrosanct principles of our Constitution, which are closely connected with the deeply entrenched values of our society, can only be altered with the support at the final voting of this august Assembly by not less than three quarters, by all the Members, in other words, Madam Speaker, only when the wish of the people is fulfilled.

Madam Speaker, in the Age of Reason, Thomas Paine refers to the Athenian statesman and lawmaker, Solon, who is remembered for his efforts to legislate against political, economic and moral decline in Athens. He was asked the question, and I quote –

“Which is the most perfect popular government?”

To which he replied, and I quote –

“Where the least injury done to the meanest individual is considered as an insult on the whole Constitution.”

This answer, Madam Speaker, regarded as a maxim of political morality is as relevant today as it was 500 years BC. However, shameless display of unexplained wealth and baffling opulence by a few at the expense of the many who are striving hard to make both ends meet can never be reasonably justifiable in any democratic society, Madam Speaker!

Madam Speaker, this august Assembly is being called upon to entrench a new norm, a new principle, a new value in our Constitution to reflect the needs of the Mauritian society today. Zero tolerance for unexplained wealth and unjust enrichment! This Government,

elected by the people, for the people, is fulfilling its promise to clean up a system which has decayed over the last decade of Labour *maja caro* governance.

Madam Speaker, the fight against unexplained wealth proposed by this Constitution (Amendment) Bill will set the stage to define a clean, transparent and ethical platform for the next generation of young Mauritians to thrive and to prosper by restoring faith in a culture of hard work, discipline and integrity, in short, Madam Speaker, a new culture of righteousness and good governance.

Madam Speaker, the objective of this Constitution (Amendment) Bill is to introduce a new section 8 (4) (aa) in our Constitution to provide for the taking of possession of property in cases of unexplained wealth which will now read as follows –

“section 8 (4) –

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)”

Which creates the general provision that no person shall be deprived of his property or any other provision of Chapter II of the Constitution –

“to the extent that the law in question makes provision for the taking of possession of property –

- (i) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
- (ii) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
- (iii) held by a person for another person to an extent which is

disproportionate to the emoluments or other income of that other person,

by way of confiscation,

except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or”.

Madam Speaker, hon. Ganoo asked the question and I am asking the question again: why is there a need for our Constitution to be amended today? He referred to the Government playing safe. I don't think it is as simple as that. We are not playing safe! We are doing it because we have to make sure that the constitutional amendment reflects the whole concept of unexplained wealth.

Madam Speaker, the right to protection from deprivation of property is provided for under Part II of the Constitution, more particularly, under sections 3 (c) and 8 (1). I shall firstly deal with section 3 (c). Section 3 (c) provides for -

“the right of the individual to protection for (...) deprivation of property without compensation, subject to limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”

The words ‘without compensation’ are very important, Madam Speaker, and I will come to that in a minute.

Madam Speaker, the manner in which section 8, on the other hand, is drafted is inspired from the drafting of several articles of the European Convention on Human Rights of 1950. The right of a citizen is first defined and then a derogation to that right follows. So, when we look at section 8 (1), it provides that no property of any description shall be compulsorily taken possession of, except where three conditions are satisfied. And what are these three conditions?

“(a) the taking of possession or acquisition is necessary or expedient in the interests of the defence, public safety, public order, public morality, public health, town and country planning (...)”

And it goes on.

So, you can take property when it is on grounds of public safety, public order, public morality and so on. However, you must satisfy section (b) as well. And section (b) says –

“there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property”.

And then you have to satisfy section 8 (1) (c) –

“provision is made by a law (...)”

Like we have the Good Governance and Integrity Reporting Bill coming today –

“(...) to that taking of possession or acquisition”

And then it goes on to say –

“(i) for the payment of adequate compensation”.

So, if we were to go down that route, if we were to say okay, fair enough, there is a general principle that no person shall be deprived of his property but then, there are derogations under section 8 (1) (a), (b) and (c) which say that on ground of public morality, public order, public safety, you can actually do that, you would have to pay adequate compensation. And that would have resulted in an absurdity, Madam Speaker, because when somebody has got unexplained wealth which is defined as being disproportionate with his emoluments and other income, you can’t go and pay adequate compensation when you are taking that property! So, that section 8 (1) (a) which would not apply in this case, which then takes us, Madam Speaker, to section 8 (4) (a) where there are other derogations.

In section 8 (4) (a) of course, the general principle is there that no person shall be deprived of his property, but then it goes on to say that -

“Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1)”

- the general principle.

“to the extent that the law in question makes provision for the taking of possession or acquisition of property.”

Now, this is referred generally on old textbooks on Constitution as the legality principle. So, you have a law. If you are going to derive from the general principle which says you can’t take the property of somebody, then you must have a law which allows that and this is why you have the Good Governance and Integrity Reporting Bill. But let us go through it to see if that would have worked!

So, the first test, Madam Speaker, is commonly referred to as the legality principle. It is apposite to note that the wording ‘nothing contained in or done under the authority of any

law' is used in the Mauritian Constitution whereas by way of comparison when we look at the protocol on the European Convention on Human Rights (ECHR), the words used are 'except such as is in accordance with the law'. Be that as it may, this means that there must be a law in place which allows an institution of the State to deprive a citizen of his property. Okay! Let's say we have a law and it is there. That derogation continues and it goes on to say that - like hon. Ganoo has already listed - you have certain situations where you can actually take that property. For instance, if you are asking somebody to pay tax, which is a derogation, that person can't go to Court and say I have been deprived of my property because I had to pay tax.

They can have their properties forfeited and when they enriched themselves whether by fraudulent or corrupt means then basically that can be taken. That is very interesting because this concept of enrichment in section 8 (4) (a) (ii), which is the amendment brought in 1986 already recognises the concept of unexplained wealth because it is talking about enrichment. The problem there, Madam Speaker, is a conviction based on recovery process. We have all the debates last week or on a couple of weeks ago on the Asset Recovery Act. When we are talking about drug traffickers, when does somebody become a drug trafficker? When he has been convicted by a court of law for having been trafficking in drugs! When you talk about somebody who is fraudulent or corrupt, he must have been found to be a fraudulent person or a corrupt person. So, we could not rely on this as well because here that would work for the Asset Recovery Act, but it does not work for the Good Governance and Integrity Reporting Bill because you need a conviction first.

Now, when we look at section 8 (4) (a) (ii), we have other derogations which do not apply, but then there is a third principle. So, you have the legality principle, you must have the law. You have a legitimacy principle, where it is legitimate to take the money of drug traffickers when they have been found to be drug traffickers. But then there is a third test which is the proportionality test. This is where we have the words 'except insofar as it is justifiable in a democratic society,' so all of this is in section 8 (4) (a). Everybody has been talking about cases going to court. The way I have been listening to them, as a Barrister at law, the first thing I was taught was never to prejudge the decision of a court of law. But I have heard everybody who has been talking today saying there will be challenges to this law, it will not be successful and it will fail going forward. If a court is to interpret the Constitution in section 8, it will have to go in that same process. Look at the legality

principle, look at the legitimacy principle, look at the proportionality principle and then determine whether there is some kind of infringement.

But we have found that we cannot go under section 8 (1) (a), grants of public morality and what not because you have to pay adequate compensation. If you go under section 8 (4) (a) and you can deprive property without paying compensation, then you would fall foul of the fact that section 8 (4) (a) (ii) requires a conviction. That is why, Madam Speaker, we have come to this Constitution (Amendment) Bill, which now includes section 8 (4) (aa).

However, when we did insert it in our Constitution after section 8 (4) (a) and we lose one of the test which was there, that is, the proportionality test, where it states 'except insofar as it is justifiable in a democratic society'. Now, when the Bill was first proposed, we did not have these words there. However, the hon. Leader of the Opposition suggested that this test should also be included in section 8 (4) (aa) to provide a protection that if tomorrow somebody wants to go and challenge this concept under Article 1 of the Constitution which says that 'Mauritius is a sovereign democratic State' then he can do so because other than the proportionality test, there is also the whole concept of Mauritius being a democratic society, which is protected under Article 1. Hon. Gayan has explained how this Article 1 is now fully entrenched in our Constitution and cannot be derogated from after the judgement of Khoyratty by the Judicial Committee of the Privy Council that protection always remains. I was also taught when I was doing my pupillage with Mr Guy Ollivry Q.C. that Article 1 is the Constitution itself. It cannot be derogated from.

We decided to go along with that. The Rt. hon. Prime Minister and the team who were working on it, we decided to take on board the suggestion of the hon. Leader of the Opposition because it was a valid one and it makes sense and also because it afforded that protection which was not there when the first draft was circulated. And for that, I would like to thank the hon. Leader of the Opposition for his input because this is of national interest. This is not party politics. This is not *la loi Bhadain*. This is certainly something which is going to help society going forward.

I must say - hon. Shakeel Mohamed is not here - Madam Speaker, that it is a matter of regret that the Mauritius Labour Party chose not to vote for the anti-corruption law, the Prevention of Corruption Act in 2002. The Mauritius Labour Party chose not to vote the anti-money laundering law, the Financial Intelligence and Anti-Money Laundering Act in 2002. And, today, the Mauritius Labour Party is refusing to vote for the Constitution (Amendment)

Bill, which is bringing the whole concept of unexplained wealth into our supreme law and this is for obvious reasons, Madam Speaker.

(Interruptions)

Madam Speaker: Order, please!

Mr Bhadain: Madam Speaker, I would like also to refer to a couple of issues. One is in relation to the words ‘any other provisional of Chapter II of the Constitution’ to the extent which is including the amendment and which is at the beginning of the amendment. In fact, the reason why this is there is because you cannot actually challenge by way of section 17 as was mentioned before. You cannot because Chapter II includes section 17.

Also, Madam Speaker, in relation to the point which was raised by the hon. Leader of the Opposition on section 8 (4) (a), true it is that in 1983 that section was introduced in our Constitution. Section 8 (4) (a) - for other reasons, nothing to do with unexplained wealth in those days, I think to do with nationalisation and other issues probably – says –

“Notwithstanding subsection 1(c), section 17 or any other provisions of the Constitution (...)”

And that is very wide, Madam Speaker.

“(...) 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”.

Here, I must say that I have a small difference with what the hon. Leader of the Opposition has stated before by saying that we try to rely on that as if we were not transparent on that issue. But section 8 (4) (a) has always been there in the Constitution since 1983. This is not us who are introducing that section, it is there. So, today when we are coming with this amendment, when you read it in context with section 8 (4) (a), at a first reading, it would appear that when the Good Governance and Integrity Reporting Bill goes through, with a 75% majority, then it cannot be called into question in any court of law. I disagree with that and that is my personal opinion, Madam Speaker. I disagree with that because when it says that notwithstanding any other provision of this Constitution, you cannot derogate from Article 1. You cannot! That is what Khoyratty says. Article 1 is now entrenched when

Mauritius became a Republic; it is entrenched in our Constitution. So, you cannot say regardless of any other provision of this Constitution when a law is voted with three-quarter majority, you cannot go to Court. True it is that this has never been challenged before our Courts or before the Judicial Committee of the Privy Council, but one day it will and on the basis of the reading that I have, it does not become a relevant issue. This is why I would make an appeal to the hon. Leader of the Opposition. If this is one of the contentions for not voting the Good Governance and Integrity Reporting Bill, then I believe that this contention is not ...

(Interruptions)

At least, now I know that this is not the reason as to why the hon. Leader of the Opposition has decided not to vote for the Good Governance and Integrity Reporting Bill. But, at least, we are on the same wavelength on this issue as well; that this is not a prohibiting provision which would prevent the GGIR from being challenged in Court one day. It's not; it cannot be.

Madam Speaker, our Constitution dates back to 1968, but Mauritius cannot be trapped in a time warp. We can't basically be stuck in time. The future depends on how this august Assembly chooses to amend the Constitution and make a clean break from the past when we need to do it, especially to provide for new ideas, new concepts, new methodologies, new laws and a new way of doing things in our country, and this is being done, Madam Speaker, for the Mauritius of tomorrow, recognising unexplained wealth in our Constitution. Not only unexplained wealth, there is something which probably everybody or we have missed out. We are actually recognising *prête-nom* in our Constitution. Now, when you hold assets on behalf of somebody else and it is disproportionate with the income or emoluments of that person or it cannot be satisfactorily accounted for, then that *prête-nom* will have to answer. But it is an action against property; it is not an action against persons.

So, this Constitution (Amendment) Bill and its proposal with regard to unexplained wealth is defining yet another moment in Mauritian history, which will pave the way for future prosperity in a transparent environment designed to sustain future economic growth, Madam Speaker. This is what this Government, led by the Rt. hon. Sir Anerood Jugnauth, is all about.

Madam Speaker, let me end by quoting John F. Kennedy –

“The problems of the world cannot possibly be solved by skeptics or cynics whose horizons are limited by the obvious realities. We need men who can dream of things that never were”.

As far as I know, Madam Speaker - and I will finish with these words - there is only one man who has been born in Mauritius who can bring those changes and he is sitting there.

Thank you.

(4.19 p.m.)

Mr R. Uteem (First Member for Port Louis South & Port Louis Central): Madam Speaker, during the debates on the Asset Recovery (Amendment) Bill in 2012, I advocated criminalising illicit enrichment, and today I stand by every word that I stated then. If you can't explain the legitimate source of your wealth, if you can't demonstrate that you have acquired wealth by legal means, then you have to pay for it. We have always been in favour of confiscating ill-gotten wealth, we have always maintained that a criminal should not benefit from his crime; we have always fought for public officials to be accountable for wealth which they have accumulated and which they cannot justify.

Madam Speaker, we have not changed our stance. In fact, Madam Speaker, Mauritius has taken a commitment to combat illicit enrichment. Mauritius is signatory to the United Nations Convention against Corruption which came into force on 15 December 2005. Article 20 of that Convention reads as follows –

“Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”

The purpose of this Article 20 was clearly to provide an effective weapon in the fight against corruption by making public officials accountable for any accumulated wealth which he did not acquire through lawful means.

Madam Speaker, it is difficult to prove corruption because it is an offence both to give and take bribe. So, perpetrators and victims very rarely would come forward because they would be self-incriminating themselves. However, sign of corruption can be manifested when a public official lives beyond his means, where his assets are disproportionate to his emolument and other legitimate income.

As a matter of fact, Madam Speaker, there is already a provision in our law which deals with possession of unexplained wealth. Section 84 of the Prevention of Corruption Act 2002 already gives power to ICAC to investigate public officials who maintain a standard of living which is not commensurate with their emolument, to investigate public officers who control property to an extent which is disproportionate to their income or public official who holds property for himself or his relative or his associate and is unable to satisfactorily account as to how he came into the ownership, possession, custody or control. So, it's already in our law, in section 84 of the Prevention of Corruption Act. However, this section 84 of PoCA does not go far enough; it does not make it a corruption offence to possess unexplained wealth. Unexplained wealth is only evidence to corroborate other evidence relating to corruption offence.

Then, there is another provision in the Prevention of Corruption Act which is very interesting; section 82, sub-section (4), which reads –

“Where a person is convicted of an offence under this Act, the Court may, in addition to any penalty imposed, order the forfeiture of the property, the subject matter of the offence”.

So, we already have in our law powers given to the Courts to seize, to forfeit assets which are unexplained wealth in the context of the corruption charge involving public officials. But what we have relates to public officials, relates to corruption offence. What is proposed today by this amendment to the Constitution is to create a new creature, constitutional derogation, which would allow the State to confiscate, to deprive an individual of property in three specific circumstances. The first one being where that person has property which is disproportionate to his salary, to his income; the second one is where the person owns, possesses, has in his custody and control property which he cannot satisfactorily account for, and the third case is where a person holds property on behalf of another, as a nominee for another person, and that other person can't explain the source of his revenue and wealth.

Madam Speaker, the amendment to the Constitution does not distinguish between public official and the ordinary citizen. The proposed amendment does not distinguish between ordinary citizens and criminals and this is the reason why when the two Bills were circulated in the public, there was such an outcry, because the ordinary citizens of Mauritius are at risk. This law can be used against any citizen; it is not aimed towards only public officials who are corrupt, it is not aimed only towards criminals. Every citizen of Mauritius who cannot reasonably, satisfactorily account for his wealth can be subject to a confiscation order.

The next thing which this amendment does to the Constitution, which is again a source of great concern to the ordinary citizen, is that it allows confiscation of property, of wealth without having, at any point, to establish that the wealth has been acquired, accumulated through unlawful means.

The concept of legality or unlawfulness is not there in the proposed amendment and this is very different to the other countries which have adopted legislation to combat unexplained wealth. For example, in Australia, the Court can only make a confiscation order if it is satisfied that a person's total wealth is greater than his lawfully acquired wealth. Therefore, in Australia, for example, it is sufficient for an individual to prove that his wealth was acquired by legal means and he is off the hook, but not here.

Here, with this amendment, even if you can prove that your wealth is not tainted with any illegality, there is no crime involved, you can be caught as long as you cannot provide a satisfactory justification, you cannot satisfactorily account for your wealth and this is creating concern in many respect. For example, if you have received a gift, if you have received a donation, if you have received an inheritance, it is not sufficient for you to show that you are not a criminal. You have to now establish that the person who gave you, who donated you this money, this gift or your parents from whom you inherited, that the wealth, the property was acquired through emoluments and income. So, you have to now justify the source of income of the person who has given you, who has left that property for you and that is why people in Mauritius are very concerned.

The hon. Minister of Financial Services, Good Governance and Institutional Reforms mentioned the Asset Recovery Act. Last week, we dealt with the amendment to that Asset Recovery Act. There is already a section in the Asset Recovery Act of 2011. In fact, that was an amendment proposed in 2012 in section 3 subsection 2 (A) which reads as follows -

“where it is found that a person was in possession of any property or has derived a benefit from an unlawful activity, and that he did not have the legitimate source of income sufficient to justify his interest in the property or the benefit derived by him, the onus shall, on a balance of probabilities, lie on that person to show that the property was not obtained or the benefit was not derived from an unlawful activity.”

So, we already have a legislation which puts the burden on a person to show that the property that he has is not derived from unlawful activity. With this legislation, the key element of unlawful activity is missing and this is why we have to come with this amendment to the Constitution because, for the first time, we are going to introduce the notion of confiscation which is not related at all to the notion of ill-gotten wealth, of illicit enrichment because this element of unlawfulness, of illegality is not entrenched in the proposed Bill. This is why ordinary citizens of this country are worried, because if you cannot explain satisfactorily where you got the property, then the property can be confiscated even if the property is not derived from an unlawful activity.

Madam Speaker, there would be, of course, no need to make any amendment to the Constitution if the aim of the Bill was merely to seize unlawfully acquired wealth. I listened to several Members of this House, especially on the Government side, whether intervening on this Bill or on the radio, and I cannot but come to the conclusion that they must have overlooked a very important provision of our Constitution, which has been referred to by hon. Ganoo and by the hon. Minister in their interventions. I am talking about section 8, subsection 4 (c) (ii) of the Constitution which reads as follows -

“Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention with subsection (1) -

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of property -

(ii) by way of penalty for breach of law or forfeiture in consequence of a breach of law (...).”

So, you are seizing the property if it is a breach of law, then you can do it, but more interestingly the section goes on to say -

“(...) or in consequence of the inability of a drug trafficker or a person who has enriched himself by fraudulent and/or corrupt means to show that he has acquired the property by lawful means;”

So, we already have in our Constitution a derogation for a law which would provide for the seizure of property in consequence of the inability of a drug trafficker or a person who has enriched himself by fraudulent and/or corrupt means to show that he has acquired the property by lawful means. So, if the aim of today’s amendment - and the Bill that is going to come afterwards, the Good Governance and Integrity Reporting Bill - was only to seize the properties of drug traffickers or persons who have enriched themselves by fraudulent and/or corrupt means, we would not need to have any amendment, but clearly when we read the amendment that is being proposed, this element of acquisition by unlawful means is not there.

So, it is not innocent. It is not as hon. Ganoo thinks, maybe to clarify things. No! It is a deliberate amendment because this provision of confiscation without a crime, without the element of unlawful means of acquisition of that property is not provided today in our Constitution. It is because of this absence of the element of unlawfulness that the ordinary citizens of Mauritius are worried about this law. Madam Speaker, it is to meet this legitimate concern of the ordinary citizens who are afraid that their properties would be seized even if they are not criminals, even if the properties are not derived from a crime, it is for this reason that the MMM, at the first available opportunity after we had taken cognizance of the Constitution (Amendment) Bill, that, in a press conference, we urged Government to amend the amendment to the Constitution of section 8 (a) to make it subject to the proviso that it has to be reasonably justifiable in a democratic society, and we are grateful to the Rt. hon. Prime Minister for having agreed to insert this caveat, this proviso in the Bill for we should not forget, Madam Speaker, that any amendment to the Constitution has to be read, subject to the overriding provision of section 1 of the Constitution which provides that Mauritius shall be a sovereign democratic State which shall be known as the Republic of Mauritius.

Hon. Members before me have mentioned the case of Khoyratty and the State which is now well-established law that even a proposed amendment to the Constitution, even an amendment voted to the Constitution can be ruled out to be anti-constitutional in breach of section 1.

Suffice it to say, Madam Speaker, that, in our opinion, the Good Governance and Integrity Reporting Bill, as currently drafted, would not pass this constitutional hurdle, we

cannot vote it because it would not pass this threshold of being reasonably justifiable in a democratic society.

Madam Speaker, we will vote in favour of the proposed amendment to the Constitution, because we are in favour of confiscation of ill-gotten wealth and illicit enrichment, and we do so with the comfort that any law which provides for confiscation of unexplained wealth will first have to pass the test of being reasonably justifiable in a democratic society.

Thank you.

Madam Speaker: The Rt. hon. Prime Minister!

(4.36 p.m.)

The Prime Minister: Madam Speaker, first of all, I would like to thank all the hon. Members who have participated in the debate on this important constitutional amendment. I am glad to note the general consensus that gathered around this Bill, with the exception of a few who have made remarks concerning certain reserves, but, more particularly, the exception is hon. Mohamed who has completely derailed and given me the impression that sometimes legal minds go topsy-turvy. He based all his arguments on the basis that the whole proceedings are going to be criminal, therefore he spoke on independence of the Judiciary, separation of powers, right to silence, burden of proof and what not. All this is irrelevant in this debate because, in fact, it is not going to be criminal proceedings. It is going to be civil and I am afraid to say that some members of the Bar Council also have got confused and have argued in the same way as hon. Mohamed.

But after having said this, Madam Speaker, the Government is waging a war on grand corruption. The measures that we are introducing through the present constitutional amendment are bold and historical and mark a watershed in our approach to fight fraud and corruption in this country. The aim is to check accumulation of wealth through backdoor mechanisms and thus preventing unscrupulous persons from distorting the playing field.

Madam Speaker, much stress has been laid on the fact that section 1 of our Constitution speaks of Mauritius as being a democratic State and sovereign. Of course, we are sovereign, but aren't we democratic? I can assure this House that I am a firm believer in our democratic system. I have always defended our democratic system of Government. It is not now that I

am going to do anything to harm our democracy, as I said, in the playing field, particularly in the property market.

This Bill is in the interest of the country and goes to the heart of the type of society we want to bequeath to our children.

Madam Speaker, we are today making history. However, it is a matter of regret that some hon. Members are trying to stop the march of history. I find their hypocrisy on such an important issue most regrettable, to say the least. When one intends to do good, one does not just speak about it, one has to act.

We have all been talking a lot on how to curb fraud and corruption. It is now time to walk the talk. This is precisely what we are doing. But, of course, I can understand hon. Mohamed when I remember the former Prime Minister recently having made public statement; in that statement, he has stated: *“Mo pou guetté kisanla pou vote ça Bill-là, ça la loi-là.”*

Besides, this initiative is only part of a wider spectrum of legal and institutional reforms that we are introducing to enhance the overall integrity and governance framework in our country. We would be coming with the other measures which we have announced in the Government Programme 2015-2019 and which have been mentioned by the hon. Leader of the Opposition, namely, the enactment of a new Declaration of Assets Act and a Financing of Political Parties Act and the establishing of the Financial Crime Commission, amongst others. This, I must assure the House that I am going to do it because I want to leave in honour. I must add that we have already started working on these proposed pieces of legislation and I wish to reassure the House that we are going to stand by our commitment.

Madam Speaker, the Constitution (Amendment) Bill (No. XXIX of 2015) is also an expression of our deeply held values – the values of honesty and integrity. This is, therefore, an opportunity to demonstrate the values and principles that we stand for. The scourge that this Bill seeks to address is a matter that touches upon the fundamental values of our democracy. This is, therefore, no time for demagoguery and petty politics. This is no time to hide behind lame excuses. Higher and loftier objectives and ideals should always prevail over other considerations.

Madam Speaker, let me again stress on the fact that the sole aim of the proposed constitutional amendment is to track down massive unexplained wealth accumulated by

certain people through illicit dealings and on the back of honest and hardworking people. We have no hidden agenda. We are not targeting any individual, but only ill-gotten wealth.

Besides, in order to show our good faith, we have, after wide and extensive consultations, brought some substantive amendments to this Bill which should now allay the fears expressed in some quarters. I also wish to underline that we are not in any way undermining the basic tenets of our Constitution, that is, the rule of law, the separation of powers or the powers of the Judiciary, as highlighted by hon. Gayan, following the misguided comments by hon. Mohamed.

Some people think that people will contest and will go to the Supreme Court and even perhaps to the Privy Council. But this is a right which is there in the Constitution, any citizen can contest the constitutionality of any law and it is open to him to go to the Supreme Court, and if he is not satisfied with the judgment of the Supreme Court, he even appeals to the Privy Council. As I have been given to understand after hearing some arguments that the Court may find because of section 1 of our Constitution that we cannot contest or do anything about illegal wealth. Well, if the Court is going to interpret section 1 in that way, it means the Court is saying that we must allow corrupt people to enrich themselves, have ill-gotten wealth and enjoy themselves.

Well, if that is so, then it is the end of this country and we will go to doom. I cannot understand why the Labour party is refusing to vote this amendment and is hiding behind the defence of high-minded principles. They perhaps have good reasons to be worried by such legislation in our Statute books. No doubt why under their reign, malpractices, grand corruption had become entrenched to a most alarming degree and was paralysing the development of this country.

Madam Speaker, the people of this country are very much aware of the real reasons behind their stand. By refusing to vote this Bill, they are actually going against the wish of the majority of the population. I must also highlight that all the hue and cry over this Bill is not from the ordinary, hardworking and law-abiding citizens. They are all in favour of the measures we are introducing, as rightly pointed out by hon. François.

The people are well aware that fraud and corruption in this country has grown exponentially in the last decade in spite of the fact that we have several institutions and legislation to check such malpractices. You will recall that the Leader of the Opposition

questioned the need to create a new agency under a new law to tackle unexplained wealth. He suggested that the existing laws and institutions be reviewed instead.

Madam Speaker, we are talking about civil proceedings which introduce a new concept to deal with unexplained wealth from unjust enrichment and this cannot fall under the ambit of other laws, and this is why also we have had to amend section 8 of our Constitution.

The Good Governance and Integrity Reporting Bill not only addresses the issue of unexplained wealth, but also introduces the concept of positive reporting of acts of good governance, integrity reporting campaigns as well as a reward system.

These require a new law and a new agency which will ultimately fall under the ambit of the Financial Crime Commission, just other institutions such as ICAC, FIU, Asset Recovery Investigative Division, to create an apex body to fight financial crime in a more efficient manner.

Madam Speaker, people are shocked by the scale and scope of corruption which have been uncovered in recent months. This is the reason why they have, in a large majority, expressed their support for this revolutionary measure which we are introducing to clean up the Augean stable. Exceptional circumstances call for exceptional measures. It is time to live up to the expectations of the people of this country.

The choice before us is, therefore, very clear and that is to put the country first and be on the right side of history. I, therefore, call upon every hon. Member to fulfill his duty towards the nation.

Thank you, Madam Speaker.

Question put and agreed to.

Bill read a second time and committed.

COMMITTEE STAGE

(Madam Speaker in the Chair)

THE CONSTITUTION (AMENDMENT) BILL

(No. XXIX of 2015)

Clause 1 ordered to stand part of the Bill.

Clause 2 (Section 8 of Constitution amended)

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

The Prime Minister: I move that clause 2 be amended as follows -

“In the proposed paragraph (aa) –

- (a) by deleting the words “to the extent” and replacing them by the words “or any other provision of Chapter II of the Constitution, to the extent”;
- (b) by inserting, after the word “confiscation”, the words “, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society”.”

Amendments agreed to.

Clause 2, as amended, 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 Constitution (Amendment) Bill (No. XXIX of 2015) was read the 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. M. R. C. Uteem

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. J. P. F. Quirin

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

Dr. the Hon. Z. H. I. Joomaye

Hon. A. B. Jahangeer

Hon. M. Gobin

Hon. A. Ganoo

Hon. S. Fowdar

Hon. J. C. Barbier

Hon. V. V. Baloomoody

Hon. P. K. Armance

Hon. S. M. A. Ameer Meea

Hon. J. N. A. Alipho

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. R. Bhagwan

Hon. P. Jhugroo

Hon. A. C. Duval

Hon. P. R. Bérénger

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

Madam Speaker: The Ayes have it. Hon. Members, the results of the division are as follows –

Ayes: 65 Noes: 4 Abstention: Nil Absence: Nil

I have to inform the House that the Constitution (Amendment) Bill (No. XXIX of 2015) has, on final voting, obtained 65 votes, that is, has been supported by a three-quarter majority, as required by section 47 (2) of the Constitution. I declare that the Bill has been read the third time and passed.

The Bill was read a third time and passed.

At 5.00 p.m. the sitting was suspended.

On resuming at 5.40 p.m. with Madam Speaker in Chair.

Second Reading

THE GOOD GOVERNANCE AND INTEGRITY REPORTING BILL

(NO. XXX OF 2015)

Order for second reading read.

The Minister of Financial Services, Good Governance and Institutional Reforms, Minister of Technology, Communication and Innovation (Mr S. Bhadain): Madam Speaker, I beg to move that the Good Governance and Integrity Reporting Bill (No. XXX of 2015) be read a second time.

Madam Speaker, the first question to ask ourselves is whether our society needs such a legislation as the proposed Good Governance and Integrity Reporting Bill and I shall firstly start with the factual background.

Madam Speaker, this Government has been in power for nearly a year now and has taken the destiny of our country in its hands on the back of an overwhelming mandate from the people on two fronts: that of cleaning up this country and bringing a second economic miracle.

As from December 2014, we took stock of the prevailing situation at the level of my newly formed Ministry with a portfolio for good governance and institutional reforms. We were shocked beyond belief by the staggering proportion of fraud and dishonesty that had prevailed over the past decade under the Labour reign; a decade of shams, pretences and deceptions where white-collar crimes and malpractices of breathtaking magnitude had been eating away this country like a termite. Monies derived from such grotesque abuses were given lustre as if gained from heroic feats under the Labour Government. Others closely associated with that power base also benefited massively and our youth who had perceived these deceptive role models as people of inspiration simply lost faith in the good.

Madam Speaker, opulence and unexplained wealth was promoted and legitimised as a normal way of life and the moral fabric of society was flawed. The income disparity gap widened at an alarming pace as some were adding to their exceedingly high levels of wealth whilst others, lower down the social ladder, were getting even more deprived.

From day one, Madam Speaker, we rolled up our sleeves and worked day in day out unearthing the most visible and detectable scams. From the BAI scandal involving sums in excess of Rs25 billion, deceiving over 14,000 citizens who invested in the Super Cash Back Gold Scheme and putting 160,000 policyholders at risk or the award of the Betamax contract to a close family member of a then Labour Minister and other dubious contracts with regard to Bagatelle Dam, the airport in Plaisance, Terre Rouge-Verdun, Melrose prison, Jin Fei, Neotown, the audacious purchase of six Airbus, airplanes, or even the infamous *métro léger* project. 7,000 Microsoft licences purchased from an IT company which were never

used and the same State-owned bank paying over Rs5 billion to an overseas IT company, Rs1.2 billion paid for ID Cards, the unexplained millions invested in Airway Coffee and hundreds of millions being carried in suitcases by a mere driver of a parastatal body who has turned into a property tycoon, are amongst the legacy left behind by the Labour party.

In the meantime, Madam Speaker, white-collar criminals were having a free ride and coming up with all sorts of fraudulent Ponzi schemes which are still being investigated by the Police, the likes of Sunkai, Whitedot, Je T'aime Marketing, Westminster Financial Ltd. now the recent case of Vacoas Multi-Purpose Cooperative Society. Billions of rupees!

Madam Speaker: Hon. Minister, can I just interrupt you?

Mr Bhadain: Yes.

Madam Speaker: Please sit down for a minute! You are now opening the door for debates on issues which do not fall within the parameters of the Bill, but just outside the parameters of the Bill. So, if you open the door for these sorts of debates, then I will have no other alternative than to allow Members of the Opposition to reply!

Mr Bhadain: Thank you, Madam Speaker. I was merely...

(Interruptions)

I was merely explaining, Madam Speaker, why there is a need today in society for such a Bill, the Good Governance and Integrity Reporting Bill. And, of course, in a legal context when we look at the whole concept of proportionality which has been mentioned before as to whether this is justifiable in a democratic society or not, it is in light of everything which has happened and why we need to bring this legislation now.

(Interruptions)

But, anyway, I will keep it simple, Madam Speaker. The point is all this money, everything that we have seen happening in a Mauritian context, even in relation to drug trafficking, Ponzi schemes and what not, where does the money go? That is the question. Where is all this money and unexplained wealth kept? The obvious answer is that it finds its way into property, whether it is in land, buildings, boats, luxury cars, shares or other property probably visible to the naked eye, but yet untouchable and certainly not recoverable under the present legislation.

We have had debates about the Asset Recovery Act. I mentioned during both debates that the Asset Recovery Agency has recovered Rs9 m. since its existence and Rs1.8 m. this year and Rs6 m. has gone into the Consolidated Budget since 2012. Why? Because it is based on a criminal system where you need to have a conviction, you need to have criminal proceedings. There was a figure which was mentioned in the communiqué, at that time, which was published, stating that Rs290 m. had been seized and subject to freezing orders. I explained to the House that it will take at least 10 years to get that Rs290 m. because both cases are still under investigation at the level of the Police, then it has to go to the Director of Public Prosecutions for a decision to be taken to prosecute or not. If it is not to prosecute, then you have to reconstitute those funds. But if it goes further to the Intermediate Court, then you will have to wait for three or four years before trial is over. Then it goes to the Supreme Court and from there you have the appeal process which can go all the way to the Privy Council. It is only then that you are in a position to recover from a criminal proceeding's point of view under the Asset Recovery Act.

Now, I also mention that in the UK, the Asset Recovery Agency had cost about £60 m. to set up, but they had recovered only about £8 m., which basically shows that the system does not work, not only in Mauritius, but also in the UK. It is no surprise that the UK themselves are coming up with their own system which is being proposed for civil orders and unexplained wealth orders. I am quoting from the 'Telegraph' newspaper with the heading 'Suspiciously rich could be ordered to surrender their wealth', Sir Eric Pickles says –

“Sir Eric, the Government's anti-corruption champion said he was attracted to the 'simplicity' of “unexplained wealth orders” to force potential criminals to show where their wealth comes from.”

It goes on to say, Madam Speaker, that –

“The initiative comes after Mr Cameron, the Prime Minister, unveiled proposals to unmask the owners of British homes bought through foreign companies in order to flush out criminals.”

The UK is going down that road.

I also mention, Madam Speaker, that we have, unfortunately over the years had the habit of copying legislations in other countries. This morning, I heard the hon. Prime Minister again mention that we should follow what has been done in Australia or in Ireland. Now,

these countries have their own models based on the needs of their type of society and how they operate.

(Interruptions)

Madam Speaker: Did the hon. Prime Minister mention that?

Mr Bhadain: No, I am sorry I did not say...

(Interruptions)

If that is the case it will be unexplained!

Well, Madam Speaker, just to go back to what I was saying. True it is that these countries have their own models which they have developed. Unexplained wealth orders are being used in Australia and in Ireland. I understand from Mr Michael Comer, who is the expert who helped us work on this piece of legislation and who is present in this House today, that there are 14 countries in total which have actually come up with this concept of civil orders, unexplained wealth orders, but in different types which have been introduced in different societies.

Now, in Mauritius what this Government has decided, is that in the light of everything that we have seen happening - and when we look at the amount of unexplained wealth, which is circulating in the economy and the damage that this is doing to society, we have decided to go for a particular type of civil order, which will be issued by a Judge of the Supreme Court, a Judge in Chambers. If he feels that there is not enough evidence before him whether in the form of affidavit or otherwise, then he basically can refer the matter to the Supreme Court and it will be a full hearing before the Supreme Court of Mauritius. So, I say it again - I said it during the debate on the Constitution (Amendment) Bill - in fact, Madam Speaker, no power whatsoever is being conferred upon the Executive which can, in fact, affect the life of a normal citizen in Mauritius.

The Constitution (Amendment) Bill which basically defines unexplained wealth and also introduces the concept of nominees' *prête-noms* and explains that you can confiscate property when it is unexplained wealth, is, in fact, empowering the Judiciary. Now, when we look at this legislation, it starts with a system where an Agency, the Integrity Reporting Services Agency receives reports. Those reports could be positive ones, procedures which have been put in place in organisation to promote good governance, integrity and these will

be rewarded. We have such events which take place in the private sector every year where you have the 10 best companies which are actually moving in line with transparency and good governance and which are basically rewarded. So, that is the positive side. But then you can also have reports of malpractices. You can also have reports which basically would be dealing with unexplained wealth.

Now, once a report is received, what happens? Let us understand the process. Once that report is received, the Agency will process it, will check databases like the Registrar of Mortgages, the Registrar of Companies, gather information and once it has sufficient information to establish whether there is - if we take unexplained wealth - a case of unexplained wealth, then it has one specific power under this law, to contact that person in writing and ask him within 21 days or whatever number of days which may be determined depending on whether the person is in hospital or is abroad to provide explanations. Now, let us stop there for a minute! What can that person do when he receives that letter?

First, let us take the case of politicians because so much has been said about this law potentially being used as a political tool. Any politician who receives a letter, let's say, myself, what would I do? We all know that we have by law to declare our assets and this is done under oath and that declaration of assets is filed currently with the Independent Commission Against Corruption. So, if I receive such a letter, I would normally photocopy my declaration of assets, which I have already done, file with ICAC and I will send it over there. This is everything that I have. My wealth is explained. Now, we are coming with amendments to the Declaration of Assets Act which is going to provide even more details as to what is currently in the declaration which is filed with ICAC. So, that will become even easier going forward for politicians.

Now, whether we are talking about people in this House today, Government or Opposition Members or even people who have been here before and who are not here today because they also had to declare their assets. So, simple as that, a photocopy of a piece of paper which is sent to the Agency! Now, for any other citizen it is also very simple. You receive that letter, the law says that you have to reply and we have introduced an amendment to the initial Bill where before it stated that if you do not reply, then basically there is a potential criminal offence that you are committing where you can be called upon to pay Rs50,000 fine or a maximum sentence of one year imprisonment. That was originally in the legislation to protect the process of that Agency working because if everybody who receives

a letter, decides to take it, put it in the dustbin and not reply, then the process will not work. It would amount to an offence if you were not to reply.

But then, during the debates - and I will talk about the debates that we have opened up at a later stage - where we invited people to come and give their views, it was rightly put that this might be construed as you compelling somebody to give an explanation, which was certainly not the case, Madam Speaker, because replying to the letter basically meant sending an answer to say: "Look, if the person wished to do that, he could have said: 'I don't want to tell you anything. I am not prepared to disclose my assets to you. Do what you want'". That would have sufficed in the sense that the reply was made.

The point I am making, Madam Speaker, is that there was nothing in the legislation to compel somebody to give explanations in terms of the content of what that letter would contain. But, anyway, we've decided to alleviate those fears and we have said that this particular section which says that it is an offence, if you don't reply, is taken out. So, that will be in the amendments which have been circulated.

There was so much which was said, trying to scare people off, especially the people who are at the lower ladder in society, *marchands dhol puri* and what not, saying that 'ah! if you were selling *dhol puri* on a bicycle and you've managed to get some money and purchased a van, then, now, you might be called upon to explain where did the money come from to purchase that van because it has become a van acquired with unexplained wealth. But that also, in any reasonable person's mind, would be complete nonsense, with great respect, Madam Speaker. Why? Because, at the end of the day, it goes before a judge, and it is the judge who decides who is a wealthy person and who is not a wealthy person in society. Any judge would definitely not say that, for somebody who is selling *dhol puri* and has bought a van, this is unexplained wealth and he is issuing a confiscation order for that van.

But, anyway, again, we decided to alleviate those fears and we said: 'ok, fair enough, we are going to introduce a threshold'. So, we introduced a threshold of Rs10 m. to say that anything which falls under that threshold would now not be the subject of an application for an unexplained wealth order before a Judge in Chambers. We started having other critics, which basically started saying: 'Ah, what if it is Rs9.9 m.?' Some other people saying: 'Ah, you are protecting criminals now; criminals who have been selling drugs under Rs10 m. would not be subject of unexplained wealth orders'. We dealt with those critics as well. We explained that no, if it is under Rs10 m., the Agency or the Board can well refer the matter -

if it is drug trafficking - to ADSU or to MRA or to ICAC or to whatever, the Police probably, so that these institutions would do their job as they normally do. But for the unexplained wealth order, for confiscation of property, the Board would not apply to a Judge in Chambers for an order if it is under Rs10 m. So, we have alleviated those fears as well.

Then, because we have introduced that threshold of Rs10 m., on the other hand, when we remove the criminal offence for somebody who has not replied within 21 days, we said 'ok, we are talking about people who have at least Rs10 m. of unexplained wealth. So, they can go and do an affidavit in reply'. So, we've replaced that criminal offence, which was there in the law, by the requirement of doing an affidavit. Now, this is even better for this law because we are actually making the law work in a much better way. Why? Because when somebody has to do an affidavit now, that person cannot lie or he might decide to do so, but then he would face the potential situation of having sworn a false affidavit. So, when the Agency writes to that person, that person does the affidavit and files it with the Agency. Now, if that person is going to lie by saying: 'I have been betting in a casino; I was walking down the street and I have found a Louis Vuitton suitcase full of cash', I mean that would not hold water anymore because it is an affidavit. If it is proved to be false, then you commit an offence. So, no criminal offence requirement for an affidavit!

Then, the third issue was, of course, this whole hue and cry about nomination. I have gone in different forums, Madam Speaker, to explain to different types of people in society what this law is all about and why Mauritius needs this legislation and how it is going to benefit our society going forward. It started in Ébène with the civil society, university students and public officials, NGOs, and then, of course, we went all the way to the Bar Council to speak to all the lawyers, we've been on television with the Attorney General and MP hon. Mrs Jadoo-Jaunbocus. Then, of course, on 'Radio Plus', on so many occasions, and the last one was on Saturday against Jack Bizlall, which was very entertaining, I must say, Madam Speaker, and especially the book he has written about the Second Constitution, as he calls it, in a Second Republic context, which is good reading I must say.

Now, we have done all of that, we have talked to all these people. Then, I realised that there is a problem in Mauritius. The problem in Mauritius is that every time you have to appoint somebody on a board or in an organisation, you have people coming and saying: 'Ah, we have to look at the transparency process involved in that nomination process.' But when I look at the law, I try to understand where does that all come from, because a Government is

elected by the people, has a mandate for five years, and that Government has to deliver within those five years, we have Cabinet working, Ministers having their portfolio doing their jobs, and then you have people who are appointed as Chairpersons of Boards and other members and then people who are running those organisations as Executives. So, I tried to understand that concept. What is happening in Mauritius? Why every time somebody is appointed, people have to come and say: 'no it is not transparent; no, there is a system of favouring X or Y, and this is being done because you want to use this as a political tool because you are going to use that against your political opponent', and so on and so forth? Where does that all come from? Then I realised that, if we go back to our Constitution – probably, I don't know, this is my opinion - I believe that the makers of our Constitution at that time believed that, with all the context which was prevailing in Mauritius, if you have a Hindu Prime Minister, he would appoint all Hindus. Then, you must have some kind of checks and balances mechanism, and this is why appointment processes in the Constitution basically have that. I don't know, this is my personal opinion.

However, what I do know and what is a fact - and this is not my opinion - is that so many legislations have come afterwards, which basically dictates appointment processes to be in consultation with the Leader of the Opposition or basically by the President under advice of the Prime Minister or sometimes even Ministers appointing. But what I have realised is that, at the end of the day, when a Government gets elected in a Mauritian context, in our system, there is only one person who has all the powers, and that is the Prime Minister.

(Interruptions)

But it is like that! We agree that it is like that today!

(Interruptions)

No, I know that there were certain...

Madam Speaker: Hon. Bhadain, please address the Chair!

Mr Bhadain: Yes. I do know that there are certain positions in the Constitution like the Electoral Commissioner, like the Director of Public Prosecutions, which are constitutionally protected, and there is a process over there. But what I am saying is that all these legislations which have come afterwards basically talk about consultation or under the advice of. Then, I went to the Constitution - and I am sure the hon. Leader of the Opposition will agree with me on that - and I looked at section 113 of the Constitution. That section says - and it was introduced some time, I believe, after 1982 - that, after a general election, any

person who has been appointed with that process of consultation, under the advice of the Leader of Opposition, of the Prime Minister, Minister and all that, ‘political nominees’, can all be kicked out. And the Constitution provides that. So, when I looked at all of that, I said ok, but then, we are in a system like in America. When an administration comes in, it has the constitutional power to remove all the people who have been appointed politically, political appointees, and replace them by new political appointees who probably are going to get kicked out when another Government is going to come. That is what our Constitution does.

So, this whole debate, I was trying to understand, now, why are people always saying that this whole process, this Bill will be flawed only with appointing somebody where the Rt. hon. Prime Minister is acting on his own volition or he is consulting or he is giving advice. I still can’t understand, Madam Speaker. I believe, as the Minister of Good Governance, that when you talk about transparency and good governance, it must be real transparency, real governance *et non pas un semblant*, and I believe that our legislations, which have been voted over the years in this House, have created a *semblant* of transparency through a consultation process or through giving advice because, at the end of the day, power remains in the hands of the Rt. hon. Prime Minister under our current system. That is how it is.

Now, to alleviate those fears like we have done with the threshold of Rs10 m. and all of that, we decided, fair enough, we are going to have a system where the President is going to appoint for all four positions: the Chairman of the Board, the two Assessors and also the Director of the Agency. The President is going to appoint under the advice of the Rt. hon. Prime Minister after consultation with the Leader of the Opposition, and we felt, okay, that should satisfy all the fears that have been alleviated. The reason why I say that, Madam Speaker, is because when we look at an appointment process - we have been talking about proportionality today in this House - it must be proportional to the power which can be exercised by that person.

Now, if we look at the Chief Justice of Mauritius, for instance, he is appointed by the President under the advice of the Rt. hon. Prime Minister.

(Interruptions)

Madam Speaker: Hon. Minister Bhadain, please! Don’t engage in cross-talking!

(Interruptions)

Mr Bhadain: Well, it does not matter, Madam Speaker. But whatever process there is, it is not more stringent - I will certainly check that and come back - than what is being included in the Good Governance and Integrity Reporting Bill, that the Rt. hon. Prime Minister advises the President after having consulted the Leader of the Opposition. Now, this has been done. The hon. Leader of the Opposition made a suggestion which was considered. That suggestion was that for the Chairperson of the Integrity Reporting Board, why not have the President appointing, in consultation with the Prime Minister and the Leader of the Opposition - after consultation with the Leader of the Opposition.

Madam Speaker, after due consideration was given, it was decided that we could not go for that because you would be giving powers to the President in a case where that person does not do anything except for making a decision whether to send a case to Court or not. That is all he does. So, these were the three amendments which I have been talking about: the threshold of Rs10 m., the nomination process and the elimination of that criminal offence.

One other change we made, Madam Speaker, was in relation to the seven years retroactivity. Now, the way the law was drafted, before it was seven years prior to the commencement of this Act and seven years prior to the commencement of this Act would make it, if we talk about 2016, 2009. But the explanations which were provided by the State Law Office and by the Consultant Sir Victor Glover, ex-Chief Justice, who worked on the law, was that it should be in line with the Banking Act because when you ask somebody for records, somebody has to give an explanation and if he does not have records available through his bank, then basically he would not be in a position to answer. Therefore, that change has been made to make it seven years. It will always be seven years. So, you lose one year when you would move forward one year. So, in 2020, it will be 2013; in 2050, it will be 2043. That was another change that we have brought.

Then, another major change again. We were listening to what everybody was saying, whether it is to be people in the Bar Council. Hon. Ganoo has very positively contributed, I must say, to a number of suggestions; the hon. Leader of the Opposition and also people from civil society. An issue arose as to what do you do when you have a property which is partly financed by unexplained wealth and partly financed by explained wealth, and we decided to bring an amendment to say that when you make that, when the Judge in Chambers or the Supreme Court makes that Unexplained Wealth Order, he also has the discretion - if he wishes to do so - to make an equivalent order for the monetary equivalent of that unexplained

wealth and that would solve these situations. So, if you have a plot of land as inheritance, but a mansion has been built on it and that is unexplained wealth, then you cannot go and seize the plot of land and the mansion as well, and that is in the light of what was said by hon. Shakeel Mohamed earlier today. It is not true to say that the Judge can only make an Unexplained Wealth Order. There is an amendment which has been brought to that, the monetary equivalent in the amendments which have been circulated. So, that was the fifth one, Madam Speaker.

And then, of course, another suggestion that we have taken from hon. Ganoo was in relation to action *in rem*, as compared to action *in personam*, and I am not going to go into a great deal of explanation on that because the Rt. hon. Prime Minister, himself, has explained during the debates on the Constitution (Amendment) Bill that we are not talking about criminal proceedings, we are talking about civil proceedings and it is not an action against a person, it is an action against property. That property might be held by a criminal or it might be held by a person, who is a non-criminal, on behalf of a criminal or you can have somebody who, at the end of the day, is not a criminal at all but he has a lot of unexplained wealth which he basically has to explain.

The reason why this is so is because I can go into scenarios and scenarios as to how somebody can sell drugs and buy land for, I don't know, Rs20 m. and then sell it to somebody else for Rs17 m. and that person who is buying is not a criminal and he is buying it for cheaper and then he is reselling it, and he is creating more unexplained wealth. We can go into so many scenarios, but the whole concept of having a civil order based system is because it is an action against that property *in rem*. It is not an action against any person and that is why I explained to the Bar Council - hon. Mohamed was there - that everything which is being talked about in terms of the right to silence, in terms of the presumption of innocence, in terms of Section 10 of the Constitution, whether somebody is being cautioned when he is giving his version and so on, it does not apply at all because it is not a criminal system. It is a civil system and why is it a civil system is because asset recovery within criminal proceedings, which is based on criminal proceedings, does not work and this is what hon. Shakeel Mohamed was telling us today in terms of the American judgements that he had been citing to this House, that even if you do it the civil way, it might still be construed to be criminal. But here, we have Parliament voting, amending the Constitution - which has already been done now - and our Constitution, as I speak right now, recognises unexplained wealth,

recognises *prête-noms* and recognises the fact that unexplained wealth can be confiscated if it is disproportionate.

(Interruptions)

Well, it will soon be.

Madam Speaker: No interruptions, please!

(Interruptions)

Mr Bhadain: It is going to come. Yes! You take judicial notice of that. So, basically, this is in our Constitution. I mean, how can we come and say now that this is something which can be construed as being criminal. It is not. We have already voted. The Constitution is there and at the end of this whole process, Madam Speaker, it is a policy decision. It is a decision as to whether Mauritian society needs to have a civil based recovery system where unexplained wealth can be confiscated following an order of a Judge in Chambers by the Judiciary exercising its power.

Nothing! Nothing whatsoever to do with the Executive! I told all the lawyers at the Bar Council to tell me how tomorrow this law can be used against me, a politician, as a political tool. How can it be used against me? And I am still waiting for the answer. Not one single lawyer, Barrister in the Bar Council has been able to answer that question to me. I have asked that same question to Trade Union guys, to Mr Bizlall on national radio, on 'Radio Plus'. I have put that question to reporters, to journalists who have been talking to me and until today I don't have one person coming and showing me how this can be used as a political tool, *un outil de persécution*, whether it is against a political opponent or whether it is against anybody else.

Now, some people have said, the closest they have come to, and I will say this, Madam Speaker, is: 'Forget about what you can do against somebody, let's look at how you can protect somebody. You nominate the person, he is sitting in the Agency or the Board and he can choose not to do something against a Member of Government.' And when they say that, I said: "That's a good point." Does the law deal with this? Then, I realised how are you going to legislate against that? ICAC operates with anonymous complaints or on its own initiative. The Asset Recovery Unit is doing its work. The Police every day start investigations. How do you ensure that there is a law which prevents somebody from not doing his job? How do you

do that? I will tell you honestly, Madam Speaker, we couldn't find the answer. We couldn't! But one thing I said to these people who raised those qualms was: 'You know in a small place like Mauritius, whenever somebody writes a complaint, he copies it to *'Defi Plus'*, to *'l'Express'*, to *'Radio Plus'*, to *'Radio One'*.'" I said people go on radio every day, *'Xplik ou Cas'*, it's called and they say whatever they want.

Now, if somebody was going to report a Member of Government for having unexplained wealth to an agency by way of a letter or whatever it is, I am dead sure that if nothing happens, that person will use our friends in the press to go and say: "Look, this agency is not working! This agency is not doing its job!" I believe even that is a futile argument, Madam Speaker. I still can't understand how this law can be used as a political tool against anybody and this is why I totally agree with the Rt. hon. Prime Minister when he says in his speech on the Constitution (Amendment) Bill: "If you have nothing to fear, it does not concern you at all." You don't have unexplained wealth. Hon. Mohamed was saying the same thing twice. We don't fear anything! We don't fear this law!

(Interruptions)

But I would have expected, if you don't fear the law, you vote for it!

(Interruptions)

Madam Speaker: Hon. Jhugroo, please don't interfere!

Mr Bhadain: If you don't vote for it, it means that there is something wrong. What is wrong? I have heard the hon. Leader of the Opposition also this morning mentioning that he is not voting for this legislation. In the press yesterday, *'la loi Bhadain'*, he says with great respect. I actually like it when they say *'la loi Bhadain'*, I must say.

(Interruptions)

But he is saying he is not voting because of two things: firstly - and I agree with him on that - is section 8 4A probably the wording of it might be construed as 'you want to be able to go to any court of law to call in question whatever is in this law because you are prevented by that particular section of the Constitution.' That's not my reading! But okay, fair enough! It is a good point because it has never been decided by a court of law. Never interpreted!

However, when we come to the other Bill, what is wrong with the Good Governance and Integrity Reporting Bill? I haven't heard one single argument being put to this House today whether it is by the hon. Leader of the Opposition or anybody else as to why this law has flaws. Why this law contains issues which are dangerous? I can't understand because, Madam Speaker, going back to the process, at the end of everything, when everything has been said and done, we are left with only one very simple situation; the Agency reports to the Board, the Board decides to send a case to the Judge in Chambers and everything which can happen in terms of confiscation will happen there.

The Judge in Chambers on the basis of affidavits, and this is full transparency, no *ex parte* applications, *inter partes* the Judge in Chambers can reject the application of the Board, this is in the law, or he can refer it to the Supreme Court because there is not sufficient evidence and now basically there is a hearing which is going to take place or it can grant the order. When it goes to the Supreme Court, if there is a hearing, the Supreme Court can reject the application or the Supreme Court can grant the Unexplained Wealth Order and, in any case, if an order is issued by the Judge in Chambers or by the Supreme Court after a hearing, that particular person can go to the Court of Appeal and challenge that decision, and if he is not satisfied of that decision of the Court of Appeal, he can still go to the Privy Council in the UK to challenge that decision.

There are at least five safeguards. You give the explanation by way of affidavit; the agency finds it okay, it stops there. The agency does not find it to be okay, sends it to the Board, the Board chaired by a Commonwealth Judge and two assessors; they will look at it and they will decide whether to stop it there or whether to go to Court. That's the second safeguard. The Judge in Chambers is the third safeguard. The Court of Civil Appeal is the fourth safeguard. The Privy Council in the UK is the fifth safeguard before asset is confiscated and we cannot say that this is an abusive system. We cannot say that it is not justifiable in any democratic society and anybody who has said that just by walking into the Supreme Court of Mauritius, you will have this law turned down, I challenge them to go.

Now, Madam Speaker, so much has also been said in terms of...

(Interruptions)

They are waiting for the end, the finale!

(Interruptions)

Now, Madam Speaker, it is a simple law. Very simple! There is no complexity about it. There is nothing which should make people, who don't have unexplained wealth, afraid in any way, shape or form. It is well in line with our supreme law of the Constitution now because it is recognised in the Constitution and, at the end of the day, the Agency which is going to be created will have a Director and that person will be an independent person, an impartial person and we will see when the person is appointed soon. We will see! And all these fears that are being expressed will be dispelled in the matter of no time. The Commonwealth Judge who is going to chair the Board will be somebody who is also very independent and impartial and the two assessors who are there and, in any case, they can't do anything against anybody. They can't! The law does not empower them. It is as simple as that.

So, I am not going to go into details, into all the sections of the Bill. I am sure that everybody has read it. Everybody will have an opportunity to talk about it. We have 30 odd MPs who are going to talk. I will, if need be, in my summing up, bring all the other issues which probably I have missed out now and I would very much want to say this, Madam Speaker: this law – I have been saying it in various forums - will change Mauritius. It will certainly change Mauritius. I have explained that everything that this Government intends to do in terms of Smart Cities, in terms of the Heritage City which is being done in Ébène, there are apartments which are going to be constructed and sold. We don't want people with unexplained wealth to go and benefit from all the economic development that this Government intends to bring.

We want to create that platform so that it is just, fair, equitable for everybody in society. We want the youths of today to be able to secure a position where they can really benefit from their hard work, from their integrity and they don't sit in their houses to see other people who are selling drugs or other people who are taking bribes or other people who are committing fraud and Ponzi schemes and all other people who are cheating on taxes, who basically are benefiting whilst they are stuck. That law changes society.

There is another point which was raised within Government itself, I must say, in all transparency as to whether for undeclared income - people who have not committed any criminal activity, but they have undeclared income which goes well above Rs10 m. and they use that money to enrich themselves even more by doing other business, by buying land, by doing other things and re-selling – these people should be exempted.

I was asked to see whether there was a possibility of introducing a clause in that particular legislation and I said: “No, you can’t because you will defeat the whole purpose of the legislation, especially that unexplained wealth is defined in the Constitution as being disproportionate with income and emoluments.”

Somebody told me: “But you can have an honest person who has been cheating so much on his tax and he has bought property and he has been doing property development.” I was amazed, I said: “You know from where I come from, this is called dishonesty and you can’t have such a provision in that law which will change society by including an escape route for people who don’t declare taxes. How can you do that?” And this proposal was not accepted, Madam Speaker.

I must say there were other proposals like that which came from different parts of society, we have sat down, we have considered, but we found it to be unacceptable, not because we just wanted to disappoint the people who were raising those issues. No! Because they would not fit into what we are trying to achieve for society through this legislation.

On a last note, Madam Speaker, I must say that it has been very tiring the last six weeks to go and open up a debate on a piece of legislation after First Reading to have the whole society participating in that. I thought I should do it because we needed to have a transparent system.

If I am the Minister of Good Governance and Institutional Reforms and I am bringing as mover of the Bill to this House such a legislation which is going to radically affect the functioning of society going forward in a good way, then I might as well go and meet everybody, talk to journalists, talk to civil society, meet the Bar Council. It was not easy, Madam Speaker, I must say to walk into the Bar Council when you have most of these lawyers there from the Labour party sitting and watching you.

(Interruptions)

It was not easy.

(Interruptions)

Hon. Mohamed was there.

(Interruptions)

Madam Speaker: Please, don’t interrupt! Hon. Bhadain, please, address the Chair!

Mr Bhadain: The point I am making is this. This is the very first time probably that we’ve managed to have such debates in this House and also out there so that everybody could come and give their views. I very much believe that it is a good process which must still be done for many other things. We have talked about Declaration of Assets Act as to whether it

should be in public or not. We have talked about the FCC. We have talked about financing of political parties. This is the way forward. This is the transparent way forward. This is the way which is going to show to everybody that Mauritius is indeed a sovereign democratic State as Article 1 of the Constitution says.

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

The Deputy Prime Minister rose and seconded.

(6.30 p.m.)

The Leader of the Opposition (Mr P. Bérenger): Madam Speaker, we have just heard an awful speech and a lot of constitutional rubbish and I will prove that in a minute.

In a way, I am very sad. What we have just heard, the level that this debate starts on is in such stark contrast to what took place when we discussed the Asset Recovery (Amendment) Bill and even the level of the debate this morning compared to what we have just heard. I feel very sad and I hope that the debate come back to fundamentals.

We voted an amendment to the Constitution a few hours ago, the fundamental law of the country. It is a solemn moment when we amend the Constitution. I consider we did a great job doing that. As the amendment to the Constitution provided that we must now come with the Bill to implement, to put into action the constitutional provision that we put in, that is, allowing for confiscation of unexplained, illicit, ill-gotten gains and property. This is what we are doing as a follow-up to the amendment that has been approved with the required majority, Madam Speaker.

As I said this morning, we are fully satisfied with what we voted, the amendment to the Constitution, but we are still not satisfied with this piece of legislation. Although we have travelled a long way, I am very sad listening to the hon. Minister. How grudgingly he acknowledged amendments, as if there was no need, but, in his generosity, grudging all the way. When you accept amendments, do it with a smile, do it because it was worth considering those amendments and not grudgingly. That's what we have just heard. It is a shame. It was not warranted; it's not justified both on the constitutional amendments and now we put our heads together and we agree on amendments which we feel are necessary for the country. This is what we did on the Constitution and this is partly what we have done, but even with the amendments, we are not fully satisfied. We have progressed as I said the other day.

The two main points which I am going to take today is the amendment very grudgingly acknowledged – the change as far as the requirement to provide information at the request of

the Director of the Agency. This is the first. That was fundamental. It was awful - and I don't know how Government agreed to that – to put in our legislation that the Director of the Agency that we are going to set up, to create in the law, writes and 'shall write' the wording of the previous amendment, of the first amendment. The Director 'shall write', not 'may write'. When we look at the first version of the Bill, it is not at all as the Minister tried to give the impression. You don't want to reply, you don't reply, that's it! Finished! Bye bye! We go to sleep! Not at all!

As I said, the legislation at first provided that the Agency 'shall write' to request information. And then, the next paragraph (b) -

“(b) Every person to whom a request has been made pursuant to paragraph (a) shall comply with the request within 21 working days of the date of its issue or any longer period which the Director may determine.”

‘Shall reply’.

And then subsection 8 –

“(8) Any person who contravenes subsection (1) (b) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.”

So, don't give the impression that okay, there was no *mauvaise intention*: 'You don't want to reply, you don't reply, bye bye, you go to the seaside'. No, you could end up in jail as it was before without further process except when the case goes to Court but then the Magistrate will have the law in front of her or him. So, don't give that impression that, in fact, the change is not important. It is fundamental and I am happy with it. Instead of acknowledging it, of being all happy together, he acknowledges the amendment grudgingly as it does not change anything.

(Interruptions)

This is what we have just heard earlier on, Madam Speaker, grudgingly.

(Interruptions)

Madam Speaker: Order, please!

Mr Bérenger: And if I have a stronger word, I'll use the stronger word. Now, it is something completely different. The Minister has agreed to something completely different. Now, the Director asks for information, he does not get the information, he goes to the Judge for an order. This, we fully agree with, as I said this morning! So, this is a fundamental amendment, it is not *en passant* like that. We should acknowledge it and we should be proud

of it and we agree fully with that amendment which was the most dangerous. I use the word 'dangerous' - part of the first version of the Bill.

The second thing which I have heard and which made me – the hon. Minister genuinely thinks he knows everything. You listen to him and the amount of constitutional rubbish which we have just heard! So, from his weak knowledge of the Constitution, it is as if the framers of the Constitution, *les pères de la Constitution* provided for everything and so on and so on. He is not aware at all of what changes we have brought! The Rt. hon. Prime Minister, in past Governments, recently, since we became a Republic especially, we have brought a lot of amendments where the President has more and more power to appoint. The impression he gives is that generally the Prime Minister does what he wants, all the powers. No! This used to be the case before we became a Republic! And we, together or in Opposition...

(Interruptions)

...we have changed that over the years and I am proud of that and I am sure the hon. Prime Minister is proud of it. And he says: what was the use of the President appointing after consultation? He does not even know who appoints the Chief Justice? Appointed by the President!

(Interruptions)

Not the advice of the Prime Minister!

(Interruptions)

Well, you don't even know the difference. It is not at all the same!

Madam Speaker: Hon. Leader of the Opposition, can I ask that there should be no cross talking between a sitting Member and yourself?

Mr Bérenger: Yes, but especially no rubbish!

Madam Speaker: Please don't reply!

(Interruptions)

Mr Bérenger: Yes. But, Madam, this shows that he does not know anything about the Constitution! He might know a lot about corruption, but nothing about the Constitution. He

does not even know that when we say that the Chief Justice is appointed by the President after consultation and so on, that is one thing. It is the President who appoints. When we say: on the advice of - clearly, he does not know his Constitution! If he goes to section 64: Exercise of President's functions, it is absolutely clear. Can I read the paragraph -

“In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or of a Minister (...).”

He shall act in accordance with the advice of the Cabinet or of a Minister.

“... acting under the general authority of the Cabinet except in cases where he 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 or in his own deliberate judgement.”

And, what I was saying is that since we have become a Republic, especially the number of cases where the President appoints in his/her discretion, numerous cases! Coincidence, I have before me, I am being consulted as the Leader of the Opposition. The Chief Justice is an example where the President appoints, after consultation, but it is the President. It is the same thing for the PSC, the Public Service Commission, again, appointed by the President. There is a long list! Clearly the Minister is not aware of it. But since we have become a Republic, there is a long list of cases. The Electoral Commissioner - that is even better - is appointed by the President after the President has consulted the Prime Minister, the Leader of the Opposition and any other leader whom he deems fit to consult, any other political leader in Parliament. This is even better!

But, Madam...

(Interruptions)

Shut up!

(Interruptions)

Constitutional post ...

Madam Speaker: Hon. Minister Bhadain!

Mr Bérenger: Imbecile! You don't know, shut up!

Madam Speaker: Please don't interrupt. You will have the opportunity to reply in your winding up speech. Please!

Mr Bérenger: Let me teach him a little lesson! In front of me, appointment of the Ombudsperson for Children! The idea for an Ombudsperson for Children was my idea in Government. Sweden introduced that and we followed. You want to know who appoints, Madam? The Ombudsman shall be appointed by the President of the Republic acting after consultation with the Prime Minister, the Leader of the Opposition, the Minister and such other persons as he considers appropriate. This is just one example! The list is very long and clearly the Minister is not aware of it at all. *Mais il n'est jamais trop tard pour apprendre*, Madam Speaker! *Jamais trop tard pour apprendre!* And I say that for myself and for everybody. We should not have the attitude that we know everything including constitutional matters, how the Constitution was created, how the Chief Justice is appointed. We know everything and we are wrong all the way, Madam Speaker!

(Interruptions)

So, I come back to this idea. It makes me very sad to hear this kind of rubbish that this cannot be used. I was Leader of the Opposition under the previous Prime Minister and there is a case which the hon. Minister congratulated me for. I stopped persecution of a businessman, I won't say by whom! By a person in authority! I think very close to the hon. Prime Minister, that businessman. I don't accept persecution. I don't accept injustice under any Prime Minister and anybody concerned, an MSM sympathizer, Labour party or MMM, I don't accept! And in that case, do you know how damaged his business was? Because the hon. Minister says you can't do anything, if you pick somebody like it was done, persecute and then, of course, you leak it in the Press. You leak it in the Press that the agency has opened an inquiry on so-and-so. Like it was done in the case I mentioned. That businessman close to the MSM, his business has been terribly damaged because it was leaked in the Press that an inquiry is being opened and this is one of the dangers in this agency business.

How the Director is going to be appointed? How independent is it really going to be? Otherwise, it is going to be manipulated as in the case which I have just mentioned. And, of course, finally, nothing happened legally! But he was persecuted that businessman! He lost a lot of good business and he is still losing! So, don't tell me that institutions like that cannot be abused, cannot be used. If you don't know, don't speak! But this has happened under the

previous Prime Minister and I don't want to be party to the setting up of any agency that could be in a position to do that kind of thing.

So, my point is that the Director of this agency should be not only apolitical, independent. But perception in cases like that is as important as reality! He must be perceived as being independent, apolitical and for that to happen, the way he is appointed is crucial - both the Director of the agency and the Board that is going to control that agency; that is going to be on top of that agency. I am not satisfied at all with the amendment. Okay, when you start on your knees, when you stand up, you are a giant! So, when we started, the Director was going to be appointed by the Minister himself, in the first draft which is being amended with the green light of the Prime Minister. But chosen and appointed by the Minister and the Board, including the Chairperson, by the Prime Minister. This is not acceptable!

This was awful and it has been dropped. *Bon*, we are progressing, but not much in this case. We have well progressed in the case of this compulsory response to a request for information. Okay, I am satisfied, but in this case, no. Because as I have quoted from the Constitution when we say that the Director, the Board, will be appointed by the President on the advice of, constitutionally it means what it means, that is, it is the Prime Minister who is choosing. Constitutionally this is as simple as that and it is bad for the country. It is bad for any Prime Minister of the country. I insist that we should amend this.

At first, I suggested that the Director, if we want him to be really perceived as apolitical, above Board independent, why not being appointed by the Legal and Judicial Service Commission! If we do not do that, okay, but let him and the Board be appointed by the President of the Republic after the President has consulted the Prime Minister, the Leader of the Opposition and whoever else as has been the case of the Ombudsman for children. We have provided for that. In the case of the Ombudsman, which is a very important job, why the hon. Minister was giving the impression that it is only State jobs. No! It is generalised now. So, I insist that this is required to avoid the perception that it is a political appointee, Madam Speaker. These are the two main points of disagreement with the Bill that we are considering now.

We have progressed on a lot of other things, but there are lots of secondary things that I will call, certainly not minor, but important things, which are among the top priorities, which I have in mind and other Members who will speak on that.

I said this morning; the Bar Council has worked under pressure. When they come with their suggestions, they should be considered carefully as well. I am sure Members from the Opposition side will come with suggestions. That is why I suggested that we vote the amendment to the Constitution and we have done so. We have done a good job earlier in the day. What does it change, if we had postponed the debate on the Bill, taken time to consider, especially on this matter of how the Agency and the Board will be appointed? I mean what is the rush. *Le Père Noël va nous gronder!* What is the rush to do this before...

(Interruptions)

I am not talking about *le père Bhadain*. I am talking about *le Père Noël*.

Okay, Government wants to rush ahead, rush ahead! There will be danger in that case of challenge before the Supreme Court. I am sure of that. The first case that comes up is going to go to the Supreme Court. I do not think it will have to go further than the Supreme Court. Why '*alle gratte lédos malheur*'; as we say in our national language. But, okay, Government wants to rush ahead. I believe that it was worth taking time to consider the other comments that we will meet here in the House and the comments that have been made by the Bar Council.

Now, it will be interesting to see whether when we are done with the debates, whether the Rt. hon. Prime Minister is going to move for a division. Because as I have said this morning, we have the other clause, section 8 (4)(a) of the Constitution, that if a law dealing with property acquisition or compulsory acquisition is voted by a three-quarter, it cannot be challenged in court. I won't go into the debate. I think that it could be challenged anyway. It has never been challenged, but it could be. I will request Government, if you have a majority, do not ask a division. If you ask a division, it means that you have this clause in mind and you want to get a three-quarter majority. I'm trying to use a word that will not hurt, not to hide and take protection behind this clause of the Bill. It would be very, very bad.

So, I hope that the Rt. hon. Prime Minister does not move for a division on that. We moved for a division this morning and there was a three-quarter majority - much above a three-quarter majority. In that case, I would appeal to Government not to move for a division. You have majority. You want to go ahead. You don't think it is worth postponing the debate, considering further different amendments, especially the way the Board and Agency are going to be appointed. Okay, you have a majority. You want to rush ahead, rush ahead, but

do not use that clause of the Constitution because it would send the wrong signal to the country.

Thank you, Madam Speaker.

Madam Speaker: Excuse me, hon. Minister, the Deputy Speaker will now take the Chair.

At this stage, the Deputy Speaker took the Chair.

(6.54 p.m.)

The Minister of Social Security, National Solidarity and Reform Institutions (Mrs F. Jeewa-Daureeawoo): Mr Deputy Speaker, Sir, the Good Governance and Integrity Reporting Bill which concerns both the public and the private sectors, is one of its kinds. The very purpose of this Bill is laudable. It is indeed a great innovation for Mauritius in its crusade to fight rampant malpractices and to ensure transparency at all levels and in all fields. I believe that this Bill is the launching pad, which will undoubtedly propel Mauritius to one of the highest ranks on the international integrity ladder. It is intended to promote in Mauritius a culture of good governance and integrity through positive reporting.

One of the observations of law-enforcement agencies across the globe is that the best method of dealing with serious organised crimes is to target the asset rather than the person. This has indeed proved to be an efficient method. There are some people who do earn money from criminal activity. However, due to a lack of proximity to the offence committed, these people cannot be prosecuted. Thus, unexplained wealth provisions serve as a valuable tool to trace illegal gains.

This Bill, the disclosure of malpractices and the recovery of unexplained wealth should have long been on the Government agenda. It is good that we are coming with it and I commend the hon. Minister of Financial Services, Good Governance and Institutional Reforms to have brought forward this innovation on our table today.

This is one of those Bills which attract significant public debates. One can clearly realise how the general population can actually participate indirectly in the legislative procedures and contribute by providing their productive opinions and constructive views.

Members of the public have indeed been able to participate through various means. It cannot be denied that this Bill has, indeed, elicited comments from all fronts. The views and comments of the public have been taken into account before the submission of this piece of legislation before the House. Various debates have been organised with a view to explaining the spirit of the Bill. Recommendations from various authorities have been welcomed.

The hon. Minister of Financial Services, Good Governance and Institutional Reforms has been all ears to all stakeholders. I am personally pleased to note how the hon. Minister has considered the various different views to bring about amendments to the Bill so as to ensure that this Bill reflects the necessity of the present conditions of the Mauritian society.

The Bill does not provide for a restriction on the right of property of the citizens, as guaranteed under section 8 of the Constitution. We should not forget that whilst many will think that civil forfeiture under this Bill will impinge on the rights to property of people, yet they should be reminded that in so many countries like Canada, Ireland and Australia such civil forfeitures have been cast as a marginal interference. Public interest takes precedence over this interference in the balance.

In the fight against corruption and malpractices, the public interest will always weigh heavier in the balance.

Private individuals should be prepared to subject themselves to the test in the interest of the general public.

I wish to take the example of Australia, which has adopted unexplained wealth laws. For the Australian authorities, unexplained wealth laws represent a highly effective tool in their fight against serious and organised crimes. If these laws are correctly and successfully applied, they ensure the removal of the financial incentive to commit crimes. The Australian authorities are very much alive to the fact that tainted wealth could be the only means to successfully detect criminal entrepreneurs whose participation in organised crimes is usually an indirect one. Civil forfeiture is thus considered as a useful civil tool in addition to classical criminal law instruments, which are traditionally dependent on criminal convictions.

In Canada, Mr Deputy Speaker, Sir, the civil forfeiture law is also considered as legislative machinery which creates authority *in rem* to seize property shown on a balance of probabilities to be tainted. The proceeds obtained as a result of these forfeitures are thereafter used to compensate victims and thus remedy the negative effects of criminality on society.

One cannot, therefore, venture to say that this Bill is depriving people of their assets. It is indeed for the benefit of the people.

Let me also consider the example of Ireland which adopted civil forfeiture legislation in the aftermath of the murders of detective McCabe and the investigative journalist Guerin. It was imperative to enact these laws as a response in the battle against organised crimes. It was a means for Ireland to hit back at such criminality. The same applies for Italy where the process has been very effective in the prevention of crime. It is of no doubt that unexplained wealth provisions contribute to measures aimed at prevention.

Likewise, this present Bill is no doubt well-intended. Those people who purport to own property to an extent which is disproportionate to their emoluments and other income should be called upon to explain the source of their income in the fight against corrupt practices. Our Government has reiterated its relentless fight against corruption and this Bill is indeed a contributing factor.

We are not creating a criminal offence. Here, we are only for the institution of civil proceedings whereby obviously the onus should be on the respondent citizen to establish on a lower standard of proof, that is, on balance of probabilities, that the property is not an unexplained wealth.

I need to add that this innovative Bill comprises a particular provision, namely clause 11. This clause provides that the Integrity Reporting Services Agency, when established, will set up and oversee good governance and integrity reporting campaigns with a view to enhancing the standard of Mauritius as an international financial centre of excellence, of integrity, with the object of attracting investment.

What is marvellous about this is the fact that the Bill not only aims at eradicating malpractices, but is also looking forward. A country depends heavily on its economic pillar. This Bill does not turn a blind eye to the need for Mauritius to attract investment by creating a captivating platform where potential investors will be guided by good business ethics in their dealings.

Therefore, the spirit of this Bill is far-reaching. Mauritius will one day be commended in the international business world for having come up with the provisions of the Bill. The confidence of the people will be boosted and so will the economy of Mauritius.

Across the globe, the dreadful truth is that ill-gotten gains are the cause of so many heinous crimes. The civil forfeiture provided in this Bill targets those ill-gotten gains. This civil forfeiture is expected to create the desired domino effect in Mauritius. Promoting the right standard of behaviour in society, disrupting established criminal networks, deterring corruption and other harmful activities are all but a few most obvious benefits that are expected to be earned from the applications of the provisions of this Bill. Having a civil forfeiture process in itself ensures a better, a more expedient and more efficient system of recovery than the usual cumbersome criminal asset recovery mechanism.

We are here preventing the seeds from developing into a full-fledged criminal plant.

Very often, we hear the distressful stories of victims of crimes about how they have lost their hard-earned properties, and we are minded to think that justice delayed is justice denied.

Mr Deputy Speaker, Sir, this Bill will be the light at the end of the tunnel for those victims. One of the main objects of this Bill is to protect and reward persons by compensation. It is indeed a paradigm shift. It is also to be noted that the provisions of this Bill make it clear that before an unexplained wealth order is ultimately imposed on a person, a comprehensive sort of investigation is carried out with the collaboration of the person concerned. An in-depth analysis is carried out with a view to creating a complete picture of all the property that the person purports to own or control. It is necessary to investigate the person's working life and related activities. It is only after this process is completed and it is only where there is sufficient evidence for unexplained wealth that an order should be sought from the Court, that an application for an order will be made.

If a person can justify his earnings, I do not know how and why he should not be able to explain his wealth! I believe the majority of the people will easily be able to explain the source of their earnings!

This Bill should not be looked up as a standalone unexplained wealth legislation. It has resulted in some amendments in existing legislation, and I personally believe that there would be further legislation that would be designed in the future to complement the present Bill in the fight against malpractices and in the promotion of a culture of integrity reporting across the island. This new piece of unexplained wealth legislation is a key addition to the existing criminal asset regime and it represents a great leap in law enforcement strategy.

With appropriate safeguards, it is a reasonable and proportionate response to the threat of surging number of malpractices.

Indeed, our vision is to make of Mauritius a paragon of integrity where people really want to live. I, once again, express my deep appreciation to the hon. Minister of Financial Services, Good Governance and Institutional Reforms for this Bill.

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

Thank you.

The Deputy Speaker: Hon. Leopold!

(7.07 p.m.)

Mr J. Leopold (Second Member for Rodrigues): Thank you, Mr Deputy Speaker, Sir, for giving me the floor to participate into such debates and I won't be long. It is good to hear that the hon. Minister of Financial Services, Good Governance and Institutional Reforms has said in his opening speech that the law is very simple. We are governed by a Government - there is a Government here - and I think in this Government they are social Democrats. When they make law, laws are supposed to be simple to understand, easy to understand, easy to apply and that protect people and protect the country. But I am asking myself: "Is this law doing all that?"

Mr Deputy Speaker, Sir, when we are referring to good governance and integrity, words like 'accountability' and 'transparency' come up all the time. Therefore, this Bill is about tackling corruption.

Corruption is a phenomenon which is difficult to tackle and, at the same time, we cannot afford to ignore.

Almost all the people living in the Republic of Mauritius believe or have the perception that the level of corruption in Mauritius for the past few years is increasing. Therefore, it is not a surprise that fighting corruption has become a priority for politicians and now this law is bringing all that good intention on the way for the concrete results.

Mr Deputy Speaker, Sir, this Bill is bringing the necessary legal instruments for the prevention and fight against corruption, but it has to be vigorously enforced and that one has

to find the examples of how systemic problems related to corruption are being tackled effectively.

This Bill is an additional tool in helping Mauritius to achieve the second economic miracle. Good governance is increasingly important in promoting economic stability. This law is not just to tackle corruption. I think it is a sound economic policy as well.

Adverse economic effects of poor governance on economic performance are losses in Government revenues, low quality of public investment and public services, and reduced private investment, and loss of public confidence in Government.

Mr Deputy Speaker, Sir, achieving the second economic miracle is achieving economic success - transparency and good governance is central in achieving economic success. With poor governance, domestic investment and growth suffer.

Now, how good governance is to be promoted by this law? Surely not by systematically seeking out all cases of corruption in Mauritius, but by improving the management of public resources, establishing stable and transparent regulatory environment thus improving economic efficiency and in turn eradicating corruption.

This law will also help to improve Government revenues and Government expenditures. Those savings can effectively be used on primary health care, basic education, vocational training and essential infrastructure.

An example of bad governance is a country in our region. Nigeria, for example, rich in resources, in occurrence crude oil, but confronted to all sorts of conflicts. Bad governance in Nigeria has given rise to civilian leadership, governance failure and widespread poverty - things which we don't want to happen in our Republic. It would be good to examine how wealth has been used in Nigeria or inappropriately used to negate sustainable development. That wealth could be used for the welfare of their people and tackle the security challenge that they are facing, like ethno sectarian violence and inter religion violence.

Having said that, Mr Deputy Speaker, Sir, let me come back to Mauritius! With the fall of the last Government in Mauritius, there have been so many arrests; still so many are being interrogated. Most of the cases, as reported by the Police and the media, entail corruption and that include -

- acceptance of money or other rewards for awarding contracts;

- violation of procedures to enhance personal interest, including kickbacks from development programmes, and
- diversion of public resources for private uses and also included are nepotism, common theft, overpricing and establishing of non-existent projects amongst others.

Is it not time, Mr Deputy Speaker, Sir, to start asking why all these are happening in Mauritius? Is this not having a link to how political parties are funded? Government integrity demands more than an expression of goodwill. Will this law bring supportive structures to enhance transparency and accountability in the way political parties are funded?

Is it not time, Mr Deputy Speaker, Sir, that financing of political parties become more formalised and to disclose it to the public so as to show the transparent operation on our electoral system. Public confidence is the integrity of our democracy. The full and timely disclosure of donations to election candidates and political parties can address all those concerns on allegation of corruption, which is happening right now in our country.

Coming back to the Bill, I think one of the important steps in fighting corruption within an organisation or institution is the disclosure of malpractices by members within the organisation itself.

If we are admitting that corruption exists in Mauritius, if there are so many alleged cases of corruption in Mauritius recently, there must be someone somewhere who is aware that a colleague, an employer, an employee, a consultant or a contractor is doing something wrong. In so many situations most people will turn a blind eye on it and not get involved. But there are a very few who are courageous enough to take a stand and report what they have seen.

The application of this law will depend on whistle blowers so as to alert malfeasance of corruption. Therefore, in this law, there must be an effective scheme which will encourage individuals to come forward and blow the whistle. Those people - the genuine ones - should be protected. They should not have to risk their careers and to compromise their safety in doing the right things.

We all know about the BAI saga, the Ponzi scheme. If there were whistle blowers and those whistle blowers were not to have to fear of retaliation or reprisal, the problem of the BAI saga would have not come to such a level of crisis.

It is very important that whistle blowers be fully protected and when I say whistle blowers, I am referring to the genuine ones, not those who are involved in corruption searching for immunity.

Mr Deputy Speaker, Sir, as I have said earlier on,...

(Interruptions)

... fighting corruption is not just morally right, but it is economically right too. If you see the result of Singapore, the effort of Lee Kwan Yew in tackling corruption had helped to give people confidence to invest in Singapore and make Singapore so successful.

It is, therefore, very important that the law of Good Governance and Integrity Reporting Bill be applied so as to get all the wealth and money that had vanished by corruption and to siphon back all the goods into the system for proper use.

With these words, I thank you for your attention, Mr Deputy Speaker, Sir.

The Deputy Speaker: Hon. Ramano!

(7.17 p.m.)

Mr K. Ramano (Third Member for Belle Rose & Quatre Bornes): M. le président, le projet de loi qui est présenté au Parlement revêt une importance particulière dans tout ce que les mauriciens attachent comme importance notamment dans la gestion du patrimoine personnel ou familial ou encore créer une culture de *good governance* et d'intégrité à tous les échelons de la société mauricienne. Une question pertinente demeure quant à la responsabilité du citoyen d'assurer une certaine transparence dans la gestion de son patrimoine, d'être redevable vis-à-vis de l'État quant à sa contribution aux impôts, d'accepter de renforcer l'arsenal répressif de l'État vis-à-vis des contrevenants et doter une agence ministérielle d'un pouvoir de confiscation de biens en cas d'activités licites ou illicites.

M. le président, je souhaite que le débat soit fait d'une façon dépassionnée et objective. Notre souci c'est avant tout de s'assurer qu'il y ait une adhésion de la population, une protection des droits fondamentaux de cette même population et une assurance que cette loi passe l'épreuve du temps, *test of time* comme dit l'anglais, et ce quel que soit le ministre en place ou le gouvernement en place. Être pour ou contre le projet de loi ne peut être interprété

comme un choix du camp des bons ou des méchants de la société. Il faut savoir écouter et analyser la pertinence des arguments.

Dans un premier temps je commenterai la situation actuelle des lois et ensuite je commenterai spécifiquement les provisions de la loi.

M. le président, je souhaite, à ce stade de mon intervention, faire un bref relevé des lois existantes où il existe une procédure de saisie et de confiscation des biens qui ont été acquis d'une façon illicite. Quand on parle d'illicite, on a en tête les acquis effectués des revenus des trafics de drogue, de blanchiment d'argent ou encore des *Ponzi schemes*. Des lois existantes du pays permettent déjà la confiscation des biens. Je cite la *Dangerous Drugs Act*, le *Financial Intelligence and Anti-Money Laundering Act* et le *Prevention of Corruption Act* ou encore l'*Asset Recovery Act*.

Il est important de rappeler encore une fois que l'arsenal répressif existe déjà quant à la procédure de saisie et de confiscation de biens des personnes mêlées à des activités illicites. Le *Good Governance and Integrity Bill* n'est pas et ne doit pas être considéré comme cette loi s'apparentant au jugement dernier. Les pour ou contre au projet de loi ne sont pas les bons ou les méchants de la société car la société mauricienne a déjà accepté des lois répressives et des confiscations des biens dérivés des activités illicites. La société mauricienne a déjà accepté une logique, une norme légale pour dire que les biens acquis des activités illicites courent le risque d'une saisie ou d'une confiscation.

De plus, M. le président, la Présidente de la République de Maurice est partie prenante des conventions internationales où la question de confiscation des biens est prévue, je cite la *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* de 1988, la *UN Convention against Transnational Organised Crime*, l'*International Convention for the Suppression of Financing of Terrorism* ou encore la *UN Convention against Corruption*.

Les lois existantes à Maurice, la *Dangerous Drugs Act*, la FIAMLA ou encore la *Prevention of Corruption Act* et les conventions internationales que je viens de citer ont pour but de combattre le crime.

A part de combattre le crime, je parle d'activités illicites, ces mêmes lois prévoient le *reversal of the burden of proof*. Le devoir de qualification du *Criminal Nature des Assets* n'est pas seulement sur l'*Enforcement Authority* mais aussi sur l'accusé de venir prouver que

ses *assets* ne sont pas des *proceeds of crime*. La Cour déterminera la pertinence d'un *Confiscation Order* sur un *balance of probabilities*.

Autre fait existant une procédure civile pour une offense criminelle.

Autre sujet de discussion est la question de l'exception à la question de rétroactivité. Cela, M. le président, bien qu'étant un garde-fou aux respects des droits fondamentaux des citoyens dans les poursuites criminelles, des exceptions ont été permises, à titre d'exemple, dans l'*Asset Recovery Act* où la rétroactivité est de 10 ans. Bien que l'exception ne doit pas devenir la règle, la question de rétroactivité est encore prévue dans le *Good Governance and Integrity Reporting Bill* - là je dois dire d'une façon ambiguë et j'aurai l'occasion d'y revenir dans mon intervention.

M. le président, il convient de rappeler que la procédure de saisie diffère selon qu'il y a eu une condamnation ou il n'y a pas eu de condamnation. Le '*conviction based forfeiture*', c'est-à-dire qu'on a bien entendu le '*in personam order*' ou encore l'action contre la personne ou bien le '*non-conviction based asset forfeiture*' aussi appelé le '*civil forfeiture*' qui est une action '*in rem*'. C'est une procédure différente des *criminal proceedings* et nécessite seulement de prouver que le bien provient d'un crime. Et là, même s'il n'y a pas eu de poursuite au criminel d'une personne, la saisie sera basée sur une question de '*balance of probabilities*' et que le bien en question ne provient pas d'une activité illégale d'un crime.

Ceci dit, M. le président, il est important de comprendre et de reconnaître que la présente loi sous le couvert du *Good Governance* à un champ d'application très large et grave incluant non seulement des activités illicites mais aussi des activités licites. Permettez-moi de préciser que cette loi concerne tout aussi bien des biens acquis des activités tout à fait légales. Le mot magique, M. le président, est le '*Unexplained Wealth*'.

M. le président, prenons un cas de figure. Un *self-employed*, un professionnel, un médecin, un agent immobilier, un homme d'affaires, un homme de loi, un comptable, un contracteur, un planteur, un boutiquier et pourquoi pas un marchand ambulant décide après 5, 10 ou 15 ans d'acheter un bien immobilier ou se trouve avec une certaine somme d'argent en banque ou en investissement. Ces personnes exercent des activités tout à fait légales et moralement acceptables dans une société telle que la nôtre. Vous remarquerez ici, M. le président, que je ne fais aucune mention d'un bien de plus de R 10 millions parce que je considère que cela relève d'une manœuvre purement politicienne, le souci de rallier la cause

d'une majorité de la population pour qui la loi '*pou casse les reins ça banne capitalistes-là*'. D'où le soutien surprenant de '*Rezistans ek Alternativ*'. Comme quoi un enregistrement de plus R 10 millions est acceptable alors que dépassé R 10 millions, vous ne justifiez pas, on saisit votre bien. Dieu nous garde que la protection des droits fondamentaux en cours n'est pas limitée à une question de millions de roupies.

Ces *self-employed* exerçant des activités tout à fait légales en achetant un bien sont répertoriés dans leur case hypothécaire au bureau de l'enregistrement. La MRA demande des explications quant aux revenus justifiant des acquisitions. En l'absence de justifications, en l'absence des fameux reçus de ces *self-employed* que j'ai mentionnés, la MRA décide de faire un *blind assessment* comme c'est la pratique pour dire que votre revenu échelonné sur X période est de tel montant prenant en considération la nature de votre activité professionnelle et la valeur de votre acquisition.

Après discussion avec la MRA comme un bon citoyen on décide de payer la somme convenue ou même avec une pénalité de 15%. Dans une société civilisée telle que la nôtre cette démarche est tout à fait louable et acceptable et même recommandable. Le *self-employed* a rempli ses dettes vis-à-vis des autorités, vis-à-vis de la société. C'est une norme légale et sociale tout à fait acceptable. A l'état actuel des choses, le souci du *self-employed* qui fait des activités tout à fait légales s'arrête là.

Mais, malheureusement, M. le président, avec la nouvelle loi, le calvaire du bon *self-employed* ne s'arrête pas là parce qu'il est un client potentiel du fameux *unexplained wealth*. Le *Bill* vise tous les cas où le patrimoine d'un individu quelconque excéderait sa déclaration des revenus. L'individu visé n'est pas un criminel, il n'est pas non plus suspecté d'en être un. Le bien de l'individu pourra être confisqué parce qu'il ne pourra pas prouver devant une Cour de justice selon la nouvelle loi que son patrimoine est proportionnel à ses revenus déclarés. Mon appel aujourd'hui est au ministre, au gouvernement, à cette majorité gouvernementale c'est de faire preuve pas seulement de la compassion mais aussi de la raison pour ces *self-employed* qui ne sont pas suspectés d'activités illégales, qui ne font pas l'objet d'une charge criminelle, qui n'ont pas été condamnés d'une offense criminelle et qui, M. le président, sont tout à fait d'accord de s'acquitter de leurs dettes vis-à-vis de la MRA et de l'État. Ces personnes-là, M. le président, ne peuvent pas et ne doivent pas avoir leurs biens confisqués sous l'*Unexplained Wealth*.

Je fais une parenthèse ici, M. le président. Dans la logique des choses, sous la nouvelle loi tous les *assessments*, je dis bien une bonne centaine d'*assessments* que fait la MRA chaque année sont qualifiés pour être référés à des *Unexplained Wealth Orders*. La section 9(1) du *Good Governance and Integrity Reporting Bill* préconise un *Duty to Report* -

- (1) 'Notwithstanding any other enactment, where, in the exercise of his functions, the Director-General of the Mauritius Revenue Authority has reasonable ground to suspect that a person has acquired unexplained wealth, he shall make a written report of the matter to the Agency.'

La situation est d'autant plus aberrante, M. le président, que le gouvernement a prévu une amnistie sur deux années consécutives pour ceux qui sont volontiers à déclarer leurs revenus, à s'acquitter de leur dette vis-à-vis de la MRA.

M. le président, il est beaucoup question ces temps-ci de faire référence aux pays où il existe des traditions démocratiques ; des pays où il existe des lois qui permettent au judiciaire de confisquer des biens dans le cadre d'une procédure civile où la personne visée a acquis des biens qui sont disproportionnés à ses revenus. L'*onus of proof*, la charge de la preuve est renversée. Il a une obligation de justification même s'il n'a pas été préalablement condamné au pénal. Référence est faite beaucoup à l'Irlande et à l'Australie. Les orateurs précédents ont beaucoup parlé d'Irlande et d'Australie.

Madame la Présidente, il convient de reconnaître que le *Proceeds of Crime Act 1996* en Irlande, le *Proceeds of Crime Act* de 2002 en Australie parlent d'*Unexplained Wealth Orders* dans la lutte contre le crime organisé. Les suspects sont dans l'obligation de prouver que leurs biens n'ont pas été acquis par des revenus générés par des activités illicites car il y a une présomption que ces revenus proviennent des activités illégales. Cela est tout à fait justifié d'exproprier des criminels des biens acquis grâce à des activités criminelles. Ces criminels ne peuvent en profiter et ne peuvent se servir de ces moyens pour poursuivre leurs activités criminelles. Dans sa forme actuelle, le présent projet de loi permet d'exproprier toute personne qui n'aurait pas déclaré des revenus mêmes générés par des activités légales.

M. le président, toujours dans ce même raisonnement, je me réfère ici à la section 16 relative au *Unexplained Wealth Order* -

“16. Unexplained Wealth Order

- (1) 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 or an Order for the payment of its monetary equivalent.

- (2) Where the Judge is not satisfied, he shall refer the matter to the Supreme Court.”

M. le président, nous parlons ici d’une sanction pénale qu’est l’*Unexplained Wealth Order*. J’ai soulevé plus tôt, M. le président, le cas des personnes qui font des activités tout à fait légales mais qui n’arrivent pas à justifier leurs revenus et envers qui nous appliquons une sanction pénale qui est la confiscation de leurs biens à travers l’*Unexplained Wealth Order*. Il se pose une règle d’or du droit qui est la question de proportionnalité de la confiscation d’un bien. Je parle de la proportionnalité de la sanction face à l’offense commise qui est ici, dans ce cas présent, la non justification des revenus pour ceux qui font des activités tout à fait légales.

Venez dire maintenant aux professionnels ou aux *self-employed* qui font des activités tout à fait légales, qui ont fait l’objet d’un *assessment* de la MRA et qui ont payé avec une pénalité de 15% ; qu’ils auront ces biens saisis ou il leur faut maintenant payer le *monetary equivalent* pour un *explained wealth*, M. le président, c’est un cas flagrant de double *jeopardy*. Cela équivaut à pénaliser une même personne deux fois pour la même offense, c’est-à-dire, n’avoir pas déclaré ses revenus et ne pouvoir justifier ses acquisitions. Je me pose la question, M. le président : est-ce que l’incapacité d’un professionnel ou d’un *self-employed* qui a fait une activité légale, qui ne peut justifier les moyens de ses acquisitions, fait de lui un hors-la-loi qui mérite une sanction pénale.

M. le président, permettez-moi de considérer ici le pouvoir de l’*Agency* de prendre une inscription de privilège sur les biens d’une personne sur qui pèse une enquête relative au *Unexplained Wealth Order*. La question d’inscription est une question très grave et je souhaite que cela ait toute l’attention du gouvernement.

Suite aux protestations soulevées quant aux inconvénients faits à une personne chez qui pèse une inscription, le ministre est venu dire que pour soulager de tels inconvénients la durée de l’inscription prise par l’*Agency* sera de six semaines seulement afin d’assurer que personne ne soit pénalisé injustement. Maintenant que l’amendement a été circulé, nous voyons étrangement que les 42 jours ne courent qu’après réception du rapport par le *Board*. Je m’explique, M. le président. Si on veut

s'assurer que les droits ne soient pas lésés, comment se fait-il qu'il n'y a aucun délai entre la prise d'inscription par l'*Agency* et la soumission du rapport au *Board*.

M. le président, il est faux de dire en vérité à partir de la date de l'inscription par l'*Agency* que la durée de l'inscription est indéterminée parce qu'il faut bien reconnaître que la durée de l'inscription ne court qu'après réception par le *Board* du rapport de l'*Agency*. On est en droit de dire qu'une fois l'inscription est prise contre une personne que financièrement et civilement le citoyen concerné est paralysé dans tous ses droits à partir de la date de l'inscription. Nous savons tous qu'une inscription interdit une personne de contracter un emprunt. Une inscription empêche une personne de procéder à un partage ou encore de transférer ses biens même à ses enfants.

M. le président, il est un principe reconnu du droit qu'une fois une enquête est ouverte contre une personne, cette dernière doit bénéficier d'un *fair justice*; doit être assuré que ses droits soient protégés et respectés.

M. le président, il est primordial que la question de la durée soit un élément déterminant dans le *Good Governance and Integrity Reporting Bill*. Je ne parle pas, bien sûr, du délai de 21 jours pour toute personne de répondre par voie d'affidavit mais bien du délai dans lequel l'*Agency* doit soumettre son rapport au *Board*; du délai aussi dans lequel le *Board shall direct the Agency to a Judge in Chambers* parce que, une fois que l'inscription est prise par l'*Agency*, l'*Agency* peut prendre un mois, six mois, une année, deux années ou trois années ; il n'y a aucun délai qui est prévu pour que le rapport soit soumis au *Board*. Pendant tout ce temps, l'inscription est déjà prise contre la personne concernée. Donc, le délai de 42 jours ne court qu'après réception du rapport par le *Board*.

Ce délai, M. le président, doit aussi s'appliquer quand le *Board directs the Agency to apply to a Judge in Chambers for an Unexplained Wealth Order*. M. le président, la durée est un élément fondamental pour prévenir toute action abusive et, bien sûr, pour protéger tout citoyen dans ses droits.

M. le président, je propose que la section 5 (2) concernant *Powers of the Agency* et la section 14 concernant *Application for Unexplained Wealth Order* soient amendées pour qu'une période définie soit stipulée pour l'*Agency* de soumettre son rapport au *Board* et d'une date déterminée pour l'inscription et pour faire une application d'*Unexplained Wealth Order*. M. le président, nous connaissons tous qu'il existe bon nombre de cas à Maurice où la

question de durée a été considérée comme un élément déterminant dans la protection des droits des citoyens.

M. le président, je souhaite ici, toujours en ce qui concerne l'inscription, aborder un autre aspect du droit qui est la nature de l'inscription d'une part et le privilège d'autre part vis-à-vis des institutions créancières - banques ou assurances.

Toute institution créancière en contrepartie d'un crédit exige des sûretés dans les formes de sûretés fixes, flottantes ou d'hypothèques. En cas de non-respect des termes de l'acte de prêt, l'institution créancière peut demander la vente de ces biens devant la *Master's Court* de la Cour Suprême. Suivant la vente à la barre, le *proceeds of sale* est partagé selon les dispositions de l'*Insolvency Act* dans un ordre de priorité clairement établi par la loi.

M. le président, malheureusement, il convient de se rendre à l'évidence que le présent projet de loi est silencieux quant au rang qu'aura l'inscription du privilège sur les autres inscriptions déjà existantes. Y aura-t-il une primauté sur les autres ou si on se fie à la section 12 (4) *where a privilege is inscribed under the section it shall take effect from the date of the inscription*. Il est clair, M. le président, qu'une réponse claire est nécessaire du ministre.

En cas de primauté, M. le président, la situation risque d'être catastrophique pour l'emprunteur car toutes les institutions créancières du pays exigent *le first rank inscription* comme sûretés pour les facilités de crédit. En cas de perte de ce *first rank mortgage inscription*, M. le président, dans la pratique les institutions bancaires ont le droit d'exiger le paiement immédiat de la facilité bancaire comme stipulé dans le contrat de prêt. Et nous savons tous ce que cela représente pour le pauvre emprunteur. La situation est d'autant plus ambiguë et cornélienne pour le vendeur d'un bien immobilier. Le vendeur qui fait une vente à crédit à un acheteur, dans le jargon *notarial*, on appelle cela une vente avec solde de prix. C'est-à-dire, qu'il y a une vente, la vente est conclue, la vente est enregistrée mais dans le contrat de vente c'est convenu en ce qui concerne le prix, une partie du prix a été payée et la différence sera payable dans tels délais. Pour garantir cette différence de paiement, il y a une inscription de privilège qui est prise sur le bien en faveur du vendeur contre l'acheteur.

La question se pose, M. le président, si un *Unexplained Wealth Order* est émis contre l'acheteur après la conclusion de la vente, après l'enregistrement du contrat de vente, est-ce que le vendeur pourra demander la résolution du contrat de vente comme lui permet le Code Civil Mauricien ou perd-t-il tout simplement son droit ? La question se pose. Mais il est

évident qu'on se trouve dans un cas de *deprivation* de propriété. Je suis sûr que les ministres jadis membres de la profession légale sont interpellés par cette question et là aussi j'aurais souhaité avoir une réponse du ministre.

M. le président, toujours en ce qui concerne l'inscription de privilège, il convient de préciser que la loi est assez ambiguë car une inscription de privilège reconnaît l'existence d'une sûreté en faveur de *l'Integrity Reporting Services Agency*. La publicité de l'inscription est faite au bureau de l'Enregistrement à l'égard des tiers créanciers et le public en général. Et la nature de ce privilège donne une certaine primauté à l'égard des autres inscriptions. Dans le cours normal des choses pour le *sale by levy*, par exemple, une fois un bien est saisi sous le *Sales of Immovable Property Act* et vendu au *Master's Court*, le *proceeds of the sale* est distribué selon un ordre établi par *L'Insolvency Act*. Après la satisfaction des *inscribed creditors* qui sont colloqués selon la date de leur inscription le montant restant est retourné au débiteur dont le bien a été saisi et vendu à la barre.

Et là, M. le président, à la section 17 du projet de loi –

“Realisation of Property; where an Unexplained Wealth Order is made and the order is not subject to an appeal, nor discharged, that property recovered and confiscated shall vest in the Agency. The Agency shall appoint a liquidator to realize any confiscated property.”

Dans ce nouveau projet de loi, M. le président, le bien confisqué échappe complètement au *Sales of Immovable Property Act* et il est clair qu'aucune autre institution créancière même les *inscribed creditors* ne pourront être colloqués, ne pourront être payés. Encore moins le remboursement de la somme restante au débiteur ! Je considère là aussi que c'est un cas flagrant de *deprivation of property*.

Il nous suffit, M. le président, de nous inspirer des sections 25 et 26 de *l'Asset Recovery Act* où sous l'item *Realisation of Property* il est clairement mentionné –

“If, after full payment of the amount payable under the Confiscation Order, any sums referred to in subsection (1) remain in the hands of a Trustee, the Trustee shall distribute those sums among such of those persons who held property (...) and in such proportions as the Court directs, after giving a reasonable opportunity for those persons to make representations to the Court.”

La provision légale existe déjà, M. le président.

M. le président, il est important qu'une telle disposition soit prévue dans le projet de loi afin que les autres créanciers ne soient pas injustement pénalisés. Au cas contraire, cela constituerait un cas flagrant de *deprivation of property* - je me répète ici - et les débiteurs seront toujours à la merci des institutions créancières qui, même si leurs recours seront moindres, exigeront le remboursement immédiat des dettes. Je considère qu'on tombe dans la démagogie un peu si on considère qu'il appartient aux créanciers de vérifier la provenance de tel ou tel bien dans la pratique. C'est presque inexistant et c'est presque impossible, M. le président. Donc, il convient de se rendre à l'évidence qu'il existe des propositions de loi et il nous appartient aussi en tant que législateurs d'assurer la protection des autres créanciers.

M. le président, prenant en considération les points que je viens de soulever, il y a un autre grand absent sous l'item d'inscription, c'est l'absence d'un montant déterminé lors de la prise de l'inscription. Qui dit inscription dit dette. Et la dette doit être clairement stipulée.

L'Article 2196 et L'Article 2171-1 du Code Civil Mauricien stipulent clairement que l'inscription doit être prise pour une somme déterminée et sur un bien déterminé. Il en est de même dans l'*Inscription of Privileges and Mortgages Act* qui stipule, et je cite à la section 3 –

“Procedure for Inscription: any creditor applying for the inscription of a privilege or mortgage shall, inter alia, in respect of each creditor (...).”

Entre autres items, indiquer –

“(...) the amount of the claim in principal and accessories and the date when it becomes due.”

Dans le présent projet de loi à la section 12, c'est mentionné que –

“The Agency shall deposit with the conservator of mortgage two identical memoranda in such form as may be prescribed.”

C'est-à-dire, selon l'*Inscription of Privileges and Mortgages Act*, la question que je me pose, M. le président, à défaut d'un montant, l'inscription n'est pas valable.

M. le président, il est clair ici que nous avons un manquement qui mérite d'être corrigé d'un point de vue légal et procédural, bien sûr, mais aussi dans un souci de protection des autres créanciers qui ont déjà des inscriptions sur les biens de la personne concernée.

M. le président, il y a un autre intérêt sur lequel j'insiste et qui mérite d'être protégé car il faut bien le souligner. Le présent *Unexplained Wealth Order* s'applique pour les biens acquis des activités licites et illicites. Une fois que le montant de la dette est stipulé, par exemple, pour celui qui pratique une activité tout à fait licite, un *self-employed*, doit avoir la possibilité, une fois sa dette ou son amende payée, de préserver son logement principal ou même l'immeuble abritant son *business* qui a fait l'objet d'une acquisition tout à fait légale.

Il y a un autre aspect de la loi qui n'a pas été suffisamment travaillé, M. le président. Les différentes institutions publiques telles que la MRA ou les différentes municipalités, les différentes institutions publiques qui ont le droit de prendre des inscriptions légales sur le Code Civil Mauricien. Toutes ces institutions publiques, en ce qui concerne les redevances publiques, peuvent prendre une inscription sur bien et c'est toujours pour une somme déterminée, M. le président.

M. le président, dans le *Criminal Property Confiscation Act* de 2000 *Western Australia*, il existe un concept qu'on appelle le *crime used property substitution* où le DPP de là-bas peut faire une application de *crime used property substitution* ou le *crime used property* n'est pas disponible pour une confiscation ou a été déjà vendu ou qui sert de logement principal où les enfants, la personne concernée ont des *dependants* qui sont autrement capables. Ce concept de *property substitution* existe au niveau de la loi en Australie et cette loi a été mentionnée par plusieurs orateurs.

Ce concept de *property substitution*, comme je l'ai souligné, M. le président, aurait pu être utilisé dans un premier temps où des *unexplained wealth orders* ont été émis contre des personnes qui ne peuvent justifier leurs acquisitions de biens, mais qui exercent des activités tout à fait légales ou encore qui ne font l'objet d'aucune enquête criminelle, d'aucune charge criminelle et n'ont pas été condamnées pour une activité criminelle.

Ces cas d'exceptions sont tout à fait justifiés lorsqu'on parle de logement principal d'une famille, où la famille concernée a sous sa responsabilité des personnes autrement capables, je l'ai mentionné, ou encore le bien en question est son lieu d'activité professionnelle tout à fait légale. L'activité professionnelle est légale, l'acquisition a été faite d'une façon tout à fait légale.

M. le président, j'aborde ici un aspect de la loi concernant les *non-citizens*. La section 3 du projet de loi stipule *that this Act shall apply to the property of citizens of Mauritius*. Les

non-citizens ne sont pas concernés. Bien qu'il existe aujourd'hui de nombreuses situations où les étrangers sont autorisés à acquérir des biens à Maurice sous le *Property Development Scheme*, la nouvelle loi avant c'était l'*IRS*, le *RES* ou bien même sous l'*Investment Promotion Act*. Des cas d'exception, des cas qui sont prévus par la loi pour permettre aux étrangers d'acheter des biens à Maurice. Les objectifs de la présente loi sont pourtant clairs. C'est-à-dire -

- (i) *promote a culture of good governance and integrity reporting in Mauritius, and*
- (ii) *disclose malpractices and recover unexplained wealth.*

Quelle est aujourd'hui la raison d'exempter les *non-citizens* de ce projet de loi où bon nombre d'entre eux sont détenteurs d'un *occupational permit* ou encore *permanent residence permit*, et jouissent des mêmes droits fonciers que les mauriciens, ont les mêmes droits d'acquérir des biens immobiliers à Maurice. Pourquoi cette discrimination, cette ségrégation légale contre les mauriciens?

Dans un souci de combattre le *transnational crime* et confisquer les biens mal acquis, le législateur est venu de l'avant avec l'*Asset Recovery Act*. Aucune distinction n'est faite entre le *citizen* et le *non-citizen* sous l'*Asset Recovery Act*. Bien au contraire, dans la partie 6 de l'*Asset Recovery Act*, mention est faite de *International Co-operation*, toute une section de la loi est prévue visant directement les *property believed to be proceeds, an instrumentality or terrorist property* ». '*Instrumentality*' est défini comme *any property used or intended to be used in any manner in connection to an unlawful activity*. Cette section de la loi parle de –

- (i) *International Co-operation agreements;*
- (ii) *Foreign request in connection with civil asset recovery;*
- (iii) *Foreign request for enforcement of foreign restriction or Recovery Order, and*
- (iv) *Foreign request for the location of tainted property.*

Tout un arsenal légal est prévu pour connaître la provenance de l'argent, M. le président. Et pourquoi cette discrimination ?

Il en est de même naturellement dans d'autres dispositions de la loi où la question de *property* est soulevée où aucune distinction n'est faite entre mauriciens et non mauriciens notamment dans la *Dangerous Drugs Act*, la *Financial Intelligence and Anti-Money*

Laundering Act ou encore la *Prevention of Corruption Act* ou des dispositions pour permettre des procédures de saisie vis-à-vis des *non-citizens*.

La situation est d'autant plus aberrante, M. le président, lorsque ces *non-citizens* font du business à Maurice, sont détenteurs de permis, acquièrent des biens, sont des *taxpayers*, font des *returns* à la *MRA mauricienne*, mais ne sont pas *answerable sous le Good Governance and Integrity Reporting Bill*. Pourquoi ce paradis pour les *malpractices* des étrangers, M. le président?

La situation est d'autant plus cocasse car nous savons tous qu'il existe bon nombre de partenariats entre les mauriciens et les *non-citizens* ou encore des compagnies avec des actionnaires mauriciens et étrangers et trouver que seul le mauricien est concerné sous cette loi. Je considère que c'est une aberration, M. le président. Je ne connais pas beaucoup d'étrangers qui seront très emballés d'avoir des partenaires mauriciens dans de tels cas, M. le président.

Autre situation cocasse, M. le président où un mauricien est marié à un étranger sous le régime de la communauté des biens et qu'ils sont conjointement autorisés à acheter un bien immobilier sous le *Non-Citizens (Property Restriction) Act*. Comment faire cette distinction, contre qui appliquer l'*Unexplained Wealth Order*, M. le président.

Dans une des déclarations faites par le ministre, mention est faite de la nécessité de rétablir l'*imbalance* dans le prix de l'immobilier parce qu'il y a trop d'*Unexplained Wealth Order* à l'île Maurice. Nous savons tous que dans le secteur de l'immobilier le plus grand *imbalance* a été créé par les étrangers qui ont créé une véritable spéculation de prix. La logique d'exempter les étrangers ne tient pas la route dans cette démarche, M. le président.

Pourquoi cette ségrégation alors que dans un récent *guideline* émis par le *Prime Minister's Office*, M. le président, relatif au *Permanent Residence Permit*, mention est faite de la nécessité d'un certificat *of income from the Mauritius Revenue Authority covering the last three years*. Il existe déjà une provision légale pour pouvoir retracer la source de revenus des étrangers, M. le président.

In case of Retired non-citizens, il faut qu'il y ait des preuves *of transfer of USD 40,000* chaque année et la Banque de Maurice, nous savons tous, exige déjà *the source of funds* pour toute somme dépassant les USD30,000. Pourquoi cette distinction? Pourquoi cette

discrimination des mauriciens étrangers, M. le président, car il existe déjà des provisions légales pour retracer *the source of funds* et les moyens pour acquérir un bien immobilier?

Je souhaite ici aborder un autre aspect, M. le président. J'aimerais ici faire référence à un excellent article du *Professor Anthony Gray* du *USQ Law School* ayant pour titre: *The compatibility of unexplained wealth provisions and civil forfeiture regime* que je recommande vivement aux analystes du droit constitutionnel et même aux législateurs en général.

Plusieurs questions sont posées dans cet article, M. le président. Y a-t-il un risque où une enquête au criminel a été instituée et que l'on voit que le *standard of proof*, le *burden of proof* sont insuffisants pour prouver la culpabilité d'une personne, l'Agency entre alors en jeu avec un niveau de preuve plus bas où le *balance of probabilities* prévaut ? Il faut bien le souligner qu'il existe insuffisamment de preuve ou pas de preuve contre une personne accusée de blanchiment d'argent ou soit trouvée innocente par une cour de justice, mais il faut bien le reconnaître, l'*Unexplained Wealth Order* pourra toujours s'appliquer même vis-à-vis de cette personne qui a été trouvée innocente par une cour de justice. Bien que le législateur ait prévu une procédure civile pour une sanction pénale, il faut bien le reconnaître qu'il existe bon nombre de décisions de justice en Australie ou aux États-Unis, où la Cour Suprême a déclaré qu'elle n'est aucunement liée à la procédure civile que le législateur a imposée si elle considère que la finalité relève d'une sanction pénale. *De facto*, la cour appliquera les mêmes règles de base du *criminal law* que sont le *standard of proof*, le *beyond reasonable doubt* ou encore le *non-reversal* du *burden of proof*.

Bien que la procédure soit *in rem*, c'est-à-dire, contre les biens qui font l'objet d'une confiscation, la stigmatisation qui s'ensuit est considérée comme étant de nature pénale, c'est-à-dire, contre la personne, et il convient alors d'appliquer les procédures, les *standards* du droit pénal. La séparation des pouvoirs entre le judiciaire, le législatif et l'exécutif est une règle d'ordre de notre démocratie. Il convient que la souveraineté du judiciaire soit pleinement respectée.

M. le président, dans cette même ligne de pensée, j'ai de sérieuses réserves qu'on puisse dicter à la Cour Suprême - je pose la question et j'aurais souhaité être éclairé là-dessus - une sanction imposée, *be it confiscation order or monetary equivalent*. On a beau dire que la procédure est civile, mais il faut le reconnaître que la sanction est ici pénale.

M. le président, il y a une section de la présente loi qui mérite toute notre attention. Les institutions du pays symbolisent notre tradition démocratique. Il convient de s'assurer qu'elle soit protégée, bien sûr, mais aussi qu'elle puisse jouer pleinement son rôle. Toute loi, je l'ai dit, doit pouvoir passer l'épreuve du temps, quel que soit le ministre et quel que soit le gouvernement en place. C'est une section de la loi qui m'interpelle et qui mérite à mon avis toute notre considération. Je parle ici, M. le président, de la section 8 (2) du projet de loi – *Functions of Board*.

A la sous-section 2, il est stipulé –

“Notwithstanding any other enactment, the Board –

(a) shall, in case of concurrent jurisdiction with an enforcement authority, prevail in relation to any action relating to the confiscation of property;”.

Quand on parle d'*enforcement authority*, M. le président, j'ai en tête la police, l'ICAC, la MRA, l'*Asset Recovery Unit*, une institution publique qui a pris une inscription pour une redevance non payée. Quelle est la raison, M. le président, de cette supériorité d'action et de pouvoir ?

The Deputy Speaker: Hon. Member, I am sorry.

Mr Ramano: J'ai seulement encore une feuille.

The Deputy Speaker: May you finish. Thank you.

Mr Ramano: La question que je me pose, M. le président, est : quelle est la raison de cette supériorité d'action et de pouvoir ? Le projet de loi va encore plus loin. La sous-section (4) stipule –

“(4) Where an enforcement authority has already instituted any proceedings in connection with the confiscation of property, the Board may, (...) –

(a) request the enforcement authority to stay action;”.

M. le président, ça va encore plus loin.

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

M. le président, sommes-nous en train de créer une super police avec des pouvoirs d'inscription, de confiscation, de sanction pénale avec des procédures civiles ? Une institution dont le recrutement du personnel voit le budget dépendre d'un ministre, d'un ministère, d'un gouvernement et un *Agency* qui a des pouvoirs de '*supersede*', d'avoir une priorité d'action qui peut dicter d'autres *enforcement agencies to stay action*. Il faut bien le préciser, M. le président, il est question ici de confiscation des biens. Mais il y a des *proceedings*, il y a des enquêtes dans la pratique - nous le savons tous. Dans la pratique, des *proceedings*, des enquêtes visant la confiscation des *properties* qui sont aiguillées par la police, par le DPP, qui mènent à la confiscation des biens. Des institutions dont l'indépendance est garantie par la Constitution. Pourquoi cette supériorité d'action, cette primauté de l'*Agency* face à ces autres *enforcement agencies*, M. le président ? Je me pose la question et j'aurais souhaité avoir une réponse.

Cette provision, M. le président, fait peur. Je le reconnais et je dois l'avouer. Que cela fasse peur aux criminels, à ceux qui se sont enrichis par des moyens illicites est le dernier de mes soucis. Mais cette provision me fait peur, fait peur à notre État de droit. Je la considère même dangereuse et je pense que cela mérite d'être précisé.

M. le président, il est important, dans un souci de transparence, que l'indépendance de l'*Agency* ou du *Board* soit garantie et reflétée dans la nomination. Nous saluons l'amendement qui a été fait, même si nous considérons que la possibilité aurait dû être donnée au président directement. Il faut qu'il y ait cette perception d'indépendance pour qu'il y ait la confiance de la population et qu'il n'y ait pas une perception d'interférence.

La section 4(7) contredit cela malheureusement –

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

Pourquoi une telle perception quand la même section 4(6) donne déjà le pouvoir à l'*Agency* –

“(...) to employ such employees and consultants on such contractual terms and conditions as it may determine”.

La confiance dépend aussi de l'intégrité des membres de l'*Agency* et du *Board*. Il est essentiel que tous les membres, que ce soit de l'*Agency* ou du *Board*, soient assujettis au *Declaration of Assets Act*. La présente loi est silencieuse à ce niveau, M. le président.

M. le président, nous sommes mis en présence d'un *Good Governance and Integrity Reporting Bill* aux plusieurs interrogations, et je souhaite vivement que nous soyons éclairés dans le cours du débat, parce que la lutte contre la corruption est l'affaire de tous. Nous sommes tous pour une société meilleure, mais je pense qu'il est de notre devoir, en tant que législateur, que nous soyons assurés que nous sommes en train d'adopter la bonne loi, avec les bons paramètres, pour qu'on puisse protéger les droits de tout un chacun comme il se doit.

Je vous remercie, M. le président.

The Deputy Speaker: We will now break for dinner for one hour.

At 8.04 p.m. the sitting was suspended.

On resuming at 9.20 p.m. with Madam Speaker in the Chair.

Madam Speaker: Please, be seated! Hon. Mrs Dookun-Luchoomun!

The Minister of Education and Human Resources, Tertiary Education and Scientific Research (Mrs L. D. Dookun-Luchoomun): Madam Speaker, I stand before the House, a very proud Member of this Government - a Government, Madam Speaker, which has kept its promise to the people of the Republic of Mauritius to make the fight against corruption and corrupt practices its priority.

Madame la présidente, ce gouvernement avait promis d'assainir le pays et tient sa promesse aujourd'hui en apportant au Parlement the Good Governance and Integrity Reporting Bill. Madam Speaker, I must, at the very outset, congratulate my colleague Minister Bhadain not only for the presentation of this Bill but also for having gone the extra mile out to explain to the various segments of the population, to different stakeholders, the essence of the Bill. He has gone as far as bringing amendments so as to allay the apprehensions of some people.

Madam Speaker, I have also taken time to go through some of the apprehensions, the criticisms, the objections expressed from different quarters. Everybody expects systems, institutions and persons to reflect a high degree of integrity in their several dealings. The move globally today is for more openness in society and open societies thrive on the establishment of mechanisms, the formulation of laws and regulations for investigating possible breaches of ethical conduct.

The time has, indeed, come for Mauritius to have such an enabling legislation. And what does this legislation propose? What it proposes, Madam Speaker, is something very straightforward. In the first place, the Integrity Reporting Services Agency with the power invested in it will request explanations regarding the ownership of property, the source of funds, and thus, at this very first point, there are already two safeguards that need to be stressed and are inbuilt in the Bill.

Safeguard No. 1:

This request will only apply to those persons having wealth or property that is disproportionate to their emoluments and other income and whose source cannot be satisfactorily accounted for.

Any person who can explain the source that may well be legitimate - through inheritance and other means - has absolutely nothing to worry about.

This Bill will not affect people who have worked hard, often over a lifetime and have acquired property in a manner that is quite legitimate.

Nor should we forget to remind ourselves of the threshold of Rs10 m. set by the hon. Minister, again, to allay the fears of people.

Évidemment, une personne qui a la conscience tranquille, qui a la capacité de justifier ses excédents ne devrait pas s'inquiéter parce que cette loi ne l'inquiétera nullement.

Safeguard No. 2:

Madam Speaker, the person from whom explanations are being sought will have 21 days within which to comply. And the onus is on the person to provide these explanations by way of an affidavit.

It is only in a case where there is no reply at all that a Disclosure Order can be resorted to - I need hardly state that it would be preferable for anyone to give the reply rather than to wait for a Disclosure Order and to forward a response - any response for that matter, Madam Speaker.

It is only after all inquiries will have been completed by the Agency that it reports the matter to the Integrity Reporting Board which then gets into play.

Safeguard No. 3:

The Integrity Reporting Board will have a Chairperson who will be no less than a retired Judge of the Supreme Court from the Commonwealth, and then we come to the crux of the matter: it is only after the Chairperson of the Board along with his two other members or assessors will have decided that an application for an Unexplained Wealth Order is needed, then only would the Agency be allowed to apply to the Judge in Chambers for this Order and it is only when the Judge in Chambers is satisfied that wealth is unexplained, then only will such an Order be issued.

What we need to retain here is that the Board is not mandated to apply any sanctions whatsoever; it will leave it to the Supreme Court to decide on the ultimate sanctions.

Madam Speaker, that is what this Bill is all about. Disons-le tout de suite, il n'y a aucune mainmise du gouvernement dans le processus. L'Exécutif n'a rien à faire avec le processus. Le gouvernement n'est pas non plus avide de saisir les biens d'autrui. Il s'agit encore moins de 'vendetta politique' comme certains voudraient le faire croire. Et, fort heureusement, notre système judiciaire est toujours perçu comme étant non-arbitraire et jouit toujours de la confiance de la population. Les gens honnêtes avec des biens légitimement acquis n'ont absolument rien à craindre, Madame la présidente. Tout se fera dans la transparence et au niveau légal.

Cette auguste assemblée aura également constaté qu'à aucun moment, la personne appelée à soumettre des explications, ne passe par un interrogatoire comme c'est le cas pour la *PoCA*. Il n'y a pas d'emprisonnement pour celui qui refuse de fournir les explications recherchées et ces explications, Madame la présidente, je viens de le dire, doivent être formellement rédigées *by way of an affidavit*. Et c'est tout! À aucun moment, cette personne ne sera appelée à fournir des explications de vive voix. À aucun moment, cette personne ne sera interrogée. Cela parce que le tout passera par l'aspect civil de la loi et non par la partie criminelle.

Madame la présidente, c'est bien de noter aussi que même s'il arrive à être prouvé qu'une personne détient des biens non expliqués, la personne ne risque pas la prison. *It is simply a case of civil confiscation - confiscation of ill-gotten wealth and, at times, it will also be possible for them to give the monetary equivalence. It is an action, Madam Speaker, against ill-gotten property and not against the person.*

Madam Speaker, we all know there exists a powerful correlation between bad governance and corruption. Transparency International's Annual reports consistently show that the most corrupt countries are those that lack sound institutional governance capacity.

Obviously, different countries have their several ways of working out their good governance and transparency policies. For example, in Morocco in 2007, the Government established a new Financial Investigation Unit answerable to the Office of the Prime Minister. It had the mandate to receive, analyse and disseminate information on suspicious transactions and collect data on money-laundering operations.

Other countries have laws and, to address money-laundering, decrees, to establish agencies to track down corruption cases and many other ways. But we should not, therefore, be surprised that even the Sustainable Development Goals to which the Global community has subscribed in September last, the Global Sustainable Development Goals formulate a new development paradigm that focuses, *inter alia*, on accountability. We thus now have a premium that has been placed on a standalone Goal 6, that of 'Governance' which reads thus

—

“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

It has also major indicators relating to the reduction of illicit financial flows, the reduction of corruption and bribery in all their forms and the development of effective, accountable and transparent institutions.

Madam Speaker, I will now view this Bill from a different lens -. I will look at it from the perspective of education. The Ministry of Education has been vested with the responsibility to, among other things, promote a value-based education. We have not simply to cater for the cognitive development of our children, but also their overall development. We want them to claim their legitimate place in society as tomorrow's adults with a sound moral compass.

Education, Madam Speaker, is expected to inculcate in our children and youth a mindset change, a culture that extols meritocracy, work ethics and selflessness as basic to flourishing life chances.

Le but premier de l'éducation, Madame la présidente, c'est effectivement d'inculquer chez nos apprenants et nos jeunes une nouvelle façon de voir les choses. C'est également d'inculquer un état d'esprit, une culture qui prône la méritocratie, un sens d'éthique et encore, un altruisme pour un mieux-être et un mieux-vivre.

C'est une nouvelle mentalité que nous nous devons d'instaurer dans cette jeunesse qui est à la recherche de ses repères, d'un code de conduite sain pour animer son existence.

We want them to grow as persons instilled with the positive values of hard work and rewards obtained at the cost of 'sweat of the brow'.

We encourage learners to recognise and appreciate the virtue of patience and results obtained through sheer dint of effort. However, Madam Speaker, over the last decade or more, our youth have been made to believe that easy wins are a normal part of the game, that values and integrity play second fiddle to these quick gains. The model that they have been exposed to is that the end justifies the means, even if the means are foul. Our young people have, in short, lost their moral bearings. *Ils ont perdu leurs repères*, Madame la présidente.

The situation does not apply to the youth alone. People have been exposed to a major contradiction, particularly unveiled over the past years. It has been the contradiction between discourse and action. It has been the contradiction between professed intents and promises and actual reality and practices. Thus, on one side, people have been sloganeered and fed on such diets as those notorious equality of opportunities, democratisation of the economy of this and that, and yet what did they get on the other hand? Nothing!

On the other hand, Madam Speaker, and in actual practice, cronyism, nepotism and favouritism have been blatantly rearing the hydra heads. They dictated who derived wealth from private and nebulous, mostly illicit, sources and who made ostentatious display of same. *Certains, Madame la présidente, sont devenus milliardaires en quelques mois.*

The larger interests of the nation were sacrificed at the altar of the personal interests of a privileged few.

Madam Speaker, we have come to a major turning point in our history. Ours is an educated population that now demands greater accountability from all those placed in a position of importance and power. The greatest risk lies in the temptation to make an abuse of

the power and position vested by society as it has been in the last regime. Such a risk has to be curtailed. I must say should be eliminated.

This Bill will provide a mechanism by which these errors might be eliminated. I believe, Madam Speaker, it would be wrong to say that this Bill goes against....

(Interruptions)

Madam Speaker: Hon. Soodhun, sorry! You are just interrupting the lady! Please!

Mrs Dookun-Luchoomun: ... the interests of the people or that it will be used as a political tool. After all, even we, hon. Members of this National Assembly, will be subjected to this Bill, to this law, when this Act becomes a law. And you will agree that we are not likely to vote for a Bill that will hold a jeopardy against us. This Bill keeps all these dimensions in view. It aims at cracking down on those who have vitiated the system in the past by going back to the preceding seven years and forestalls and nips in the bud any temptation that might arise to vitiate the system.

Madam Speaker, those who have been abusing the system, making it suit their own convenience; those who have gathered illicit, ill-gotten wealth are those who need to fear.

This piece of legislation will help us write the wrongs that have prevailed so far.

Madam Speaker, the Constitution guarantees the right of people to property. This right is being maintained. We are nowhere trying to undermine entrepreneurship and profit motive. Nobody is being discouraged from taking risks. Indeed, we should not be risk averse, economies thrive on such risk taking, but there is one crucial and ethical conditionality. People have to learn, to operate within the confines of clear, legal parameters and norms.

Madame la présidente, en décembre de l'année dernière, ce gouvernement a eu un mandat clair et explicite d'assainir, d'épurer le pays. Depuis, on se donne constamment les moyens de le faire. Ce projet de loi va effectivement et aussi dans cette direction. Bien entendu, on peut comprendre que cela pose problème pour certains, que cela engendre des appréhensions. C'est effectivement la raison des garde-fous préconisés par le projet de loi.

Madame la présidente, on juge une société de par sa capacité de mettre en exergue la bonne gouvernance. Celle-ci devient une marque, une caractéristique démontrant le niveau de développement qu'on a atteint. L'inverse, c'est-à-dire la mauvaise gouvernance nous

mènerait vers des précipices à la Enron, à la Mart, beaucoup plus proche de nous à la Sunkai, Whitedot et la BAI.

Nous devons comprendre que nous avons un devoir, un devoir de faire comprendre aux gens qu'on ne peut plus accepter ou trouver acceptable des gens qui refusent de payer leur taxe. Faudrait comprendre qu'on ne peut plus se permettre d'exhiber, de montrer d'une façon *shameful*, comme on le dit, des biens mal acquis. Et là, je voudrais faire allusion à ce qu'avait dit l'honorable Ramano au cours de son intervention. Il a cité plusieurs points très valables, mais quand il vient nous dire qu'il trouve normal que quelqu'un qui a pu accumuler des richesses parce que tout simplement il avait oublié ou il n'a pas pu payer sa taxe, que la personne - puisque cela se fait d'après les lois de la MRA – puisse négocier avec la MRA et par la suite payer la taxe qu'il devait même au prix d'une pénalité, que ce sont des choses acceptables. Non! Quand l'honorable Ramano vient nous dire que le *self-employed or the professional, the doctor, the lawyer who has failed to pay his tax could eventually pay it and pays penalty if it is needed, does he not think about* le malheureux salarié qui, lui, n'a pas d'autre option que de payer sa taxe. Il nous faut changer de mentalité. Il nous faut apprendre que nous devons vivre d'après les paramètres de la loi et que payer sa taxe n'a rien de terrible, c'est un devoir et on doit le faire.

Madame la présidente, je pense qu'il est temps que la mentalité change dans notre pays. Il est temps qu'on donne les repères à nos jeunes, il nous faut être des modèles pour ces jeunes. Il nous faut, nous autres, au Parlement, arriver à mettre sur pied des mécanismes, à venir avec des projets de loi pour assainir la situation et donner des repères à nos jeunes. Nous avons une responsabilité, un devoir de reddition des comptes aux générations qui nous suivent. Assumons cette responsabilité et soyons dignes et fiers de le faire !

Merci, Madame la présidente.

(9.41 p.m.)

Mrs D. Selvon (Second Member for GRNW & Port Louis West): Madame la présidente, j'ai entendu l'honorable ministre, Roshi Bhadain, dire sur une radio privée que ses lois, dont le projet qui est devant nous en ce moment, sont celles qui ont été les plus débattues. Je ne sais pas si c'est rigoureusement exact sur le plan historique, mais je le félicite pour avoir débattu personnellement, en long et en large, sur la place publique, avec ses critiques les plus féroces, les trois lois proposées pour des changements au droit constitutionnel des mauriciens à la propriété.

L'histoire retiendra que le ministre a également écouté avec beaucoup d'attention, dans cette auguste Chambre, tous les orateurs, y compris le *Leader* de l'Opposition, notamment l'intervention qu'il a trouvé excellente, d'ailleurs, de l'honorable Paul Bérenger, *Leader* de l'Opposition, la semaine dernière, le félicitant chaleureusement à plusieurs reprises. Et aujourd'hui, il est clair que le ministre a fait un effort considérable pour venir de l'avant avec environ une douzaine de retouches à *the Good Governance and Integrity Reporting Bill (No. XXX of 2015)*. J'avais raison d'avoir dit que le *Bill* devrait être amendé et n'avait pas, au début, été suffisamment discuté.

Madame la présidente, il est clair que l'ensemble des amendements proposés au projet de loi originel, constitue un changement positif et salulaire tant dans l'approche que dans le fond. J'avais voulu, d'abord, que le ministre, dans son discours devant cette Chambre, confirme que l'intention du législateur est de remettre entre les mains du judiciaire toute décision affectant le droit constitutionnel des mauriciens à la propriété, et il l'a fait d'une manière très consciencieuse.

La raison en est simple: en droit, les Cours de justice se réfèrent de temps à autre, surtout en appel, à l'intention du législateur exprimée lors des débats parlementaires, pour décider de l'interprétation d'une loi. C'est ce qu'on appelle le '*legislative intent*' ou '*legislative purpose*'.

The more debated a Bill has been, the clearer will be the legislative intent to a reviewing Court. Il est aujourd'hui évident que le législateur, personnifié par l'honorable Bhadain, insiste sur le rôle du Juge en Chambre comme celui qui aura le contrôle de toute décision concernant le droit de propriété par rapport à des dénonciations qui pourraient être soit justifiées, soit sans fondement. J'en suis satisfaite du fait que je crois dans l'intégrité et l'indépendance du judiciaire.

Madam Speaker, I will now refer to clause 3 subsection 5 of the new legislation. It reads –

“Any 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.”

Some critics have alleged that the burden of proof should not be reversed towards the accused party, as this reversal means removing the presumption of innocence.

In truth, as the Minister has already explained last week, the burden of proof can and should be reversed depending on circumstances. The presumption of innocence enjoyed by the accused party is thus removed. This reversal has been rightly proposed by hon. Bhadain and, according to him, by the DPP also.

On Monday, 16 March of this year, the Reuters News Agency announced that senior bankers in the UK, will, I quote –

“be presumed guilty until proven innocent under strict new rules proposed by British regulators seeking to hold individuals accountable for bank failures.”

Reuters added, I quote –

“The Financial Conduct Authority (FCA) on Monday announced details of a "presumption of responsibility" rule which requires senior managers to demonstrate that where a firm is guilty of misconduct they ‘took such steps as a person in their position could reasonably be expected to take, to avoid it happening.’ ”

We are introducing a ‘presumption of responsibility’ on people having unexplained wealth and who may be drug traffickers or criminals of various sorts. There is nothing wrong in that and it is a significant fact that this has been allowed in the very European Nation where modern democracy was born and from which Mauritius derives its Constitution and democratic and legal traditions. Some may argue that this reversal of the burden of proof violates the European Convention on Human Rights, but the legal burden of proving a defence which is in denial of the claims given by the claimant lies on the defendant.

With reference to actual case law, in *BHP Billiton Petroleum Ltd v Dalmine SpA* [2003] BLR 271 the Court of Appeal in the UK confirmed that the burden of proof rests on the party who affirms and not on the party who denies. On the facts of the case it was held that the burden of proof was on the defendants to prove their affirmations.

As a matter of fact, the burden of proof can even be shared and, in fact, in criminal cases, so as not to violate the presumption of innocence, Courts in the UK apply a European Union legal principle that the larger share of the burden of proof remains with the prosecuting party while the accused party has a lesser burden. This could happen, and rightly so, under the new Bill before us.

In clause 3(5) of the Bill now before us, Madam Speaker, another sacrosanct principle is affirmed: the balance of probabilities. I have already stated, last week, that this principle

being applied rigorously by the judiciary will ensure fairness in the process of uncovering unexplained wealth. I have also congratulated the Minister for leaving out in his legislation the 100,000 or so entrepreneurs of the informal economy who have invested honestly around Rs1 billion and who honestly contribute to the national GDP.

Madam Speaker, I refer, now, to a third fundamental principle raised by the Bar Council. *A savoir la justesse d'une loi qui a des objectifs du droit criminel à travers une procédure civile. Cela est contesté par le Bar Council en référence au Good Governance and Integrity Reporting Bill. Il existe une étude sur ce type de législation appelée 'hybride' combinant le civil et le criminel en droit et qui est utilisé en Irlande pour traquer les biens et l'argent mal acquis. Cette étude est intitulée: "Using civil processes in pursuit of criminal law objectives", a case study of Non-Conviction Based Asset Forfeiture, by Colin King, Centre for Criminal Justice Studies, School of Law, University of Leeds, publiée dans The International Journal of Evidence, le 11 février 2015.*

Cette étude conteste ce type de législation hybride et en appelle aux Cours de justice de la rejeter afin de préserver intact le système criminel. Ma conclusion, cependant, est que pour le moment, il y a aussi beaucoup de légistes en faveur du '*crime control*' par des procédures civiles. L'étude précitée propose d'attendre l'opinion de la Cour européenne des droits de l'Homme, ECHR.

I am also happy with the other amendments that have served to attenuate the publicly perceived unilateral executive powers that would have excluded consultations with other constitutional powers like the President of the Republic and the Leader of the Opposition by the Government of the day.

I would have preferred meaningful consultations with the Leader of the Opposition, instead of a simple phone call. We do need a truly meaningful change from a situation of unilateralism, on the part of the executive in the appointment of top public officials who should not bow to the will, whims and caprices of the Executive, that is, the Government of the day, be it this one or any other one. At the end of the day, I wish to point out that it is now left to our judiciary to deal with challenges to the legislation if and when the occasion will arise.

With these reservations, Madam Speaker, I have decided to vote for the Bill, while awaiting impatiently for the day when executive unilateralism at all costs and in all

circumstances, will have been replaced by consensuality as far as can be obtained on some issues. This should be the case in all matters of such national importance.

Thank you, Madam Speaker, for having given me the floor, and I thank all Members for their kind attention. Thank you.

Madam Speaker: Hon. Ramful!

(9.52 p.m.)

Mr D. Ramful (Third Member for Mahebourg & Plaine Magnien): Madam Speaker, when we look at the different provisions of this Bill and having heard some of the Members making reference to the different provisions of this Bill, it is an undisputed fact that this Bill has very far-reaching consequences. For example, there are provisions relating to Non-Conviction Based Asset Forfeiture. There are provisions touching on the fundamental rights like the presumption of innocence, the right to silence, the reversal of the burden of proof although I accept the principle that even in an ideal democracy there is no such thing as an absolute right. Even for rights guaranteed under the Constitution, there are restrictions that can be imposed by the State.

However, the State can only interfere with the rights of the individuals when there is a need to do so. It is not a question about if you have nothing to hide, so why don't you vote. This is not the question. The issue is...

(Interruptions)

... balancing the public interest; the balancing between the public interest of bringing this piece of legislation with the need to protect the fundamental rights of the individual.

(Interruptions)

We don't legislate in vain.

(Interruptions)

Madam Speaker: Don't interrupt. You have had the opportunity to express your views, please!

Mr Ramful: Well, in fact, hon. Gayan was my pupil master and he himself told me: we don't legislate in vain and this is what Government is doing today. The hon. Prime Minister made reference to an article which is titled: Comparative Evaluation of Unexplained Wealth Orders by Booz Allen Hamilton. This was a study that was carried out by the US

Department of Justice. In fact, when we read the report, this is what they say at the last paragraph -

“Unexplained wealth law authorising forfeiture of property acquired through unlawful activities were introduced as a result of extraordinary events; the increase in crime and drug-trafficking in the Irish and Australian societies. Additionally, in Ireland, the law was introduced following the murder of two public personers. A journalist and a detective were murdered and that outraged the entire society. A collective shock was created, a unified and conducive environment to enact a far-reaching law that would have otherwise been unacceptable, without generating massive dissatisfaction and major opposition. On the contrary, the Australian and Irish citizenry as a whole are supportive and in favour of the law. Thus, when enacting unexplained wealth orders legislation, one of the most important objectives should be its justification and linkage to solving real or perceived needs in society.”

This is the point that I want to make. Is there a real need and, if so, what are the justifications for this Bill?

Do not come with statements, citing the instances when the CCID of Mr Jangi is calling in members of the Labour party. Do not come with these kinds of statements. Do not come with statements about BAI, etc. Come with a study! Have we carried out a study explaining to the population what is the level of fraud and corruption in this country?

(Interruptions)

Madam Speaker: Order, please!

Mr Ramful: I have heard Members talking about organised crime. What is the definition of ‘organised crime’? What is the level of organised crime in this country? Has there been a serious study that has been carried out by Government to justify bringing this piece of legislation? So, this is why, Madam Speaker, I am in the dark. I am waiting. I have not heard why the hon. Minister has come up with a piece of legislation ...

(Interruptions)

Madam Speaker: Order, please!

Mr Ramful: ...without any justification at all, without any justification for coming up with this piece of legislation.

We have also to bear in mind that there are only three countries: Australia, Colombia and Ireland and, as I have said, they had their own specific problems. That is why they introduced this type of legislation. There are examples in Mauritius, when the Prevention of Corruption Act was passed. There was a need to come up with this legislation and the Vice-Prime Minister, hon. Collendavelloo, presided over a Select Committee. There was extensive research and experts were contacted. There was a detailed Select Committee report. Recommendations were made. Then, we came with a piece of legislation.

(Interruptions)

Yes, I will come to this. The Minister said ...

(Interruptions)

Yes, because the way ECO was dismantled ...

(Interruptions)

I have to answer to the hon. Minister because he said that the Labour party did not vote. We should not forget the way ECO was dismantled. This was the reason why the Labour party did not vote.

(Interruptions)

Madam Speaker: No interruptions, please! Usually when you are intervening, the hon. Member sits silently and does not interrupt anybody. Please, allow him to talk.

Mr Ramful: The hon. Minister when making his remarks about the Labour party, forgot to mention that it was the Labour party in 2000 who came with the first piece of legislation on economic crimes. He failed to mention this. He failed to mention that when he was Director of investigation under the ICAC, he proposed amendments to the then hon. Prime Minister, which were accepted and these amendments were brought. He failed to mention ...

(Interruptions)

Madam Speaker: Hon. Bhadain, you will have the opportunity to reply to the hon. Member during your summing up.

Mr Bhadain: On a point of order, Madam Speaker.

Mr Ramful: He failed to mention the Asset Recovery Act in 2012, it was the Labour party who brought this piece of legislation. The hon. Minister should be careful when accusing the Labour party for not voting this piece of legislation.

As I have said, if there is a problem ...

(Interruptions)

Madam Speaker: Order please! I think it is getting late and you should not engage in futile discussions, please!

(Interruptions)

Hon. Jhugroo, what kind of statement you are making?

(Interruptions)

Mr Ramful: I am defending my party.

So, as I have said, we have to identify the problem. If there is a problem about people enriching themselves with drugs money, let us have a look at the drugs legislation. Is there a need to consolidate the Dangerous Drugs Act? If there is a problem about people enriching themselves with corruption, bribe money, let us have a look at the Prevention of Corruption Act. Is there a problem with the provisions there? Is there a problem with financial crime? Have a look at the FIAMLA. Do we need to consolidate that piece of legislation? In any event, the hon. Minister is well aware, a few days back, we have voted the Assets Recovery (Amendment) Bill. There are even more far-reaching powers than under this Act and it covers any criminal activity. So, why are we coming with this legislation? This is my question. What is the objective behind this Act? If we have so far-reaching provisions already, is the objective really to combat fraud and corruption?

I have a lot of doubt, and I have to say so because there are concerns out there...

(Interruptions)

...in the public.

(Interruptions)

If this piece of legislation is going to be used to target political opponents, if the objective behind this Bill is politically motivated, then we are setting a very wrong precedent.

(Interruptions)

Unfortunately, we have, as the hon. Minister rightly said, the habit, here, in Mauritius to copy legislation. We have the habit of cut and paste without really debating whether that piece of legislation will fit the Mauritian context. This is why I say we need to have a justification, a plausible justification for coming up with this piece of legislation.

I will have to, very briefly, Madam Speaker, refer to some of the objections, some of the clarifications regarding some of the provisions of this Bill. There have been a lot of debates about whether the confiscation proceedings would be civil or criminal in nature. No matter how loud you shout within those four walls, no matter what term you may include in this legislation, eventually, it would be for the Court to decide, because we are dealing with a judicial process. This is the realm of the judiciary, and I would like to refer to an article which was cited earlier on by hon. Mohamed as well as by hon. Ramano, namely ‘The Compatibility of Unexplained Wealth Provisions and ‘Civil’ Forfeiture Regimes With Kable’, by Anthony Gray. The author has made extensive research on confiscation proceedings in different jurisdiction, and this is what he concluded –

“Conclusion – Forfeiture Provisions Are In Fact Criminal in Nature

My conclusion, having applied the principles derived from North America and Europe, and having considered relevant High Court of Australia decisions regarding forfeiture proceedings, is that such proceedings are in fact criminal in nature. I am not alone in reaching this conclusion; academic leaders in this field have made the same observation:

Non-criminal proceedings should not be used to circumvent the criminal trial if the outcome can be a significant penalty, especially (but not exclusively) if it may entail loss of liberty.

Civil forfeiture as generally practised today by the federal government is in fact punishment and thus cannot be imposed separately from and in addition to criminal punishment.”

He went to talk about the problem in Australia and he said –

“The difficulty in Australia with this conclusion, however, is that there is no express human rights instrument which can be utilised to strike out such provisions.”

And here, we have to bear in mind that we have a written Constitution.

Madam Speaker, when we look at all the research that has been done, I have no doubt that the proceedings under this piece of legislation are in substance criminal in nature, and this brings on the table all these issues about the reversal of the burden of proof, the right of silence, as guaranteed under the Constitution.

I won't go into all the various issues; the other Members have already spoken about the different provisions. There is one issue, which I would like to bring to the attention of the hon. Minister and, maybe, he will, in the course of his summing-up, have the opportunity to explain. There is this provision about the Agency having the powers to share information with other enforcement authorities.

Now, let's take the scenario where, for example, someone is being investigated under the Agency, is being served with a notice, asking him to explain where he has received funds to purchase a property which is worth more than Rs10 m. He collaborates with the authority, he decides to explain in an affidavit, and the authority finds out in his explanation that there is an underlying criminal offence and the authority refers the matter to the Police, as it is empowered under the Act. The Police investigate and this authority, the Agency, has the power to share information with the Police under the Act. Now, what happens to the concept of fair hearing?

(Interruptions)

Even if it is information! Even if it is information, the person is being accused of a criminal offence by the Police, he has the right, under the Constitution, to remain silent, and the Police beforehand are aware of his defence! Where is the concept of fair hearing? And there have been challenges in Australia; there have been challenges before the Supreme Court, and there were occasions where the Court asked the authority to give an undertaking that they were not going to use any information obtained under the disclosure order against the accused. So, maybe, the hon. Minister should consider looking into this matter.

There is also the issue about the appointment. True it is, as I have said, the provisions under this Act have very far-reaching consequences. True it is, as pointed out by the hon. Leader of the Opposition, that there is that perception given that the Director is going to be appointed by the President after the advice of the Prime Minister. There is that perception that

the person is going to be a political appointee. The hon. Leader of the Opposition has also suggested that, maybe, we should remove the word ‘advice’ and replace it by the word ‘consultation’ - after consultation with the Prime Minister. Then, again, I have some doubt. I am referring in particular to Article 64 (4) of the Constitution, and also this reminds me of an article by late Justice Robert Ahnee.

He gave an interview in ‘Weekend’ and when he referred to section 64 (4) - and I will read it - it says -

“Where the President is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.”

Now, there was an argument and this is what late Justice Robert Ahnee said, that this provision, according to subsection (4), it would appear that even when there is consultation, the President has no discretion. He or she is obliged to follow the advice or the proposition made by the Prime Minister. Now, this is debatable.

(Interruptions)

This is why I say the best way is that there is no such perception. Why don’t we, for example, appoint the Director by an independent body, the Judicial and Legal Services Commission, for example?

(Interruptions)

We are open to any proposition. At least, there is no such perception. So, these would be basically my intervention except that I will conclude by referring to a press interview given by the hon. Minister of Financial Services, Good Governance and Institutional Reforms in 2010. At that time, he was wearing the hat of a barrister in the private practice and he was asked in that interview: “Why is it that those in high places seem to have got away in the MCB Fraud and Air Mauritius ‘black box’ cases?” And this was his answer, Madam Speaker:

“We have to respect the criminal justice system and remember the burden of proof is on the prosecution and that economic crimes are sometimes very difficult to prove. We should also give due credit to Defence Counsels who work hard to ensure that the

rights of their clients are respected as required by law. The system should only function in this way for the best interests of our society.

Everyone is presumed innocent until he has pleaded guilty or been proven guilty.”

(Interruptions)

He was wearing the hat of a barrister at that time. Now he has changed hats and this is the consequence. We are being asked to vote a piece of legislation which, according to me, according to all the authors, all the researchers, the process is criminal in nature and the consequence is that we are reversing the burden of proof. So, these would be what I had to say on the Bill.

Thank you.

Madam Speaker: Hon. Rughoobur!

(10.20 p.m.)

Mr S. Rughoobur (Second Member for Grand' Baie & Poudre d'Or): Thank you, Madam Speaker, for giving me the opportunity to say a few words on this Bill.

Madam Speaker, I wanted to come back on the summing-up of the Rt. hon. Prime Minister early on the importance of promoting values in any society without which there is neither stability nor progress. The spirit of the Good Governance and Integrity Reporting Bill is based on value promotion. No progress, no growth, no development is possible without understanding well the importance of -

1. Value promotion, and
2. Getting your priorities right.

I am going to dwell, Madam Speaker, on three issues very briefly:

1. the issue of unanimity in this House;
2. what about the preventive strategy, and
3. the rule of law.

On this issue of unanimity, Madam Speaker, allow me to express my appreciation for the passion and unanimity that the fight against unexplained wealth has generated in our country. I note, therefore, with a sense of great satisfaction that, whether on this side of the

House or the other side, we all want a clean Mauritius. The only difference we share is the method of structure we want to put in place. Many would probably be more in favour of consolidating the existing legislations, the MRA, ICAC or an eventual Crime Commission while we believe in the importance of a standalone legislation to fight unexplained wealth.

Fundamentally, therefore, Madam Speaker, we have chosen to struggle in different paths, but our destination is the same. So, Madam Speaker, this unanimity that we have in this House and in the country for having a clean Mauritius, definitely gives us this, encourages the Government to go forward and bring in this legislation, which I mentioned earlier, Madam Speaker, it will definitely contribute in bringing growth and progress in the country.

But coming back to what I stated earlier, Madam Speaker, on the importance of having a preventive strategy in the fight against illicit enrichment, I have not heard much about the need of having those strong preventive measures to combat illicit, unexplained wealth. This is where I believe that institutions like the MRA, ICAC, even the FIU, etc., and other similar institutions have an important role to play to prevent the accumulation of illicit wealth and eventually crack down those who get out of the Nets of these institutions and accumulate unexplained wealth.

Madam Speaker, it is my humble view that these existing institutions can be consolidated, as rightly pointed out by many, but as a preventive tool, as a preventive strategy, they should provide adequate safeguards to prevent accumulation of illicit enrichment. But we would still need a standalone institution to fight against accumulation of unexplained wealth. I believe, Madam Speaker, we need to ensure that we have strong leadership and effective structures in those existing institutions that will subsequently enable us to reduce considerably the number of cases that will have to be referred to the new institutions that the Bill proposes to create.

I, therefore, invite hon. Members to reflect on the need to have the existing institutions around, consolidated, but with the objective of promoting a preventive strategy and why not eventually even making the institutions we are creating to fight unexplained wealth irrelevant. What I mean by this is that we get few cases, that is, we have a preventive strategy by consolidating the existing institutions, making more strong with giving them the resources they require, strong leadership so that once we fight one's cases of corruption, unexplained wealth is fought by these institutions effectively, there is less and less need to refer cases to the institutions that we are creating with this new legislation. So, that would be, Madam Speaker, the preventive strategy upon which I wanted to emphasise.

Madam Speaker, we are talking of the protection of the rights of individuals since this morning. Allow me to refer to the late Lee Kuan Yew, the former Prime Minister of Singapore. He stressed on the four factors that enabled his country, Singapore, to move from a low-income to a high-income economy. The most important of those four factors, Madam Speaker, he stated was the Rule of Law. At a time when we are struggling to bring growth by all means in our country, it is imperative that we ensure that the Good Governance and Integrity Reporting Bill in front of this House do promote and consolidate the concept of the Rule of Law in our country. The Rule of Law, Madam Speaker, is generally defined as a system in which four universal principles are upheld and they are as follows –

1. That the Government and its officials and agents as well as individuals and private entities are accountable under the law. I refer to the speech of the Rt. hon. Prime Minister who rightly stressed earlier on the importance of this whole issue of democracy and separation of powers.
2. The laws are clear, publicised, stable and just are allied evenly and protect fundamental rights, including the security of people and property.
3. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.
4. Justice is delivered timely by competent, ethical and independent representatives and neutrals, who are of a sufficient number and reflect the make-up of the communities they serve.

Madam Speaker, the main issue, therefore, is to ensure that the Good Governance and Integrity Reporting Bill only adds at consolidating the system of our Rule of Law. This will not only be possible with the adequate and effective legal provisions, but also the effective operations of all the new institutions being set up following the adoption of the Bill. These institutions should ensure that the four universal principles that make up the Rule of Law are upheld.

Madam Speaker, there have been a few concerns that were expressed earlier and coming back to the provisions of the Bill, I, myself, expressed a few concerns on the issue of inscription of privilege on property by the Agency. As per the amendments being circulated, the 42 days lapse after the submission of the report by the Agency to the Board. In his summing up, I understand that the hon. Minister will clarify this whole issue of inscription.

(Interruptions)

One of the other issues mentioned by my hon. friend Ramano is the dangers of tracking down people who have even generated wealth by honest means. It is true that the perception in some quarters is that the legislation is meant to target even honest people - it is a perception - who have been working extremely hard but run the risk of failing to explain their wealth acquired by legal means. I am sure that the Government will embark on an effective communication campaign to dissipate such a perception in the interest of the country at large.

In my concluding note, Madam Speaker, I will not miss this opportunity to pay tribute to the large section of our population who are honest, working hard to earn every single penny they earn. It has been the case long before but certainly the case today as well. These are people who have made our country stable and prosperous as it is today. It is our duty to protect them and ensure that whatever legislation we bring in front of this House, promotes the rights and interests of these honest citizens.

Thank you, Madam Speaker.

Madam Speaker: Hon. Lesjongard!

(10.30 p.m.)

Mr G. Lesjongard (Second Member for Savanne & Black River): Merci, Madame la présidente. Merci de me donner la parole d'intervenir sur un projet de loi d'une importance capitale pour notre pays et notre peuple.

Permettez-moi, Madame la présidente, de commencer mon discours par ceci et je tiens à signaler à la Chambre que je n'ai rien de personnel, je le fait en toute fraternité mais je dois dire à la Chambre que j'ai été étonné par la teneur de l'intervention de l'honorable ministre.

Quand un ministre présente un projet de loi qui suscite la polémique - et ça on l'a vu depuis un certain temps - il essaie de chercher le consensus parce que c'est important. On est en train de débattre sur un projet de loi, comme je l'ai dit un peu plus tôt, d'une importance capitale et il essaie de chercher le consensus, rallier la majorité et il le fait dans l'humilité. A mon avis - peut-être je me trompe - dans l'intervention de l'honorable ministre, on ne sent pas cette humilité. Je pense que c'est important. Si je peux me permettre, Madame la présidente, un conseil d'ami, il ne faut jamais oublier qu'on est le serviteur du peuple de ce pays et le peuple apprécie que ses serviteurs soient humbles, Madame la présidente.

Madam Speaker, two key words in this piece of legislation is ‘good Governance’ and ‘integrity’ and when we have a look at the Explanatory Memorandum of the Bill, when we have a look at the main objects of the Bill, we see that part (a) deals with the promotion of a culture of good governance and I think, this is the key word in this piece of legislation. True it is that this legislation deals with unexplained wealth, but I think the hon. Member who has intervened just before me, he made the same statement, that is, good governance and the promotion of a culture of good governance.

Now, another word, like I said, is ‘integrity’. ‘Integrity’, Madam Speaker, refers to a system whereas when we talk of ‘good governance’, we refer to a concept and ‘integrity’ is defined as a system that consists of institutions and practices and together they aim at building transparency and accountability. This system, like I said, is a mix of institutions, laws, regulations, codes, policies, procedures that provide a framework of checks and balances to encourage and promote an environment of high quality decision-making. Integrity agencies should operate within such a system and such a system operates to tackle corruption, misconduct and maladministration, Madam Speaker.

Now, it has been stated earlier that the answer to corruption does not lie in a single institution or a single law. The battle against corruption can be won in the acquisition of values, behaviours related to integrity through a series of legislation, agencies and code of ethics, and the success of such a system depends on strong Government institutions, an independent Judiciary, a public service not politicised, a Parliament not totally subordinated to the Executive Government. But leadership is most important, a leadership that sets example for all in both personal behaviour and day-to-day running of Government which was not the case in the past years.

Now, the good functioning of such Agencies depends on how much control the Central Government wish to exercise and this is the critical issue today in this piece of legislation. This has been taken care of by others who have intervened before and I’ll say a few words later on this important issue. But the questions are: “How do we achieve that stable balance? How do we ensure, Madam Speaker, that on one side there is central, political control and on the other side, the autonomy of the Agency and professional independence? With the nomination of those who are going to be at the head of that Agency, does this Bill achieve that necessary balance? If that balance is not achieved and that form of autonomy is not visible, the public at large, Madam Speaker, will feel that Government is manipulating

such an institution. What will happen? The public will lose confidence in such an Agency. I am not aware that there is going to be an amendment. It has not been circulated until now. The public at large will feel that Government is manipulating such an institution, then, the public will lose confidence.

As it is today, Madam Speaker, the perception is that Government will exercise some form of control on this institution. This is the perception outside and I am happy from what I heard from the Minister that he is going to bring an amendment to the nomination of those people at the head of this institution because the perception is that Government will control this institution and Government will deal with its political opponents via that institution. We should ensure that that perception disappears otherwise we will not get the support of the population.

Madam Speaker, good governance is a good idea. Our aspiration as a nation is that we would be better off if public life in our country is conducted within institutions that are fair, judicious, transparent, accountable and efficient. The question is: "Is this the situation today?" Now, for all those in our country, who live in conditions of public insecurity, instability, abuse of law, public service failure, poverty, inequality, *la bonne gouvernance représente cette lueur d'espoir qui peut changer leur vie. A cause de cela, Madame la Présidente, la bonne gouvernance est devenue un élément essentiel et un ingrédient majeur dans les analyses que font les pays qui luttent pour leur développement économique et politique.*

Many countries today believe that to explore failures of their institutions and the constraints related to growth, they should adopt the concept of good governance. Those who strongly defend the concept of good governance have associated a lot of issues to good governance in order to make their country progress. We have also seen that since the year 2000, many countries have set eye on their agenda: the concept of good governance. Internal Development Agencies have created departments of good governance.

This is where we come to the conclusion that good governance is a good idea which, after all, can reasonably defend bad governance. But the problem today is that the popularity of this idea has far outpaced its capacity to deliver. The problem today is that, during its brief span of life, good governance has muddled the waters of thinking about the development process. Good governance is the magical word, but it is not the magic bullet. It is not the solution to all our problems. It is part of the solution.

On the political front - and this is very interesting, Madam Speaker - for those on the political right, that is, the right-wingers, good governance means order, rule of law and creating the necessary conditions for free market to flourish. For those on the political left, that is, the left-wingers, good governance incorporates the notion of equity, fairness, protecting the poor, the minorities and the women and, for the rest, it is associated to justice and accountability.

Madam Speaker, when one has a look to that concept, one should be very careful in making comparison. I, for one, agree that this concept is a very important concept and has given results in many countries, but we should not forget the realities in our world. Let me give us a few examples that show that we should be very careful in making statements regarding good governance. We say that good governance brings growth in a country - one first statement. Now, Madam Speaker, I'll give an example, a country like Bangladesh having virtually no Government, which is ranked among the 14 lowest countries on a standard governance index of Transparency International's Corruption Perceptions Index, has, for the past several years, a rate of growth in excess of 5%.

On the other hand, another example, the US, a country which is referred as an example of good governance, its micro-economy is relatively well managed; Government's action is mostly transparent and accountable to its citizens. You will recall, Madam Speaker, of a problem that hit the US, that is, hurricane Katrina in 2005. The US failed miserably. It was a massive failure of governance. The system put in place to protect the citizens did not work. The institutions that were supposed to allocate authority and responsibility among different levels in the Government did not function. It was a total failure. Let us not forget when we talk of good governance and the example I have taken. What happened in our country back in 2013, what we called at that time in March 2013 the black Saturday where 11 of our citizens lost their lives when we were hit by flash floods? Again, it was a total failure of governance, Madam Speaker. That is why I say let us tread carefully when we talk of good governance and integrity.

What is important today, Madam Speaker, is: what are the priorities of the present Government with regard to good governance? How will our citizens benefit from good governance? How do we move forward? How do we deal with institutions showing poor governance? How do we ensure that jobs are created, that our youngsters will find jobs? How will this piece of legislation assure them that they will be treated in a fair manner? These are the questions that we need to ask ourselves, Madam Speaker.

Coming to this piece of legislation, at the level of our party, the *Mouvement Patriotique*, Madam Speaker, we have made a series of proposals. Some of them have been accepted and some no. But this is the rule of the game and I take an expression which is very familiar and has been used by the Leader of the Opposition in other pieces of legislation, that is: *qui peut le plus, peut le moins, Madame la présidente*.

We are in favour of the piece of legislation that promotes a culture of good governance and integrity reporting. We fully support the fight against corruption. However, we feel that for a piece of legislation to be effective, it has to be coherent, proportionate, fair, relevant and justifiable and it is for these reasons that we have submitted our proposals, one that deals with the nomination of people at the head of that institution. I understand that further amendments will be brought to reflect the independence of that Agency, that is, the nomination will be made by the President of our Republic, in consultation with the Prime Minister and the Leader of the Opposition.

Another section where we have requested amendments and this is what worries us a lot - I think hon. Ramano highlighted this - is section 7. In section 7, Madam Speaker, it is stated that -

“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 function.”

The question is: “Why should the Agency make use of the services of the Ministry?” It is an independent agency. This section opens the door to suspicion of political interference. What we are proposing is to delete that section to show the neutrality of the Agency and we suggest that the Agency has recourse to its own officers, Madam Speaker.

Another proposal was with regard to section 5. We understand - and this has been circulated - that Government has proposed amendments to that section. Another issue is: “Why should explanation be given in writing only? Why can’t the person under investigation be given the opportunity to be heard in person?” Given what is at stake, that is, the person’s wealth, why can’t a counsel or his accountant accompany him, Madam Speaker?

Another important section where we have requested amendment is section 8 (2), that is, the section that deals with the supremacy of the Board over other enforcement authorities. Each enforcement authority should be allowed to play its role fully, Madam Speaker. This

clause brings a lot of confusion among the enforcement authorities. It will create conflicts and it will create some form of interference.

Section 8 (5) (c) again there, we find that this provision can open the door to abuse and suspicion of political interference. The Board must act in consultation with other agencies. It should provide reasons as to why it should take over an inquiry.

With regard to section 12, that is, Inscription of Privilege, hon. Ramano has already spoken on that and he has also stated that we should come with a time frame with regard to section 14 (1).

Let me conclude on this note, Madam Speaker, having said what I have said. Between 2000 and 2005, I was given the responsibility of Minister of Housing and Lands after what I would call the Choonee scandal. I thought that after that scandal and with the will of the then Prime Minister who is Prime Minister again today, that the days of political agents making millions of rupees by the sale of State lands was over. What I witnessed between 2005 and 2014 was incredible! I have in mind that gentleman called Bungalia touring around the world with suitcases full of cash, Madam Speaker. I also recall during that period those unsolicited bids where promoters handed over suitcases full of cash to political leaders.

Madam Speaker, if we want to promote a culture of good governance in our country, we, as Parliamentarians and Ministers, should set the example. The question today is: “Do we, as responsible politicians, want to put an end to all that?” And the answer should be: “Yes!”

Thank you, Madam Speaker.

Madam Speaker: Hon. Jhuboo!

(10.55 p.m.)

Mr E. Jhuboo (Third Member for Savanne & Black River): Thank you, Madam Speaker, for giving me the opportunity to comment on the present Bill. Since the Bill is on good governance, I will first have a look at the definition and the concept of good governance *tout comme mon colistier précédemment pour autant nous ne sommes pas concertés sur le sujet.*

Good governance, Madam, is, and I quote –

“The capacity of a country to elect accountable Government, to create and uphold laws, to protect people’s rights, to manage fairly and effectively the resources of the State.

Good governance is about helping to create the conditions in which women and men are empowered to participate in the political, social and economic development and in doing so, to achieve their potential. Good governance is also to achieve proper mobilisation and allocation of public funds and effective delivery of public service. Good governance is ultimately about enhancing people’s rights, the right to security, to basic services such as education, health, the right to vote, to organise freely and to express opinions, to seek, redress due process of law. Good governance is about a fair and transparent process in selecting, appointing public officials and servants.

Madam Speaker, I have tried to find out in this Bill, issues, ideas and propositions pertaining to good governance. I have seen none apart from three lines in the Bill, and I quote –

“The main objects of this Bill are to –

- (a) promote a culture of good governance and integrity reporting (...);
- (b) stimulate integrity reporting in the public and private sectors, and
- (c) encourage positive reports of acts of good governance and integrity”.

Madam Speaker, in Singapore, with a strong political will as the foundation, the framework of good governance consists of four pillars, the 4As: effective anticorruption law, effective anticorruption agency, effective adjudication and effective government administration.

What we see in this Bill has nothing to do with good governance. I hope that the hon. Minister will come up with a statement and a proposal on how he is going to transform this country and the projects he has in mind in relation to good governance, whether it is in the political arena or in public administration. At all levels, how he is going to articulate a vision that will inspire Mauritians and mobilise them to achieve what is best for the country.

Madam Speaker, this Bill is mainly about the creation of institution and dealing with unexplained wealth. The way this Bill was introduced in Parliament, the initial proposition

by the press has created a lot of confusion and, of course, contradictory interpretations. I had mentioned in my first speech at the National Assembly that fighting corruption is an essential element of the pursuit of good governance. If we have a look at our legal framework arsenal for combating malpractices and corruption, one might say that we should not mix penal with civil, but still we have ICAC, MRA, Ombudsman's Office, National Audit Office, FIU, Asset Recovery Unit and the Public Accounts Committee too.

Madame la présidente, je suis en faveur de la consolidation de notre arsenal légal, civil et pénal. Mais, en parallèle, nous devons éliminer les institutions qui ne fonctionnent pas. Je suis pour la création rapide de la *Financial Crime Commission* qui englobera toutes les institutions qui luttent contre la corruption sous toutes ses formes afin que les juridictions des unes ne chevauchent pas sur celles des autres et que l'outil qui émergera sera le plus efficace possible. Je note que les amendements successifs ont été proposés mais je me pose toujours la question sur la pertinence de certains. Notamment, je vous ai fait part de la conception de la bonne gouvernance. Malheureusement, la bonne gouvernance ne devrait pas avoir de seuil. On impose désormais un barème de R 10 m. Pour être français – je crois que Corneille était un précurseur de la bonne gouvernance - Corneille disait –

« de voleur à voleur, il y a bien des degrés. Les plus petits sont pendus, les plus grands sont titrés. »

Avec cette nouvelle loi, je crois que même Corneille se retourne un peu dans sa tombe parce qu'en l'occurrence on voit l'inverse. Les petits sont titrés et les plus grands sont coffrés.

Il ne doit pas exister de barème dans la lutte contre ce cancer qui est la corruption. Et si on veut distiller une culture de bonne gouvernance dans notre nation, on ne doit pas sombrer non plus dans les démagogies purement politiciennes. Il existe une culture, il existe une pratique dans le pays qui veut que le mauricien, quelle que soit sa profession, marchand d'*alouda* ou de *dhol puri* ou contracteur ou professeur garde une partie de ses revenus en cash et cela en soi n'est pas de l'*unexplained wealth*. La provenance de cet argent peut être expliquée, mais elle n'est tout simplement pas déclarée et cela concerne principalement la MRA.

Donc, ne faisons pas d'amalgame car on ne peut pas mettre sur le même pied d'égalité l'argent de la sueur, l'argent du travail et celui de l'argent mal acquis. Le seuil imposé de R 10 m. cible le politicien corrompu, le haut fonctionnaire véreux, mais passe dans les mailles

du filet tout un pan de l'argent illicite puis du policier ou du fonctionnaire qui s'agrippe à la tétine de l'argent facile sous le seuil de R 10 m. Si nous voulons distiller une culture d'intégrité dans notre société, la lutte contre toute forme de corruption, de la plus petite à la plus grande, doit être sans faille. Nous ne pouvons imposer un seuil car il est en cela antinomique, contradictoire avec une culture de transparence, de droit, de bonne gestion.

Madame la présidente, les hommes sont faillibles, les institutions le sont moins. Elles sont certes plus lourdes et le *challenge* est de les rendre plus efficaces. Il y a eu certes un avancement dans le mode de désignation des officiers qui vont occuper les postes dans ces différents *Agencies*. Mais je pense que ces nominations doivent se faire d'une manière indépendante et totalement transparente pour éviter toute personnification du débat ou encore l'idée que cette loi est créée pour purement pénaliser les adversaires politiques du jour et en cela la proposition du *Leader* de l'Opposition de nommer ses différents assesseurs par la Présidente de la République est une bonne chose.

Madame la présidente, les lacunes sont multiples dans cette loi. Je vous épargnerai les incohérences identifiées par mes prédécesseurs notamment l'honorable Ramano. Il y a aussi une incohérence stratégique, économique. Il y a en ce moment un colloque sur la diaspora mauricienne qui se tient, d'où l'incohérence stratégique. Combien de mauriciens établis à l'étranger ont investi à Maurice pendant les 25 dernières années dans les régions de l'Ouest ou du Nord, dans différents campements. Cette loi est en totale contradiction avec la politique du gouvernement d'attirer ces nouveaux immigrants. Une autre incohérence, Madame la présidente, le *valuation exercise* concernant les biens et la méthode selon lesquels ils seront effectués. Une deuxième incohérence, l'argent illicite récupéré devra aller au *Consolidated Fund* et non pas au *National Recovery Fund* sous la tutelle du directeur de l'agence. Cela encore est un non-sens.

En bref, Madame la présidente, souvent les médicaments censés guérir sont potentiellement plus dangereux que la maladie elle-même. C'est pourquoi, nous souhaitons que les propositions de tout un chacun soient prises en compte afin de fédérer la Chambre sur ce projet.

Merci.

(11.05 p.m.)

Mr F. François (First Member for Rodrigues): Madam Speaker, I will start my contribution to the debate on the Good Governance and Integrity Reporting Bill 2015 by quoting the United Nations Development Programme (UNDP) in 1997, the definition of governance, and I quote –

“Governance is the exercise of economic, political and administrative authority to manage the country’s affairs at all levels. It comprises the mechanisms, processes and institutions through which citizens and groups articulate their interest, exercise their legal rights, meet their obligations and mediate their differences (...). Governance encompasses the State, but transcends the State by including the private sector and the civil society organisations.”

Madam Speaker, the main object of this Bill in the Explanatory Memorandum –

“(a) is to promote a culture of good governance and integrity reporting in Mauritius”.

Good governance, which is accountable, participatory and transparent. This is the buzzword of this Bill despite we have been talking about unexplained wealth and all these things. Good governance! And I totally appreciate the intervention of my predecessor, hon. Lesjongard. It is governance to ensure the political and social economic priorities which are based on broad consensus in our society. Good governance, Madam Speaker, is simply good economics.

Madam Speaker, corruption and malpractices in our society have been described as a cancer. It violates public confidence in the State and private sector. It endangers and threatens sustainable development of people, stability and security of society.

Madam Speaker, in the first instance, I have to say, I was a bit perplexed about the Good Governance and Integrity Reporting Bill - you will excuse my words - which I did refer as *ène la loi un peu bancale*, if this expression is acceptable. This was my first impression. However, having gone through the various readings and discussions, I have changed my attitude and shifted my mind. I was relieved though by the explanation, during our Parliamentary meetings, of hon. Bhadain, as well as by my colleague, hon. PPS Jadoo-Jaunbocus, in a private radio debate together with hon. Mohamed.

Madam Speaker, this Bill has a bearing on our society. How can a society function when some people are recognised by their unexplained wealth, which is a dangerous thing? I remember, in an international conference I attended, a foreign friend told me that, in the jurisdiction of his country, some Members of Cabinet never deliver infrastructural projects unless they are provided with a percentage of the project as commission. Madam Speaker, amazingly, last week itself, I have received a mail from a person telling me that a promoter is interested to implement a project in Rodrigues, but requires some information about Rodrigues. He submitted a list of queries and, at the end of the mail, it was written in bold: “What commissions expected?” Through a mail addressed to me! Madam Speaker, you will realise how such crap will make me react! As if this crooked mind person is considering me to be at the same level field of those corrupted people he probably usually meets! *Incroyable!* What commissions are expected? I can tell you that this person is blacklisted in my contact.

Now, say suppose I embark in this filthy reasoning and this sort of mafia together with this crook, obtain the commission and invest in any property. Is this acceptable and reasonable? No! Madam Speaker, allow me to refer to a quotation from the former UN Secretary-General, Kofi Annan, in a document from the ICGMF 28 International Training Conference in Miami, Florida, from 18 to 23 May 2014, and I quote –

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organised crime, terrorism and other threats to human security to flourish. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance and a major obstacle to poverty alleviation and development”.

Rightly said so by Kofi Annan!

Madam Speaker, this proposed Bill is important and I agree that confiscation of unexplained wealth is an effective and necessary weapon, through an *in rem* framework, that is, civil recovery, while respecting the criteria of legality, necessity and proportionality. Madam Speaker, the *in rem* nature, not *in personam*, of the proceeding offers a viable device to attack the difficult problems of corruption, unjust enrichment to those who profit at society's expense. It is not unreasonable to expect persons to explain how they came to

acquire their wealth. If they have done no wrong, there should be no problem for people to explain how they got the funds to purchase wealth.

Madam Speaker, I have also read in the press that a former Minister from Rodrigues and his political party, in a press conference, argued that this law will negatively impact and is controversial to Rodrigues and the people of Rodrigues. It was reported that hon. Leopold and I shall take our responsibility towards this legislation. Madam Speaker, clean hands; we need a great clean and prosperous society. I have got nothing to be afraid of. Why are they afraid of this legislation, knowing well how Rodriguans behave and cherish the fundamentals of their human and societal values? I question! *Mo coner bien!*

(Interruptions)

Madam Speaker, my political party, OPR, has always taught us to have clean hands in politics and not become automatic teller machines (ATM), with corrupted acts to win elections or become corrupted at the expense of our society, as rightly referenced also by Lee Kuan Yew, former Singaporean politician, in his book entitled 'From Third World to First', cited also by hon. Leopold and hon. Rughoobur.

What kind of society do we want to leave as legacy for our children in the next 10, 20, 30, 40 or 50 years' time? Madam Speaker, while scrutinising this Bill, I will not go into its technical, legal details, as sufficiently canvassed by lawyers from both sides of the House, but I will focus on a particular part of the Bill which seeks to introduce the confiscation of property of a person, that is, property of a person for which that person cannot explain its lawful acquisition.

The Bill seeks to provide a new plan to tackle and explain wealth, as per section 3, subsection (5), through civil proceedings, and the onus - well written - shall lie on the respondent to establish on a balance of probabilities that any property is not unexplained wealth. That is clearly defined. I am not a lawyer, but I think this is quite clear. Madam Speaker, I find this extraordinary where in this unexplained wealth law it is not necessary to demonstrate on the balance of probabilities that the wealth has been obtained by criminal activity, but instead the State places the onus on an individual to prove that the wealth was acquired by legal means. It's fantastic. Madam Speaker, this is one way that Government can do something about protecting our communities and, more importantly, making sure that

people out there, who do the wrong thing, do not get the opportunity to create wealth at the expense of other people and they do not keep it.

In essence, if lawful origins of wealth cannot be established, it can be forfeited to the State through the General Fund as established under section 18 of the Bill, after an Unexplained Wealth Order is made and if the order is not subject to an appeal, nor discharged.

Madam Speaker, our society should be able to trace where large sums of money invested in property come from. If a person cannot explain how he has accumulated his wealth, there is obviously some kind of problem in gaining it.

We all have witnessed how existing law enforcement officials go through a difficult exercise of tracing the wealth of suspected persons to its source, which is not an easy task. This is often very complex, Madam Speaker, because some of these people are pretty clever, *'et en Creole nou dir, zott rusée! Et bien rusée!* And they go through all manner of devices to try and camouflage the source of that wealth.

Madam Speaker, the reporting mechanism provided in the Bill allows to trace out wealth to its source to establish its unlawful origin. I think that it is absolutely reasonable and I commend the provision of section 14, where the Board has reasonable suspicion to believe that a person has unexplained wealth, it shall direct the Agency to apply to a Judge in Chambers for Unexplained Wealth Order to the confiscation of that unexplained wealth.

We all know how wealth acquired through serious illegal activity, particularly drug-trafficking in this country, and corruption is damaging our institutions and the state of confidence in our society by our citizens.

Madam Speaker, the role of FIU, as debated in the previous Asset Recovery Bill, is crucial during pre-investigative and intelligence gathering stage and their role of interface between private sector and law enforcement authorities and to assist with flow of relevant information and asset tracing is very important.

Madam Speaker, section 16 of the Bill answers the genuineness of the Bill, where Unexplained Wealth Order will be made by the Judge in Chambers upon satisfaction of reasonable suspicion of unexplained wealth by a respondent. It is quite important to repeat that line. I quite like it. This is important to bring confidence and positive attitudes in the

legislation. It is only the Court which can act in that direction and no one else. *Et c'est rassurant, que la Cour!*

This present Bill takes asset confiscation laws, as constitutionally voted this morning by more than 94%, to another level. It is very much in response to the sophistication of illegal activities out there. Everyone knows that.

Madam Speaker, one fundamental point that I need some clarification though - that has just caught my attention - is the mechanism for calculation of unexplained wealth, with regard to the threshold of Rs10 m. as proposed. There is a threshold, but the mechanism to calculate it is not quite clear for me.

Madam Speaker, there is established as per section 4, an Integrity Reporting Service Agency. Promoting integrity is partly about minimising fraud and misconduct but, ultimately, it is about the quality of democratic accountability. Accountability with good governance!

Madam Speaker, the fundamental of the Agency is also about the legitimacy to promote effective practices aimed at preventing corruption, reporting of acts of malpractices and unexplained wealth with necessary independence and resources to carry out their functions effectively, free of undue influence, which was also raised this morning by the hon. Leader of the Opposition, and rightly said so by hon. Lesjongard.

Again, Madam Speaker, I like the idea for promoting a culture - this is not a small word, this is a big word, a culture. *Une culture de la bonne gouvernance et de l'intégrité ! Ça c'est une valeur fondamentale extraordinaire, surtout pour nous les parlementaires, ici, dans cette Chambre.*

I believe that Government shall also go a step further by introducing the concept of a 'national integrity system' as developed by Ibrahim Seushi, the President of Transparency International-Tanzania, where he proposed the interconnection of independent institutions such as the political will, administrative reforms, 'watchdog' agencies such as Anti-Corruption Commission, Audit Institution, Ombuds Offices, Parliaments and public awareness involvement.

Ibrahim Seushi, in his analogy, reported that if any one of these 'integrity pillars' weakens, an increased load is thrown on to the others. If several weaken, their load will tilt,

so that the round ball of ‘sustainable development’ rolls off, and today we all know the world we are working, we are debating about moving from MDGs to SDGs for the next 15 years. The general equilibrium of these pillars, which I just mentioned, is therefore important and Government has an incentive to keep these pillars in balance, and I think that’s what this Bill is trying to do.

Madam Speaker, further, I cite Chris Aulich from the Australia and New Zealand School of Government Institute for Governance at the University of Canberra, Australia; he reported that ‘in developing an integrity system, the factors that underpin good governance and promote the ethical and effective pursuit of public purposes would be diffused throughout the social, economic, cultural, legal and political institutions of a nation.’ This is what we have to do and this is what we are doing.

Madam Speaker, the culture of good governance and integrity requires not only a dose of confidentiality as per section 21 of the Bill, but also a dose of professionalism in both the private and public sector.

I adhere to what Kenya proposes in section 11 of its Leadership Integrity Bill or Act, where, the word ‘professionalism’ is defined in the law mainly for public officers in carrying their normal duties in a manner that maintains public confidence in the integrity of the office. I won’t go in any saga out there.

In this Bill, I believe that the word ‘professionalism’ shall be applied to section 4 subsections (5) and (6) for the independent service provider and the employment of such employees and consultants respectively. Why? This is important to avoid that any discrimination arises against any person to bring confidence in this piece of law.

Madam Speaker, the promotion of good governance and integrity reporting campaign also by the Agency, as mentioned in the Bill, shall become a foundational element of our society as is the case in Trinidad and Tobago.

It shall not only, as per section 11 of this Bill, enhance the standing of Mauritius as an International Financial Centre of Excellence of unimpeachable integrity with the object of attracting investment, but shall also carry out public education initiatives that foster an understanding of the standards of integrity.

(Interruptions)

Thank you, hon. Attorney General, if you will do it.

(Interruptions)

In the same breath, while fulfilling integrity, I will propose that Government uses this opportunity to work out a mechanism to educate our people about laws of our Republic to allow them to understand and know their rights as well. There is a big lacuna in that direction, even with interpretation of laws in our Republic.

Madam Speaker, another issue, despite the declaration of assets for all parliamentarians and public officers, I would suggest that after the transitional period of this Bill, it would be appropriate for the Act to include the following provisions for politicians and political parties in Parliament to be required to detail all contributions, direct and indirect, and submit it annually to what I call 'an Integrity Commission. We know it is being done under the Declaration of Assets Act, but I mean under an Integrity Commission.

Madam Speaker, this Bill is about building integrity reporting for the betterment of our nation and the society. And we, as responsible parliamentarians, it is imperative that all of us have a role to play in this endeavour.

Madam Speaker, to conclude, Government's move to tackle the issue of good governance again is a great and right step in the direction towards combating acquisition of unexplained wealth to the detriment of our society.

The public wants and expects a culture of good governance and transparency in our public and private sectors. The success of this legislation surely will depend on other institutional arrangements for investigation, the powers of the investigating and reporting Agency, the independence, impartiality, the coordination and information flows, and not in derogation to associated legislation such as debated recently; the Asset Recovery Act, the Financial and Anti-Money Laundering Act, the Prevention of Corruption Act, amongst others.

Madam Speaker, I wish the legislation, this Bill a fruitful delivery for our society. I congratulate Government, hon. Bhadain for bringing this legislation forward.

Madam Speaker, with those few words, I am pleased to support the Good Governance and Integrity Reporting Bill and I thank you for your kind attention.

Madam Speaker: Hon. Fowdar!

(11.30 p.m.)

Mr S. Fowdar (Third Member for Grand’Baie & Poudre d’Or): Thank you, Madam Speaker. It is getting late. There have been extensive debates, Madam Speaker, around this Bill in this House and outside as well.

The hon. Minister has stood up on several occasions to explain, to clarify issues regarding the Bill and I must confess that he has made enormous progress from the day the Bill has been presented into the House till to date. I, therefore, do not intend to take the time of the House by repeating the same arguments that have already been stated by my colleague Members here.

Madam Speaker, I have been among the first to inquire on several issues relating to the Bill and I thank the hon. Minister for taking on board my issues, my request. But I have to confess, Madam Speaker, that there are many issues still unclear to me and there are many issues which, I think, need to be polished where I still have some reservations, but I will vote for the Bill. I will vote for the Bill, Madam Speaker, because I do not want to miss this golden opportunity to be part of the fight against fraud and corruption in this country. Should there be any teething problem after the presentation of the Bill, we will need to come back and do amendments and sort out. But, essentially, I do not understand my good friends on the Opposition side why they do not follow my step, even if I do not agree hundred per cent with the Bill, I am voting for the Bill because I feel this is a major step against fraud and corruption in this country.

We can always look at amendments afterwards because all the Bills, even the Constitution today, have been amended. It is not perfect all the time and I am sure we are going to amend the Constitution again. But the fight against fraud and corruption is very important for this country. Therefore, Madam Speaker, I again repeat, I have reservation, but I am not going to miss this golden opportunity to fight against fraud and corruption in this country.

I listened carefully to the speech of my good friend, hon. Ramano and I am sure that the officers of the Ministry of Financial Services, Good Governance and Institutional Reforms have taken good note because he has many pertinent issues and one of them is *inscription des privilèges*, amnesty for taxpayers. There are lots of pertinent issues that the hon. Member has

raised and I think, in good faith, we have to take all these issues on board so that the Bill becomes really effective and efficient.

Therefore, Madam Speaker, bottom line, this is a courageous move against the powerful community of fraudsters and corruptors in this country and this Bill is a necessity. I won't take much time of the House, Madam Speaker. I am definitely voting for the Bill because the Bill is of national interest to the country.

I thank you, Madam Speaker.

Madam Speaker: Hon. Boissézon!

(11.34 p.m.)

Mr E. Boissézon (Third Member for La Caverne & Phoenix): Madam Speaker, thank you for allowing me to intervene on the Good Governance and Integrity Reporting Bill. At start, I shall congratulate the hon. Minister of Financial Services, Good Governance and Institutional Reforms for the introduction of the Bill and *la patience qu'il a eu pour expliquer les tenants et aboutissants du projet de loi*.

La fraude et la corruption sont des problèmes de développement de grande ampleur. On estime que le flux transfrontalier total revenant des activités criminelles de la corruption et de la fraude fiscale représente entre 1 et 1.6 billion de dollars par an, soit l'équivalent du PIB des 12 pays les plus pauvres du monde. Le véritable coût de la corruption dépasse de loin, la valeur des biens volés. Elle conduit à la dégradation des institutions publiques et la méfiance vis-à-vis d'elles, notamment de celles impliquées dans la gestion des finances publiques et dans la gouvernance du secteur financier, l'affaiblissant si ce n'est la destruction du climat de l'investissement étranger direct et privé.

Je cite le précédent secrétaire des Nations Unies, M. Kofi Annan qui définit la corruption –

« La corruption est un mal insidieux dont les effets sont aussi multiples que délétères. Elle sape la démocratie et l'état de droit, entraîne des violations des droits de l'homme, fausse le jeu des marchés, nuit à la qualité de la vie et crée un terrain propice à la criminalité organisée, au terrorisme et à d'autres phénomènes qui menacent l'humanité. »

A Maurice, lors du débat numéro 10 de 2011, alors que le *Leader* de l'Opposition posait sa PNQ sur l'*Independent Commission against Corruption*, il dit entre autres et je cite

—

“Can I ask a general question? Would the hon. Prime Minister agree with me that the mood at present in the country is crying for new measures to combat fraud and corruption and doing what has been mentioned, what I have proposed here would send a strong signal? Would the hon. Prime Minister agree with me?”

Trois ans après, lors d'une autre PNQ adressée au Premier ministre, concernant la *Declaration of Assets (Amendment) Bill*, le *Leader* de l'Opposition cite —

“Sir, one issue that was raised on the two occasions that we last discussed the issue of corruption in general, was whether the new legislation will take care of assets being held through nominees or *prête-noms*. Is it still the intention, therefore, for this legislation to deal with this issue of wealth held by Members of Parliament or anybody else, but through *prête-noms* or nominees when the issue arises?”

The Prime Minister then replied —

“Yes. That is definitely the case, Mr Deputy Speaker, Sir, (...).”

(Interruptions)

No, I am quoting —

“(...) because this is one of the problems which we have, it is so easy today to just use somebody else's name and then acquire assets and holdings. This will definitely be in the law when we bring it.”

Mr Béranger said —

“Another issue that has been raised is the issue of holding. Somebody holding asset disproportionate to 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?”

The Prime Minister then replied —

“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.”

Today, at the request, I can say, of the Leader of the Opposition, that Bill is before us.

Madame la présidente, quelles étaient les interrogations des précédents dirigeants ?

Premièrement, la population en a marre de la fraude et de la corruption et crie pour que de nouvelles mesures pour combattre la fraude et la corruption soient apportées pour combattre ces fléaux.

La deuxième interrogation est la question de signe extérieur de richesse, et la troisième, prête-nom ou nominé. Aujourd'hui, quels sont les objectifs du projet de loi qui est devant cette Chambre ? Elle est en droite ligne avec la démarche de ce gouvernement d'éradiquer la fraude et la corruption ; promouvoir la culture de *good governance*; stimuler et encourager les rapports sur les actes d'intégrité et de bonne gouvernance ; protéger et récompenser les personnes qui rapportent des cas de fraude et de corruption, et surtout déceler les cas de malversation et la confiscation des biens non-expliqués.

Madame la présidente, je ne crois pas qu'il y ait une seule personne dans ce monde qui ne soit d'accord qu'un des objectifs de l'humanité est de combattre la fraude et la corruption, le crime organisé, la prolifération des drogues dures et synthétiques, les atrocités du terrorisme international. Tout un chacun est d'accord que même si beaucoup a été fait pour combattre ces fléaux, nous devons admettre en toute honnêteté et en toute humilité que les mesures n'ont pas apporté les résultats escomptés.

Loin de mettre le blâme sur le dirigeant précédent, nous devons concéder que les dispositions légales en place ne facilitent pas la confiscation des biens mal acquis. La confiscation pénale dirigée *in personam* est une action contre la personne. Elle exige un procès au pénal et une condamnation, et fait souvent partie du processus de détermination de la peine. L'exigence d'une condamnation pénale signifie que le gouvernement doit d'abord établir la culpabilité hors de tout doute raisonnable ou de telle sorte que le juge soit intimement convaincu.

Madame la présidente, vous concéderez que tout cela est un processus long and ardu dont l'issue est incertaine. Nous savons tous que le complot pour la vente de drogues ou la distribution de pots de vin ne se fait pas par des actes notariés et encore moins en public. Le système de confiscation du pénal peut être assis sur des affaires de biens; ce qui signifie que le ministère public doit prouver que les avoirs en question sont les produits ou instruments issus du crime.

Plusieurs acquittements peuvent être prononcés pour plusieurs raisons. La preuve recueillie au cours d'une perquisition illégale peut être déclarée irrecevable. Un témoin peut

se rétracter. Un juge peut orienter un jury à tort. C'est souvent la triste réalité des affaires de corruption et de crime organisés. Afin de contourner ces contraintes, les Nations Unies préconisent la confiscation des biens illégitimement acquis en l'absence de condamnation. L'Article 54 (1) (c) de la Convention de Nations Unies contre la corruption cite –

« Elle engage les États et les États doivent envisager de prendre les mesures nécessaires pour permettre la confiscation de tel bien en l'absence de condamnation pénal lorsque l'auteur de l'infraction ne peut être poursuivi pour cause de décès, de fuite ou d'absence ou dans d'autres cas appropriés. »

La proposition des Nations Unies repose sur un principe unique qui est : 'Pour être dissuasive une sanction doit pouvoir s'accompagner de la privatisation pour les délinquants des profits qu'ils ont pu tirer de l'infraction.'

Madame la présidente, je vous cite un cas qui est arrivé en Italie. Lors d'une conversation entre deux mafieux qui furent interceptés, l'un deux sympathisant avec une famille dont le fils avait été condamné à une longue peine de prison, devait ajouter : « Votre fils est en prison, mais, nous, on nous a confisqué tous nos biens » semblant dire que la confiscation était plus importante que la perte d'un fils en prison.

Madame la présidente, le concept de confiscation sans condamnation date de quelques années déjà et est fondé sur l'idée que si une chose viole la loi, elle peut être confisquée au profit de la loi.

La notion de compétence *in rem*, littéralement contre la chose, ceci est au courant dans le droit maritime afin que le navire soit confisqué et non le capitaine ni l'équipage ou le propriétaire. Ce principe avait d'ailleurs été formulé en 2004 dans le rapport Warsmann sur la lutte contre le trafic des stupéfiants en France, et je cite –

« Afin de faciliter le prononcé de ces mesures conservatoires qui, parce qu'elles amputent les profits issus des activités illicites, figurent parmi les mesures les plus efficaces de la lutte contre la criminalité organisée, il paraît nécessaire, ainsi que votre rapporteur l'a déjà préconisé dans son rapport au ministre de l'Intérieur sur la lutte contre les réseaux de trafiquants de stupéfiants, de créer une procédure pénale distincte permettant de prononcer rapidement des mesures conservatoires sur les biens.»

Madame la présidente, un des reproches faits par des opposants à ce projet de loi et le fait qu'il n'y ait une atteinte aux droits de propriété. N'ayant pas de cas précédent à l'île

Maurice pour étayer la justesse de la loi, nous devons nous tourner vers d'autres juridictions. Je vous cite le cas d'Abdul Ada v France du 27 novembre 2014. Ce cas parle de ressortissants Marocains résidant à Mulhouse qui avaient acquis une maison pour la somme de 246 120 € à Mulhouse et cette famille avait un revenu de 1300 € par mois ! Ils possédaient, en effet, plusieurs comptes en banque en France et au Maroc, la maison sur laquelle ils avaient effectué d'importants travaux et neuf voitures immatriculées en leurs noms.

Le tribunal prononça donc à leur encontre une peine complémentaire de saisie, de confiscation des sommes déposées sur leurs comptes en banque et la maison acquise en 2005. Cette peine fut confirmée en appel puis par la Chambre criminelle de la Cour de Cassation en novembre 2009. Ils référèrent le cas à la Cour Européenne qui elle après son prononcé dit ceci : « les autorités ont pu légitimement prononcer des sanctions sévères s'agissant du trafic de grand ampleur au niveau local. Tous les arguments des référents se heurtent aussi au même raisonnement. Le droit de l'État peut parfaitement porter une atteinte grave au droit de propriété et au respect de la vie privée lorsqu'il s'agit de lutter efficacement contre le trafic de stupéfiants. »

Madame la présidente, la Cour contrôle donc la proportionnalité de la mesure prise en appréciant à la fois la nécessité de garantir l'intérêt général en luttant contre le trafic de stupéfiants, la fraude et la corruption et celle de protéger le droit de propriété. Dans ce cas, la Cour s'est basée sur une présomption. Les intérêts sont présumés bénéficier en connaissance de cause, de ressources tirées de transactions illicites. Il leur appartient donc d'apporter la preuve contraire en démontrant que leurs biens ont une origine licite.

En Irlande du Nord, dans le cas de *Walls v Director of Assets Recovery*, la Cour d'Appel a déclaré que la procédure de confiscation des avoirs en l'absence de condamnation est une forme de procédure civile qui est conforme à la Convention Européenne. Je cite la directrice de *L'Assets Recovery Agency* de l'Irlande du Nord après le prononcé de la sentence

—

« This means that the new civil recovery regime has passed another significant legal challenge. This Agency is committed to using its power firmly and fairly to recover proceeds of crime. »

Autre point soulevé par les opposants est la protection des personnes qui ont acquis des biens en toute bonne foi pour la valeur de ces biens. Dans l'affaire *Gilbert v. United*

States, United States v. Lourenco, la Cour a jugé que l'intérêt du gouvernement remonte au moment de l'acte. Et je cite bien, la Cour a jugé que l'intérêt du gouvernement remonte au moment de l'acte qui a rendu les biens passible de confiscation ajoutant que le congrès a ajouté une disposition afin d'empêcher un accusé de chercher avant sa condamnation à transférer le bien à une tierce personne. En permettant ainsi au gouvernement de faire valoir intérêts en vertu de la doctrine de rétroactivité - *relation back doctrine* - cela met en échec les revendications d'un propriétaire qui acquiert la propriété de biens soumis à confiscation après que l'infraction se soit produite et avant que le jugement de confiscation ait été annoncé.

Un point a été soulevé concernant les garanties bancaires et je citerai un avocat qui a écrit un article dans la presse et il cite -

« Un des points qui a été soulevé est que cette loi va troubler les inscriptions des privilèges des créanciers sur certaines sûretés. »

Je cite –

« Exerçant son pouvoir public et économique, l'État mauricien a décidé de présenter un nouveau projet de loi dont le titre fait l'objet du texte. Il attaque de façon détournée les biens des gens et les confisque au fis de notre Constitution écrite. S'était-il avisé des conséquences collatérales que cela pourrait engendrer pour le banquier ? Ce projet de loi risque de troubler les rangs des inscriptions, des privilèges, des créanciers sur certaines sûretés avec pour risques d'attirer les déconvenues pour les banques voire même l'impossibilité de réaliser leur garantie. »

Mais si ce même légiste avait pris compte du jugement dans l'affaire *Gilbert v. United States*, comment un bien qui appartient au gouvernement peut être considéré comme un *asset* comme garantie ? Je me pose la question, quand un jour cet avocat a pris fait et cause pour les pauvres gens dont les biens sont confisqués par les banques quand - en toute bonne foi - ils ont garanti une personne qui n'arrive pas à payer sa dette parce qu'il a perdu son emploi. On n'a jamais vu ces personnes ! Et aujourd'hui, je me pose la question si ces avocats ne sont-ils pas des agents de l'Opposition.

Mais tout en vantant les principes de ce projet de loi, je demanderai au gouvernement de faire attention à un point. La confiscation sans condamnation ne doit pas se substituer aux poursuites pénales. Si se dispenser d'une poursuite pénale en faveur d'une Confiscation Sans Condamnation (CSC) nuit à l'efficacité du droit pénal et à la confiance des citoyens en

application de la loi, par conséquent, bien que la CSC puisse être un outil efficace pour récupérer des avoirs liés aux crimes elle ne devrait pas être utilisée comme alternative aux poursuites pénales lorsqu'un État a la capacité de poursuivre le contrevenant.

En d'autres termes, les criminels ne devraient pas être autorisés à échapper à des poursuites en s'appuyant sur le régime CSC en tant que mécanisme permettant d'obtenir réparation pour des crimes qui ont été commis, renoncer à une poursuite pénale lorsqu'elle est possible en échange d'une procédure de CSC et donne l'impression que le contrevenant s'achète un moyen d'arrêter les poursuites.

La réduction de la criminalité est, en général, aussi garantie par des poursuites pénales et des condamnations ainsi que par des confiscations. En conséquence, les poursuites pénales doivent être poursuivies chaque fois que possible pour éviter le risque que le procureur, les tribunaux et le public considèrent la restitution des biens comme sanction suffisante alors que les lois pénales ont été violées. Toutefois, la CSC devait être complémentaire à des poursuites et à des condamnations pénales. Elle peut précéder une mise en accusation ou peut être menée en parallèle à des procédures pénales.

En outre, les recours à la CSC devraient être préservés dans tous les cas de sorte qu'ils puissent être engagés si les poursuites pénales devenaient impossibles ou en cas d'échec de ces derniers. Ce principe devrait être affirmé de manière à faire la loi.

Pour terminer, je dirai aux personnes, aux gens honnêtes de ce pays, qu'ils peuvent dormir sur leurs deux oreilles. La loi, comme on dit entre parenthèses, 'Bhadain' ne les concernent pas, mais d'autre part de se réjouir que le pays a fait un grand pas dans la lutte contre la fraude et la corruption. En fin de compte, je vous dirai - quelqu'un a dit que c'est un proverbe français rappelé depuis le 19^{ème} siècle qu'un bien mal acquis ne profite jamais encore, fallait-il lui donner force juridique en organisant sa mise en œuvre concrète.

Merci.

Mr Teeluckdharry: I move that the debate be now adjourned.

Mr Rutnah rose and seconded.

Question put and agreed to.

Debate adjourned accordingly.

ADJOURNMENT

The Deputy Prime Minister: Madam Speaker, I beg to move that this Assembly do now adjourn to Thursday 03 December 2015 at 11.30 a.m.

The Vice-Prime Minister, Minister of Housing and Lands rose and seconded.

Question put and agreed to.

Madam Speaker: The House stands adjourned.

At 00.00 hours, the Assembly was, on its rising, adjourned to Thursday 03 December 2015 at 11.30 a.m.