No. 35 of 2021

REPUBLIC OF MAURITIUS

SEVENTH NATIONAL ASSEMBLY

PARLIAMENTARY

DEBATES

(HANSARD)

FIRST SESSION

FRIDAY 26 NOVEMBER 2021

CONTENTS

PAPERS LAID

MOTIONS

BILLS *(Public)*

ADJOURNMENT

THE CABINET

(Formed by Hon. Pravind Kumar Jugnauth)

Hon. Pravind Kumar Jugnauth	Prime Minister, Minister of Defence, Home Affairs and External Communications, Minister for Rodrigues, Outer Islands and Territorial Integrity
Hon. Louis Steven Obeegadoo	Deputy Prime Minister, Minister of Housing and Land Use Planning, Minister of Tourism
Hon. Mrs Leela Devi Dookun-Luchoomun, GCSK	Vice-Prime Minister, Minister of Education, Tertiary Education, Science and Technology
Dr. the Hon. Mohammad Anwar Husnoo	Vice-Prime Minister, Minister of Local Government and Disaster Risk Management
Hon. Alan Ganoo	Minister of Land Transport and Light Rail
	Minister of Foreign Affairs, Regional Integration and International Trade
Dr. the Hon. Renganaden Padayachy	Minister of Finance, Economic Planning and Development
Hon. Mrs Fazila Jeewa-Daureeawoo, GCSK	Minister of Social Integration, Social Security and National Solidarity
Hon. Soomilduth Bholah	Minister of Industrial Development, SMEs and Cooperatives
Hon. Kavydass Ramano	Minister of Environment, Solid Waste Management and Climate Change
Hon. Mahen Kumar Seeruttun	Minister of Financial Services and Good Governance
Hon. Georges Pierre Lesjongard	Minister of Energy and Public Utilities
Hon. Maneesh Gobin	Attorney General, Minister of Agro-Industry and Food Security

Hon. Jean Christophe Stephan Toussaint	Minister of Youth Empowerment, Sports and Recreation
Hon. Mahendranuth Sharma Hurreeram	Minister of National Infrastructure and Community Development
Hon. Darsanand Balgobin	Minister of Information Technology, Communication and Innovation
Hon. Soodesh Satkam Callichurn	Minister of Labour, Human Resource Development and Training
	Minister of Commerce and Consumer Protection
Dr. the Hon. Kailesh Kumar Singh Jagutpal	Minister of Health and Wellness
Hon. Sudheer Maudhoo	Minister of Blue Economy, Marine Resources, Fisheries and Shipping
Hon. Mrs Kalpana Devi Koonjoo-Shah	Minister of Gender Equality and Family Welfare
Hon. Avinash Teeluck	Minister of Arts and Cultural Heritage
Hon. Teeruthraj Hurdoyal	Minister of Public Service, Administrative and Institutional Reforms

PRINCIPAL OFFICERS AND OFFICIALS

Mr Speaker	Hon. Sooroojdev Phokeer, GCSK, GOSK
Deputy Speaker	Hon. Mohammud Zahid Nazurally
Deputy Chairperson of Committees	Hon. Sanjit Kumar Nuckcheddy
Clerk of the National Assembly	Lotun, Mrs Bibi Safeena
Adviser	Dowlutta, Mr Ram Ranjit
Deputy Clerk	Ramchurn, Ms Urmeelah Devi
Clerk Assistant	Gopall, Mr Navin
Clerk Assistant	Seetul, Ms Darshinee
Hansard Editor	Jankee, Mrs Chitra
Parliamentary Librarian and Information Officer	Jeewoonarain, Ms Prittydevi
Serjeant-at-Arms	Bundhoo, Mr Anirood

MAURITIUS

Seventh National Assembly

FIRST SESSION

Debate No. 35 of 2021

Sitting of Friday 26 November 2021

The Assembly met in the Assembly House, Port Louis, at 3.00 p.m.

The National Anthem was played

(Mr Speaker in the Chair)

PAPERS LAID

The Prime Minister: Mr Speaker, Sir, the Papers have been laid on the Table.

A. Ministry of Housing and Land Use Planning
Ministry of Tourism

The Annual Report 2019/2020 of the Mauritius Tourism Promotion Authority. (In Original)

B. Ministry of Finance, Economic Planning and Development

The Annual Report of the Bank of Mauritius for the year ended June 2021.

C. Ministry of Financial Services and Good Governance

The Annual Report 2020 of the Integrity Reporting Services Agency.

D. Ministry of Youth Empowerment, Sports and Recreation

The Annual Report of the Trust Fund for Excellence in Sports for the Financial Year 2020-2021.

E. Ministry of National Infrastructure and Community Development

The Annual Report 2019/20 of the Construction Industry Development Board.

MOTION

SUSPENSION OF S. O. 10(2)

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

The Deputy Prime Minister seconded.

Question put and agreed to.

Mr Speaker: Hon. Members, I have received a request from the Leader of the Opposition…

(Interruptions)

No loudspeaker! So, I will ask the Leader of the Opposition to make the request.

(3.05 p.m.)

MOTION

ADJOURNMENT OF DEBATES – INTENSIFYING COVID-19 PANDEMIC & DETECTION OF NEW VARIANT B.1.1529

The Leader of the Opposition (Mr X. L. Duval): Mr Speaker, Sir, I request leave to move for the adjournment of debates for the purpose of discussing a definite matter of urgent public importance.

My Motion is as follows –

"*This Assembly is of the opinion that, in view of the intensifying COVID-19 pandemic and in particular the detection of the new variant B.1.1529, urgent measures be taken to protect the health and save the lives of our citizens."*

Mr Speaker: Thank you. And according to Standing Order 11(2) which further provides that the leave of the Assembly, without any dissentient voice, would be required to accede thereto. Is there any dissentient voice?

The Prime Minister: Mr Speaker, Sir, I object to the request of the hon. Leader of the Opposition on the following grounds.

The Government's preparedness and response to the COVID-19 pandemic has been lengthily debated on numerous occasions in this House since 2020.

Mr X. L. Duval: Mr Speaker, Sir, on a point of order. I have not been able to present my Motion and the purpose for it. The Prime Minister has objected; I think he should stop there.

Mr Speaker: I understand.

Mr X. L. Duval: Otherwise, you should allow me also to defend myself, on the grounds of fairness.

Mr Speaker: Yes, I understand your point of order, but, right now, we are at the stage of a request to ask leave to present a Motion. We have not reached the Motion yet.

Mr X. L. Duval: Yes, I know. In the same way, Mr Speaker, Sir, that I have not been able to debate the reasons for, I do not think the Prime Minister ought to be allowed to debate the reasons for rejection.

Mr Speaker: No, no!

Mr X. L. Duval: This is my point!

Mr Speaker: No debate! I am warning…

Mr X. L. Duval: He has objected; that's enough. There is no need to debate.

Mr Speaker: Please!

Mr X. L. Duval: Sorry!

Mr Speaker: I am warning the Prime Minister not to bring any debate in the House…

Mr X. L. Duval: Exactly!

Mr Speaker: …because there is no Motion yet.

The Prime Minister: If you want me to object, I will only object to that request for the Motion.

Mr X. L. Duval: Yes. Yes, that's what I want.

The Prime Minister: I will give my reasons…

Mr Speaker: So, if there is a dissentient voice, then the request cannot be agreed to.

We move on!

PUBLIC BILLS

Second Reading

THE CRIMINAL CODE (AMENDMENT) BILL

(No. XVI of 2021)

Order read for resuming adjourned debate on the Criminal Code (Amendment) Bill (No. XVI of 2021).

Question again proposed.

Mr Speaker: Hon. Seeruttun!

(3.07.p.m.)

The Minister of Financial Services and Good Governance (Mr M. Seeruttun): M. le président, merci…..

(Interruptions)

At this stage, Members of the Opposition left the Chamber.

Mr Speaker: Order! Order! Both sides of the House! Order! Order! Members who want to withdraw, do so silently, please!

(Interruptions)

Order! Order! You may proceed!

Mr Seeruttun: M. le président, merci de m'accorder le temps de la Chambre pour apporter ma contribution sur ce projet de loi qui est le *Criminal Code (Amendment) Bill.* Un projet de loi qui n'aurait pas eu sa raison d'être si une injustice n'avait pas été commise il y a 56 ans de cela avec l'excision d'une partie du territoire de l'île Maurice.

On doit ici, M. le président, féliciter l'honorable Premier ministre, pour sa décision et son audacité de présenter un tel projet de loi si important pour la souveraineté de Maurice et en même temps envoyer un signal fort sur la scène internationale que Maurice, même petite, a le même droit que les grandes puissances quand il s'agit de sa souveraineté territoriale et les droits humains.

M. le président, je dois dire que je note avec satisfaction que les membres de l'Opposition trouvent aussi que ce projet de loi marque un moment historique pour le pays et qu'ils vont tous voter - ce qu'ils avaient dit la semaine dernière, mardi dernier; je ne sais pas aujourd'hui, ils ne sont plus là. Ils devaient voter avec le gouvernement et soutenir le Premier ministre dans cette voie. C'est dommage, malheureusement, ils ont préféré aujourd'hui, dans un moment aussi important où le pays vote un projet de loi pareil, de ne plus être dans cette Chambre. C'est dommage ! Alors que moi j'attendais à ce qu'au moment de passer au vote, on allait les entendre haut et fort voter pour ce projet de loi. Dommage, encore une fois, M. le président, qu'ils ont choisi de ne pas être présents lors d'un moment aussi important pour le pays, pour la République de Maurice.

M. le président, c'est aussi vrai que depuis très longtemps, depuis la période postindépendance, les gouvernements successifs ont revendiqué d'un droit à la souveraineté territoriale où souvent on a privilégié des négociations et les dialogues, des fois au détriment des actions fermes et concrètes. Ce combat qui date de plus de 50 ans, ce combat pour la rétrocession de l'Archipel de Chagos et de notre souveraineté a connu une tournure accélérée depuis 2015. Je dois ici, M. le président, saluer le courage, la détermination et la volonté de notre ancien Premier ministre, feu Sir Anerood Jugnauth, qui avait d'ailleurs dit que sa dernière mission comme Premier ministre était de compléter la décolonisation totale de notre République. Et il l'a fait et la République lui doit cette reconnaissance.

M. le président, c'est bon de rappeler qu'entre 2015 et aujourd'hui, ici même dans cette Chambre, il y a eu par rapport au dossier Chagos, 23 questions parlementaires, 5 *PNQ's* et 5 *Statements* du Premier ministre. Pendant ces tranches de questions souvent, certains membres de l'opposition émettaient des doutes quant à la position du gouvernement et la stratégie de Maurice pour mener à bien ce combat. Je me souviens dans une de ses réponses, Sir Anerood, pour calmer les ardeurs de l'opposition, il avait dit, je cite –

"*Might is not always right.*"

La décision était prise, M. le président, il fallait qu'on fasse voter une résolution à l'Assemblée Générale des Nations Unies pour demander une opinion consultative auprès de la Cour Internationale de Justice par rapport à notre droit sur les Chagos.

M. le président, c'est aussi bon de rappeler que certains membres de l'opposition d'alors avaient cru qu'on n'allait pas pouvoir galvaniser les pays membres des Nations Unies à nous soutenir lorsqu'on avait pris la décision d'aller à l'Assemblée Générale des Nations Unies pour demander ce vote, donc pour aller chercher cet avis à la Cour Internationale de Justice à La Haye. Qu'est-ce qu'on n'a pas entendu, M. le président ? Des fois, ils nous demandent d'être prudent de nos détracteurs de l'étranger mais c'est navrant de mentionner qu'on a témoigné combien de fois ici même, ces mêmes personnes agissent comme des antipatriotiques. Et les exemples sont multiples et je ne vais pas m'attarder dessus car ils vont se reconnaître. Mais, comme je le dis encore une fois, c'est bon d'entendre aujourd'hui qui sont tous derrière le Premier ministre pour soutenir la République.

Ce projet de loi, M. le président, *the Criminal Code (Amendment) Bill* est une accumulation de tous ce qu'on a pu accomplir depuis cette démarche initiée en 2015. Aujourd'hui, comme stipulé dans ce projet de loi, la nouvelle section *76B - Misrepresenting the sovereignty of Mauritius over any part of its territory* n'aurait pas été possible si on n'avait pas eu ces résultats au niveau de ces différentes instances internationales. M. le président, encore une fois je dis qu'il faut se rappeler de quelques dates importantes et des dates historiques pour la République de Maurice.

En 2015, le Tribunal international du droit de la mer donne entièrement raison à Maurice. Le jugement indique que Maurice aurait dû être consultée avant de créer un parc marin autour des Chagos car elle détient une souveraineté sous les territoires maritimes des Chagos.

22 juin 2017, Maurice saisit l'organisation des Nations Unies pour contester le démembrement du territoire mauricien par le Royaume-Uni. Le pays veut obtenir un avis consultatif de la Cour Internationale de Justice sur la question. La résolution de Maurice est adoptée. 94 membres des Nations Unies votent pour Maurice et 15 contre.

25 février 2019, la Cour Internationale de Justice tranche. Le Royaume-Uni doit se retirer des Chagos dans les plus brefs délais.

22 mai 2019, les Nations Unies votent pour l'adoption et donner force à l'avis consultatif de la Cour Internationale de Justice. Le vote est sans appel : 116 pour et 6 contre.

28 janvier 2021, le jugement de *l'International Tribunal for the Law of the Sea (ITLOS)* rendu public. Londres n'a aucun droit sur l'Archipel des Chagos. La souveraineté de Maurice a été confirmée sans ambigüité aucune.

24 août 2021, le congrès de l'Union Postale Universelle ne reconnaît plus les timbres-poste émis par la *British Indian Ocean Territory (BIOT)* et la résolution 73/295 de l'ONU a été appliquée à Abidjan. L'UPU reconnaît officiellement que les Chagos font partie de Maurice et l'UPU demande à Maurice de le tenir au courant des opérations postales au Chagos. L'UPU cessera d'utiliser les timbres-poste de la *BIOT* et le terme *BIOT* cessera d'exister sur tous les documents de l'UPU et aucune référence ne sera faite. Encore une fois, M. le président, le vote est sans appel. 77 pour et 6 contre.

M. le président, lors de leurs interventions, je vois que l'honorable Bérenger l'a dit en français, l'honorable Bodha l'a répété en anglais, qu'il faut se méfier de ceux qui se sont abstenus et ceux qui étaient absents lors de ce vote. Encore une fois, M. le président, ceci démontre qu'ils veulent toujours voir le verre à moitié vide. L'optimiste voit toujours le verre à moitié rempli mais ils choisissent toujours, comme je l'ai dit, de voir les choses avec du pessimisme.

Donc, M. le président, toutes ces décisions en faveur de notre République prouvent qu'avec une bonne stratégie, la persévérance, la détermination et un leadership fort, on a fait trembler deux grandes puissances. Si on a eu ces résultats, c'est grâce à ce travail fait avec efficacité. Ce gouvernement agit et ensuite fait des annonces contrairement aux autres malheureusement.

M. le président, avec ce dénouement positif, la petite Île Maurice a aujourd'hui redessiné la carte mondiale. L'Archipel des Chagos est aujourd'hui mentionné clair et net comme étant partie intégrante du territoire de la République de Maurice. J'avais écouté l'honorable Bérenger lors de son intervention et il avait exprimé déjà certaines craintes par rapport à nos prochaines actions et surtout par rapport à l'*International Civil Aviation Organisation (ICAO).* Je pense, encore une fois, qu'il ne faut pas être alarmiste. Ce qu'on peut lui dire, c'est faite confiance à ce gouvernement parce qu'on procède de manière calculée et réfléchie et on a toujours, comme dit l'anglais, *deliver on our promises.*

Ce projet de loi, M. le président, concerne l'Etat qui a été trouvé en violation des lois internationales. Et là je trouve dommage que le député, l'honorable Ramful, a voulu faire un amalgame entre les développements qui se font sur nos îles éparses et cette injustice causée par les Britanniques aux Chagossiens. Je crois l'histoire retiendra sa position et celle de son partie sur ce sujet, M. le président.

Donc, pour conclure, M. le président, permettez-moi encore une fois de féliciter le Premier ministre avec toute son équipe pour leur sens du devoir et du patriotisme à faire avancer une cause juste. Mon souhait c'est que la prochaine étape c'est aller rendre une visite sur l'île, sur l'archipel des Chagos en bateau et j'espère que les Membres de l'Opposition voudront bien faire partie de ce voyage malgré les menaces des États-Unis.

Donc, je dis vive la République de Maurice et encore une fois bravo à l'équipe dirigée par le Premier ministre de notre République.

Merci beaucoup, M. le président.

Mr Speaker: Hon. Deputy Prime Minister!

(3.21 p.m.)

The Deputy Prime Minister: M. le président, j'interviens presqu'à la fin d'un débat et ayant vu la participation d'une bonne douzaine de parlementaires mais ni le Leader de l'Opposition, qui paraît-il été souffrant et je le regrette, ni un dirigeant principal du Parti travailliste, par exemple le président du Parti travailliste a choisi de ne pas intervenir. Néanmoins, nous avons eu droit à 12 ou 13 discours ayant traité de long en large les objectifs du projet de loi, des nouvelles dispositions légales qu'il établit et de ses conséquences immédiates. Il serait donc tout à fait inopportun de ma part de répéter ce qui a été dit et souvent très bien dit par mes collègues, députés des bancs de la majorité comme des travers des élus de l'opposition.

Ce projet de loi, voyez-vous, M. le président, est à la fois, comme le disait l'orateur précédent, un aboutissement mais aussi une nouvelle étape. D'abord, c'est un aboutissement ; l'aboutissement d'un long combat qui aura duré plus d'un demi-siècle. Et je souhaiterais plutôt que de répéter ce qui a été dit déjà mardi dernier. Dans le temps qui m'est imparti, j'aurais préféré procéder à une restitution des faits historiques, de rappeler la trame de notre histoire politique qui nous mène au contexte d'aujourd'hui.

M. le président, la période entre 1945 et 1970, c'est bien sûr l'ère des indépendances. L'ONU adopte en 1960 la Résolution 1514 qui est la déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux. Donc, l'ONU, à l'époque avec le soutien des grandes puissances émergentes, les États-Unis bien sûr mais aussi la Russie et la Chine, vient soutenir l'indépendance complète des territoires coloniaux mais en insistant que les frontières coloniales ne doivent pas être modifiées.

Cette période de 1945 à 1970, c'est aussi évidemment la guerre froide et les années 60 vont témoigner du déplacement du focus de la guerre froide de la région Asie-Pacifique vers l'Afrique, et bien sûr il y a à ce moment-là le début d'un intérêt prononcé pour l'océan Indien avec les premiers navires militaires Russes pénétrant la région et la réaction de l'Occident. L'Occident, alors que la Grande-Bretagne n'est plus la grande puissance qu'elle était et adopte le *East of Suez Policy,* c'est-à-dire le retrait de sa présence militaire à l'est de Suez et dès lors l'arrivée des États-Unis avec les négociations dès le début des années 60 pour l'établissement d'une base américaine dans l'océan Indien. C'est ainsi qu'en 1965, par le biais d'un *Order in Council*, la Grande Bretagne va créer le prétendu *British Indian Ocean Territory* avec les Chagos mais aussi quelques îles des Seychelles et va offrir R 3 millions de compensation au gouvernement mauricien, gouvernement colonial de l'époque.

Immédiatement, les Nations Unies à travers la Résolution 2066, expriment sa préoccupation par ce qui apparaît déjà comme un démembrement du territoire mauricien. Et cette préoccupation sera renouvelée par des Résolutions semblables en 1966 et 1967, pourtant de 1967 à 1973 va s'opérer le déplacement forcé des habitants des Chagos en violation de la déclaration universelle des droits de l'homme parce qu'évidemment les Chagossiens ne sont jamais consultés. Et ces Chagossiens vont arriver à Maurice dans des conditions absolument pitoyables pour s'établir dans certains faubourgs de Port-Louis, sur une île en pleine crise économique. En attendant, la Grande-Bretagne fait sortir un *Ordinance* en 1971 pour empêcher le retour des Chagossiens et parallèlement se déroulent les négociations pour l'indépendance. Je crois qu'il est bien établi maintenant que la Grande-Bretagne nous force la main.

C'est une période très complexe pour nous. Nous n'avons pas connu de guerres de libération nationale pour unir notre population et la posture anti- indépendance du PMSD va contribuer à l'ethnicisation de tous les débats autour de l'indépendance. Jean Claude de l'Estrac,

dans son dernier ouvrage sur Diego Garcia, caractérise ses négociations à l'ouverture du premier chapitre de son livre et je cite. Il nous dit –

« C'est une histoire de duperie. De mensonges et de lâchetés. Peut-être pis encore. »

Après 1969 à 1982, que se passe-t-il ? Les îlois débarquent à Maurice et il y a une première organisation politique. Les îlois sont contactés par l'organisation fraternelle des frères Michel. A l'époque, ce n'était pas l'organisation fraternelle, je m'en souviens plus, le mouvement fraternel et les premiers contacts avec le MMM. Le MMM qui va organiser, contribuer à structurer les îlois.

Parallèlement, nous sommes arrivés dans les années 70, la guerre au Vietnam et les Nations Unies adoptent la Résolution 2382 pour proclamer l'océan Indien 'zone de paix'. Donc, c'est l'idéal de la démilitarisation de l'océan Indien qui apparaît. Et à Maurice, rapidement le combat pour les Chagos, le combat pour le droit au retour des Chagossiens et l'affirmation de l'intégrité territoriale de notre pays va devenir le combat de toute la gauche. Le MMM, mené par Sir Anerood Jugnauth et Paul Bérenger, met toute la gauche. Les syndicats et cette défense inconditionnelle de l'intégrité territoriale de notre Etat archipel va devenir un axe central du combat de la gauche de 1969 à 1982. En 1976, Michel Vencatessen entre la première affaire en Cour contre la Grande-Bretagne. En 1977, la grève de la faim des îlois. Et je profite de l'occasion aujourd'hui pour rendre hommage à ces grandes figures du mouvement des îlois, telles Lizette Talate, Charlesia Alexis et dans un passé plus récent, Ferdinand Mandarin, quelles que soient les différences de l'approche sur la question et Olivier Bancoult, tous ceux qui ont été à la pointe du combat des îlois.

Et puis, commencent les négociations avec la Grande-Bretagne où le MMM est très impliqué, sur le terrain Bérenger, au Parlement Sir Anerood Jugnauth, président du MMM, Leader de l'opposition et puis le grand changement de 1982. Immédiatement, il y a une nouvelle compensation de 4 millions de livres sterling.

(Interruptions)

Après cette interruption de l'Opposition, je vais poursuivre, M. le président. Même absents physiquement, ils perturbent le bon déroulement des travaux de notre Assemblée.

M. le président, je disais que 1982 c'est le grand changement de gouvernement, nouvelle compensation de la Grande-Bretagne, création de l'*Ilois Trust Fund*, mais le plus important c'est l'amendement à l'*Interpretation and General Clauses Act* pour inclure dans la définition de Maurice l'archipel des Chagos. À cette époque, la ligne politique du gouvernement MMM-PSM c'est la démilitarisation totale de l'océan Indien. Et puis, de 1983 à 1990, les choses avancent peu, sans doute parce que la situation internationale n'y est pas favorable mais aussi la présence du Parti travailliste et du PMSD au gouvernement va sans doute gêner Sir Anerood Jugnauth dans son action.

En 1991, à la faveur d'une nouvelle alliance MSM-MMM, Sir Anerood Jugnauth va introduire un amendement constitutionnel cette fois pour inclure dans la définition de Maurice, dans notre Constitution, les Chagos. La prochaine étape importante c'est durant cet autre gouvernement MSM-MMM, entre 2000 et 2004. À ce stade, il y a une nouvelle ligne politique, le gouvernement choisit de séparer la question du rétablissement de la reconnaissance de la souveraineté mauricienne sur les Chagos et Diego Garcia et la question de la base militaire. C'est cette nouvelle ligne qui continue à nous guider jusqu'au jour présent.

En 2004, il y a une tentative de porter la question devant la Cour Internationale de Justice, mais qui va être habilement contournée par la Grande-Bretagne. Laquelle Grande-Bretagne sera condamnée, sévèrement critiquée et condamnée par le secrétaire général du Commonwealth pour ses actes. Après il va falloir attendre 2010 pour un développement important lorsque la Grande-Bretagne prétend créer un *Marine Protected Area* autour des Chagos et pour la première fois le gouvernement – pour la première fois j'allais dire le Parti travailliste parce qu'à l'époque le gouvernement c'était un gouvernement travailliste – les travaillistes depuis 1965, depuis 1968 ont toujours été sur la défensive par rapport à la question des Chagos.

En 2010, et le Premier ministre Navin Ramgoolam a raison, il va réagir heureusement, et Maurice va contester le *Marine Protected Area* en initiant une procédure arbitrale sous la Convention des Nations Unies sur le droit de la mer et, en 2015, le tribunal décrète que le *Marine Protected Area* a été établi illégalement. Ce qui ne va pas empêcher la Grande-Bretagne néanmoins de poursuivre son action mais le véritable tournant intervient en 2016. Le MSM est de retour au gouvernement et sous la férule de Sir Anerood Jugnauth et, plus tard, de notre

Premier ministre Pravind Jugnauth, la lutte pour le retour des Chagos au sein de la République mauricienne va connaître une accélération extraordinaire. Mon prédécesseur a rappelé les étapes cruciales : en juin 2017, la décision de l'Assemblée Générale des Nations Unies de référer la question des Chagos à la Cour Internationale de Justice pour un avis ; en 2018, Sir Anerood Jugnauth, ministre mentor à l'époque qui revêt sa toge d'avocat pour présenter notre affaire devant la Cour internationale ; en 2019, l'avis de la Cour internationale ; la même année la Résolution 73/295, où les Nations Unies adoptent les conclusions de la CIJ et exigent le retrait de la Grande-Bretagne dans une période de six mois.

Le député Bérenger, pour ne pas féliciter le gouvernement faisait référence au grand nombre de délégations nationales qui choisissent de s'abstenir ou d'être absents mais quoi de plus normal quand l'on songe que c'est la petite République de Maurice qui fait face à la Grande-Bretagne et à ses alliés. Quoi de plus normal ! Mais ce qui importe c'est que nous réussissons, là, où personne n'a réussi avant nous, et puis, comme l'a expliqué l'autre jour le Premier ministre, va s'enchaîner la modification des cartes de l'ONU, en janvier de cette année le jugement de la Chambre spéciale du Tribunal International sur le Droit de la Mer, la résolution de l'Union Postale Universelle, bref, nous connaissons une accélération extraordinaire qui va déboucher sur le présent projet de loi. Le projet de loi qui vient criminaliser les actes - certains actes - qui ont pour effet de publier, de diffuser des fausses informations concernant la souveraineté territoriale de notre pays.

L'Opposition nous avait promis un vote unanime et je m'en félicitai parce que cette Opposition n'a pas, depuis les dernières élections générales, fait preuve d'un sens aigu de patriotisme ou de responsabilité. C'est cette Opposition qui a choisi de mettre en doute l'intégrité démocratique du processus électoral. C'est cette opposition qui a voulu profiter du drame du Wakashio pour créer du désordre dans le pays. C'est cette Opposition qui, face à la pandémie de la Covid, au lieu de se comporter de manière responsable comme le fait en ce moment les oppositions dans toutes les grandes démocraties, choisit, encore une fois, de semer de fausses informations, de briser la confiance de la population, non pas en le gouvernement de *l'Alliance Morisien* mais en l'Etat - en invitant on doute de tout. C'est cette même opposition et j'en suis convaincu, plutôt que de voter à l'unanimité ce texte, parce que sur cette question des Chagos ils ne peuvent trouver une raison quelconque de se démarquer de l'action gouvernementale,

préfèrent opter pour un faux-fuyant, invoquer une prétendue motion pour se retirer de la Chambre aujourd'hui.

Évidemment, cela m'a étonné que très peu d'orateurs de l'opposition se soient exprimés sur ce sujet. Vous aurez remarqué que toute la nouvelle génération des députés du MMM ne se sont pas senti concernés ou interpellés et c'est grave quand l'on sait quelle a été l'importance de ce combat pour le MMM historique, le MMM du député Ganoo, le MMM du député Kavy Ramano et de moi-même et d'autres encore, Dorine Chukowry. C'est grave. Quant au Parti travailliste et au PMSD, je disais mon étonnement que les principaux dirigeants ne se soient pas adressés à la Chambre, mais cela me ramenait à la mémoire l'autre jour, lors d'une interpellation à laquelle le Premier ministre avait répondu, les ricanements sur le *front bench* de l'opposition. Seul, je crois le député Bérenger avait pris les choses au sérieux.

Mais en tout cas, le combat pour les Chagos, M. le président, c'est un combat pour défendre l'intégrité territoriale de la République, pour réclamer la décolonisation totale qui a valeur de symbole non seulement pour notre pays mais pour tous les pays et tous les peuples ayant connu les affres de la colonisation. C'est un combat qui n'appartient pas à une seule génération, c'est un combat plus que jamais essentiel à la définition de notre pays, de qui nous sommes, un combat plus que jamais d'actualité pour la dignité de notre peuple et il est des sujets, eu égard auxquels il importe que nous parlions d'une seule voix, *one Mauritius, one voice,* celle de la République unie et indivisible et il est tellement triste que l'opposition ai choisi, à nouveau, de rater ce rendez-vous avec l'histoire.

Tout cela pour vous dire que ce projet de loi est un aboutissement mais il serait dangereux de n'y voir rien qu'un aboutissement car le combat n'est pas terminé et il ne le sera pas tant que le drapeau Mauricien ne flottera pas sur chaque île et sur toutes les îles de l'archipel des Chagos et tant que les Chagossiens n'auront pas obtenu le droit au retour sur les îles où certains d'entre eux, de moins en moins, naquirent, mais surtout naquirent leurs parents.

La décolonisation de notre pays demeure partielle et incomplète, et l'occupation illégale de notre terre perdure. Et, M. le président, le combat n'est pas gagné d'avance. Certes, grâce à l'engagement des gouvernements menés par Sir Anerood Jugnauth et puis de Pravind Jugnauth, nous avons établi de manière la plus incontestable qui soit en droit international l'appartenance des Chagos à Maurice. Nous avons établi que la loi internationale n'est pas nécessairement

comme disait mon collègue, le ministre Seeruttun, la loi du plus fort. Nous avons établi, les gouvernements de Sir Anerood Jugnauth et de Pravind Jugnauth, le caractère illégal du soi-disant *BIOT*. Mais le droit étant désormais de notre côté, c'est désormais le combat politico-diplomatique qui va prendre le dessus. Il nous appartiendra de nous assurer que toutes les organisations internationales, multilatérales, qu'elles relèvent ou non des Nations unies, s'alignent sur l'opinion de la Cour internationale de Justice telle qu'entérinée par l'Assemblée générale des Nations unies. Il nous revient, donc, de poursuivre cette lutte et c'est à nous qu'incombe la responsabilité de prendre la relève de Sir Anerood Jugnauth et de poursuivre, ce qui aura été pour lui, le combat de toute une vie.

En conclusion, M. le président, aujourd'hui, à travers ce projet de loi nous allons renouveler, nous allons nous engager à renouveler nos efforts avec la même cohérence et la même rigueur dans l'action auquel nous a habitué le Premier ministre, dont je salue l'engagement. Et tous ceux qui le côtoient au Conseil des ministres, comme dans nos réunions parlementaires peuvent témoigner de la passion, de la conviction avec laquelle il demeure inébranlable dans son action politique pour le retour des Chagos au sein de la République. Nous allons donc renouveler notre engagement pour poursuivre ce combat diplomatique afin de rendre encore plus intenable moralement et politiquement la position de la Grande-Bretagne face à l'opinion publique internationale. Au gouvernement de *L'Alliance Morisien*, nous prenons, donc, l'engagement aux côtés du Premier ministre, comme nos aînés, hier, de poursuivre ce combat pour libérer les Chagos. C'est la lutte des militants patriotes qui se poursuit. Et à nouveau, M. le président, nous démontrerons que David peut vaincre Goliath.

Vive la République de Maurice. Une et indivisible !

Je vous remercie, M. le président.

(3.44 p.m.)

The Prime Minister: Mr Speaker, Sir, let me, first of all, thank all the Members who have intervened on this Bill.

I am glad to note that Members from both sides of the House have expressed their full support for this Bill which aims at enabling Mauritius to further assert its sovereignty over the

Chagos Archipelago, which clearly forms an integral part of the territory of Mauritius. This has demonstrated that on matters of such significance, we are able to speak with one voice.

Mr Speaker, Sir, I have also taken good note of some of the comments and observations made by some Members, to which I will be happy to bring clarifications. One such comment questions the reasoning behind submitting a revised version as well as the delay in resubmitting it. The reply is very simple. Soon after the introduction of the Criminal Code (Amendment) Bill (No. XIII of 2020) into the National Assembly on 28 August 2020, Mauritius had to take part in the oral hearings held by the Special Chamber of the International Tribunal for the Law of the Sea on the preliminary objections that were raised by Maldives in respect of maritime delimitation between Maldives and Mauritius. It was obvious that soon after the hearings, the judgment was going to follow, and so, we deemed it appropriate to review the Bill in the light of that judgment. Hence, the more targeted approach in relation to the State which is the subject of a judgment by an International Court, and with the new formulation of the revised Bill, which appears to have the support of every Member who spoke, no one who commits the crime covered by the Bill can claim ignorance as an excuse.

This reformulation has also addressed the risks of unintended consequences which the Bill could have been interpreted to have on the freedom of expression.

The Bill which is currently before the House has, therefore, an application which is limited to specific objects or documents which are expressions of sovereign authority on the part of a foreign State.

Mr Speaker, Sir, Government has been relentless in its efforts to achieve the complete decolonisation of Mauritius. Since the Chagos Archipelago was illegally excised from our territory prior to our accession to independence, our decolonisation process remains incomplete. Completion of that process would enable Mauritius to effectively and fully exercise its sovereignty over the Chagos Archipelago and would also allow our citizens of Chagossian origin who wish to return to the Chagos Archipelago to do so. I will not dwell on the various initiatives which have been taken by Government since some Members who took part in the debate have, in fact, lengthily spoken about those initiatives.

Government is continuing to explore all avenues, including, of course, at the diplomatic level, so that the United Kingdom terminates its unlawful administration of the Chagos Archipelago, thereby allowing the complete decolonisation of Mauritius.

During the African Union Summits and other meetings in which I have participated, I have invariably seized the opportunity to raise the Chagos Archipelago issue with my counterparts and, obviously, seek their support for the completion of the decolonisation of Mauritius.

And more recently, Mr Speaker, Sir, when I attended the World Leaders Summit held in the context of the COP26, I met a number of Heads of State and Government, including the Prime Minister of India and the President of Maldives. I must say I had a lengthy discussion with the President of Maldives on the Chagos Archipelago.

I also had meetings with the British Prime Minister and the UK Secretary of State for Foreign, Commonwealth and Development Affairs, during which I have impressed upon them the need for the United Kingdom to respect the Advisory Opinion of the International Court of Justice of 25 February 2019, the UN General Assembly Resolution 73/295 and the Judgment of the Special Chamber of the International Tribunal for the Law of the Sea of 28 January 2021. I also reiterated that Mauritius has no objection to the continued use of Diego Garcia for defence purposes and is ready to enter into a long-term arrangement, in fact, a very long-term arrangement with the United States and the United Kingdom, in respect of Diego Garcia.

Now, in view of those assurances, security considerations cannot, therefore, justify the continued illegal occupation of the Chagos Archipelago by the United Kingdom.

Mr Speaker, Sir, in Resolution 73/295, the United Nations General Assembly has called upon the United Nations and all its specialised agencies to recognise that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonisation of Mauritius as rapidly as possible and to refrain from impeding that process by recognising or giving act to any measure taken by or on behalf of the so-called “British Indian Ocean Territory”.

Mr Speaker, Sir, in Resolution 73/295, the United Nations General Assembly has called upon the United Nations and all its specialised agencies to recognise that the Chagos

Archipelago forms an integral part of the territory of Mauritius, to support the decolonisation of Mauritius as rapidly as possible and to refrain from impeding that process by recognising or giving act to any measure taken by or on behalf of the so-called "British Indian Ocean Territory".

By virtue of the agreements which they have signed with the United Nations, the United Nations specialised agencies are required to submit to their respective members or organs all formal recommendations made to them by the United Nations. And this is what the Food and Agriculture Organisation and the Universal Postal Union, which are specialised agencies of the United Nations, have done. This is also what we will invite the International Civil Aviation Organisation, which is also another specialised agency of the United Nations, to do. I heard the other day, hon. Bérenger, seeming a bit worried. I mean, the body language spoke in that sense, that we have to be very careful, as if we are going to do something which is not correct or that might be harmful to us. What is there that we are claiming our legitimate rights? And after what I have said, after the Resolution of the United Nations and advising, directing, in fact, all the agencies and the organs of the United Nations to implement the judgement of the International Court of Justice. This is the only legitimate thing to do, Mr Speaker, Sir.

And as I have always said - I have said that to the United Kingdom - it is not our intention to target any country. We are fighting for our rights. We are not targeting any country, but, obviously, the objective is to assert the rights of Mauritius and to ensure that the United Nations General Assembly Resolution 73/295 is properly implemented.

Mr Speaker, Sir, speaking about the vote at the Universal Postal Union, again in his intervention last Tuesday, hon. Bérenger referred to the so-called "British Indian Ocean Territory" as being a member of the Union. I think it is good that I do clarify. The so-called "British Indian Ocean Territory", on its own, is not a Member of the Universal Postal Union. However, the so-called "British Indian Ocean Territory" had so far been listed amongst the overseas territories of the United Kingdom of Great Britain and Northern Ireland known as United Kingdom Overseas Territories, and it is that entity which is and has been a member country of the Universal Postal Union since 01 April 1877.

And I wish to inform the House that on 19 February 2021, the Ministry of Foreign Affairs, Regional Integration and International Trade had addressed a *Note Verbale* to the

International Bureau of the Universal Postal Union to register the strong objection of Mauritius against the inclusion - I say again, against the inclusion - of the so-called “British Indian Ocean Territory” in the Overseas Territories of the United Kingdom of Great Britain and Northern Ireland on the grounds that such inclusion is contrary to international law, under which the Chagos Archipelago is recognised as forming an integral part of the territory of Mauritius. In that *Note Verbale,* Mauritius requested the Universal Postal Union to take necessary steps for the removal of the so-called “British Indian Ocean Territory” from the list of the Overseas Territories of the United Kingdom which are a member country of the Universal Postal Union.

And following that request, Mauritius was informed that the International Bureau of the Universal Postal Union would submit a draft Resolution on the implementation of the UN General Assembly Resolution 73/295, of course, for the consideration of the plenary session of the Council of Administration of the Universal Postal Union which was scheduled for 31 April 2021. The Council of Administration unanimously endorsed the submission of that draft Resolution to the 27th Universal Postal Congress held last August in Abidjan, Côte d'Ivoire.

Now, through the adoption of that draft Resolution, the 27th Universal Postal Congress formally acknowledged that for the purposes of the activities of the Universal Postal Union, the Chagos Archipelago forms an integral part of the territory of Mauritius. It accordingly instructed the International Bureau to ensure that the use of any associated terminology in the Universal Postal Union documentation is consistent with its decision, including the removal of any references to the so-called “British Indian Ocean Territory”, or to the Chagos Archipelago as part of the member country known as the “Overseas Territories of the United Kingdom of Great Britain and Northern Ireland”.

Mr Speaker, Sir, referring to the voting pattern of that Resolution, hon. Bérenger also referred to the fact that a number of countries abstained or were absent during the vote.

I must point out that due to the COVID-19 pandemic, the 27th Universal Postal Congress was held in a hybrid format, that is, both as an in-person meeting and as a virtual meeting. Out of the 192 members of the Universal Postal Union, only 160 members submitted credentials instruments, and some among them submitted proxies to allow other members to vote on their behalf. Members who were under sanctions were not allowed to vote. And some of those proxies were given only for the purposes of electing the next Director General and Deputy Director

General of the Universal Postal Union or for a specific period when other matters such as the choice of the venue of the next Congress was being decided. The vote on the Resolution relating to the implementation of the UN General Assembly Resolution 73/295 took place on 24 August 2021, and on that day, only 124 votes were recorded since several members which participated virtually did not vote.

In fact, some members later informed our delegation that connection problems did not allow them to cast their vote while others stated that they did not have enough time to do so since the voting line was open for a few minutes only.

There are other reasons that could also be attributed to the abstentions and the absentees. The Universal Postal Congress was a highly technical meeting which was mostly attended by postal operators. Many of those operators were pretty unfamiliar with the details and implications of the resolution and could not act on their own, while others said that they did not have the chance to consult their respective capitals in time.

Now, considering the special circumstances in which the Universal Postal Congress was held, and having regard to the COVID-19 pandemic, I consider that the results are extremely satisfactory, the more so since the United Kingdom's support has dwindled to only four other countries, namely the United States of America, Australia, Israel, and Hungary. The remaining two votes were cast by the United Kingdom itself. Maldives, although present in the meeting room, opted not to vote - opted not to vote, especially when we consider that when the Resolution was tabled, Maldives voted with the United Kingdom.

Under Article 19 of the Rules of Procedure of Congresses, in order to be adopted, that Resolution required the vote of a majority of the member countries present and voting. Therefore, abstentions and absences do not count.

Mr Speaker, Sir, in his intervention, hon. Uteem referred to the Committee of Parliamentarians on the Chagos Archipelago. Of course, initially I did not want to go into that, but since that matter has been raised and put as if we are to be blamed now for not continuing with the same Committee, I am duty-bound to put it on record what has happened. That Committee, Mr Speaker, Sir, was set up in 2015 and hon. Uteem said, and I quote –

"Unfortunately, we no longer have such a Committee and yet, Mr Speaker, Sir, the issue of sovereignty is a national issue above party politics".

He went on to ask for the reconstitution of the Committee. Again, I say I do not want to engage into a polemic, but I feel bound to set the record straight.

This Committee, which comprised the Leader of the Opposition and representatives of all political parties represented in the National Assembly, was established under the Chair of the then Prime Minister to consider the best way forward with regard to the Chagos Archipelago issue. It was, as I say, late Sir Anerood Jugnauth who had taken the initiative of setting up this Committee.

Hon. Bérenger was Prime Minister from September 2003 to July 2005 while Dr. Navinchandra Ramgoolam was Prime Minister from December 1995 to September 2000 and from July 2005 to December 2014. Both of them had, I think, ample opportunity of setting up such a Committee, but neither of them had dared to do so.

As I say, it was Sir Anerood Jugnauth who had set up this Committee. That Committee held six meetings between April 2015 and May 2017. I went to the records to try to exactly confirm what I am going to say. And its members were requested to keep the discussions of the Committee confidential in order, of course, not to jeopardise the interests of Mauritius. However, the discussions of the sixth meeting that were held on 31 May 2017 were leaked to the Press.

I also recall that at the very first meeting of the Committee held on 13 April 2015, the then Leader of the Opposition had said that he wanted to discuss certain issues, but was not prepared to raise them at the level of the Committee.

Mr Speaker, Sir, I also recall that prior to the vote which was taken by the United Nations General Assembly in 2017, Resolution 71/292, seeking an Advisory Opinion of the International Court of Justice, hon. Bérenger had said, in a sarcastic manner, that Mauritius would hardly obtain 10 votes.

(Interruptions)

Mr Bérenger: I have never said that!

The Prime Minister: Yes!

(Interruptions)

The Member should stop interrupting me while I am making my speech…

(Interruptions)

Mr Bérenger: Stop lying!

The Prime Minister: I am not lying!

Mr Bérenger: You are lying!

The Prime Minister: We have witnesses!

Mr Bérenger: You are lying!

The Prime Minister: We have witnesses for what you said!

(Interruptions)

Mr Speaker: Order!

(Interruptions)

Order on both sides!

An hon. Member: *Bliye!*

Mr Speaker: Order on both sides! Withdraw that word 'lying'.

Mr Bérenger: Yes, I withdraw it, but I did not say that.

The Prime Minister: This is a fact! This is what you said sarcastically!

Mr Bérenger: No!

The Prime Minister: If we get 10 votes, it is going to be a lot!

Mr Bérenger: No! On this one, you are…

(Interruptions)

Mr Speaker: Hon. Bérenger, please!

Mr Bérenger: Well, it is not this…

(Interruptions)

Mr Speaker: Do not interrupt! This is debate!

(Interruptions)

An hon. Member: *La verité!*

Mr Bérenger: This is not debate! It is a lie!

Mr Speaker: This is debate! This is a lie!

(Interruptions)

The Prime Minister: *Ale do tomem!* Withdraw that word 'lie'!

Mr Speaker: Withdraw that, please!

Mr Bérenger: I withdraw.

Mr Speaker: Every time you say it, every time you will withdraw! You make my work difficult.

(Interruptions)

An hon. Member: *Met sa dehor do ta!*

Mr Speaker: Please, cool down!

Mr Bérenger: Shame on you!

Mr Speaker: Cool down!

The Prime Minister: Shame on you! Shame on you, now! Now it is a shame on you! When you saw the results! Now you know it is a shame on you! *Pa honte! Pa rekonet ceki lin dire! Franchement!*

(Interruptions)

An hon. Member: *La honte!*

The Prime Minister: *Pas honte! Pa ti kone pou arriver!*

An hon. Member: Shame!

(Interruptions)

Mr Speaker: Order!

The Prime Minister: *Pa ti kone ki pou arrive!*

Mr Speaker: Order!

Mr Bérenger: *Amenn dokiman !* I challenge you!

The Prime Minister: *Amenn dokiman? Temwin! Kapav amenn temwin!*

Mr Bérenger: I challenge you!

Mr Speaker: Order! Hon. Bérenger!

(Interruptions)

Hon. Bérenger! I am on my feet. I am asking for order. You are a former Prime Minister, you know very well…

Mr Bérenger: Well, he cannot…

(Interruptions)

Mr Speaker: Please! Listen to me! Please listen to me! You have been a Prime Minister of this country; you know Standing Orders better.

Mr Bérenger: I have been a real Prime Minister!

(Interruptions)

Mr Speaker: Please! Please! Cool yourself! Calm down!

You may continue!

Mr Bérenger: Shame!

The Prime Minister: Let me say again, this is what he said in that Committee. You know, a Committee, when we met, for Sir Anerood Jugnauth to ask everyone…

Mr Uteem: On a point of order!

The Prime Minister: What point of order?

Mr Uteem: On a point of order, the hon. Prime Minister himself started by saying what happened in that Committee was confidential. How can he now tell what he thinks happened and not allow us to say what happened? So, either it was confidential and he cannot disclose it or he discloses it and we are able to refute what happened there as well!

(Interruptions)

Mr Speaker: Order! Order! You made your point of order.

An hon. Member: This is not a point of order!

Mr Speaker: I will come to it. Please, continue!

The Prime Minister: Let me say, Mr Speaker, Sir, it is because hon. Member Uteem raised this issue, trying as if to accuse us why we have discontinued with this meeting that I am duty-bound to give those reasons. In the Committee, there were other members; there are witnesses. So, this is what former…

(Interruptions)

Mr Speaker: Hon. Bérenger …

Mr Bérenger: But he cannot say that!

(Interruptions)

Mr Speaker: Every time…

(Interruptions)

Hon. Bérenger, what is happening to you?

Mr Bérenger: Shame!

Mr Speaker: Now you are going too far!

Mr Bérenger: I am…

Mr Speaker: Now you are going too far!

Mr Bérenger: *J'ai mon honneur* !

Mr Speaker: Now you are going too far!

(Interruptions)

There is no question. This is parliamentary democracy. This is debate. There is no question of honour or whatever. You have to be patient and listen, and this is the last time…

Mr Bérenger: You do what you want!

Mr Speaker: …and this is the last time you are interrupting the orator.

Mr Bérenger: We will see!

The Prime Minister: Let me say again for the House to clearly understand when you are protesting, you are saying why is it that now we have discontinued with this Committee. That is why I am giving those reasons.

Hon. Bérenger, when he was a member of that Committee, when Sir Anerood Jugnauth in the Chair was asking every member to give their views, he stated: "Well, I know what to do. I have the solution, but I am not ready to say it in front of everybody in that Committee. If you so wish Sir Anerood, I will discuss the matter with you." Now, they are protesting? Now this is the MMM which is protesting, saying why we discontinued this Committee? And when you were asked to say and to give your views and to at least make proposals, you said: "No, I am not going to discuss in that Committee."

(Interruptions)

He is going to discuss with the then Prime Minister.

And again, let me repeat what has been said. I recall very well. Mr Speaker, Sir, we were moving for the United Nations General Assembly for a Resolution to ask for an Advisory Opinion to the International Court of Justice, and I remember very well the comment of hon. Bérenger. I will not go into other details when he said sarcastically: "*10 votes si gagne tro boukou sa*". This is what he said.

Mr Bérenger: Prove that! ...in Government!

(Interruptions)

The Prime Minister: Mr Speaker, Sir, am I entitled to carry on with my speech?

Mr Speaker: Hon. Bérenger, I already warned you. Could you please withdraw from the Chamber? Withdraw!

Mr Bérenger: *Lâche*!

Mr Speaker: Withdraw from the Chamber without any more comments.

Mr Abbas Mamode: Withdraw, *aller!*

Mr Bérenger: Shame on you!

The Prime Minister: Shame on you!

Mr Lesjongard: *Si pa ti ena Anerood, to pa ti pou vin premie minis.*

(Interruptions)

Mr Speaker: Now, order!

(Interruptions)

Order!

(Interruptions)

Order! Both sides of the House, order!

(Interruptions)

Both sides of the House, order!

(Interruptions)

I am on my feet, hon. Quirin! I am on my feet.

Mr Bérenger: Shame!

Mr Speaker: Please continue!

The Prime Minister: Well, a shameful behaviour of somebody who cannot accept what he has said, and there are officers - Mr Speaker, Sir, I am not talking about political figures who were part of that Committee. I am talking about officers of Government who were also present at that time. 10 votes! We are going to obtain hardly 10 votes!

Mr Speaker, Sir, the Resolution which was put to a vote on 22 June 2017 had proved hon. Bérenger totally wrong. Totally wrong! In fact, the Resolution was adopted by an overwhelming majority of votes, with 94 countries voting in favour of that Resolution and only 15 countries…

(Interruptions)

Mr Speaker: Order!

The Prime Minister: … and I also recall. Again, maybe his memory is failing him. I put that to his memory failing him. I do recall when, after the vote, hon. Bérenger himself said he

was surprised. He was surprised that we could have obtained so many votes. And again, let me say that in these circumstances, Mr Speaker, Sir, do you think it was going to be appropriate to reconstitute that Committee?

I said it was an initiative of Sir Anerood Jugnauth. He set it up and after all what had happened, he decided - in fact, I am not going to say what else has happened, but he discussed the matter with me and he decided that we should no longer continue with that Committee.

So, I hope the hon. Member will appreciate that having regard to past experience, it is not advisable to make especially our strategy public with regard to the Chagos Archipelago.

Mr Speaker, Sir, as I said, nevertheless, on my part, I will assume my responsibility and I will continue to keep the House informed of developments about the Chagos Archipelago. And I must say, if we have reached here today with what I call “momentous progress” in regard to achieving the decolonisation of Mauritius, it is because we have kept our strategy confidential. This has paid up to now and has enabled us to achieve that much of progress. The United Kingdom, well, I do not know how much they know, but, for sure, they did not know everything about the stand that we were going to take, our strategy, the moves that we were going to make, and they could not thwart our plans. So, whenever we are going to take other initiatives, I will, obviously, in due course, keep the House informed.

Mr Speaker, Sir, there is today an authoritative pronouncement by the highest Court of the world, the International Court of Justice, regarding the status of the Chagos Archipelago and which has been applied by the International Tribunal for the Law of the Sea. The International Court of Justice has made it clear that the Chagos Archipelago is, and has always been, an integral part of Mauritius and that the so-called “British Indian Ocean Territory” is an illegal entity. In Resolution 73/295, the United Nations General Assembly has called upon the United Nations and all its specialised agencies as well as all other international, regional and intergovernmental organisations to recognise that the Chagos Archipelago forms an integral part of the territory of Mauritius and not to recognise the so-called “British Indian Ocean Territory”.

Pursuant to that resolution, the United Nations has changed its maps to clearly show that the Chagos Archipelago is part of the territory of Mauritius.

In the Resolution which it adopted last August, the 27th Universal Postal Congress, *inter alia*, decided that the International Bureau of the Universal Postal Union should cease the registration, distribution and forwarding of any and all postage stamps issued by the so-called "British Indian Ocean Territory".

It is crystal clear that as a matter of international law, Mauritius is the only State which is lawfully entitled to exercise its sovereignty and sovereign rights over the Chagos Archipelago and its maritime zones.

It is, therefore, unacceptable that any person acting under the authority or instructions of, or with the financial support of, a foreign State as defined in the Bill or any organ or agency of that State, should, with impunity, be able to produce, distribute, supply or market any coin, stamp, official map or other official object or document which describes or refers to the Chagos Archipelago as the so-called "British Indian Ocean Territory". The Bill is intended to punish such misrepresentation of the sovereignty of Mauritius over the Chagos Archipelago.

Mr Speaker, Sir, the Island of Tromelin also forms an integral part of the territory of Mauritius. As has always been the case, Government will continue to assert our sovereignty over the Island of Tromelin.

Mr Speaker, Sir, I would like to seize this opportunity to once again thank all countries, as well as the African Union, which continue to support us in our long-standing struggle to complete our decolonisation. I also wish to thank the team of external lawyers led by Professor Philippe Sands GCSK, QC as well as the local team of officials for their dedication and tireless work.

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

Question put and agreed to.

Bill read a second time and committed.

COMMITTEE STAGE

(Mr Speaker in the Chair)

The Criminal Code (Amendment) Bill (No. XVI of 2021) was considered and agreed to.

On the Assembly resuming with Mr Speaker in the Chair, Mr Speaker reported accordingly.

Third Reading

On motion made and seconded, the Criminal Code (Amendment) Bill (No. XVI of 2021) was read a third time and passed.

Second Reading

THE INDEPENDENT BROADCASTING AUTHORITY (AMENDMENT) BILL

(No. XVIII of 2021)

Order for Second Reading read.

(4.25 p.m.)

The Prime Minister: Mr Speaker, Sir, I move that the Independent Broadcasting Authority (Amendment) Bill (No. XVIII) be read a second time.

Mr Speaker, Sir, as the House is aware, the Independent Broadcasting Authority has been in operation for over 20 years now. During that period, only minor amendments had been made to the IBA Act of 2000 while, during that same period, the media landscape has undergone considerable, if not dramatic, changes. It was, therefore, high time for the IBA Act to be revisited and revamped in the light of the experience acquired over the last 20 years. The aim is to adapt the law so that it can respond to present day realities, exigencies and requirements, and to enhance the operational effectiveness as well as the efficiency of the Authority in its regulatory role.

Mr Speaker, Sir, the broadcast regulator has a vital role to play in our modern democratic society. And this role is to promote and maintain a peaceful broadcasting environment, and it does so by serving the best interests of all stakeholders in an independent, fair, and objective manner. It is, therefore, important for the legislation to be reviewed and tuned to present day realities so as to enable the IBA to continue discharging its mandate effectively and efficiently in the new environment.

Mr Speaker, Sir, the proposed amendments have been motivated only by the changes in the media landscape and past experience with the operation and application of the existing law.

While proposing the new dispensation, as reflected in the Bill, we have drawn inspiration from international best practices, which include an equitable balance between rights and obligations, between rights and duties, and between rights and responsibilities.

Contrary to what is being ventilated in the media by some Members of the Opposition, the proposed amendments are certainly not an attempt to muzzle the private radios or to curtail freedom of expression in the country. The sole objective of the proposed amendments is to establish a modern and more comprehensive legal and regulatory framework within which the IBA can operate and carry out its functions and fulfil its obligations in a more effective and efficient manner.

Mr Speaker, Sir, let me now explain briefly the salient features of this Bill.

Section 5(1) of the IBA Act presently provides that the Authority may give written directions to any licensee and the licensee shall comply with these directions. However, there is no specific mention to the effect that a breach of this particular section constitutes an offence. Therefore, with a view to reinforcing the regulatory powers of the Authority, Clause 4 of the Bill is amending Section 5 of the principal Act to provide that any licensee who fails to comply with Section 5(1) of the Act shall commit an offence.

Mr Speaker, Sir, Clause 4 of the Bill is also amending Section 5 of the Act to empower the Authority to impose administrative penalties for breach of the Act.

Mr Speaker, Sir, as at date, the main sanctions that the Authority can apply in case of breaches of the law are set out in Sections 24 and 25 of the IBA Act. Section 24 provides for revocation of a licence and Section 25 provides for the suspension of a licence. The revocation of a licence is an extreme measure and it has been applied by the Authority only once, and that was against Mayfair and Purely Communications Ltd, which was commonly known as Planet FM. On the other hand, the suspension of a broadcasting licence has been applied by the IBA on several occasions against all existing licensees.

The fact remains that suspension and revocation of a licence are harsh sanctions. We have, therefore, deemed it necessary to include administrative penalties which, unlike suspension or revocation, will allow licensees to carry out their broadcasting activities.

The imposition of administrative penalties is not new in our legal culture and several regulators, including the Financial Services Commission and the Bank of Mauritius are statutorily empowered to impose administrative penalties.

Mr Speaker, Sir, I shall elaborate further on this issue of administrative penalties when I come to Clause 9 of the Bill, as a lot has been written and said about this new power which is being vested in the Authority.

Mr Speaker, Sir, Clause 5 of the Bill is adding a new Section 18A to the principal Act. This new section is empowering the Director of the Independent Broadcasting Authority to apply to a Judge in Chambers for an order directing a person to disclose any evidence, communicate or produce any record, document or article needed by the Authority in the exercise of its regulatory functions under the Act. It is important to highlight that a similar power is conferred on many regulators including, but not limited to, the Dental and Medical Council. I here, refer, to Section 13(5) of the Medical and Dental Council Act. This power has been limited to the parameters of the Act and the Director's application for disclosure will be subject to the judicial safeguard of an application before the Judge in Chambers. Hon. Members on the other side of the House will agree with me that the Judge in Chambers will not grant an order on a mere request of the Director of the Authority, but the Judge must be satisfied that the document requested relates to the exercise of the Authority of its regulatory powers and is *bona fide* required by the Authority in relation to the exercise of its powers under this Act.

Mr Speaker, Sir, it is pertinent for me to mention here that, in 2013, a private radio station was carrying out a "*sondage*" and the Authority asked for information in relation to that "*sondage*", but the reply received from the radio was unsatisfactory. The Authority resorted to the Judge in Chambers but had to withdraw the case due to lack of legal basis to ask for information in relation to broadcasting operation of the licensee.

The proposed new Section 18A will thus enhance the powers of the Authority, but such powers will remain subject to judicial scrutiny and control. I trust that Members of the Opposition are not implying that the Judge in Chambers will not be acting independently or will allow the Director of the Authority to make an application before the Judge in Chambers which does not satisfy the stringent requirements of Section 18A of the Act.

Mr Speaker, Sir, Clause 7 of the Bill is amending Section 22 of the Act to provide, *inter alia,* that a licence for radio broadcasting shall henceforth be valid for a period of one year only, instead of three years as is the case presently.

This provision is being proposed because radio licensees normally pay their licence fees yearly. They do not pay their licence fees for three years at one go. This provision will put at par the duration of the licence and the fee paid annually. The onus will be on the radio station to apply for the renewal of the licence in due time.

Moreover, on renewal of a licence, the Authority shall consider the past conduct of a licensee. This provision is similar to the procedure in a Court of Law where the Court has power to take into account the "antecedent" of a person before pronouncing a sentence.

Mr Speaker, Sir, it should be noted that frequencies allocated to licensees constitute a scarce resource which is the property of the State. A licence is not granted for life and no licensee can claim any proprietary interest in the frequencies allocated to them by the ICT Authority. The very word "licensee" refers to temporary nature of the permission granted to radio stations to use frequencies.

Mr Speaker, Sir, Clause 8 of the Bill is amending Section 23A of the Act by adding thereto a new subsection (3). Again, this new subsection will complement Section 23A of the IBA Act and will help the Authority to enhance its regulatory powers in order to discharge its functions more effectively.

Mr Speaker, Sir, Part V of the IBA Act currently provides for, *inter alia,* a Standards Committee and a Complaints Committee. Both Committees have become obsolete and need to be replaced by a more effective mechanism. Consequently, Clause 9 of the Bill is repealing Part V of the principal Act and replacing it by a new Part V which provides, *inter alia,* for the procedures for the Authority to impose administrative penalties and for the setting up of an Independent Broadcasting Review Panel to receive and adjudicate on a complaint by any person aggrieved by a decision of the Authority. Clause 9 further provides for the modalities for the operation of the Review Panel.

Mr Speaker, Sir, let me come again to this issue of administrative penalty. The new Part V of the Bill empowers the Authority to impose Administrative Penalties on broadcast licensees.

This specific power complements the panoply of sanctions available to the IBA. The principal objective of Administrative Penalties is to leverage and encourage compliance with regulatory requirements in order to protect viewers and listeners of broadcast licensees and to ensure the soundness of the broadcast industry in Mauritius. Responsiveness, proportionality, fairness and equity, deterrence, punishment and reparation for damage caused are some of the necessary elements of an effective Administrative Penalty. In addition, Administrative Penalties, when imposed by way of an appropriate settlement mechanism, subject to an agreement of the parties, will allow for the early and effective resolution of enforcement matters.

Mr Speaker, Sir, this disciplinary measure is advantageous inasmuch as it caters for a range of administrative penalties depending on the seriousness and gravity of the breaches and it will also act as a deterrent to licensees and encourage compliance with the IBA Act as well as the Codes issued by the IBA. It is to be noted that the Bill also makes provision for licensees to show cause as to why they should not be inflicted an administrative penalty and in case the penalty is maintained, the licensees can apply for a review of the decision by the Review Panel. It should also be noted that the administrative penalty will apply to all broadcast licensees, including the Mauritius Broadcasting Corporation. In addition, the further safeguard of applying for judicial review in relation to a decision of the Review Panel has been provided for in the Bill.

Mr Speaker, Sir, although the imposition of administrative penalties will be a new sanction to regulate broadcast licensees in Mauritius, this practice is already well anchored in regulatory bodies in Mauritius such as the Financial Services Commission and the Bank of Mauritius. This practice is also well established in foreign jurisdictions such as the United States of America, United Kingdom, and France.

For instance, in France, the *Conseil supérieur de l'audiovisuel (CSA)* provides as follows, and I quote –

> *«Les sanctions pécuniaires*
>
> *Le montant de la sanction pécuniaire dépend de la gravité des manquements commis et est en relation avec les avantages tirés de celui-ci.*
>
> *Il n'excédera pas 3% du chiffre d'affaires hors taxes, réalisé au cours du dernier exercice clos calculé sur une période de douze mois.*

Ce maximum est porté à 5% en cas de nouvelle violation de la même obligation.

Lorsque le manquement est constitutif d'une infraction pénale, le montant de la sanction pécuniaire ne peut excéder celui prévu pour l'amende pénale.

Lorsque le CSA a prononcé une sanction pécuniaire devenue définitive avant que le juge pénal ait statué définitivement sur les mêmes faits ou des faits connexes, celui-ci peut ordonner que la sanction pécuniaire s'impute sur l'amende qu'il prononce. Sont agrégées au montant du chiffre d'affaires l'ensemble des recettes publicitaires provenant de l'activité du service. Les sanctions pécuniaires sont recouvrées comme les créances de l'État étrangères à l'impôt et au domaine. »

In the United States of America, the Federal Communications Commission (FCC) provides as follows, and I quote -

"Obscenity, Indecency and Profanity

It is a violation of federal law to air obscene programming at any time. It is also a violation of federal law to broadcast indecent or profane programming during certain hours. The Federal Communications Commission (FCC) defines indecent speech as material that, in context, depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards for the broadcast medium.

Congress has given the FCC the responsibility for administratively enforcing the law that governs these types of broadcasts. The FCC has authority to issue civil monetary penalties, revoke a license or deny a renewal application. The FCC vigorously enforces this law where we find violations. In addition, the United States Department of Justice has authority to pursue criminal violations. Violators of the law, if convicted in a federal district court, are subject to criminal fines and/or imprisonment for not more than two years."

Similarly, in the UK, the Office of Communications, commonly known as Ofcom, which is the UK's broadcasting regulatory body, may impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached one of its requirements.

Sanctions may include -

- a direction not to repeat content;
- a direction to broadcast a correction or a statement of Ofcom's findings;
- financial penalties; and depending on the license type and type of breach, shortening, suspending or revoking a license.

I am informed that in August 2021, Ofcom has fined a Chinese State-owned broadcaster £200,000 for failing to comply with broadcasting rules.

Mr Speaker, Sir, the procedure to impose an administrative penalty has been clearly set out in Clause 9 of the Bill. Same is in line with the provisions of the Financial Services Act. Mr Speaker, Sir, as I indicated earlier, the Standards Committee and the Complaints Committee are being repealed and replaced by a new and more effective mechanism.

I am informed that the last meeting of the Standards Committee was held in March 2013. Since April 2013, the Standards Committee has not held any meeting at all and has been ineffective in terms of output. The Board of the IBA has considered the issue and at its meeting of February 2020, decided that membership of the Standards Committee be discontinued with immediate effect. From April 2013 to 27 February 2020, an amount of Rs1,245,240 has been paid to members of a Committee which no longer had its *raison d'être*. It was, therefore, high time to review Part V of the Act in order to address the situation.

In regard to the Complaints Committee, which is set up by the Authority under Section 30 of the IBA Act, the members thereof are appointed by the Authority. The Complaints Committee was set up in 2001. From 2003 to date, the Complaints Committee has dealt with 228 complaints falling within its jurisdiction, as provided under Section 30 (4) of the IBA Act.

Mr Speaker, Sir, there have been instances where complaints have been lodged before the Complaints Committee and at the same time the complainant has lodged a case before the appropriate Court or has made a declaration to the Police. In such circumstances, the Complaints Committee has set aside a number of cases on application of Section 30(6) (a) of the IBA Act. Out of the 228 cases received by the Complaints Committee, 117 cases have been set aside from 2003 to date, including those under Section 30(6) (a) of the IBA Act.

Mr Speaker, Sir, as the law stands now, after considering a complaint under Section 30(4) of the IBA Act, the Complaints Committee is required to forward a copy of its decision to the Authority, pursuant to Section 30(10) and (11) of the Act. It is the Authority which has the

power to approve the recommendations of the Complaints Committee and same is communicated to the parties. It is only then that the decision becomes a final decision.

The Bill now provides that a public complaint will be referred to the Authority by the Director. This will help to speed up matters and will save cost and is in the interest of all parties.

Mr Speaker, Sir, the Bill proposes the creation of an Independent Broadcasting Review Panel, which shall consist of a Chairperson, who shall be a barrister-at-law of not less than 5 years standing and 2 members having wide experience in the field of broadcasting policy and media issues. The Review Panel shall, *inter alia*, regulate its proceedings as it may determine and shall ensure that proceedings are conducted in a manner which is consistent with the rules of natural justice and procedural fairness. The Review Panel will have the power to deal with complaints from aggrieved licensees in relation to the administrative penalty imposed. In case a party is dissatisfied with the decision of the Review Panel, the latter may have recourse to Judicial Review of the decision of the Review Panel before the Supreme Court.

Mr Speaker, Sir, I must point out that the Review Panel proposed in the new Part V of the Bill is based on similar provisions in the Financial Services Act and the Bank of Mauritius Act. Mr Speaker, Sir, Clauses 15 and 16 of the Bill are amending Sections 37 and 38 respectively of the principal Act to increase fine for offences from Rs100,000 to Rs500,000 and a term of imprisonment from “up to two years” to “up to five years”.

Mr Speaker, Sir, it must be highlighted that up to now, there has been no person who has been caught under Section 37 or 38 of the IBA Act. In any case, if there is any matter pending before the Court, on application of *la peine la plus douce* principle under Section 10(4) of the Constitution, the lighter penalty will apply.

Mr Speaker, Sir, Clause 19 provides for the Chairperson of the Independent Broadcasting Authority to sit on the Board of the Information and Communication Technologies Authority. The objective is to allow better synergy between the Independent Broadcasting Authority and the Information and Communication Technologies Authority in relation to issues of broadcasting.

The services provided by the ICT Authority are complementary to broadcast regulation, given the blurred lines between the ICT and Broadcasting. For instance, the ICT authority manages Frequency Spectrum and broadcasting cannot be done without frequencies. For this

reason, since its enactment in 2000, the IBA Act provided for the Chairperson of the ICT Authority to be a member of the IBA Board. However, the ICT Act does not provide for the Chairperson of the IBA to be a member of the ICT Authority. Therefore, the composition of the ICT Authority as set out in the ICT Act is being amended to provide that the Chairperson of the IBA shall be a member of the ICT Authority, thus allowing more synergy between the IBA and the ICTA in relation to broadcasting frequencies allocated to licensees.

Mr Speaker, Sir, it is a fact of life that in all human activities, there must be movement forward. Our legislation too, if not some of it, also needs to move forward with time but with justification. In the present case, our experience has been the chief philosopher.

Mr Speaker, Sir, to conclude, the IBA has, in the past, often been described as a *'bouledogue sans dents'* because of its limited regulatory powers, and it is the right time for the Authority to find and show its teeth. The Independent Broadcasting Authority (Amendment) Bill 2021 provides the best fit under these circumstances, as it will surely empower the IBA to meet the future regulatory challenges for the benefit of the country and it will also pave the way for the highest standards of broadcasting in a fast-changing landscape, guided by democratic principles.

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

The Deputy Prime Minister seconded.

Mr Speaker: At this stage, I will be suspending the Sitting for 45 minutes.

At 4.54 p.m., the Sitting was suspended.

On resuming at 5.45 p.m. with Mr Speaker in the Chair.

Mr Speaker: Please be seated!

The Leader of the Opposition (Mr X. L. Duval): Mr Speaker, Sir, can I start? No one in the frontbench! No one in the second bench! No one in the third bench; just one! Is it normal, Mr Speaker, Sir?

Mr Speaker: Go ahead with your speech!

Mr X. L. Duval: I carry on!

(Interruptions)

There you are!

Mr Speaker, Sir, I would like to say that for a Black Friday, the Government has not done too badly. It managed to unite the Opposition on two important issues. One issue concerning what we had just now this afternoon, the refusal of the debate on COVID-19, and this has united the Opposition. As you will find out during the debates today and tonight also is that the Opposition is fully, fully behind the principle of freedom of the Press, freedom of expression, the right of the people to have their voice in this country and, of course, we are against the vendetta that is being performed against certain titles of the Press and certain radios or one radio in particular.

Mr Speaker: Can you please remove the word 'vendetta'?

Mr X. L. Duval: What?

Mr Speaker: You used the word 'vendetta' as being practised and this is imputing motives. This is interpretation. Please, just withdraw it and continue!

Mr X. L. Duval: What will I do? 'Vendetta' is my speech, Mr Speaker, Sir.

Mr Speaker: No!

Mr X. L. Duval: I will show you.

Mr Speaker: You are a former Ag. Prime Minister of the country.

Mr X. L. Duval: All right! Okay!

Mr Speaker: You know what I mean.

Mr X. L. Duval: Okay, Mr Speaker, Sir, I will say a long list of actions - directly, indirectly, Government itself, parastatal bodies - which have been taken against one particular radio. When you listen to the Prime Minister today, you think this is just a mere piece of legislation that is being brought to put more order in the house. What I will show clearly, Mr Speaker, Sir, is that this is far from the case and this Bill comes as another episode in this long list of actions which have been taken against one particular radio.

Mr Speaker, Sir, I was just about to say though, I think we have got our priorities wrong today. As we speak, the UK Parliament is once again debating COVID, is once again debating the Botswana variant which is many, many miles from the UK. Yet, here, we are only a few

hours from Botswana, South Africa, and we have been denied the possibility of debating. That is all I wanted to say on that issue.

Mr Speaker, Sir, we are here to consider a Bill which has been brought in all urgency. We are told that it will be passed; whether it is at 2.00, 3.00, 4.00 a.m. in the morning, this Bill will be passed and will go into law. But there is something, as I mentioned before, *inavouable* in this Bill. There is also, Mr Speaker, Sir, apart from COVID, an elephant in this room. The elephant in this room is 'TOP FM' and there is no doubt in my mind that it is the elephant in the room, and it must be brought out clearly and identified as such.

What is the rush for this Bill? I think the law dates back from 2002. God knows! It dates back a long time ago and it is being changed now. Why? What is the rush? Why don't we say that it has to be passed today because in a few days' time, 'TOP FM' is due to renew its licence? If it renews its licence under the existing legislation, it will automatically be granted a licence for a three-year duration. Whereas if the Bill is passed today and it is proclaimed before, I think it is mid-December when 'TOP FM' needs to renew its licence, then the licence will be renewed for only one year.

Mr Speaker, Sir, you talked about motivation. I am saying this is the reason why this Bill is being passed today. It is so that when 'TOP FM' comes for its renewal, it will be renewed under the new legislation. That is the only plausible reason for the rush with which we are presented with this Bill. We are not used to sit on a Friday. We are sitting on a Friday although, as you see, there are not many Members in the House here. Many Members are afraid to come and sit for hours in this House, not because of me but because of the risk of catching COVID-19, and that is also the truth. The Government benches themselves are almost empty. I thank the Prime Minister for attending, but the rest are not here *avec raison*. I do not blame them for not being here.

Mr Speaker, Sir, so, I want to take you back a little bit into a long history of harassment that our friends from Top FM have been subject to. And at that time, I must say, it was well-known that Top FM was very close to the Government, for whatever reason. But on 27 February 2019, Top FM took the unfortunate decision - unfortunate for Top FM; probably fortunate for the rest of us - of challenging in Court, under whatever condition, the granting of two radio licenses:

one to Planet FM, I think which is closed down, which went bankrupt little bit later, and the famous Wazaa FM, which is very, very critical of the Opposition.

So, on 27 February, Top FM goes down and lodges its case in Court. Immediately, Mr Speaker, Sir, would you believe, Top FM is faced with a catalogue of horrors which, when I tell you, Mr Speaker, Sir, you will yourself be horrified at what Top FM has suffered since daring to challenge the two licenses that were granted to Wazaa and Planet FM. Mr Speaker, Sir, Top FM had a contract with State Bank of Mauritius. So, we are talking of 27 February when it lodges the case. When, Mr Speaker, Sir, do you think that SBM rescinds and terminates the advertising contract with Top FM? When? The next day, 28 February, *sans pudeur*. The State Bank of Mauritius annuls the contract. Rs100,000 per month is gone from the revenue of Top FM. It carries on. On 07 March, eight days after the lodging of the Court case by Top FM, it is the turn of Mauritius Telecom to terminate all sponsorship and advertising of Top FM. Second action, Mr Speaker, Sir, only three days after this Court case is lodged. And that represents, Mr Speaker, Sir, Rs400,000 per month for Top FM.

It does not stop there. This is why I tell you it is a catalogue of actions. On 11 March, not even one month after, therefore, again, you know what SBM does, Mr Speaker, Sir? Top FM, and with their permission, I am talking obviously, had an overdraft facility of Rs4m. with State Bank of Mauritius, Government owned, Government-controlled bank. That facility, Mr Speaker, Sir, Rs4m. facility cancelled overnight and they are told that they should repay the Rs4m. within two weeks. What a lot of coincidence! What unfortunate coincidence for Top FM! I am sure Government benches will tell us in a moment. And so, we have had SBM intervened twice, Mauritius Telecom intervened. It is not finished. *Ils ont de la suite dans leurs actions.*

On 22 March, not even a month after, Beach Authority, this time, was a tenant in one of the buildings owned by the Director. Beach Authority terminates the lease agreement. It is gone! Bye bye! Rs200,000 per month less. It is becoming very familiar, Mr Speaker, Sir. There is a chain of action, and so, Mr Speaker, Sir, comes into play the Mauritius Revenue Authority which ought not to be indulged in these things. I have been myself Minister of Finance many times. I have a long history in Government. Never would I have asked Mauritius Revenue Authority - speak up anyone here - to go and question opponents of the State, opponents of the Ministry,

people who criticise us. Mauritius Revenue Authority enters into the game and we know the huge powers that the MRA has, far greater powers than…

The Prime Minister: Mr Speaker, Sir, on a point of order. I heard the hon. Leader of the Opposition saying 'asking the Mauritius Revenue Authority to do something against Top FM'.

Mr X. L. Duval: I didn't say that.

The Prime Minister: This is what you said. We can check. I heard that.

Mr X. L. Duval: There is no need to fight. If I said it, I will remove it.

The Prime Minister: I am not fighting! This is the problem with you! I am not fighting! I am just asking the Chair to rule on a matter which is imputing motives to Members of the Government…

Mr X. L. Duval: There is no problem.

The Prime Minister: … who have directed the Mauritius Revenue Authority to do certain things.

Mr Speaker: I heard the point of order…

Mr X. L. Duval: I will remove it. There is no problem.

Mr Speaker: … and you will have to withdraw that expression…

Mr X. L. Duval: I have removed it.

Mr Speaker: …'asking the Mauritius revenue authority'.

Mr X. L. Duval: It is removed.

Mr Speaker: You withdrew.

Mr X. L. Duval: About five minutes ago.

Mr Speaker: Okay.

Mr X. L. Duval: I removed it about five minutes ago. No problem! But, nevertheless, it is a huge coincidence, let me put it this way, that after Mauritius Telecom, after SBM, after Beach Authority where it has lost so much revenue, that now the Mauritius Revenue Authority decides to get into the act. Big question mark on its motivations! And then we continue, Mr

Speaker, Sir. So, the MRA was on 01 April. It was not an April fool. On 14 May, Cellplus also now terminates its contract with Top FM. And we go on like this, Mr Speaker, Sir.

But instead of becoming a little poodle of the State, Top FM reasserts its independence. Top FM continues fighting, because the number of listeners jumps hugely. It is showing, Mr Speaker, Sir, the independence that we expect of the Press and, of course, then it starts with a series of programmes and videos. And all this, Mr Speaker, Sir, upsets the IBA and follows a series of suspensions, I think four suspensions, and there are cases in Court for abuse of power, lots of things like that going on, Mr Speaker, Sir.

But let us just take it from the start. One issue, problem, contesting an action of Government and a whole lot of these parastatal bodies, apparently of their own volition, decide to take it upon themselves to punish Top FM. And that is not even contestable because this is history. And so, Mr Speaker, Sir, what I am asking the House is to consider that this Bill is not a one-off. It comes after a series of mishaps, misfortunes suffered by Top FM. And Mr Speaker, Sir, I cannot prove; that is why I removed what I said. I cannot prove anything that I have said. I cannot prove who gave instructions to SBM; I cannot prove who told Mauritius Telecom to do what it did. I cannot prove any of that. All I can say is that the Government controls the Board and that the Government controls the shareholding of these companies and of the Beach Authority, and appoints the Board of the Mauritius Revenue Authority. This I can say, but I have no proof, because these things would be done verbally anyway. It would not be done in writing, as the Prime Minister fully knows. But, nevertheless, Mr Speaker, Sir, I think…

The Prime Minister: What the hon. Leader of the Opposition is saying, that this would have been done verbally and not in writing is imputing motive that we have been behind the instructions given to those bodies.

Mr X. L. Duval: How am I imputing motives?

The Prime Minister: You can say you can't prove it. That's it.

Mr Speaker: Let me rule! Leader of the Opposition, make your case without imputing motives.

Mr X. L. Duval: I was not aware that I was imputing any motive.

Mr Speaker: Make your case without imputing motives.

Mr X. L. Duval: I was not aware that I was imputing any motive. I did not mean to impute any motive; I was just stating facts as they are. I was not aware that I was imputing any motive, but I will be extra careful from now on.

Anyway, I'll finish on that score. I think the public will see for itself that these are not coincidences; these are a stream of actions that have happened. Who is behind them? I cannot say for sure. We can all have our idea who could be behind them, but I cannot say for sure.

Mr Speaker, Sir, I am not going to be long on this Bill because there are people, lawyers who will talk. But one thing that defies logic is the decision to shorten the length of tenure or length of the licence, whatever it is called, from three years, which was already short by international standards, Mr Speaker, Sir, to a mere 12 months. Let us think now. Put yourself in the shoes of a new investor, someone who comes to set up a radio in Mauritius. He has got to invest in a building, so much equipment, recruit so many people and do such a lot of advertising, not knowing whether he will be allowed to continue more than 12 months. And, look, whether it is Radio Plus, Radio One, Top FM, they have new projects maybe. They want to invest. What is the certainty of investment? No certainty that you will be here more than one year.

What about the bank now that would want to finance all this? Would any bank, in its right mind, finance someone who cannot make a business plan with any certainty for more than 12 months? It does not exist; it does not exist! Let alone the reason behind, but the economic truth is that you are starving the sector of investment because no one, in his right mind, would invest with only a year certainty to recoup any of its investment.

Now, of course, that is the economic argument. What is the operational argument now? Knowing that your licence is going to come up for renewal in three months, four months, six months, 12 months, it puts a lot of pressure on the editorial content because you would not take the risk to be too independent. You would not take the risk to be too critical. This is the whole point where Judges, Commissioner of Police, etc., are given security of tenure. Why? Because you want them to be independent; you want them to be free to act, and here it is the opposite. It is bringing them back, keeping them as if the Press, the radios are a little poodle by the side of Government.

And so, Mr Speaker, Sir, to prove my point, I looked at the major countries. The UK, Mr Speaker, Sir, gives you a licence for five years; Australia, up to five years; New Zealand, ten

years; India, five years; other countries eight years, because a radio is a major enterprise. You need to secure it and encourage it to invest and you need to give it independence of operation.

We will come later to complaints and all that, administrative penalties, etc. So, that is one thing. We are, in fact, Mr Speaker, Sir, having an *épée de Damoclès* all the time on our radios. Mr Speaker, Sir, all this, of course, will be looked at by the Independent Broadcasting Authority. But how independent is any of our institutions? How independent is the Independent Broadcasting Authority? We do not need to talk about the Electoral Supervisory Commission, the Electoral Boundaries Commission, etc. Let us just talk about this one, how independent it is! When all members are, firstly, appointed by the Prime Minister, the Cabinet or Government at least, and whether or not consultation with the Leader of the Opposition – that is just a formality, as we all know. It is appointed and usually, in 99% of the cases, all these are political activists; clear, unashamed, nothing to be ashamed of, but clear political activists appointed, as it is the case in the IBA, and I understand my predecessor Dr. Arvin Boolell had objected to the appointment of the Chairman.

If you look at the – I do not want to give any name – names of the people there, clearly it is a non-Independent Broadcasting Authority. And that is the problem, Mr Speaker, Sir, because when you have doubts on the independence, in practice, of institutions, then the law itself becomes an ass, the law itself becomes completely useless, and that is the problem with the power given for administrative penalties, the power for disciplinary proceedings, etc. There is no independence; only independence is in the word itself. Apart from the title, there is no independence in the Independent Broadcasting Authority, Mr Speaker, Sir.

As far as the complaints procedures are concerned, the Independent Review Panel, same thing, Mr Speaker, Sir, members are appointed by the Minister; no independence. No independence, Mr Speaker, Sir. If political activists can be appointed on the Electoral Supervisory Commission, just think at what can be done on the Independent Broadcasting Authority and the Complaints Review Panel or whatever it is called, Mr Speaker, Sir.

But there are also other issues, more of a technical nature, which I will touch on; this obligation in Section 18A to disclose sources. The Prime Minister took some examples of I do not know which law where you are forced to disclose your source. But this is the Press! It is a sacrosanct principle that the Press does not disclose its source! We all know this since we were

three years old! This breaks this tradition, breaks this protection that people had, whistle-blowers, people who come up and tell lots of things; it is part of democracy to have whistle-blowers. It is part of the democracy to have independent Press and, of course, the radio, news, etc.; it is part of the Press. Top FM has produced some remarkable documents in the past. So, Mr Speaker, Sir, this obligation to go to a Judge in Chambers, get an *ex parte.*

Now, okay, we are very happy that the Prime Minister is 100% happy with the independence of the Judiciary. I hope so; I hope he is right! Many people do not have that same opinion. Many people, Mr Speaker, Sir, choose which Judge is sitting in the Chamber that particular day. It is also a fact. I do not have that unshaken trust in every single member of the Judiciary. It would not be human if I had this trust.

So, Mr Speaker, Sir, another issue. Firstly, we should not ask the Press to disclose its source and secondly, this blind trust in other human beings, whether they are Judges or whoever they are, that, Mr Speaker, Sir, does not hold water.

Mr Speaker, Sir, there are so many other things. I do not want to go too deeply into it. But we know the saying *Vox Populi, Vox Dei*, and this is relevant here would you believe, because what voice does the Mauritian citizen have? What voice does he have? Can he go to the MBC and get himself heard? Can he go to the MBC/TV or MBC Radio? Where can he go? He can go to the newspapers, but that is also an indirect if the Editor wants to take what he said. But the radios in Mauritius have given a direct voice to the population, and when you are killing these radios, you are killing this voice of the population.

And, Mr Speaker, Sir, there is a famous saying, I think, of Winston Churchill –

"Never waste a good crisis"

What is happening now is that we have seen the Cybersecurity and Cybercrime Bill passed recently at a time of COVID, where all Mauritians are completely focused on COVID; and the Bill passed here. Normally, there would have been a far greater outcry. Now, this Bill, had it been passed in normal times, you would have seen a hundred thousand people on the streets, Mr Speaker, Sir, because you are touching at the voice of the population.

Remember what happened when *Radio Free Dom* had its licence cancelled back in Reunion Island in those years. There was widespread contestation and the decision was

rescinded. And so, Mr Speaker, Sir, 'never waste a good crisis' has not gone on deaf ears so far as Government is concerned. There are two reasons for the rush today. Firstly, because Top FM is about to renew its licence, and secondly, because Mauritians are subject to a great deal of fear and apprehension; and there are COVID restrictions limiting demonstrations to 50 people. Otherwise, it is my firm belief that you would have seen a huge demonstration against this Bill, Mr Speaker, Sir.

So, Mr Speaker, Sir, the only thing left to say is: who next or what next? Now, we have touched Facebook; it did not workout. We passed the Cybercrime Bill; that has been passed in Parliament and that was for social media; this one is for the radio. There is only the written Press left. When will it be their turn? That is what we can ask. Anyway, Mr Speaker, Sir, the Opposition here, from what I have seen, all Members of the Opposition are 1000% behind the independent radios of this country. We will support them and do whatever we can to get them out of the claws of this new Independent Broadcasting Authority, as Government wishes to vote in the coming hours of today and tonight.

Thank you very much.

Mr Speaker: Hon. Uteem!

(6.14 p.m.)

Mr R. Uteem (Second Member for Port Louis South & Port Louis Central): As the world of shopping celebrates Black Friday, today we will go down in history as one of the darkest days for our democracy, for our constitutional right to freedom of speech.

When a Government, of which MMM was a party, brought the IBA Act in 2000, the main function of a radio in those days were to inform and entertain. But over the years, Mr Speaker, Sir, the role of private radios in Mauritius completely changed and today private radios have become the main medium for the population to comment on public event and to air their grievances. Whether it is *Enquête en Direct, Explik ou K,* Fer noir vinn blan, *La voix maurice, Polémique, Lever do mo pep*. Private radios today, Mr Speaker, Sir, have become the bridge between the people and the Authority, the main gateway to relay information, to comment on events and to make complaints.

And today, even now, if anybody turns on the radio, a private radio, any radio except for MBC and probably Wazaa FM, what would they hear? What are the people out there saying, Mr Speaker, Sir? Mauritius is safe. Mauritius is relatively safe. Everything is fine. *Tou korek! Tamam!* Or are the people complaining and criticising the Government? Nurses, doctors, medical experts, experts in aviation, social workers, people admitted to ENT, people queuing up to get vaccinated, family of victims, are they praising this Government or are they criticising the way the Government is mishandling the COVID situation? So, let us not get any doubt about it, the purpose of this Bill is to silence these complaints by removing the bridge, the gateway, the messenger. Yes, today, we are shooting the messenger, the private radio. And they are doing it, because we do not agree with this Bill, they have decided to do it by suffocating the radio financially. The IBA is being given the power to impose such administrative penalties as it thinks fit. And the administrative penalty would be as high as Rs500,000. The 500,000 is for one offence, one time; it can be more. And this administrative penalty is going to be imposed not only, if according to the IBA , a private radio has breached the Act or the Code or all the conditions of their licence, which would be understandable, but also if they have failed to comply with any direction of the IBA. IBA has an absolute discretion to give whatever direction they want to a private radio, and if that private radio does not do it, Rs500,000 fine. So, if IBA is not happy with the way radio has reported an information or the Press conference, however unreasonable IBA may be, it can order the radio to issue a communiqué, a rectification. If the radio does not do that, Rs500,000 penalty. If the IBA is not happy about people who come on the radio, make comments and air their grievances, Rs500,000 penalty. And I am not exaggerating, Mr Speaker, Sir. I am not exaggerating.

The hon. Leader of the Opposition talked about Top FM. It is public knowledge that there is a case of judicial review which Top FM has brought against the IBA. I am not going to, of course, deal on the merit of that case, which is *sub judice*, but I will just, in one line, say what the case is about. The IBA was not happy that one day on Top FM a trade unionist and former Member of this House, Mr Jack Bizlall, made certain comments. IBA was not happy about that. They thought that Top FM has breached its code of conduct and therefore decided to suspend the licence of Top FM. And Top FM has now brought the case before the Supreme Court for Judicial Review. So, the IBA is taking sanctions against a radio, not because of the fault of journalists,

not because they have anything against a journalist, because they are not agreeable with people going on radio and airing their grievances, especially against this Government.

Now, let me take a simple example, Mr Speaker, Sir, just to have an illustration. Tomorrow morning, a member of the public calls a private radio and says: 'Yesterday I was listening to the live broadcast and the exchange that happened in the House between the hon. Prime Minister and the Leader of Opposition, and I think that the hon. Prime Minister misled the House. And I say so because at the time the inter-parliamentary committees were hearing in 2016-2017, the hon. Prime Minister was not even part of that committee because he has had to resign since 01 July 2015 and therefore, whatever he said happened there, he could not possibly have known because he was not there; he had resigned. IBA is not happy. IBA said no. Yesterday I heard the Prime Minister say what he said happened and, therefore, you, private radio, you have breached the code of conduct by allowing a member of the public to bring that fact to the public so that the public know that the hon. Prime Minister was not part of that Committee because he had resigned office since 01 July 2015. Rs500,000 as fine! Rs500,000 as fine because IBA is not happy with that radio. But, of course, when the radio will be fined, what will it do? It will have recourse to the Supreme Court. But we all know that a case before the Supreme Court can take months, if not years. What happens in the meantime? In the meantime, the normal course of things, the IBA's decision would be stayed, pending the determination of the Supreme Court. This is elementary rule of fairness; rule of natural justice; a rule of a right of protection of the law, guaranteed by Article 3 (a) of our Constitution. Any lawyer knows that! There is a decision, you are making an appeal, you ask for a stay of the decision. Status quo! Let the Court decide! But the IBA does not agree; Government does not agree. The proposed new Section 22, sub-section 4, and I will read it because it is very important -

> "The Authority may, notwithstanding any pending judicial process, take into account any sanction imposed by it on a licensee, for the purpose of determining whether or not to renew a licence."

Notwithstanding any pending judicial process! I could not believe my eyes when I saw that. How can the State Law Office allow such a provision to be included in this Bill? How can the Attorney-General, who is the advisor to Government, accede to that Bill in Cabinet? I mean, the IBA is being given the power to disregard the Supreme Court, whatever happens in the Supreme

Court, it is not our concern! Simply unbelievable! The IBA has become Party, Judge, Jury, and Executioner. What is the point of giving the Right of Appeal to a licensee? What is the point of giving him the right to seek redress before the Supreme Court if the IBA will simply disregard pending judicial process? And what about the doctrine of Separation of Powers, can Parliament simply legislate that an Authority, which is not even an Independent Authority, can disregard pending judicial process? Isn't that a clear usurpation of the judicial function of a Court? Shouldn't it be left to the Court to decide whether to suspend an administrative decision, pending the determination of the Court? Worse, Mr Speaker, Sir, Section 22 (5) provides that -

> "the IBA will consider the past conduct of a licensee prior to determining whether or not to renew a licence."

And here, the choice of words is very important. Section 22(5) uses the term 'shall', not the term 'may'. Parliament is directing IBA. IBA must consider past conduct of a licensee before determining whether to renew or not, even if the case is pending before the Court, he has to. And the hon. Prime Minister very happily said: "yes, this is how Courts operate. Before sanctioning, before sentencing, the Court takes past conduct". Mr Speaker, Sir, IBA is not a Court. This is the whole point. You are usurping the role of the Court. This is a clear breach of Separation of Power. This is anti-constitutional.

Now, the hon. Leader of the Opposition referred to the period of the license. Today, a license for radio broadcasting is 3 years. It is being proposed in this Bill to reduce that licence for one year and the justification given by the hon. Prime Minister is that you pay fees annually and therefore your licence is renewed annually. Well, you pay lease of State land annually, but you have lease for 60 years! What is the logic? What is the logic, because you have annual fees, therefore, your licence fee has to be annual? I have never heard of such type of logic. But three years are reduced to one year, why? Because they know that the licence of TOP FM is due to expire by mid of December, in a few days' time. That is why they rush this Bill today. There are debates still pending on the Second Reading of the Petroleum Bill. That is not important; what is important is to get this Bill through so that the IBA can get the power to not renew the licence of TOP FM and disregard the case that is pending before the Supreme Court. And now, what will happen when the licence is not renewed? What will happen to all those journalists who are working today at a radio? Will they be unemployed? They will certainly resign. Now, what will

happen to the radio, without any advertisement? Where will they get the funds? How will it be able to repay its loan? How will it be able to meet its financial commitments? It will go bankrupt. So, by the time the Judicial Review is heard and determined, and the decision of the IBA is overturned by the Supreme Court, there is nothing left. The radio is already bankrupt. So, this is how dangerous this Bill which is being brought before this House. And the hon. Leader of the Opposition is absolutely right; this Bill is targeting one private radio, in particular, TOP FM. And there is a doctrine or a determined law, Mr Speaker, Sir, which is in latin, and it is called *ad hominem.* This law is what we call an *ad hominem* law. '*ad hominem'* in latin means 'to the person'. So, this law is directed to one person. Is that constitutional? There are many Privy Council cases on the *ad hominem* law, but when they are targeting TOP FM, there are spill over effects because the same law will apply to all radios now.

Two years ago, in the Finance Act 2019, Section 19 of the IBA Act was amended to increase the percentage shares owned by foreign nationals in radio and TV broadcasting companies to 44.9%. Who presented the Bill? The Minister of Finance, who was no else than our Prime Minister. And when he introduced this Bill, this Amendment, what did he say? The Amendment was necessary to attract more foreign investment in telecommunication and media sector while providing better services and choices to the Mauritian customers. Two years ago, he amended the law to provide better services and choices to the Mauritian customers and, two years later, he does the reverse, because which right minded investor is going to invest millions of rupees in equipment, in a radio station or a TV station if his licence will not be renewed after one year? So, it is simply does not make economic sense, but it sure makes political sense! It makes political sense! The licence of a radio is limited to one year, why? To make sure that those independent radios that dare to criticise the Government will not be able to broadcast during the electoral campaigns! This is the ultimate aim of the Bill: silence the voice of critics before enduring General Elections.

I mentioned General Elections because this is what happened during the last General Elections. This Bill targets only private radios. It does not target Mauritius Broadcasting Corporation. The MBC is not concerned at all. Today, the MBC has a licence of 5 years. The Amendment does not concern MBC. It would continue to pay 5 years even if the MBC has annual fees to pay. But then, for MBC, it does not matter, it is only for private radios that you have to change every year.

MBC, you can leave it for five years! Why? Because IBA is happy with MBC, Prime Minister is happy with MBC. No matter how much we complain about MBC, no matter how much we write to IBA, IBA never sections MBC. During the election campaign of 2019, everybody saw how biased the MBC/TV was. The President of the Labour Party complained to the Electoral Supervisory Commission about the unfair treatment by the MBC of its reporting of the general election.

On 29 October 2019, the Electoral Supervisory Commission issued a Communiqué after hearing the MBC and its Counsel, what did the communiqué say?

> "The commission after the deliberations reached the conclusion that prima facie there was substance in the complaint made having regard to Section 4(g)(3) of the MBC Act."

The Electoral Supervisory Commission blames MBC/TV who is acting in violation of the MBC Act. Did IBA take any sanctions against MBC? Did it suspend the MBC? No! Because the IBA is happy and wants private radio also to follow this.

Mr Speaker, Sir, the Bill introduces a new mechanism for reviewing the decision of the IBA. The Bill is striking out the provision relating to Complaints Committee. Now, we will have a Review Panel, an Independent Broadcasting Review Panel which is going to review the decision of the IBA. The hon. Prime Minister is right when he said that the provisions of this Independent Broadcasting Review Panel are similar to what is in the Bank of Mauritius Act and in the Financial Services Act. But not totally correct!

Let us start on membership. The membership of the Committee for the Independent Broadcasting Review Panel, there will be a Chairman who will be a barrister of at least five years, then there will be two members having wide experience in the field of broadcasting. These two persons will be political appointees and it does not have to have any restriction on their political colour. Now compare that to the membership of the Financial Services Review Panel - you have the Chairperson who is a barrister of five years standing but you have a Vice Chairperson who is either the Solicitor General or his representative and the third member is the Financial Secretary or his representative.

So, the composition is completely different! One you have very independent members and the other one you have political appointees. Where it gets worse is under this Bill, the

quorum for this Review Panel is two members. 2 members! So, you do not need to have the Chairman, you do not need to have a lawyer, two political nominees can sit and hear appeals. Can you imagine how dangerous this would be? At least for the Review Panel for the Financial Services, there is always a lawyer either the Chairperson or the Vice Chairperson who is the Solicitor General.

Now, the next thing is the termination of the tenure of the Chairperson. It is the same in the Financial Services Act and it is flawed. I think that it has to change in both laws. The law that is being proposed today provides that, it is in section 30B(2) –

> "The Chairperson of the Review Panel shall cease to hold office where he is unfit to be the Chairperson because of breach of trust, misconduct or default in the discharge of his duties."

Who decides? Who removes the Chairperson? Is it IBA? Is it the Prime Minister? Surely, it must be a Court! Who decides that he is unfit? Is it the IBA? Is it the Prime Minister? It should be a Court! Who decides what is breach of trust? Breach of trust is there only in fiduciary duties. What is meant by breach of trust? The Prime Minister no longer has trust in the Chairman? The IBA no longer has trust in the Chairman? What is breach of trust?

So, that is why I think the Prime Minister ought to come with an amendment at least specifying that it is only a Court of law that can determine whether a Chairperson is unfit or not.

Mr Speaker, Sir, the credibility of the Review Panel and its impartiality will very much depend on the person who is appointed as Chairperson. The current Chairperson of the Financial Services Review Panel is a former judge, Mr Gérard Angoh, whose professionalism and impartiality is beyond dispute. The current Chairperson of the Complaints Committee of the IBA, which will be replaced by the Review Panel, is Mr Gilbert Ithier, senior counsel; a senior lawyer whose professionalism and impartiality is beyond dispute. Will the hon. Prime Minister give assurance to the House that Mr Gilbert Ithier, who is currently the Chairman of that Complaints Committee would be appointed Chairperson of the Independent Broadcasting Review Panel, if not, why not? If the hon. Prime Minister is not minded to appoint Mr Gilbert Ithier as Chairperson, will he give assurance to the House that the Chairperson would either be a former judge or a Senior Counsel, of course, a Senior Counsel who has never appeared for him

or any member of his Party as Counsel? If not, then the population will surely judge him on his actions.

Mr Speaker, Sir, this Bill comes a week after the Cybersecurity and Cybercrime Bill and the timing is not innocent. Behind the facade of self-denial, the Government knows how unpopular it has become and they know that the worst is yet to come. But trying to silence criticisms published on the Internet or aired on radios is futile.

Mr Speaker, Sir, if this Government does not want to be criticised, then *aret fane* or better still *lev pake ale!* Thank you.

Mr Speaker: Hon. Toussaint!

(6.38 p.m.)

The Minister of Youth Empowerment, Sports and Recreation (Mr S. Toussaint): Merci, M. le président, de me donner l'occasion d'apporter mes points de vue sur *the Independent Broadcasting Authority (Amendment) Bill* que nous débattons aujourd'hui dans la Chambre.

Informer, divertir et éduquer, M. le président, a toujours été les rôles primaires des radios à travers le monde. On peut dire que depuis les années 1914 en Belgique, où nous avons pour la première fois entendu des émissions régulières de radio ou à Maurice, depuis les années 1900 pareil, nous avons eu droit aux activités de la radio ; donc 1927, aussi loin que cela par M. Charles Jolivet qui habitait à Beau Bassin. À Maurice toujours, le 01 juillet 1944, le service de radio devient le *Mauritius Broadcasting Service.* Évidemment, c'était en période de la deuxième guerre mondiale et il y avait beaucoup d'informations à passer à la population. Arrivent les radios privées en 2002; donc la première radio privée en 2002 et la loi justement de l'*Independent Broadcasting Authority* pour régir l'arrivée des radios privées entre 2000 et *ongoing.*

Plusieurs années ont passé. Le monde a changé. Beaucoup de choses ont changé. Aujourd'hui, nous sommes là à l'Assemblée assis pour faire un discours avec un masque au visage. Qui l'aurait pensé dans les années 2000 quand les radios privées ont fait leur entrée que nous allions, une vingtaine d'années après, vivre ce genre de situation que le monde entier est en train de vivre aujourd'hui.

Et cela me fait penser à la remarque du leader de l'Opposition qui, dans son discours pas plus loin que quelques instants de cela, a parlé de *our refusal to debate on COVID-19* et que sa motion avait été rejetée. Je rappelle à l'honorable leader de l'Opposition qu'il a eu l'occasion de poser pas mal de *PNQs* au ministre de la Santé et il a posé beaucoup de questions supplémentaires, si je ne me trompe pas c'est neuf *PNQs* au ministre de la Santé moins autour de beaucoup je dirais. Et qu'aujourd'hui aussi il aurait pu poser une *PNQ* au ministre de la Santé sans oublier chaque mardi …

(Interruptions)

Lot semenn ? Aller korek ! Sans oublier que chaque mardi, pas moins d'une vingtaine de questions parlementaires par les honorables membres sur la situation sur la Covid-19. Donc, toutes les semaines nous débattons, nous parlons, les honorables membres posent des questions sur la Covid-19. Le sujet de la Covid-19 est débattu dans la presse, dans les radios tous les jours. Donc, il y a un débat sur la Covid-19. Et je ne suis pas d'accord avec le Leader de l'Opposition quand il a fait cette remarque, c'est pour cela que je viens dessus, M. le président.

Aujourd'hui, nous débattons des amendements qui sont apportés à la loi existante, l'*Independent Broadcasting Authority (Amendment) Bill* et les différents membres qui ont parlé avant moi ont soulevé certains points. Et là je me réfère, M. le président, à la section 18A, et encore une fois je me réfère à ce que l'honorable leader de l'Opposition a dit et je résume qu'il n'a pas confiance dans le judiciaire. Si je rapporte mal, *I will withdraw*, mais c'est ce que j'ai cru entendre, M. le président.

Mr X. L. Duval: I think, Mr Speaker, Sir, better not say what I said. Just say what you have to say. It will be better.

Mr Toussaint: M. le président, donc j'ai entendu l'honorable Leader de l'opposition faire un commentaire sur le judiciaire. *Nou dir li koumsa.* Et ça m'a donné froid dans le dos. Il faisait référence donc à la Section 18A *Judge in Chambers*. Donc par rapport à toute cette polémique que les radios doivent dire leur source etc. mais dans le projet de loi ici, il est clair que the *Director may make an application to the Judge in Chambers.* Et je crois que le Premier ministre a été très clair dans son introduction pour expliquer cette partie-là et que ce sera justement à un juge de dire s'il faut aller dans cette direction ou pas. Et nous, en tout cas de ce côté-ci de la Chambre, M. le président, nous faisons confiance à notre système judiciaire et nous

faisons confiance aux humains qui forment partie de notre judiciaire et qui pendant des années et des années dans le pays ont fait et continuent de faire un travail formidable.

M. le président, l'honorable Uteem a aussi à maintes reprises parlé du *Administrative penalty imposed* de R 500 000. Et donc si je cite le projet de loi qui nous dit –

« *An administrative penalty imposed under this Act shall not exceed 500,000 rupees.* »

Et donc si je comprends bien, ça peut aller jusqu'à un maximum de R 500 000 et non de faire croire qu'à chaque fois qu'il y aura un problème, la radio aura besoin de payer R 500 000. C'est dommage qu'à chaque fois l'honorable Uteem fait cela. Quand il parle d'un point qui se trouve dans un projet de loi, il n'explique pas clairement et il ne va pas dans le profond, il passe à la surface juste pour essayer de faire croire que nous sommes en train d'imposer des choses horribles ici sur les radios. Ça a été le cas aussi durant les débats sur le *Cybercrime Bill*.

M. le président, les présentes lois que nous allons amender, il ne faut pas oublier c'est tout aussi pour protéger le consommateur. Le consommateur d'une radio privée c'est bien sûr les auditeurs et pas nécessairement juste ceux qui ont l'habitude d'appeler dans les *phone-in* émissions, etc. mais c'est tous les autres auditeurs qui passent beaucoup de temps à écouter la radio ; les personnes âgées, je suis témoin, écoutent beaucoup la radio, ils sont à la maison, les ménagères, etc. Mais qu'arrivera-t-il si une radio passe une publicité mensongère et que l'auditeur ou l'auditrice se laisse piéger par cela ? Donc, ce sont des lois qui visent à protéger les auditeurs, les auditrices et donc le consommateur des radios. C'est très important tout cela, M. le président. Et le Premier ministre l'a dit dans son discours qu'on reprochait à l'*IBA* d'être un bulldog sans dents et qu'il ne pouvait absolument rien faire. Donc nous donnons les outils à l'*IBA* parce que comme je l'ai dit, depuis l'apparition de la première radio régulière en 1914 en Belgique et aujourd'hui nous sommes en 2021, il y a beaucoup de choses qui ont changé, M. le président.

Et comme d'habitude, au niveau de l'Opposition, les discours restent creux mais aussi dangereux parce que ce sont des discours qui veulent faire peur à la population, qui veulent faire croire à la population qu'il y a devant eux un gouvernement dictateur. Mais, M. le président, laissez-moi faire rappeler à nos amis de l'autre côté de la Chambre, comment à l'époque il y avait une journaliste qui avait été arrêtée dans une radio. Si je ne me trompe pas et je parle de mémoire, juste parce que la journaliste a relié une information, donc le *news* comme on dit, et

qui avait parlé de la santé de l'ancien Premier ministre. Qu'est-ce qui se passe ? *Trouble* dans la radio, les policiers débarquent et vont arrêter cette journaliste. C'était au temps où le Parti travailliste et le PMSD étaient au pouvoir. N'était-ce pas de la dictature cela, M. le président ? Et on ose aujourd'hui venir nous pointer du doigt, venir faire croire à cette population qu'ils ont devant eux un gouvernement dictateur.

Je vais aussi citer une petite phrase d'un ancien Premier ministre, M. le président, pour expliquer comment quand certains sont dans une position et que quand ils sont dans d'autres positions ils oublient. Il y a un ancien Premier ministre qui avait répondu à la presse '*SSU pa donn bibron'*, M. le président. On se souvient de cette expression ' *SSU pa la pou donn bibron*'. Quand les journalistes lui avaient parlé justement de l'ordre que la *SSU* devait mettre par rapport aux travailleurs qui faisaient une grève, une manifestation, etc., cet ancien Premier ministre à l'époque avait dit que la '*SSU pa donn bibron'*. Et ce sont ces mêmes personnes qui aujourd'hui viennent nous dire nous sommes en train de faire de la dictature. Ils ont peur pour le *freedom of speech, freedom of movement, freedom of ici, of laba.* On fait de grands discours.

(Interruptions)

Si on me permet de continuer mon discours, M. le président, si l'honorable Mohamed me permet de continuer mon discours sans faire des commentaires. Il pourra me critiquer après, il aura le champ. Ce serait mieux élevé qu'il puisse se taire et me laisser continuer.

Donc, tout ceci pour vous dire, M. le président, que la radio doit rester dans ces rôles primaires, c'est-à-dire d'informer. Nous sommes dans une période difficile tout comme durant la seconde guerre mondiale où à l'époque la radio avait joué un rôle important, et on n'oubliera jamais le fameux discours de l'ancien Président de France, Charles de Gaulle, qui était intervenu sur la *BBC* à l'époque de la guerre. Et aujourd'hui, nous sommes encore une fois en guerre contre un ennemi invisible, c'est-à-dire la Covid-19, et la radio a le devoir et la responsabilité d'informer ; d'informer en utilisant les faits ; d'informer la population en étant responsable dans leurs propos. Je pense que tout cela est très important et que ce rôle d'informer reste d'actualité aujourd'hui.

Je dis aussi que la radio a le rôle de divertir, ils le font tous les jours à travers la musique, à travers les émissions qu'ils font, et un rôle aussi important pour la radio, c'est d'éduquer sa population. En ces périodes difficiles, où nos jeunes malheureusement doivent rester à la maison,

donc la radio a une responsabilité de venir nous aider, par exemple, à éduquer nos jeunes par rapport à leurs études, par rapport aux différents sujets qu'ils sont en train de faire. Et la radio le devoir d'éduquer la population dans différents domaines. Que ce soit dans le domaine culturel, que ce soit dans le domaine sportif, que ce soit dans le domaine scientifique, la radio a le devoir et la responsabilité d'éduquer la population.

M. le président, le débat d'aujourd'hui est évidemment, donc, par rapport aux différents amendements. Je ne prétends pas aller en long et en large, parce que je le redis encore une fois, et je le félicite pour cela, le Premier ministre a été très, très clair dans son introduction par rapport aux différentes sections de ces amendements que nous apportons. Évidemment, des membres de l'Opposition trouveront à en redire, c'est cela le débat parlementaire et on va les écouter, et évidemment il y aura un *summing-up* qui sera fait par l'honorable Premier ministre.

M. le président, j'ai aussi noté que malheureusement le Leader de l'Opposition a pris 15 minutes dans son discours pour nous parler de Top FM. C'est son droit ; c'est son droit, on l'a écouté avec beaucoup de patience. 15 minutes pour parler d'une seule radio et pour expliquer tout ce qui est arrivé à cette radio, et ainsi de suite.

M. le président, moi ce que je dirai à cela, c'est que les radios doivent être responsables tout comme le citoyen qui respecte la loi est responsable. La loi est là et si on respecte la loi, on n'a absolument rien à craindre. Le citoyen qui respecte la loi, il marche là, il est dehors, il a son masque, et il respecte la loi. C'est valable aussi pour n'importe quelle entité. Là, on est en train de parler de radio. C'est valable pour les banques ; il y a des lois qui régissent l'activité bancaire. C'est valable pour les différentes activités économiques du pays où il y a des lois pour régir et il y a des lois qu'il ne faut certainement pas transgresser. Sinon, tout à fait, nous avons droit à des sanctions.

M. le président, vu qu'il y a une très, très longue liste d'orateurs, je vais terminer en citant un célèbre animateur et journaliste mauricien, et dans la citation que je vais dire, si nos amis de la presse appliquent cette citation et qu'ils sont responsables, il n'y a absolument rien à craindre. Donc, je cite *the former* animateur et journaliste, notre ami l'honorable Gilbert Bablee : « *me bizin koz koze ki bizin koze.* » Un point c'est tout.

Merci, M. le président.

(Interruptions)

Mr Speaker: Quiet!

(Interruptions)

Order!

(Interruptions)

Order!

(Interruptions)

Order!

(Interruptions)

You have 30 minutes. Please try to do it.

(6.56 p.m.)

Mr S. Mohamed (First Member for Port Louis Maritime & Port Louis East): I will try my best, Mr Speaker, Sir.

Mr Speaker, Sir, I perused through the list of orators for today and the reason why I did it more intently than I did in the past for other pieces of proposed legislation is precisely because this piece of legislation deals with very fundamental issues, *entre autres*, Section 12 of the Constitution of Mauritius, which is about freedom of expression. It finds its inspiration in the European Convention on Human Rights, which is at Article 10 of the Convention, and when any legislation deals with one of the fundamental rights of our Constitution, I am of the humble view that it is important not to rush through the reading or presentation, but it is important to halt and to reflect on each and every of those clauses that potentially could breach those fundamental rights provided for in the Constitution.

Yes, it is a very technical issue in law and when I read this piece of legislation, I read it with the eyes of a lawyer. It is not necessarily about policy; it is but most importantly about fundamental rights. When I look at the list of orators, I am happy that not only I as a lawyer but also hon. Uteem as a member of the Bar; hon. Bodha, though he has not practiced for such a long time, but I will be happy to hear his views with regard to the legal implications of this Bill; hon.

Khushal Lobine, a lawyer, who will also give us his views, but it is unfortunate that the only lawyer who will enlighten us with a legal analysis is one and the only person in Government side who happens to be the hon. Prime Minister.

It is indeed unfortunate that we are not blessed by the interesting remarks that I am sure hon. Collendavelloo could have made; the interesting remarks that hon. Obeegadoo surely could have contributed or hon. Ganoo could certainly have made or hon. Callichurn. But then, I hope that we will maybe have an amendment to that list because such an interesting debate, such voices would add to the debate. Why is it that some of their names are not on there? Obviously, it is Government which can decide who will speak, who will not speak, and it is for the orators to decide whether they refuse to speak or because maybe they do not believe in the Bill. I leave that for Government side to reflect upon, but it is an interesting remark that I have to make.

Mr Speaker, Sir, I have listened with a lot of intent to the orator who preceded me. Now, I cannot blame him for being very economical with his personal understanding of this legislation. I cannot blame him. He cannot be told that he is wrong in any way and one cannot fault him for not understanding the intricacies of this law that is being proposed. He has limited himself, in a very limited way, to speak about the good deeds of the Leader of his Party, the Prime Minister. And, unfortunately, he has gone only around that particular issue and not managed in any way whatsoever to comment on fundamental rights. He has tried at one moment, when the hon. Member said, and I quote –

"freedom of movement, freedom of expression, freedom *ici*, freedom *laba.*"

In fact, let me say it has nothing to do with 'freedom *ici*' or 'freedom *laba*'. It is not with such *légèreté* that those who fought for our Constitution came up with 'freedom *ici*' and 'freedom *laba*'. In fact, whenever the framers of our Constitution brought and fought for Section 12 of our Constitution, it was certainly not for 'freedom *ici*' and 'freedom *laba*'. But then, again, I cannot blame him for he is not well versed in this particular domain. He is most probably versed in other issues which I, myself, I am not versed. Each other can contribute in his own way and I respect that.

But let me tell him, and tell you, Mr Speaker, Sir, that I read with a lot of interest what President Mandela has basically said in an address dated 14 February 1994. In that particular address, Mr Speaker, Sir, I will quote what he said because I find it quite relevant to the debate

of today. In that address on 14 February 1994, strangely enough it was on Valentine's Day, and he was speaking at the International Press Institute Congress, he said the following –

"A critical, independent and investigative press is the lifeblood of any democracy."

I'll say that again: 'a critical, independent and investigative press is the lifeblood of any democracy.' Two important words there: 'critical' and obviously 'independent', maybe not for the Government, but for us it is important that they be independent. 'Critical' is the word that President Mandela used; 'investigative'. But when we hear the previous orator who has been there to defend Government's position, he said the role of the Press is to inform. He chose very carefully, Sir, not to go as far as to say that it was their role to criticise. Why did the previous orator not choose the word 'criticise'? Why did he refrain from using the word 'investigative'? In fact, he did not even use the word 'independent' whenever he referred to the Press. That shows you the real intent of this Government. That shows you the opinion this Government has as regards the role of the Press. The Press, according to the Minister - and I take it that he speaks for Government and not only for him, it represents the views of each and every Member of Government whenever he speaks - they are there to inform, full stop. But when President Mandela said in his address that a critical and independent and investigative press is the lifeblood of democracy, was he wrong? And was hon. Toussaint right, as opposed to Mandela? Or why is it that hon. Toussaint or some Members of this Government would praise Nelson Mandela when it suits them politically? But when it comes to at least learning what the fundamental human rights means, liberty of the Press means, they will try to pretend they do not hear, pretend they do not see and pretend that they are democrats.

President Mandela went on to say –

"The press must be free from State interference."

This is what they are doing today, Mr Speaker, Sir, interfering in the Press.

"It must have the economic strength to stand up to the blandishments of government officials."

Mustn't a free Press have the strength to stand up to the blandishments of certain Members of Government, including Ministers? President Mandela thought so, and he went on to say, I quote –

"It must have sufficient independence from vested interests."

But then, again, in Mauritius, they have chosen whom they want to attack. They have clearly, as demonstrated by the hon. Leader of the Opposition and hon. Uteem in their address, explained what the hon. Minister Toussaint believes is irrelevant. But the trauma, the harassment, the onslaught of authorities, strangely enough controlled by Government against Top FM, and he believes that to be not important.

President Mandela, I have to lengthily refer to what he said because he goes on to explain, he goes on to state that –

"It must have sufficient independence from vested interests to be bold (…)"

It says 'to be bold' –

"and inquiring (…)"

Not only informing, as the hon. Minister said.

"without fear or favour. It must enjoy the protection of the constitution so that it can protect our rights and citizens."

This goes a far cry to the limit that hon. Toussaint has set for the role of the Press and radio. Because for him, they are only there to inform.

And he goes on –

"Here it is only a free press that can temper the appetite of any government to amass power at the expense of the citizen."

I accuse this Government. Through this legislation, they are clearly …

Mr Speaker: You do not have the right to do that!

Mr Mohamed: To do what?

Mr Speaker: You are accusing the Government 'through this legislation, they are clearly…'

(Interruptions)

This is imputing motives.

Mr Mohamed: Upon whom?

Mr Speaker: Be careful!

Mr Mohamed: The Standing Order says imputing motives against a Member is wrong, but not against Government.

Mr Speaker: Be careful! You continue!

Mr Mohamed: So, I shall not say that Government is trying to control because, Mr Speaker, Sir, you have asked me to be careful and I will respect your views. So, I will not say that they are trying to attempt to control the Press. Fair enough.

However, when one looks at Section 12 of our Constitution, and before I go to Section 12, let me just read from a judgement of the *Fédération* of Civil Service and other Unions and others v. the State of Mauritius, 2009 SCJ 214. In that particular judgement, the Supreme Court said the following, I quote –

> "We may straightaway say that *ad hominem* legislation per se should not be struck down unless it is unconstitutional."

What is an '*ad hominem* legislation'? And I think here it is important for hon. Toussaint maybe to understand. Just like he tried to say that I should behave, maybe he should learn and at the same time I will learn to behave. I will take that. What he should maybe understand is what an *ad hominem* legislation is. An *ad hominem* legislation, which I am convinced it is, is a piece of legislation that is not addressed to the general sector, but specifically in order *de viser* one particular entity. And that one particular entity that I am convinced this legislation is aiming at is Top FM. And when one goes further, when the Supreme Court Judges say that we may straightaway say that an *ad hominem* legislation per se should not be struck down unless it is unconstitutional, it takes me to another important element, which is our Constitution. Section 12, the heading is 'Protection of freedom of expression'.

It says further –

> "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(b) for the purpose of protecting the reputations, rights or freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence."

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

So, the question here is that when you open the door under Section 18A in this Bill and that you say that an application can be made to the hon. Judge in Chambers - this is what the members of the public listening to us today must understand - what the Prime Minister says is, in fact, a beautiful attempt to be economical with the truth. What the hon. Prime Minister has done is voluntarily and wilfully not say everything that is of relevance in this Bill. Because he is a Barrister of experience; he knows what the Constitution says. The fact that he did not make reference to Section 12 puzzles me. The fact that he does not make reference to that particular Section that is clearly relevant puzzles me. And each and every one of us, Mr Speaker, Sir, hon. Members, we take our solemn oath upon this Constitution in this House. We are, therefore, obliged - if we are to talk of responsibility - to ensure that no Section is in any way violated, not a single of it, unless it is reasonable in a democratic society.

The hon. Prime Minister has failed to explain how is it reasonable in a democratic society to place a journalist in a situation where an *ex parte* application can be heard by a Judge and an affidavit *ex parte* from this regulator, stating: I need to have this information. How reasonable is this in a democratic society? Is it, therefore, not important for the members of the public to understand what an *ex parte* application is? An *ex parte* application means, as opposed to *inter partes,* that the application can be made by the IBA to the Judge in Chambers alone, without the other party present, without the radio station present. Behind the back of the radio station, an application is made, Mr Speaker, Sir, there, and he says, maybe with untruth in the affidavit, potentially, only showing one side of the story. Come to the Judge, knock at his door: "Judge, I need, in the interest of my regulatory powers to obtain this information." Therefore, the source that is supposed to be confidential, the information that is supposed to be confidential, the content and the source need to be disclosed. And now, the Judge potentially could disclose it, simply *sur les dires du représentant de l'autorité,* IBA.

And if the journalist - *plus important encore* - refuses to comply because for him, this is one of the sacrosanct ideals, principles that he believes in, that of his profession; that confidentiality shall not, in any way be violated because it is connected to the freedom of expression, Article 10 of the European Convention or Article 12 of our Constitution, the Judge can then have an application for contempt against the journalist from a radio station. And if you are in contempt because you fail to follow what a Judge says, you end up going to jail. I have gone then another step to try to see what does not only our Constitution say but what does the European Court of Human Rights say with regard to this particular instance. I said it before and I underline for posterity that this is a law that is in blatant violation of Section 12 of our Constitution and Section 3. It does not, in any way, represent anything that is reasonable in a democratic society, because the one who introduced the Bill failed in his presentation because he did not explain to us how and why, in what manner would it be reasonable in a democratic society to come up with a law that asks us to go around Section 12 of our Constitution. But then, again, maybe hon. Toussaint is right to say 'freedom *ici*, freedom *par là'*. Who cares!

Now, I not only look at the European Convention on Human Rights but I look at the judgements from Europe. Are journalists obliged by Judicial Order to disclose their journalistic sources? The European Court of Human Rights has in numerous judgements - I can quote chapter and verse; numerous judgements, without any exception - stated the following. In the case, for instance, of Voskuil v Netherlands, Judgement of 22 February 2008, the European Courts of Human Rights found the following -

> "The Court, finding in particular that the Dutch Government's interest in knowing the identity of the applicant's source had not been sufficient to override the applicant's interest in concealing it, held that there had been a violation of Article 10 of the Convention."

Precisely, freedom of expression.

> "It further held that there had also been a violation of Article 5"

which is about the right to "liberty and security of the Convention". I can go on and on about all the judgements. When go on, Financial Times Ltd and Others V. The United Kingdom, 15 December 2009. Again, the European Court of Human Rights held that the wish of a State to try

to find out the source of information of a journalist is a violation of Article 10 of the Convention, and it goes on -

> "Emphasising in particular the chilling effect arising whenever journalists were seen to assist in the identification of anonymous sources, it found that the interests in eliminating damage through the future dissemination of confidential information and in obtaining damages for past breaches of confidence were, even if considered cumulatively, insufficient to outweigh the public interest in the protection of journalists' sources."

Public interest! This is what maybe our friends - I say it clearly, our friends - on the other side should understand that the interest of protecting the journalists' sources is a public interest. Are we not here to serve the public? We are here guided, Mr Speaker, Sir, by the Judgements of the European Court of Human Rights, and let me also underline that our Supreme Court, our last Court of Appeal, has all, in certain cases, sought to be inspired by the findings of the European Court of Human Rights in many matters of fundamental rights and breaches thereof. Our jurisprudence is rife with references to findings of the European Court of Human Rights, references and similitude between Articles of the European Convention of Human Rights and our Constitution.

Why is it today, therefore, that us, who are supposed to be, each one of us having sworn upon this Constitution, to uphold the Constitution whenever we have taken Office, forget the very intricacies and essence of that Constitution? Freedom is what I am referring to. Freedom of expression! Yes, I understand that the hon. Prime Minister feels that he has to modernise, he has to come up *en diapason* with the actual developments that have happened in the Press, but, then, whatever he has said today does not make any sense whatsoever.

Let me also say, today - and I think that members of the public must listen to us - we are here speaking *pour la posterité.* Because what is going to happen? Every single word that I speak - as I said, I read it as a lawyer - resembles the beautiful speeches that once upon the time the hon. Prime Minister used to make whenever he was in the Opposition. The importance of the freedom of the Press!

It reminds me also of what the former Prime Minister, Sir Anerood Jugnauth also tried to do with the Newspaper Periodicals Bill. Again, *une tentative de museler la presse*! But, in those

days, the people did not stand for it. In those days, there was international outcry; those were the good days! But today, what is going to happen? And this is what people have to understand. This is what going to happen; I will write the script. Every single issue that we are suggesting, we are telling the Prime Minister that this is against the Constitution. The Prime Minister does not listen to anything we have to say; neither does he believe that consultation is important because had he believed that consultation was important, he would have consulted.

In the midst of a crisis *sanitaire,* he chooses to come with this Bill. In the midst of people falling down like flies, he chooses to come with this legislation! Is this a legislation that will save lives? No! Are we not, therefore, to be concerned with only legislation that saves lives during these dire moments? The Prime Minister has shown where his priority lies. It is a pity that the Prime Minister has refused to consult. It is a pity that the system of Government we have allows any Prime Minister to sit, wait for us to finish our interventions, ignore whatever we have to say, and use parliamentary majority by basically voting the law. So, what the people have to understand is that the poison in this democracy is the system of Government. I said it outside and I say it here; too much power in the hands of one man! And I do not pinpoint this Prime Minister; I say every single Prime Minister has too much power in his hands!

Look at *le Conseil supérieur de l'audio-visuel* in France; look at Ofcom in England! Those two institutions, it is not the Prime Minister, as one man, who decides everything, as to who is to be named upon those bodies. It is the Parliament that has the choice. In France, it is *le Président de l'Assemblée nationale* who chooses at least three or four members, not *le Président de la République.* In England, you have a Committee of Selection to choose. In England, those members are accountable to Parliament. In Mauritius, they are accountable not to Parliament but to the Prime Minister. So, let us stop comparing and let us compare what can be compared. And I agree with hon. Toussaint, *koz koze ki bizin koze.* I agree, and, unfortunately…

Mr Speaker: Two minutes to conclude!

Mr Mohamed: I agree. That is quite sufficient and I thank you, Sir.

I think what we need to do right now is accept the truth. The Prime Minister will ignore. The Ministers will do exactly what the Prime Minister says. In other words, if he says jump, you will jump; if he says sit, you will sit. You will vote the law blindly, and then, even if it is unconstitutional, posterity will remember each and every single Member of Parliament who

voted and what their vote was. The day that it is turned down at the Supreme Court as being a violation of Sections 3 and 12, then, it will be too late because, maybe, we would have destroyed a radio station. We would have soiled the importance of freedom of expression. Too late! And all this because we are here only to pretend we are a democracy! This Parliament is not only for us to just oppose, but whatever we are proposing here, hear it well. Stop violating the Constitution; set up a Committee; discuss about it. It is about fundamental rights! But I know that this is not the objective of Government. The objective of Government is one clear for one and all to see. So, when I read this piece of legislation, I say it again, it is an *ad hominem* legislation that has clear unconstitutional undertones.

This is my contribution, Mr Speaker, Sir.

Mr Speaker: Hon. Bhagwan, you have twenty minutes!

(7.26 p.m.)

Mr R. Bhagwan (First Member for Beau Bassin & Petite Rivière): Thank you. Mr Speaker, Sir. As rightly pointed out by my young and very good friend, hon. Reza Uteem, it is a very sad day and a very sad Friday. We are meeting this afternoon and we are being asked to vote a tailor-made Bill to get rid of one radio which is doing an excellent job, *pou les ti-dimunns* especially. We are being asked to vote for the setting up of a new monster, a new IBA.

Nous sommes en train de débattre sur un projet de loi qui est ‘inique, toxique et cynique’, alors que la situation sanitaire dans le pays est critique, que des dizaines de familles sont endeuillées chaque jour, que des centaines de milliers de nos compatriotes se demandent si leurs proches admis dans les hôpitaux, à l'abri des regards, sont en train de recevoir les traitements appropriés, si la qualité des médicaments et de l'oxygène utilisés sont conformes, et si le personnel est en mesure d'honorer leur *duty of care.*

Les cinq principes du *duty of care*, M. le président, sont : la sécurité, la dignité, l'indépendance, la confidentialité et la communication. Le personnel de santé, tous grades confondus, ces *front liners*, gardent ces cinq principes à l'esprit lorsqu'ils accomplissent leurs devoirs envers les patients dont ils s'occupent. Mais, M. le président, en sont-ils capables en ce moment, numériquement, physiquement et mentalement? C'est cela l'urgence, M. le président, mais le gouvernement trouve que l'urgence est ailleurs et la population en jugera.

Nous devrions être en train cet après-midi de discuter de la pandémie, du *COVID Relief Fund*, des amendements à être apportés à la *Pension Act* pour venir en aide aux employés emportés par la COVID, du soutien aux PME affectés par la morosité économique.

Mr Speaker: Why don't you come back to the Bill?

Mr Bhagwan: I am coming now.

Mr Speaker: On the amendment?

Mr Bhagwan: Je suis en train de dire… *I am coming*…

(Interruptions)

Mr Speaker: I will listen carefully to what you say.

Mr Bhagwan: I am coming.

(Interruptions)

Mr Speaker: Only one!

Mr Bhagwan: I am starting. I am coming.

Mr Speaker: Only one! Only one!

(Interruptions)

You do not have the floor!

Mr Bhagwan: M. le président, prenons le timing de ce projet de loi, pourquoi discuter de ce projet de loi cet après-midi ? C'est indécent ! La présentation de ce projet de loi, c'est indécent ! C'est donc très révélateur de l'état d'esprit du chef du gouvernement et de son équipe. On est donc en mode *Emergency Procedure* au sein de ce gouvernement. Il y a panique à bord, M. le président ! Quoi qu'ils disent ! *Fire alarm inn deklanse !* Les pompiers de l'*IBA*, de ce *monster* que je suis en train de dire, sont appelés à la rescousse. En dépit de leurs énormes moyens de communications, avec une *MBC* et une *Mauritius Telecom* réduits en paillasson de *lakwizinn*, qui, très consciente et préoccupée même je le dis, par le déficit de l'image du gouvernement, qui, chaque jour, est train de sombrer, et surtout dans le paysage de l'audiovisuel privé. Déjà, M. le président, en étendant sa mainmise lors du dernier exercice d'allocation de nouvelles licences, la stratégie de ce gouvernement était évidente.

Il y a là, avec ce projet de loi, confirmation que cela n'a pas suffi et aujourd'hui le gouvernement se voit contraint de s'acharner contre les radios privées en ayant qu'autre fois une radio en particulier dans le viseur du *Sniper IBA*. Top FM, je ne vais pas parler du Wazaa FM, leur outil de propagande .

Si toute la population doit actuellement porter des masques, ceux du gouvernement sont tombés et le gouvernement veut que les radios mais pas que les radios mais la population également, doivent outre des masques portés mais aussi des muselières certifiées *IBA*.

Les radios privées sont des courroies de transmission des préoccupations de la population et sont en sorte le miroir de la société, un miroir magique qui comme dans Blanche Neige et les Sept Nains, un miroir magique qui appartient à l'univers du merveilleux. Il est tour à tour doué de paroles, capables de révéler par images des vérités invisibles ou les souhaits les plus profonds.

À entendre, M. le président, les auditeurs, les samedis ou dimanches matin, cela fait mal à certains membres du gouvernement, au Premier ministre, aux ministres. Il y a des défaillances dans tout leur système.

Et la voix de ce miroir magique, M. le président, ce gouvernement veut l'éteindre. Mais ce qu'ils ne réalisent pas cependant, je dois saluer ces milliers… aujourd'hui nous avons le *live broadcasting*, ces milliers des *ti dimoun*, des gens toutes classes confondues, région rurale, région urbaine qui vont vers les radios pour régler leurs problèmes du quotidien, que ce soit un problème de l'eau, le problème de logement, le problème de transport ; les bus remplis le matin de 60 à 75 personnes, le problème de l'environnement, le problème de *dominer* aussi, le problème concernant des animaux qui sont maltraités, mais ces gens toutes classes confondues vont vers les radios que ce soit le matin dans le Top FM *Koze do mo pep*, que ce soit samedi dans Radio One avec mon ami Finlay Salesse et Annabelle tous les jours, que ce soit au Radio Plus, que ce soit tous les dimanches *Koze do mo pep* dans Top FM. Et cela fait mal, M. le président.

En quelque sorte le gouvernement veut que le miroir magique qui est l'opinion publique se taise ou chante leurs louanges.

Les critiques, les opinions divergentes et les témoignages de la population sur les radios privées provoquent des intoxications alimentaires dans *lakwizinn.*

En s'attaquant à la liberté des radios, le gouvernement est en train de *bark at the wrong tree*, en ciblant le messager.

Hyper allergique aux critiques, le gouvernement tente de dompter les radios et la toile. La sœur jumelle de cette loi en gestation est déjà née la semaine dernière, la *Cybercrime and Cybersecurity Bill*.

Les Facebookers, les WhatsAppers et les internautes en général sont dorénavant en liberté surveillée. Les radios privées c'est une forme d'expression du droit d'informer et de s'informer.

Le droit à l'information est conçu comme « un droit universel, inviolable et inaltérable de droit de l'homme moderne. Le droit à l'information est le droit fondamental de l'individu et de la collectivité de savoir et de faire savoir ce qui se passe et ce que l'on a l'intérêt de connaître.

Le gouvernement reproche à certaines radios de diffuser de fausses nouvelles ou des versions erronées des faits. Mais le vrai antidote, M. le président, aux *fake news* est une *Freedom of Information Act.* Pourquoi le gouvernement ne vient pas avec la *Freedom of Information Act* archi déclarée dans leur programme et ici au Parlement, qui garantirait l'accès aux informations et aux documents dans l'intérêt public.

Il appartient donc à l'État et aux administrations de veiller au respect du droit en matière d'accès aux documents publics. Le droit d'informer et le droit à l'information sont indissociables. Ils concernent tous les aspects de la vie économique, sociale et politique. Ce sont deux droits qui fondent ensemble la liberté de la presse ; c'est à leur respect de la liberté de la presse doit être mesurée. Ces deux droits ne sont pas seulement compromis quand le pouvoir politique exerce directement sa tutelle sur les médias.

M. le président, trop souvent les dénonciateurs, les auteurs des témoignages sont persécutés. Et des professionnels hésitent à donner leurs opinions en raison des représailles. Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre sans considération de frontières, les informations et les idées par quelque moyen d'expression.

Toute personne a droit à la liberté d'expression ; ce droit comprend la liberté de rechercher, de recevoir et de répandre des informations et des idées de toute espèce, sans

considération de frontières, sous une forme orale, écrite, imprimée ou artistique ou pas tout autre moyen de son choix.

Le gouvernement prend de gros risques en faisant fi des principes et pratiques établies et se permet de tailler une potentielle sanction contre une cible particulière, le Top FM.

Ayant connu pendant une période le monde de la presse en tant que directeur du journal 'Le Militant', je sais combien la tâche des journalistes est ardue, ingrate parfois, les longues heures de travail, particulièrement à la radio.

Laissez-moi dire aux journalistes, animateurs et aux dirigeants de Top FM que si un journaliste n'est pas détesté, c'est qu'il ne fait pas bien son travail.

À la direction et aux employés de cette station, je réitère au nom de mes amis notre soutien. Je sais que de nombreux pères et mères de famille y gagnent honnêtement leurs vies. Je sais aussi que l'amendement proposé va fragiliser financièrement la radio et, est totalement dépourvue de *business sense*.

Mes collègues, M. le président, ont amplement démontré la mauvaise foi du gouvernement et l'iniquité du processus. Comment ne pas s'inquiéter quand ce seront des nominés politiques, nous le savons, moi-même j'ai posé pas mal de questions parlementaires, je ne vais pas donner les noms des présidents des associations auto-culturelles, des agents politiques qui sont nommés à la tête de l'*IBA*, *ICTA*. Moi-même j'ai dénoncé pas mal d'individus nommés au sein de l'*ICTA* que le gouvernement a dû retirer comme membre.

M. le président, j'ai dit au début de mon intervention que tout le monde, ici présent, sait de quoi on parle et pourquoi ce projet-là est inique, toxique et cynique.

Je refuse de croire qu'il n'y ait personne de l'autre côté de la Chambre qui ne sent interpellé pas cette dérive. Certains qui suivaient mon regard, sont silencieux, un en particulier.

Ce faisant, le Premier ministre piétine les convictions et les principes de ses ministres et ses députés. Dans le couloir, ils nous disent ce qu'ils pensent. Mais au sein du bâtiment du Trésor, *silence.*

Une humiliation honteuse pour ces pseudos hommes de principes. Celui qui voulait faire de la politique autrement, où est-il ? Il n'est même pas sur la liste des orateurs.

Le drame, M. le président, c'est que pour un maroquin, une limousine, ces pseudos démocrates sont prêts à tout et que la fin justifie les moyens.

M. le président, il y a une autre fin qu'il faudra qu'ils prévoient, une mise à la décharge par les urnes.

(Interruptions)

Mr Bhagwan: *Wi...*

Mr Speaker: Quiet!

Mr Bhagwan: …*mo lamem mwa*.

Mr Speaker: Quiet!

Mr Bhagwan: …*twa to ti* …

Mr Speaker: Quiet! Quiet!

Mr Bhagwan: …*tonn retourne*.

Mr Speaker: Quiet! Quiet!

Mr Bhagwan: *Si pa ti ena travailliste, to pa ti pou elu dan nimero 8*.

Mr Speaker: Quiet!

Mr Bhagwan: *Si pa ti ena travailliste, to pa ti pou elu dan nimero 8*.

Mr Speaker: Quiet! Now, order on both sides of the House!

(Interruptions)

Mr Speaker: Order!

(Interruptions)

Mr Speaker: Order please! I'll suspend the Sitting then. If there is no order, I'll suspend the Sitting.

(Interruptions)

Order!

Mr Bhagwan: *Laverite fermal*. M. le président…

M. le président, ce que je dis au gouvernement, il y a la colère au niveau de la population, une grande colère. Gare au retour de la manivelle, le réveil sera bien, bien brutal. Aujourd'hui vous faites de l'arrogance avec votre majorité parlementaire, avec la MBC, mais *la roue tourner sa* et bien vite, M. le président. Bien vite, bien, bien vite, vous serez balayés d'ici et nous allons, nous au sein de l'opposition…

(Interruptions)

Vous allez être balayés! *Pa riye ! Pa riye !*

(Interruptions)

Mr Speaker: Don't engage in a conversation! Hon. Members! No conversation! Address the Chair, please! Address the Chair!

Mr Bhagwan: I am losing my time, Mr Speaker, Sir.

Mr Speaker: Yes, address the Chair!

Mr Bhagwan: I am addressing you, yes.

Mr Speaker: You have the floor!

You forgot you have the floor?

(Interruptions)

Mr Bhagwan: I know.

(Interruptions)

Mr Speaker: It does not matter!

(Interruptions)

Mr Bhagwan: *No, I am not losing my time*. M. le président, ce que je dis, je vous dis gare au retour de la manivelle.

M. le président, il y a une grande colère au niveau de la population. Le gouvernement, le Premier ministre est en train de faire la sourde oreille. Ce n'est pas la *NSS*, ce n'est pas la *MBC*, ce n'est pas vos agents politiques, ce n'est pas vos bénis oui, oui, M. le président, c'est la population qui va agir et le temps va venir où la population va se prononcer et va balayer ce gouvernement.

Merci, M. le président!

Mr Speaker: Hon. Mrs Koonjoo-Shah!

(7.42 p.m.)

The Minister of Gender Equality and Family Welfare (Mrs K. Koonjoo-Shah): Thank you, Mr Speaker, Sir. I will start obviously by congratulating the hon. Prime Minister for bringing this Bill to the House.

Mr Speaker, Sir, with your permission, I shall begin my intervention by making an analogy for illustration purposes. An analogy to issues faced by Facebook in July 2019. In that year, Facebook, the social media giant, now known as Meta, was subjected to fines of over USD5 billion for privacy violations by the US Federal Trade Commission. Yet Facebook has its own community standards. Now, if anybody posts contents that go against the Facebook Community Standards, Facebook will remove and strike off the account depending on the severity of the content, the context in which it was shared and when it was posted.

What the example tells us, Mr Speaker, Sir, is that even if we are a private supplier of a service or a consumer and despite the fact that we have standards or communities of good practices, we are bound to have outliers, just as it happened to Facebook or users of the social media platform. And when the outliers are sanctioned for non-adherence to codes of practice or standards set, should they just then shout that their rights to freedom of expression are being flouted? I think, Mr Speaker, Sir, we should all understand that we are regulated by communities of good practices, standards or by law, and we may be sanctioned once we trespass the law.

Mr Speaker, Sir, based on accumulated learning from experience, why should we not introduce or amend a piece of legislation in a democracy, if this amendment is to bring about a step forward for the betterment of our society? Mr Speaker, Sir, if one listens to the Leader of the Opposition or some of the Members of the Opposition who spoke before me, in fact, one is going to be convinced that this Bill is a punishment extended to one particular radio. Well, I will leave that interpretation to the Members who are purporting that. Listening to the orator who spoke before me, I am almost inclined to believe was listening to the spokesperson of Top FM rather than elected Members of the Opposition. Hon. Shakeel Mohamed made so many references to late Nelson Mandela. Why is the Opposition so aggrieved? There has been no sanction against

Top FM. They are aggrieved as if their own political life blood supply is being cut off by this Bill, This is not the case; rest assured guys!

Mr Speaker, Sir, this current amendment, as in previous weeks when other pieces of legislation were introduced in this House, there has been only one common argument by Members of the Opposition, that our constitutional rights are being defied. Yet, I would like to remind them that last year when the Child Protection (Sex Offender Register) Bill was introduced in this very Parliament everybody voted for it unanimously. Therefore, everybody agrees that an offender, anybody who offends the rights of somebody should be sanctioned. We all have a respect for human rights but we all understand that there is a limit that nobody should cross. So, why such an apprehension about this Bill, Mr Speaker, Sir? Why with this amendment, our hon. Members on the other side are hyperventilating, claiming that our constitutional rights will no longer be upheld. A piece of legislation, allow me to remind the hon. Members on the other side, Mr Speaker, Sir, a piece of legislation applies to everyone, be it on this side of the House or on the other side of the House.

In 2004, hon. Paul Bérenger himself claimed, after calling for both the written and spoken Press's responsibility in divulging the right information while maintaining social cohesion, that sanction should be imposed for non-adherence.

In 2012, the then Prime Minister, Navinchandra Ramgoolam, defended the decision of the IBA to prevent the public to give their views on the regional elections, and further stated that this was current practice in a democracy. He even accused the Opposition to make use of political debates to attack the Government then. He was even quoted to have declared the following and I quote –

> "Je sais comment ça se passe. Vous incitez les gens à appeler lors des émissions de radio pour critiquer le gouvernement. Vous faites du *canvassing*."

So, Mr Speaker, Sir, what comes out of this *plus de sanctions* from hon. Bérenger and *incitations à critiquer le gouvernement* from former Prime Minister Ramgoolam? And when I listen to the interventions by Members on the other side of the House, we now observe *un retournement de veste* as we call it. Now, I get the impression, as always, and with the same arguments of their rights being flouted. It is obvious, Mr Speaker, Sir, that these hon. Members of the Opposition are clutching at any piece of straw that comes their way for their political survival. I earlier on

heard hon. Uteem finishing his intervention by saying *lev pake aller*. We shall, we shall see all in good times who shall *lev pake, peut être dispaite tou sa kout la!*

Mr Speaker, Sir, we need improved regulations, we need sanctions for those who trespass, we need more openness, we need sophistication in our audio-visual landscape but within the parameters of our constitutional rights, that of every citizen of this country. And allow me to reassure the Leader of the Opposition who mentioned earlier on something along the lines of the Mauritius Bankers' Association. The latter affirmed that the renewal of license for one year will have minimal impact on loan request because there are so many other very important criteria that are taken into consideration.

Mr Speaker, Sir, referring about the MBC earlier on or what some of the Members are trying to unsuccessfully imply, before 2000, the Mauritius Broadcasting Corporation (MBC) was in a monopoly situation. In fact, the MBC Act of 1982 provided for broadcasting by radio and television, but the IBA Act of 2000 provides for the liberalisation of the airwaves in a regulated manner.

The broadening, Mr Speaker, Sir, of private broadcast space was made a reality by the Government led by Sir Anerood Jugnauth. And to be purporting that hon. Pravind Kumar Jugnauth, today, is trying to collapse that bridge, is just sheer absurdity.

Mr Speaker, Sir, I listened to hon. Uteem during the debates, and I should put this on record, he is incorrect when he claims that the IBA does not sanction the MBC. In fact, on two occasions, in the case of the Church against the MBC, and as I recall the case of Rashid Imrith against the MBC, the IBA won its case and the right of reply against the MBC. Hon. Uteem claims that the IBA has never sanctioned. He should be doing a little bit more homework before he comes and spouts drivel in this House, Mr Speaker, Sir.

After 21 years, things have not remained static. We live in an era where things are evolving very rapidly. One should remember that in the year 2000, there were only three private operators in the sector and now the number has increased. Radio operators very rightly so make maximum use of information technology to reach out to their audience with array of sophisticated digital means, we have online broadcast, via Website, Podcast, Facebook, YouTube, so many interactive platforms, and this demonstrates a more advanced and rapid and a simultaneous system of communication. Mr Speaker, Sir, this is positive development as it gives

us the opportunities to exert our rights to expression. Where is the right of expression being flouted?

However, with the actual pace of technological development, if we leave that unregulated it may give way to undesirable use, and that may infringe on our basic rights to privacy as well. That is why a law which was voted to regulate the conduct of licensees in 2000 was good, at that time, but now, 21 years later, in 2021, this year, this law requires to be amended and this is exactly what this Government is doing, what the Prime Minister is doing by bringing the IBA Amendment Bill to the House. And to imply that there is a hidden agenda - I mean, the Members of the Opposition find a hidden agenda everywhere. So, to imply that there is a hidden agenda behind this Bill is just bordering ridicule. This is not this Government's style.

Mr Speaker, Sir, the Bill before the House aims to provide for a better legal framework in the view of regulating licensees of the Authority. And as said earlier on by my hon. colleague, *l'honorable* Toussaint, the hon. Prime Minister, in a very clear manner in the Second Reading, explained the rationale behind this Bill - a rationale which clearly has escaped the attention of a very blinkered Opposition, I must say.

Mr Speaker, Sir, we all agree that our radios play a crucial role in the lives of our citizens, be it here, be it abroad. Radios entertain people through their range of different programmes. It has been so useful in times of emergency. Many of us here as soon as we wake up, actually, the first thing that we do in the morning is to turn on the radio. It is a ritual. It is almost an inherent point of our daily life now. And I must admit, Mr Speaker, Sir, some of these radio channels are actually an absolute pleasure to listen to. They have good standards and they are operating as they should. And this reminds me to put on record, Mr Speaker, Sir, that we are not here to be discussing one particular radio. The law is applicable across the board, not just to one entity.

Mr Speaker, Sir, these amendments are here to ensure that our service providers are operating on the same level playing field. We have fundamental rights which are guaranteed in our Constitution. And I am not of the opinion that the amendments being proposed to the IBA Act are against our Constitution.

Mr Speaker, Sir, everybody is free to have their opinions, to receive and impart ideas. This is what we expect from our radios, the media, from our citizens. However, in subsection 12

(b) of our Constitution, we also have a duty to protect the reputation, to protect the rights and the freedom of other people. Mr Speaker, Sir, how many politicians, here, on this side and on the other side of the House, have ever been subject to fake, defamatory, demeaning attacks in their political career? Therefore, these amendments, if you look at it from another angle, are being proposed in order to provide leverage and are going to ensure that we benefit from true and impartial news, information and debates are going to be impartial. Have we ever given a thought about the irreparable consequences that misreporting can have on somebody's life, on their family or even on their businesses? We have witnessed so many cases in the past. So, therefore, I put the question to the House, as a Government, are we not bound to protect everyone's reputation, everybody's right and freedom? Is it not the duty of every audio-visual licensee to verify the validity of their information sources before circulating or airing them so that no one is unfairly prejudice based on unfounded allegations? I have said this, Mr Speaker, Sir, repeatedly during my interventions, with rights come responsibility and this is exactly what this Bill is trying to do.

Mr Speaker, Sir, it is good that the Authority is being empowered to impose deterring penalties. Mr Speaker, Sir, hon. Uteem earlier on, and he has done so in many instances before, always portrays the top end of a fine that can be up to Rs500,000. He will make the House believe and the population believe that the fine of Rs500,000 is applicable everywhere across the board for any penalties. That is not correct. The Authority is being empowered to impose deterring penalty; the purpose is to deter and it is based on the incidence of repeated irregularities and the gravity of those offences. The Authority is not being empowered to make things become difficult, that is far from it. It is being empowered so as to promote best interests, best practices, more strict adherence to the codes of ethics, advertising and marketing.

Mr Speaker, Sir, people will still be able to freely intervene on radios and it is of bad faith from the Opposition to make them believe otherwise. If one is on the right track, is following the guidelines, is using the broadcast delay appropriately, if everything is being done not to broadcast fake news, then, one has nothing to worry about. Even if it is a minor error that has happened, but there is a valid justification, operators have nothing to fear. When the Authority is of the view that there has been an infringement, Clause 29A provides that the other party will be able to make a written representation, he can ask for a review to the Independent Broadcasting Panel. If he is still dissatisfied, he can rely on Clause 30L and may apply to the Supreme Court

for a Judicial Review of the decision. Therefore, Mr Speaker, Sir, an aggrieved party will have different avenues in such a situation.

Mr Speaker, Sir, in the Bill, if we consider the case of a Chairperson, which has been brought up by so many operators from the Opposition, the appointment will be that of a qualified lawyer with a minimum of five years of experience. Barristers in their profession need to be independent and the Chairperson will therefore primarily look at the best interest of the institution in a fair, independent and impartial manner. And I am very certain that those barristers on the other side of the House will not be questioning their own ethics of their own profession.

To conclude, Mr Speaker, Sir, the Independent Broadcasting Authority (Amendment) Bill is here, and let us not make mistake about that, this Bill is here to adequately regulate our licensees, provide an appropriate legal framework, so that we can get a better service from our licensees and at the same time ensuring that the rights of our citizens are better protected.

I thank you very much for your attention, Mr Speaker, Sir.

Mr Speaker: Hon. Assirvaden, you have 20 minutes!

(8.00 p.m.)

Mr P. Assirvaden (Second Member for La Caverne & Phoenix): Merci, M. le président.

M. le président, nous sommes en pleine crise de la pandémie. Les Mauriciens, en général, souffrent énormément et pas plus tard que ce matin, le ministre de la Santé a annoncé 122 décès pour cette semaine. En tant que député de l'Opposition, M. le président, je me pose la question : quelle est la motivation derrière la présentation de ces amendements à l'*Independent Broadcasting Authority*? Quelle est la motivation du gouvernement, du Premier ministre, alors qu'il n'a pas eu des consultations comme mentionné par les responsables des radios et aujourd'hui, à l'heure que je vous parle, beaucoup de questions, beaucoup de doutes, beaucoup de méfiance et beaucoup d'appréhensions concernant ces amendements à l'*Independent Broadcasting Authority.*

M. le président, je traiterai de 4 sections de ce projet de loi. Les parlementaires avocats qui m'ont précédé, ont amplement entré dans les détails concernant le côté légal de ce projet de loi. La Section 30 à la page 9 de ce projet de loi, M. le président, l'*Independent Broadcasting*

Review Panel, présenté par le Premier ministre qui remplacera le *Complaint Commitee*, 3 membres de ce comité seront nommés par le Premier ministre. On est en droit M. le président, de se poser des questions concernant l'indépendance réelle de ce *Review Panel* car la nomination par le Premier ministre, alors que le *Complaints Commitee* qui était là auparavant, la nomination se faisait par l'*IBA*.

Et aujourd'hui, ce *Review Panel*, dont aura à sa tête, un nominé politique, on se pose la question de la crédibilité de ce *Review Panel* car nous savons très bien comment ce gouvernement, de par son *track record*, en ce qui concerne l'*ESC*, la nomination *on probation* du Commissaire de Police, des postes constitutionnelles dont je vous parle M. le président. Le chef du *CID on contract*, pour citer quelques exemples. Et aujourd'hui, ce *Panel* qui sera un tribunal déguisé, pourra, selon les termes de ce projet de loi, *summon*, infliger des *contempts of court* alors que le *Chairman* sera redevable comme l'a si bien dit mon collègue, Shakeel Mohamed, au Premier ministre.

Pourquoi ne pas jouer la carte de la transparence comme cela se fait dans d'autres pays où la nomination se fait par la PSC? Il y a des institutions à Maurice qui nomme les juges, les magistrats, les *Chairmen* de certaines institutions. Pourquoi, que le Premier ministre qui est l'Éxécutif, et c'est l'Éxécutif d'une façon déguisée, qui aura le contrôle sur ces radios?

M. le président, le Section 18A, à la page 4, une Section encore plus dangereuse, M. le président. Cette section parle que les journalistes en fonction, seront sujet à relever leurs sources d'informations, les informateurs, alors que nous savons très bien que les journalistes vivent à l'info, à travers leurs sources et cette Section malicieuse, instruite dans ce projet de loi, viennent mettre les journalistes en danger, M. le président, et là quand j'ai écouté l'honorable Toussaint dire que la radio doit être dans son rôle primaire, d'informer. Oui, le rôle primaire de la radio est d'informer mais le rôle des radios aussi est de dénoncer ce qui va mal dans le pays. Pas parce que les émissions de *Tempo La So*, polémiques, enquêtes en direct, critiques, c'est vrai le gouvernement, les ministres, le Premier ministre, que les radios déviées de leur rôle, c'est aussi ce rôle - et aujourd'hui, où est le *Freedom of Information Act*, promis par ce gouvernement depuis 2014?

Sans ce *Freedom of Information Act*, les radios sont obligées de vivre à travers leurs informateurs. Donc, aujourd'hui avec cette Section, ce que je voulais vous faire comprendre, M.

le président, c'est que l'Éxécutif contrôlera aussi les radios en ce qui concerne les informations, M. le président. La protection des sources d'informations des journalistes est une règle de droit dans plusieurs pays, pas simplement à l'île Maurice, que ce soit en France, que ce soit en Australie, dans plusieurs pays; en Angleterre, qui empêche les autorités publiques, quelques fois les tribunaux, d'obliger les journalistes à relever leurs sources d'informations et ici, en 2021, alors que nous savons très bien que les journalistes vivent de cette source, ici, nous amenons un projet de loi pour pousser les journalistes à relever le secret professionnel, qui est aussi une règle dans ce métier, qui interdit à certaines professions de ne pas relever leurs sources.

Donc, M. le président, ce projet de loi, présenté par le Premier ministre, est un projet de loi inquiétant. Mais comme souligner par mon collègue, Shakeel Mohamed, en regardant la liste d'orateurs, vous remarquerez M. le président, que des ministres de ce gouvernement, l'honorable Ganoo, juriste, n'est pas de la liste des orateurs. L'honorable Obeegadoo,…

The Prime Minister: Mr Speaker, Sir, on a point of order. The hon. Member maybe is not aware. Hon. Ganoo is on mission abroad. So, he cannot be, even if he had wanted to, be on the list of the orators.

Mr Assirvaden: Mais, M. le président, c'est mon droit de dire qu'il n'est pas sur la liste.

(Interruptions)

Mr Speaker: Please, allow me to give my ruling. There was a Point of Order. Do not mislead the House!

Mr Assirvaden: I am not misleading. L'honorable Obeegadoo n'est pas sur la liste.

(Interruptions)

Mr Speaker: This is something else.

Mr Assirvaden: L'honorable Obeegadoo n'est pas sur la liste ; un des porte-paroles du gouvernement. L'honorable Ramano qui est présent, n'est pas sur la liste. L'honorable Collendavelloo n'est pas sur la liste, mais permettez-moi, M. le président,..

(Interruptions)

An hon. Member: *Nuckchedy ase pou twa!*

(Interruptions)

Mr Assirvaden: L'honorable Nuckcheddy veut montrer qu'il est là. Okay.

M. le président, permettez-moi, j'ai souvent croisé le fer avec l'honorable Collendavelloo, qui est un juriste que je respecte et permettez-moi, M. le président, puisque je ne vois sur la liste des orateurs, l'honorable Collendavelloo, qui est un Membre de cette alliance. Permettez-moi d'emmener l'honorable Collendavelloo dans le débat.

Le 10 avril 1984, lors de la présentation d'un projet de loi, je vous parle de 37 ans de cela, M. le président. L'honorable Collendavelloo disait ceci concernant un projet de loi, le *Newspapers and Periodicals (Amendment) Bill*, le 10 avril 1984 –

> "*What is said is that certain Members of the Government's (…),*" on parle du gouvernement MSM de ce temps-là, "*side has attempted to rationalise on democracy. This is what Hitler did in 1933.*"

Il continue. Il était au MMM, oui c'est vrai, –

> "*This is how democratic progress fails into significance."*

Pardonnez mon anglais –

> "*We have a Constitution which guarantees us in Section 3 and in Section 12.*"

Vous allez voir les similitudes entre ce qui se passe en 2021, 37 ans après, –

> "*That the basic right which is to express oneself, inter alia, through the medium of the Press. Such rights are fundamental. They bear no restrictions, save reasonable one and the whole issue. Let us not forget this (…)*"

L'honorable Collendavelloo continue -

> "*this will be whether this restriction which this Government is proposing today is or is not reasonable."*

On est en 2021 *revisited!* 37 ans après ! Je suis étonné, surpris que l'honorable membre ne dit rien !

M. le président, la section 38 est amendée. Quand la section 38 est amendée, M. le président, à mon point de vue c'est pour asphyxier financièrement les radios et en particulier TOP FM. Il faut le dire. Les membres du gouvernement doivent avoir le courage de dire, oui,

nous ne sommes pas d'accord à ce que radio TOP FM dit tous les jours, nous ne sommes pas d'accord avec les émissions, nous visons directement par ce projet de loi.

La licence de la radio, il y a quelques temps de cela, était révisée, M. le président, sortant de R 400,000 à R 800,000. Et cette fois-ci pire encore, les trois radios que nous avons, TOP FM, Radio One et Radio Plus ont passé aussi par les épreuves du Covid. Après avoir augmenté la licence de R 800,000, maintenant, ils changent les règles du jeu. Au lieu de trois ans la licence, c'est une année la licence ! J'ai vérifié, j'ai demandé et on me dit que chaque année les radios seront obligées de payer la licence à R 800,000 ! Ce n'est pas fini. Pour étouffer financièrement les radios et surtout TOP FM, déjà affectée par le Covid, il y aura un *administrative penalty* de R 500,000 selon le bon vouloir de celui qui sera nommé à la tête de l'IBA, un nominé politique !

Donc, pour vous dire qu'aujourd'hui ce projet de loi, M. le président, est un projet de loi qui nous met à la fois en colère, triste et aussi qui rend les gens inquiets. Car le *track record* de ce gouvernement en ce qui concerne les institutions, le *track record* du Premier ministre lui-même, en ce qui concerne les projets de loi que son gouvernement a amené dans cette auguste Assemblée concernant la liberté de tout un chacun. Nous aussi nous avons été critiqués avant 2014. Qu'est-ce que les radios, que ce soit Radio Plus, Radio One ou TOP FM n'ont pas dit sur le Parti Travailliste et son leader ? Comment le Dr. Ramgoolam a été traité à la radio pendant des années ? Mais on les a permis de dire, de dénoncer. Combien d'émissions de polémique, d'émissions de notre ami, l'honorable Gilbert Bablee, *koz koze ki bizin koze,* avec les Nazirs et autres, chaque samedi, chaque dimanche, dénonçant le régime travailliste, critiquant le Dr. Ramgoolam ! Et aujourd'hui, sur les réseaux sociaux, à peine dans les émissions à la radio, aujourd'hui ce gouvernement devient frileux à mon point de vue.

Donc, la radio TOP FM est visée dans ce projet de loi. Nous allons le savoir très vite. Dans quelques jours la licence de la radio arrivera à terme. Nous allons le savoir très vite si ce gouvernement a l'intention de sanctionner la direction de TOP FM. Si ce gouvernement a l'intention - nous allons savoir – d'éliminer du paysage audiovisuel la radio TOP FM.

Alors, le Premier ministre, dans son introduction, parle de la MBC. Nous savons très bien, l'honorable Uteem la dit. J'ai été faire des plaintes auprès de la Commission électorale concernant la MBC en 2019. Qu'en est-il de la MBC ? Ils ont continué de plus belle ! J'ai été au CID central faire une déposition contre la MBC. Qu'en est-il des dépositions contre la MBC ? Ils

continuent de plus belle. Ce sont des nominés politiques qui dirigent nos institutions aujourd'hui. Donc, ce projet de loi, M. le président, vise surtout à contrôler, à verrouiller.

Vous savez, M. le président, quelqu'un m'a fait une réflexion. Si vous voulez savoir si une personne ou quelqu'un est religieux, ne lui demandez pas, observez-le. Et moi, je me pose la question, si je veux savoir si ce régime a une tendance dictatoriale en devenir, observez-le avec les projets de loi qui sont dans cette hémicycle. Observez ses actions, observez les discours des ministres qui défendent ce projet de loi. Ne leur demandez pas. Regardez leurs actions ! Puis, notez, énumérez. Tout ce qu'ils font est typique d'un régime dictatorial en devenir.

Merci, M. le président.

Mr Speaker: Hon. Members, we break for one hour!

At 8.19 p.m., the Sitting was suspended.

On resuming at 9.29 p.m. with Mr Speaker in the chair.

Mr Speaker: Please remain seated!

Hon. Mrs Navarre-Marie, you have twenty minutes!

Mrs Navarre-Marie: Yes, I know.

Mr Speaker: Thank you very much for your comprehension.

(9.28 p.m.)

Mrs A. Navarre-Marie (Fourth Member for GRNW & Port Louis West): Merci, M. le président. Après les amendements apportés à l'*ICTA* en 2018, le *Cybersecurity and Cybercrime Act* voté le vendredi 19 novembre, voici devant cette Chambre l'*Independent Broadcasting Authority (Amendment) Bill*, présenté en première lecture mardi dernier et faisant l'objet de débats aujourd'hui, soit trois jours seulement après la première lecture.

Ces amendements, M. le président, visent à renforcer l'arsenal légal de l'*IBA* pour sanctionner les radios privées. Ce projet de loi démontre une fois de plus la dérive totalitaire de ce gouvernement. En effet, des amendements ont été apportés à l'*ICTA* en 2018 où le gouvernement imposait de lourdes peines pour les messages en ligne qui *inconvenience* le lecteur ou le destinataire. Et nous savons que ces amendements ont été à leur tour utilisés pour déposer des plaintes contre des journalistes et des médias en 2019.

Cette fois encore, les amendements à l'IBA est un nouvel outil visant à contrôler l'information. Serait-ce une coïncidence? Dans tous les cas, cela démontre la tendance vers une dérive totalitaire.

Ces amendements proposés à l'*IBA* sont abusifs et dangereux et nous rappellent 1984, une année sombre de notre histoire - *le Newspapers and Periodicals (Amendment) Bill* présenté par le gouvernement MSM et qui exigeait une garantie de R 250,000 des journaux et magazines avant d'être autorisés à publier. 44 journalistes avaient été arrêtés, y compris le regretté Père Henri Souchon, pour avoir protesté contre le projet de loi.

Le premier point du projet devant la Chambre aujourd'hui concerne la protection des sources. La protection des sources, M. le président, est l'une des conditions fondamentales de la liberté de la presse. Sans cette protection, les sources peuvent être dissuadées d'aider la presse à informer le public sur les sujets d'intérêt national. La protection des sources est le fondement même de la profession journalistique et de la presse. Et c'est cela qui est touchée à la section 18(A).

Cette section 18 (A) stipule que –

> « *The Director may make an application to the Judge in Chambers for an Order directing that person to the evidence required*. »

Cette section vise à enlever le droit à la confidentialité et est contraire à l'Article 10 de la Convention Européenne des Droits Humains.

Dans l'affaire Jecker contre la Suisse en octobre 2020, la Cour Européenne statua qu'il y a eu infraction à l'Article 10 de la Convention à l'égard de Jecker. Cette dernière, une journaliste a fait valoir qu'elle avait été contrainte de témoigner dans le cadre d'une enquête criminelle sur le trafic de drogue et que les autorités l'avaient obligée à divulguer ses sources à la suite de la publication d'un article de journal sur un trafiquant de drogues douces qui lui avait fourni des informations. Elle s'est plainte d'une ingérence injustifiée dans l'exercice de son droit en tant que journaliste de ne pas divulguer ses sources.

Les amendements proposés, ici, dans cette Chambre vont contraindre un media à révéler ses sources. Qui va vouloir témoigner désormais? C'est vouloir instiguer la peur chez les fonctionnaires ou autre citoyen de ce pays.

Deuxième point: *Le Review Panel*

La nomination du *Board* est un vrai scandale. Les membres seront nommés par le Premier ministre. Et nul ne peut nier que ce sera '*job for the boys or girls'*. Est-ce qu'un nominé politique, M. le président, peut décider de ce qui est bon ou pas pour la population ? C'est le règne des potentats et des mandarins.

Pourquoi pas un juge, quelqu'un d'indépendant nommé par le *Judicial and Legal Services Commission* afin de garantir l'Independence de cet organisme?

L'Independent Broadcasting Review sera comme un tribunal avec les mêmes prérogatives, mais sans l'appellation. Cette instance va usurper les pouvoirs de la Cour Suprême.

Troisième point : l'annulation des licences

Avec les nouvelles dispositions de la partie 5, l'*IBA* aura les pouvoirs d'imposer une *administrative penalty*, soit une amende ne dépassant pas R 500,000/sur un *licensee* (à savoir, une radio privée) qui ne se plierait pas sous l'*IBA* ou sous les *Regulations* stipulées sous cette loi, ou sous tout autre Code émis par l'*IBA*.

Les *licensees* qui feraient fi des directives émis par l'*IBA* ou qui ne respecteraient pas une condition de leurs licences sont aussi concernés. Mais surtout, cette autorité pourra imposer cette sanction après réception d'une complainte d'un membre du public.

M. le président, toute activité, qu'elle soit économique ou autre nécessite un *Business Plan* - le Leader de l'Opposition en a longuement parlé - ce qui permet à l'organisation de faire un projet à long terme, un projet sur la durée. Or, la licence d'un an n'est pas crédible. Cela empêche l'organisation de se projeter à long terme. Pourquoi vouloir à tout prix renouveler la licence sur une base annuelle? Si cela n'est pas une tentative d'étouffer la presse, cela lui ressemble étrangement.

Quelles sont les motivations qui poussent le gouvernement à vouloir museler les medias? Les mauriciens ont recours aux radios privées pour exprimer leurs doléances. Ces radios sont inondées d'appels de détresse. C'est à travers les radios privées que la population prend connaissance des tribulations du citoyen lambda, de la discrimination dont il fait l'objet face aux services publics et aux autorités dites compétentes. C'est à travers les radios privées que la population a appris comment les bicoques des mauriciens - y compris des bébés - ont été

détruites par le ministère du Logement et ont dû dormir à la belle étoile, alors que le pays était en confinement; qu'un bébé malade dormi à la belle étoile est décédé quelques jours après. Grace aux radios privées, les mauriciens prennent connaissance du nombre de personnes décédées avec la COVID; de négligence médicale, des droits bafoués des personnes handicapées. Si le mauricien a recours aux radios privées pour s'exprimer, cela prouve qu'il y a dysfonctionnement de nos institutions.

Le gouvernement aurait-il peur d'entendre les vérités? Aurait-il peur des enquêtes en directe à la radio? Si le gouvernement considère que '*Tempo la So'*, pourquoi ne pas effectuer un audit du dysfonctionnement de ces institutions et y remédier? Ce sont les auditeurs qui donnent vie à une radio. En muselant les medias, ce sont les voix des auditeurs, de la population que le gouvernement étouffe. En revanche, si le citoyen se sent diffamé, il a déjà la possibilité d'aller en Cour Suprême et autres instances. Avec l'*IBA*, il y a déjà une certaine forme de censure.

As rightly pointed out by Lord Denning, je cite –

> *"The freedom of the press is extolled as one of the great bulwarks of liberty. It is entrenched in the constitutions of the world…it can publish whatever it chooses to publish. But it does so at its own risk…Afterwards, after the publication, if the press has done anything unlawful, they can be dealt with by the Courts…If they should damage the reputation of innocent people…they may be liable in damages…'*

M. le président, les amendements proposés à l'*IBA* ont sonné l'alarme parmi les défenseurs locaux de la liberté d'expression, et ont été diversement commentés par l'opinion publique. Il y a eu des critiques, telles que –

- 'Un dernier clou dans le cercueil de la démocratie';
- 'Maurice une autocratie';
- 'l'heure est grave', et
- 'non aux amendements à l'*IBA*'.

Lors des débats sur le *Cybersecurity and Cybercrime Bill*, l'Opposition avait réclamé un *Select Committee*. Les amendements proposés dans ce présent projet de loi est le genre de sujet qui mérite un *Select Committee.*

La liberté d'expression est l'un des grands principes de tous les systèmes démocratiques. Il est garanti par la Constitution mauricienne de 1968 et est considéré comme un droit de la personne par la Convention Européenne des Droits Humains.

Pour la santé de la démocratie, M. le président, l'accès à l'information est essentiel. Dans toute démocratie, les citoyens ont le droit et la responsabilité de participer aux affaires publiques. L'acquisition du savoir d'une société se fait par le biais de débats libres, de journaux, de magazines, de télévision et de radio. Tout cela est possible quand il existe une presse libre et indépendante. Considérée comme le quatrième pouvoir, la liberté de la presse est un droit précieux et elle devrait être exemptée d'ingérence de l'État.

L'article 12 de la Constitution Mauricienne concerne la liberté d'expression de l'individu. Bien qu'il n'y ait pas de dispositions distinctes garantissant la liberté de la presse dans notre Constitution, la liberté de la presse est garantie par la Constitution Mauricienne et constitue une composante essentielle du droit à la liberté d'expression. Dans l'affaire *London Satellite Systems Ltd* contre l'État *and others,* la cour suprême avait statué que la liberté de la presse n'a pas besoin d'être mentionnée séparément car elle figure déjà dans la liberté d'expression. Dans *Hossenbaccus* contre le Mauricien, il a été jugé que la liberté d'expression est fondamentale. Il s'agit d'un instrument essentiel pour l'avancement des connaissances et doit en effet être bien gardé pour permettre à la presse de remplir son obligation sociale, c'est-à-dire informer le public.

La libéralisation des médias audiovisuels a été réalisée en 2002, ce qui a donné au public Mauricien le choix entre la MBC et trois autres radios privées –à savoir Radio One, Radio Plus et Top FM. Avant 2002, M. le président, les Mauriciens recevaient la majorité de leurs informations de la télévision qui est monopolisée par le gouvernement. Les émissions de radio sont dominées par la MBC du gouvernement qui est financée principalement par la redevance télévisuelle alors qu'il y a une distribution inégale des revenus publicitaires aux différentes publications Mauriciennes. Certaines feuilles de chou proche du gouvernement et ayant pour seule qualité la médiocrité sont privilégiés.

Mr Speaker: Protect yourself. Protect yourself; the mask.

Mrs Navarre-Marie: Est-ce que ce sont des presses qui encensent le gouvernement avec un goût de *mazavarou,* c'est cela dont on a besoin ? Non. Les Mauriciens méritent mieux. L'histoire retiendra que c'est à chaque fois que le MMM a fait partie du gouvernement, la

démocratie a été rétablie. En 1982, nous avons amendé la constitution pour que les élections législatives aient lieux tous les cinq ans. En 2001, le *Regional Assembly Act* pour l'autonomie de Rodrigues. En 2002, pour la libéralisation des ondes, d'où l'arrivée des radios privées. En 2003, le *Local Government Act* pour octroyer plus de pouvoir aux administrations régionales.

M. le président, cette année Maurice perd cinq places au classement mondial des reporters sans frontières. Reporters sans frontières écrit ceci, je cite –

> « (…) Maurice a beau être l'un des pays africains salué comme un modèle de démocratie et de respect des droits humains, le paysage médiatique y est fortement polarisé et reste très marqué par l'influence des personnalités du monde politique ou économique qui en assure le financement ou la promotion. »

Et il continue, il se réfère au drame du Wakashio –

> « Se référant au drame du Wakashio l'année dernière, reporters sans frontières fait état du boycott de deux médias par le gouvernement. »
>
> Et cite nommément l'Express et Top FM dont les journalistes n'ont pas été autorisés à assister aux conférences de presse du Premier ministre.

Ces remarques ne sont pas du tout à notre honneur, M. le président.

M. le président, la presse mauricienne a toute une histoire, une histoire de construire, construire la liberté d'expression. Or, cette liberté d'expression est menacée par les amendements proposés à l'*IBA*. S'il est vrai que l'on doit protéger les citoyens, il est d'autant plus vrai que l'on doit leur donner la liberté de s'exprimer.

Mr Speaker: Two minutes to conclude.

Mrs Navarre-Marie: Oui bien sûr. Si un citoyen se sent diffamé il y a des cours de justice mais ce n'est pas pour autant que s'il y a des chauffards que l'on doit supprimer les chauffeurs. Thomas Jefferson a dit ceci –

> «Notre liberté dépend de la liberté de la presse et elle ne saurait être limitée sans être perdue »

Avec ce projet de loi, M. le président, nous assistons non seulement à un recul dans la liberté d'expression mais à une véritable liberticide. C'est la liberté d'expression qu'on assassine et

l'heure tardive à laquelle ce projet de loi est débattu devant cette Chambre est plus que symbolique. On attend que tout le monde soit déjà couché pour procéder à cet assassinat.

Ce projet de loi, M. le président, n'a pas sa raison d'être et doit tout simplement être retiré, ni plus ni moins. Si cette loi est votée, l'histoire retiendra que le gouvernement MSM et ses alliés complices ont été les fossoyeurs de la liberté d'expression et des radios privées à Maurice.

Je vous remercie.

Mr Speaker: Hon. Nuckcheddy! You have twenty minutes.

(9.48 p.m.)

Mr S. Nuckcheddy (Third Member for Flacq & Bon Accueil): Thank you, Mr Speaker, Sir. Allow me at the outset to congratulate the hon. Prime Minister for bringing this present Bill to the House.

This Bill, Mr Speaker, Sir, proposes to amend some provisions of the Independent Broadcasting Authority Act to provide a better legal framework to regulate licensees of the authority. For the majority of the world population currently, broadcasting remains the most readily accessible and widespread means of information and communication. Broadcasting is essential to ensure plurality, social inclusion and to strengthen civil society. It empowers people to take informed decisions vital to their own development. Broadcasting is the most pervasive, powerful means of communication in the world. Broadcasting provides education and entertainment and as per a recent research, people spend on an average of 24.4 hours a week watching television and 23.9 hours listening to radio every week.

With the IBA Act at the very beginning of this millennium, the then Government the MSM-MMM Government through the Independent Broadcasting Authority wanted to promote the development of broadcasting services which are responsive to the needs of the Mauritian audience. It was thus a time when the then Government showed that it is no more for the State to determine what its citizens have access to. By doing so, Mr Speaker, Sir, it was shown that a free choice of information broadcasting and accessing to it is one of the fundamentals to the respect of individuals and freedom of expression in a democratic society like ours.

Today, that is two decades after; all Mauritians unanimously agreed that this was a great step towards the preservation of the democracy as opposed to the previous Government, where gagging orders were issued on the very morning of a Saturday of 05 January 2013 to protect that mum and her children. You have to consult *le Mauricien* of 02 March 2014. The whole story has been told there. There is a famous movie of Steven Spielberg, *Il faut sauver le soldat Ryan, ici, il fallait sauver la Dame de Carreau La Liane.*

(Interruptions)

Mr Speaker, Sir, I listened to some of the hon. friends on the other side of the House and it seems that for the next election we will not have the PTR, MMM or PMSD as our opponents but it will be Top FM. They have been trying to show the people that these amendments are being brought only and only to stop Top FM. This is not the case, Mr Speaker, Sir. We do reckon the good works that are being done by our private radios. Who does not remember the investigation done by Top FM on *moto-école*.

A critical, independent and investigative Press is the lifeblood of our democracy. Hon. Uteem mentioned in his speech that his Party, the MMM, was a party to the Government when the IBA Act was enacted. But, what hon. Uteem did not mention, Mr Speaker, Sir, is that during the same mandate when his Leader was the Prime Minister of the country, and that was reported in the *5 Plus Dimanche* at that time as follows, I quote –

> *« La tentative de museler les radios privées revient sur le tapis. Le gouvernement compte mettre sur pied un comité spécial afin d'examiner les questions « d'abus » sur les différentes chaînes de radio locales. »*

The same article of *5 Plus Dimanche*, Mr Speaker, Sir, also adds –

> *« Ce comité spécial, - ce qui est important - qui sera présidé par le Premier ministre, se penchera, entre autres, sur des questions concernant « les sanctions ayant trait aux abus » etc.*

Mais ce qui est important c'est qu'à l'époque on voulait instituer un comité qui serait présidé par le Premier ministre d'alors.

Moreover, Mr Speaker, Sir, hon. Uteem is a lawyer and very cunningly stated that the IBA never sanctions the MBC. This is not true, Mr Speaker Sir. Recently, the MBC was

sanctioned by the IBA on 12 November 2020, last year, *concernant le droit de réponse refusé à l'Eglise*.

Concerning the case of ESC, let me remind the House that no complaints were lodged at the IBA at that time. I can see the problem with hon. Members of the MMM, they listen only to Top FM, Finlay Salesse and Marie Josée; they should also listen to Jimmy Jean Louis sometimes.

(Interruptions)

Mr Speaker, Sir, I am not a lawyer but I got the right like my other friends to bring my contribution on this Bill like any other Bills. However, despite not being a lawyer I do understand that the amendments that this Bill is proposing concern the broadcasting and not the Press. Hon. Shakeel Mohamed seemed to be confused here. And nor am I going to cite case laws of the European Court of Human Rights, as these cases refer to sources of the journalist and the new Section 18A does not concern the sources at all. I will come to that later.

Let me come to the amendments proposed to this Act, Mr Speaker Sir. We all know that this is not the first time that amendments are being brought to this Act and neither the first Act to be amended. Earlier, I mentioned democracy. A democracy also requires that reforms are brought to existing legislations in particular areas to bring them in line with the ever-changing needs of the country. Now, when this Government is bringing these amendments for the reasons I mentioned above, we see people coming with all sorts of comments and they are only creating a panic in the society for their own or their master's interest. During this debate, I am going to take only comments made by three persons and you shall see for yourself, Mr Speaker, Sir, how irrational they are.

One Mr Rajen Narsinghen stated that the Section 18A is very dangerous and it is against the Section 12 of the Constitution. Why he thinks it is dangerous, Mr Speaker, Sir? Just because he believes that there will be no protection of the source of information. He believes that the reporter or the broadcaster or whoever will be compelled to provide the source of the information. Mr Speaker, Sir, in fact, the Section 18A has two sub-sections and nowhere the word "Source" is mentioned. Let me read what the provisions under the Section 18A says, Mr Speaker, Sir. The first part says –

"(1) Where a person refuses to give evidence or, to communicate or produce any record, document or article, on the ground of confidentiality, the Director may make an application to the Judge in Chambers for an order directing that person to disclose the evidence required, or communicate or produce any record, document or article needed, for the exercise, by the Authority, of its regulatory powers."

The second part says –

"(2) The Judge in Chambers shall make an order under subsection (1) where he is satisfied that the evidence, record, document or article the disclosure of which is sought is bona fide required by the Authority in relation to the exercise of its powers under this Act."

Mr Speaker, Sir, did you hear the word "Source"? As far as I am concerned, I did not mention the word at all when I read the two paragraphs of the Section 18A. What is mentioned in this Section, Mr Speaker, Sir, is 'evidence', 'documents', 'articles', etc. And these are important things to foster the trust of our people on the licensees. Let me give you two examples, first: if tomorrow one of the private radios broadcast the findings of a survey where it is said that, for example, 95% of the population consider hon. Pravind Kumar Jugnauth as the best Prime Minister. So, will it be anti-constitutional to request the licensee to provide details like the results of the survey, the sampling, the sample size, the methodology etc. so as to determine the validity of the survey? No, Mr Speaker, Sir, not at all! The second example: if tomorrow a licensee is bringing a partner with him or is merging with another company, would it be anti-constitutional for IBA to request details on that partner so as to carry out a due diligence? No, Mr Speaker, Sir, this Section is not dangerous, is not anti-constitutional and neither is it against the Section 10 of the European Convention of Human Rights which protects the right of an individual to hold his own opinions and to express them freely without government interference.

I also read the interview of Mr Habib Mosaheb in *L'Express* paper of 25 November 2021, that is, yesterday. He also tries to spread the same fear among the public. Mr Speaker, Sir, I know that on Sundays most of the people like to relax, but please just for one day switch on to Top FM between 11:00 am to half past noon, you will see how this gentleman yells on the air. How he insults people who talk in favour of the Government and he does so after that the person is no more on line. At one time, I even heard him saying that he has the right to decide who he

can take on air and whom he can decline. One Mr Nazir of Providence is often his target. This is anti-constitutional, Mr Speaker, Sir. This is against the Section 10 of the Human Rights as it provides for an individual to express his views aloud. This is where dictatorship lies and we see that every week, Mr Speaker, Sir. From 2015 to now, this gentleman has never been called at the IBA as it was the case in the former Government's era where he was called practically every week.

Another person who has been on the media last week with his terrifying comments, Mr Speaker, Sir, is someone who was the first Chairperson of the IBA. Whilst insisting that no one on this planet who will be appointed by the hon. Prime Minister as the Chairman of the Independent Review Panel can be impartial, however, Mr Speaker, Sir, in much louder tone he also mentions that while he was appointed as the Chairperson, he was always independent.

Mr Speaker, Sir, the Section 6 of the IBA Act provides that its Chairperson shall be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition. So, what happened when the Chairmanship of the gentleman had to be renewed at a time while he was the Chairman of the IBA? The then Leader of the Opposition, Navinchandra Ramgoolam, opposed to the renewal, and '*5-Plus'* again reported the following –

> *«* Le Parti travailliste objecte au renouvellement du mandat d'Ashok Radhakissoon, estimant *ki li pa ti indépendant di tout.»*

Mr Speaker, Sir, I am the Deputy Chairperson of Committees, et il y a eu une députée quelques temps de cela qui occupait ce poste, et qui avait dit, je cite -

> *« Tout seki légal, pa moral. »*

Eh bien, c'est peut être légal, mais moralement, est-ce que c'est juste que quelqu'un qui a octroyé un permis à un opérateur lorsqu'il était le président, maintenant il défend ce même opérateur, comme son avocat, pour contester l'octroi d'une licence de radio à deux nouvelles compagnies?

I leave that to the Bar Council to decide. As for me, *c'est ni légal, ni moral, c'est plutôt un scandale.*

Mr Speaker, Sir, we can now see who are those who are criticising these Amendments. The same person, Mr Speaker, Sir, goes on the radio and says that these amendments are being

brought to penalise. Now, if we go down memory lane, 29 February 2004 – indeed, a special day, as we only get a 29 February after every four years. So, as that time, he was the Chairman of the IBA and hon. Paul Bérenger was the Prime Minister. *5-Plus Dimanche* again, of that special date 29 February, mentioned the following -

> « L'*IBA* et le PM menacent de bannir les émissions en direct. Nous pourrions aller très loin dans les sanctions, s'il le faut. »

Ce qu'avait avancé le *Chairman* d'alors. And this is dangerous, Mr Speaker, Sir.

M. le président, les Mauriciens ne sont pas dupes. On a un peuple qui a l'aptitude de jugement *and they do judge when the time comes.*

Mr Speaker, Sir, before I conclude, I would like to take a few amendments that are being proposed to show the House how they are intended to bring things into line. The Section 5, in its actual form, mentions that under subsection 1 –

> "The Authority may, for the purposes of this Act, give written directions to the Corporation or any licensee and they shall comply with those directions."

That's all what the Section 5 is saying. Nowhere any mention is made as to what happens if someone refuses to comply with the directions given by the Authority. Thus, subsection 1 of the Section 5 is being proposed to be amended by adding another subsection which will now make failure to comply an offence.

Mr Speaker, Sir, I also heard that these amendments are being brought to terrify our people. Let me take the Section 25 which, in itself, is not being amended, but reference is made in several such sections which are to be amended and also in some of the new provisions. The Section 25 talks of Suspension of license and subsection 2 (b) clearly states that -

> "Any decision taken under subsection (1) shall have effect for not more than 21 days."

Meaning that the Authority can suspend a license for not more than 21 days. Now, are you aware, Mr Speaker, Sir, that up to now the maximum number of days that a license has been suspended has only been two days? So, they should not be terrified or pretend to be terrified or even try to alarm the public as these are the maximum and the proportionality will be applied, and with the mutual respect and abiding of the law, the Constitution, the International

Conventions, no one will have to pay more than Rs500,000 of fine every year, as it is trying to show the public. The IBA is not as stringent as the Office of Communication, commonly known as OfCom, which recently, that is, on 06 October 2021, imposed a financial penalty of 25,000 Pound Sterling on a satellite channel.

M. le président, dans l'émission 'Au Cœur de l'Info' de Radio Plus, du lundi 22 novembre 2021, l'ancien *Chairman* de l'*IBA* a demandé aux députés d'agir comme des députés responsables.

Alors, je prends en compte ces conseils, et lors du vote, je vais agir comme un député responsable et je voterai pour ces amendements.

Merci, M. le président.

Mr Speaker: MP Lobine!

(10.06 p.m.)

Mr K. Lobine (First Member for La Caverne & Phoenix): Thank you, Mr Speaker, Sir.

Mr Speaker, Sir, when this country is under siege from COVID-19, with new variants causing rampage in Mauritius, right now, Mr Speaker, Sir, we are being called upon to review, maybe, people travelling from South Africa and other countries of Southern Africa, Lesotho, Zimbabwe, Botswana and all that because of new variants being discovered, we are tonight debating about a Bill that has been brought to this House with a Certificate of Urgency.

Mr Speaker, Sir, this is an important Bill with amendments being brought that would affect the livelihood of many fathers and mothers of this country. Private radios, Mr Speaker, Sir, they employ people. They do a job whereby people, for free, listen to private radios; for free, people have got a voice. They voice out their concern. They voice out their appreciation of Government. They voice out against Opposition, against Government, but they do have a voice on private radios that we did not have in the past and this Bill, Mr Speaker, Sir, is being brought with a Certificate of Urgency instead of other important Bills that ought to have come before this House with a Certificate of Urgency; the Freedom of Information Bill. Information is the raw material of journalists to work, whether the written press or the private radios and if we had a

Freedom of Information Bill debated and voted, Mr Speaker, Sir, we would have gone a long way in having information that are correct, precise and fair.

Instead of having Bills like the Financial Crime Commission before this House, instead of having the Criminal Justice Bill before this House, I find it, in my humble opinion, very ominous to have such amendments being brought now, in such a crisis situation that our country is. There is no urgency as such with regard to amending the IBA Act now and the timing is puzzling, Mr Speaker, Sir. I have listened to the comments in the Press from the CEO of 'Radio Plus' and the CEO of 'Top FM', expressing their concern that there have been no consultations whatsoever with those radios, with those stakeholders when those amendments are being brought. This is a fundamental principle in a democratic society, Mr Speaker, Sir, when we are bringing amendments that, if I may say, through the backdoor, is touching, is doing the wrong thing with regard to Section 3 and Section 12 of our Constitution.

And, Mr Speaker, Sir, I do not hold a watching brief for Top FM nor for Radio Plus nor for Radio One, but, as a lawyer, I shall give my views on the various sections of the IBA Act that will be subsequently amended. My learned colleague lawyers, hon. Uteem and hon. Mohamed explained the *ad hominem* nature of the amendments being brought, Mr Speaker, Sir.

That is a legislation being brought to target a particular radio, a particular group, a particular entity and in that instance, Mr Speaker, Sir, Top FM is the targeted radio.

I shall be much grateful if any hon. Member in this House could enlighten me in which country in this world, Mauritius being the exception of course, where amendments have been brought instead of increasing the duration period of a licensee of a private radio, same has been instead reduced? Where on earth, if I could be enlightened, if I could be given some more knowledge because through my research, I have found none of the country on planet earth that has amended the laws of their countries to reduce the licence of private radios!

To the best of my knowledge also, Mr Speaker, Sir, in other jurisdictions, say, for example, the UK, very recently, Sunrise Radio, Mr Speaker, Sir, the licence has been renewed for 12 years. In other countries like in India, licences for private radios are renewed for 10 years and in many other countries, they are renewed for at least 5 years, Mr Speaker, Sir.

Previous orators have spoken with regard to amendments that were brought to the Finance Act of 2019 allowing foreign nationals, foreign investors, instead of having 19% shares in private radios companies, they now can have up to 49.9% of shares in those radios. Who are those investors, Mr Speaker, Sir, that will come and invest in a private radio that is not sure to have his licence renewed over a year? What type of a business plan will a private radio adopt? What attitude will a private radio have with its people working; that you will have a contract of only one year because my licence is only one year, so you will be renewed in your job on a year-to-year basis! This goes against the fundamental principle, Mr Speaker, Sir, of freedom of expression! This is the *ad hominem* nature of those amendments, Mr Speaker, Sir, because some months back, two private independent radios, their licences have been renewed for a period of three years as per the existing law.

Again, I have never appeared as lawyer for Top FM nor do I hold a watching brief for them but the licence of Top FM is due to be renewed on 12 December 2021. With this new amendment being brought to the IBA Act, Mr Speaker, Sir, if their licence is being renewed, it will be renewed for only one year. This is not normal, Mr Speaker, Sir. We cannot create disparities amongst private radios in this country and the more so, Mr Speaker, Sir, the wide powers that are being added to the already wide powers that the authority does have is also against fundamental principles of law.

Let me remind this House, let me remind all hon. Members that there are at least four judicial review cases before the Supreme Court of Mauritius challenging the powers of the IBA, challenging section 5 of the IBA. Yes, for me, they are *sub judice*. Even, in this House, we cannot debate on things that are being heard before the Supreme Court. I think as a matter of ethics, we in this House, ought to have left it to the Supreme Court to give its judgement and accordingly this House could debate on amendments to be brought to the IBA Act. Main issues that are being discussed at the level of the Supreme Court, Mr Speaker, Sir, is the exercise of fundamental right to freedom of expression, to freedom of speech, to freedom to impart ideas and information without interference, freedom to hold opinion. We are talking before the Supreme Court, Mr Speaker, Sir, about breaches to sections 3, 12 and 17 of the Constitution. This is precisely what those amendments are. They are through the back door challenging all those principles enshrined in our Constitution.

If you look at the Explanatory Memorandum, Mr Speaker, Sir, it says and I quote –

"The Bill, *inter alia*, empowers the authority to impose administrative penalties."

These are again additional powers that are being given to this authority.

I would go a step further to draw the attention of hon. Members of this House that certain subsections that are being added to Section 5 of the IBA Act will have retroactive effect as from January 2021. That is, the new subsection 4(c) at paragraph 3 of the proposed Bill, it says, and I quote –

"The Authority may, in the exercise of its regulatory functions, impose such administrative penalties as it thinks fit."

And if we read further –

"The Code of Ethics and Code of Advertising Practice in force shall be deemed to have been issued under paragraph (a)."

That is, it will have retroactive effect as from January 2021. So, we are giving powers to an authority that would have retroactive effect on private radios.

We go a bit further, my learned friend, hon. Nuckcheddy has spoken about section 18A, under the caption Judge in Chambers. Let me remind this House again, Mr Speaker, Sir, as per this section, you go before a Judge in Chambers, it is an *ex parte* application. You go by way of affidavit evidence; the Judge in Chambers will be duty-bound to give an order as per affidavit evidence. It is only when an interim order is granted and served on the respondent, on those private radios, then they will have the right to file and rebut through counter affidavits and this takes a lot of time. To have a ruling, we need to have hearings and it takes at least 3 to 6 or 7 months. In the meantime, those licensees are being penalised, Mr Speaker, Sir, because there are other sections that are being amended that would oversee or supersede what the Supreme Court will be deciding in the meantime. And in the meantime, the authority, run by political poodles will have the right to take administrative action in the form of penalties against private radios, Mr Speaker, Sir.

Again, Mr Speaker, Sir, if we look at section 22 of the IBA Act, I do not understand why for TV licence, for example, it has not been reviewed. Why only for private radio licence it has been revised from three years to one year? Why not for the TV licence? It has remained for five

years. Why? So, I want some clarity on this double standard in those amendments being proposed, Mr Speaker, Sir.

Mr Speaker, Sir, I would refer this House to a report prepared by Geoffrey Robertson, Queen's Counsel, entitled Media Law and Ethics. This report is lying somewhere in the drawer of Government. It was prepared, it is a well drafted report, and there are several recommendations that ought to have been put into practice. Unfortunately, none of them are being put into practice and they have clearly, in that report, expressed the views that: 'Yes, we need to regulate, we need to have a review panel, we need to have an independent body.' And this is what it says, Mr Speaker, Sir. Geoffrey Robertson, QC recommended, Mr Speaker, Sir, that in adjudicating complaints against the media, an independent body should not be dominated by members of the media or by media funded organisation or by the Government. The body should be set up in such a way that the people that will be appointed should be appointed by the Judicial and Legal Service Commission. And the report proposed the setting up of a Media Commission to be chaired by a Media Ombudsperson.

And this, Mr Speaker, Sir, is the answer to the amendment being brought with regard to the abolishment of the Complaints Committee and to the setting up of this Independent Broadcasting Review Panel. Instead of going with this Independent Broadcasting Review Panel, we could have adopted what Geoffrey Robertson has already said in his report and that could have been put into practice instead of bringing that panel in.

And I, again, do not understand amendments being brought to the standing of the Barrister. In the current Act, the Complaints Committee, Mr Speaker, Sir, the Barrister should have at least 10 years of practice. So, again I do not understand why for this panel this threshold is being diminished from 10 years of practice to 5 years of practice. When you look at the powers been conferred to that panel, Mr Speaker, Sir, it is a panel that will have powers like a Judge or a Magistrate. You need to go there, you need to swear, you need to affirm, and you need also to go by the procedures that are being called upon you when you are there. So, they are having powers like Magistrates and Judges and they need to be independent but also seers to be independent. I am of the humble view that a Barrister of at least 10 years' experience would have been the appropriate candidate for that job, not with five years' experience. So, I humbly move and urge the Government to bring amendments to those amendments instead of reducing it to 5

years, keep it to 10 years, and make the appointment through the Judicial and Legal Services Commission.

Mr Speaker, Sir, my learned friends have been talking about sources for the journalists.

Mr Speaker: Two minutes to conclude!

Mr Lobine: This is a sacrosanct principle in our democracy, Mr Speaker, Sir, in Section 12 that freedom of expression and freedom of the Press are also the watchdogs for our democracy. So, I shall be urging the hon. Prime Minister not to proceed with those amendments as couched. Let the Law Reform Commission work on same, have a large consultation with the private radios and with the civil society, set up a Select Committee of this House to look at all those amendments to be brought. And if we are to vote tonight, Mr Speaker, Sir, I shall invite all my hon. Members from the other side of the House not to vote for this Bill, do not go down in history for the wrong reasons. I rely on your good sense and I know that democracy will prevail. This Bill should not go ahead in this House at this present moment of our history, Mr Speaker, Sir.

I rest my speech here. I thank you for your attention. God bless our country!

Mr Speaker: Hon. Ms Anquetil!

(10.26 p.m.)

Ms S. Anquetil (Fourth Member for Vacoas & Floréal): Je vous remercie, M. le président. Tout comme mes mandants, je suis une grande adepte de la radio et je crois que c'est mon devoir de participer aux débats pour faire entendre la voix du peuple surtout que les amendements proposés à l'*IBA Act* visent à menacer directement les radios privées mauriciennes avec une mainmise de l'État sur les ondes. Ces radios qui soutiennent matin et soir la voix des sans voix, les femmes battues, les enfants vulnérables, les personnes en situation de handicap. Ces radios qui viennent en aide aux plus défavorisés de notre société qui ne savent plus à quelle porte frapper.

M. le président, aujourd'hui la radio est accessible partout. Elle ne coûte pas cher aux auditeurs, sans image elle occupe très peu d'espace. Ce fabuleux média de masse est un mode d'information et de communication extraordinaire. Elle est très populaire dans notre pays puisque la majorité de nos concitoyens l'écoutent tous les jours. Dans le contexte mauricien, une

préférence est notée pour les stations privées. Cela fait maintenant 20 ans que l'État n'a plus le monopole sur la radio diffusion dans notre pays.

M. le président, j'ai écouté avec beaucoup d'attention le discours du Premier ministre. Je voudrais ce soir rétablir certains faits. Le MSM a toujours été contre la libéralisation des ondes. Qui ne se souvient pas de la saisie du *satellite dish* de Monsieur R. ? Nous, au Parti travailliste nous en avons été toujours pour et aujourd'hui encore à travers ces amendements, c'est clair que le MSM est contre les radios privées.

L'histoire témoigne que c'est le gouvernement Travailliste, dirigé par le Dr. Navin Ramgoolam, qui a ouvert l'espace audiovisuel à Maurice en accordant la retransmission des chaînes étrangères à Maurice. Je tiens à vous rappeler que Canal+, un des plus grands opérateurs est installé sur le sol mauricien depuis 1999. C'est encore le Parti Travailliste qui a voté l'*Independent Broadcasting Authority (Amendment) Bill.* C'était le mardi 8 août 2000. C'est nous qui avons préparé la loi et c'est nous qui l'avons fait voter. Allez vérifier dans les archives ! Ensuite, il y a eu la dissolution du Parlement et c'est l'équipe du MSM qui a donné les permis des stations radio.

Dans le cadre de la libéralisation des ondes, c'est toujours le Parti Travailliste qui a créé la compagnie Multi Carrier (Mauritius) Ltd qui opère un réseau d'émetteurs à travers l'île pour faciliter la retransmission des programmes de la MBC, des radios privées et publiques. Cela démontre clairement que nous, au Parti travailliste, nous avons la bonne volonté de faciliter les opérations des radios privées dans notre pays.

M. le président, selon le classement mondial de la liberté de la presse 2021, comme l'a si bien dit tout à l'heure ma collègue de ce côté de la Chambre, l'honorable Arianne Navarre-Marie, l'ONG Reporters sans frontières classe Maurice à la 61ème place, derrière le Sud-Afrique, les Seychelles et Madagascar. Maurice a perdu cinq points en un an et, en 2020, on occupait la 56^{e} place, ce qui démontre clairement que la liberté de la presse se dégrade dans notre pays. Sur son site Internet, Reporters sans frontières titrent Maurice 'l'indépendance des médias mis à mal'.

M. le président, alors que le pays passe par des moments très, très difficiles avec la pandémie de la Covid-19, alors que les chiffres montrent que la mort frappe fort, alors que la première des priorités c'est de sauver des vies, alors que les critiques, les questions et les grandes

inquiétudes de la population ces derniers jours sont tout à fait légitimes, au lieu de débattre la motion proposée par le Leader de l'Opposition sur la situation de la Covid-19 qui fait rage dans notre pays, et bien, le gouvernement a jugé qu'il était plus important de débattre sur les amendements de l'*IBA Act*. Pourquoi une telle précipitation, quelle est donc l'urgence ?

M. le président, ces amendements ne seraient en réalité qu'un moyen, à peine déguisé, de bâillonner la presse et les médias indépendants qui dérangent et d'empêcher les citoyennes et les citoyens de s'exprimer sur les ondes contre les puissants du jour, qui, blessés dans leur amour-propre, dépassés par des événements n'hésiteront pas une seconde à faire appel à un arsenal d'intimidations, d'interpellations, de procès, d'amendes, et j'en passe.

Les provisions légales à la section 18A de cette loi, qui est libellée *'Judge in Chambers'*, stipule que les journalistes devront renoncer à la confidentialité et transmettre obligatoirement certains renseignements. Aussi, le renouvellement de la licence de station radio chaque année est arbitraire. Les pénalités administratives sont excessives. Il est un fait que la plupart des régimes dictatoriaux ont adopté des lois iniques, c'est-à-dire, qui manquent d'équité, pour pouvoir justement museler la presse indépendante, entraînant sur son passage leur disparition.

M. le président, c'est la raison pour laquelle l'opposition parlementaire et extraparlementaire, les juristes, les ONG, la société civile dans son ensemble dénoncent aujourd'hui une atteinte aux libertés les plus fondamentales. C'est tout simplement comme l'ont dit les autres, mes collègues de ce côté de la Chambre, c'est tout simplement un jour triste pour notre démocratie qui a perdu de sa vigueur. Cette nouvelle loi répressive arrive à un moment où les Mauriciens ne peuvent pas manifester ni protester dans la rue. Le gouvernement profite donc de cette situation et le message qu'il envoie à la population est clair : *ferm labous, res trankil, pa exprim zot kont gouvernman.* Nous voilà désormais renvoyés à l'époque de la peur instrumentalisée comme arme politique ! C'est révoltant ; c'est révoltant car aujourd'hui nous sommes impuissants, nous, en raison de la tyrannie du nombre devant tant d'arrogance. Il est un fait que cette loi vise principalement Top FM. L'entretien de M. Habib M., accordé à un grand quotidien hier, jeudi 25 novembre, m'a bouleversé.

M. le président, tout comme le projet de loi sur la cybercriminalité, je vote contre, car je ne peux soutenir une législation injuste, arbitraire et anticonstitutionnelle.

Je vous remercie pour votre attention.

Mr Speaker: Hon. Jutton, you have twenty minutes.

(10.35 p.m.)

Ms T. Jutton (Second Member for Vieux Grand Port & Rose Belle): Thank you. Mr Speaker, Sir, today the debates in this august House verily revolve around the question of whether the amendments to the Independent Broadcasting Authority Act restrict the freedom of expression, and allow me to delve directly into the crux of the matter. But yes, before starting, I would like to ask you, Mr Speaker, Sir, I have been hearing hon. Mohamed and hon. Assirvaden naming all hon. Members on this side of the House who are barristers or lawyers by profession and questioning why they are not intervening on this Bill. So, I am asking whether, on this side of the House, as well as the other side of the House, we are intervening by function of our profession or as elected Members of Parliament for the welfare of those who have believed in us and chosen us as their voice.

Mr Speaker, Sir, I heard several Members of the Opposition expressing themselves these last days over the radio, on the Press and even here in this House. Et alors que certains parlent de vérouillement des institutions, d'autres de contrôle total des institutions. Lorsqu'on parle de liberté de la presse, on fait invariablement état de liberté d'expression dans son sens le plus large. Il convient au prime abord de déterminer ce que nous entendons par la liberté d'expression et d'établir si, dans une société laïque, la pratique de cette liberté d'expression se fait d'une manière débridée ou à partir d'un encadrement légal structuré. Pour ce faire, il faut remonter à la déclaration des droits de l'homme et du citoyen de 1789, plus spécifiquement aux Articles 4 et 11 de cette déclaration, dont j'en avais aussi fait mention pendant mon allocution sur la *Cybercrime and Cybersecurity Bill.* Je cite, M. le président –

> « La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société, la jouissance de ces mêmes droits. »

Et,

> « Ces bornes ne peuvent être déterminées que par la loi. La libre communication des pensées et des opinions est un des droits les plus précieux de l'Homme : tout citoyen peut

> donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté, dans les cas déterminés par la loi ».

La section 19 de la Déclaration Universelle des Droits de l'Homme de 1948 dit, je cite encore une fois –

> « Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considération de frontières, les informations et les idées par quelque moyen d'expression que ce soit. »

La liberté d'expression est reconnue à chaque personne pour qu'elle puisse librement exprimer ses pensées sans censure préalable mais non sans sanction si cette expression porte préjudice à quelqu'un, et je répète ces derniers mots, M. le président, non sans sanction si cette expression porte préjudice à quelqu'un.

Selon l'Article 10 de la Convention Européenne des Droits de l'Homme de 1950, la liberté d'expression permet à tout citoyen d'exprimer ses idées avec néanmoins des limites imposées par la loi. En France, plusieurs textes ont prévus un encadrement à cela. Par exemple, la loi du 29 juillet 1881 sur la liberté de la presse énonce comme première limite à la liberté d'expression: l'injure, la diffamation, la calomnie, l'incitation à la discrimination, à la haine et à la violence et cette loi est appuyée par celle du juillet 1990 selon laquelle toute discrimination fondée sur l'appartenance ou non appartenance à une ethnie, nation, race ou religion est interdite.

Dans des autres pays européens démocratiques et laïques, la liberté d'expression est bien plus contraignante par rapport à la religion.

L'Allemagne, la Finlande et l'Autriche ont, par exemple, un code pénal contre le blasphème. Pour autant, il y a de mêmes dispositions qui se retrouvent dans la législation pénale grecque, irlandaise, italienne, néerlandaise, suédoise et même norvégienne. La situation dépend du degré de liberté d'expression admis dans les pays concernés. Donc, du niveau de démocratie où interviennent les aspects culturels. Dans nombre de pays occidentaux démocratiques, les citoyens sont habitués à une liberté d'expression qui admet la dérision, le brocardage même sur les thèmes religieux. À Maurice, la constitution offre d'une manière générale la même garantie

de liberté d'expression comme l'a mentionné l'honorable Mohamed et l'honorable Lobine et même l'honorable Uteem.

Avec votre permission, M. le président, je vais faire référence à l'article 12, dont je cite –

> « (1) Sauf avec son propre consentement, il ne sera porté aucune entrave au droit de quiconque à la liberté d'expression, c'est-à-dire, la liberté d'opinion, la liberté de recevoir ou de communiquer des informations ou des idées sans ingérence, et le droit au secret de la correspondance. »

Mais, ce que l'honorable Lobine et l'honorable Mohamed ont omis de dire, c'est la section (a) et (b) de l'Article 12, la section 2, qui dit que –

« Rien de ce qui est contenu dans une loi ou de ce qui est fait en application d'une loi ne sera tenu comme non conforme ou contraire au présent article dans la mesure où cette loi prévoit des dispositions dans l'intérêt de la défense, de la sécurité publique, de l'ordre public, de la moralité publique et de la santé publique ; et dans le but de protéger la réputation, les droits et libertés d'autrui ou la vie privée des personnes.»

C'est ce que les autres ont omis de dire. Bien sûr, il doit aussi être établi si ces dispositions selon leurs applications sont raisonnablement justifiables dans une société démocratique. Et, ici, à Maurice, je laisse aux judiciaires d'en déterminer ce qui est raisonnablement justifiable pour notre société. Manifestement, M. le président, il ne s'agit guère d'une liberté d'expression sans limite. Du reste, aucune liberté ne peut être absolue dans la mesure où elle est pratiquée strictement par rapport au respect des autres. Ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits.

Il faut aussi faire ressortir ici, qu'il y a la loi et l'esprit de la loi et qu'entre ces deux il existe tout une panoplie de possibilités. Nul besoin d'ajouter, M. le président, que certains journalistes, certains *licensees* des *broadcasting authorities* en ont profité pour faire carrément des abus. Et on n'en a vu, M. le président. Avec ce projet de loi, le mot-clé c'est responsabilisé.

D'emblée, M. le président, il faut aussi faire ressortir que trop souvent il y a certains journalistes qui ont cette fâcheuse tendance de transposer tel quel chez nous des concepts qui n'ont pourtant aucune pertinence à la réalité mauricienne et de les faire passer pour des produits

du terroir. D'ailleurs, la laïcité en est un exemple. Nous sommes une société multiraciale, multi-ethnique et multilingue avec de sensibilités et de susceptibilités à fleur de peau où un simple dérapage de la presse, écrite ou parlée, a le potentiel de provoquer de graves incidents. Des propos racistes ou communaux peuvent justement créer ce qu'on appelle une haine raciale et ce qui nous mène justement au vif du sujet : jusqu'où la liberté de la presse peut-elle s'aventurer dans une démocratie laïque et surtout dans une démocratie laïque comme la nôtre ? Parce que, M. le président, il convient de préciser que les fondements même qui président à la liberté et aux droits conférés à la presse et dans une société démocratique laïque, comportent obligatoirement des responsabilités inhérentes. Ces responsabilités incombent autant aux dirigeants, des médias, qu'aux journalistes. La liberté de la presse indépendante est incontestablement une des pierres angulaires de toute société démocratique. Pour sa préservation et sa responsabilisation cette liberté doit se donner des limites. Et c'est ce qu'aujourd'hui, plus précisément, les *broadcasting licensees* doivent adopter. Je veux aussi rétablir le fait que l'honorable Anquetil a mentionné un peu plus tôt dans la Chambre sur la libéralisation des ondes, juste pour réaffirmer que ça a été fait pour les radios privées sous le gouvernement du MSM avec feu Sir Anerood Jugnauth. Et à entendre comment, aujourd'hui, ils sont en train de nous accuser, d'accuser le gouvernement sous le règne, encore une fois, du MSM - le mot utilisé, M. le président, était 'violation des droits humains, violation à la liberté d'expression, qui n'est pas le cas. Un peu plus tôt dans la Chambre, l'honorable Premier ministre a parlé, par exemple, de la *FCC* aux États-Unis, la ESA en France.

Mr Speaker, Sir, the very aim of this Bill is to amend the IBA Act to provide a better legal framework to regulate licensees. Let me come directly to Clause 9 of the Act, which is about repealing Part V of the principal Act and replacing it with a more elaborate procedure on imposing an administrative penalty where, I quote –

> "the Authority may impose an administrative penalty on any licensee who refrains from complying, or negligently failed to comply, with the Act or regulations made under the Act"

Mr Speaker, Sir, as the hon. Prime Minister even stated earlier in this House, this is normal practice as other existing regulators have adopted

previously, such as the Financial Services Commission and the Bank of Mauritius. So, why is there so much debate and so much noise, I would say, on this today? This is only regulating, Mr Speaker, Sir, instead of just merely suspending or revocate a licence. And we have to also note here that the penalty will be proportionate to the gravity of the breach committed and it will be up to a maximum of Rs500,000. This is just fair.

Mr Speaker, Sir, we have heard and received complaints from so many people who feel aggrieved by what has been said on air or what has been broadcasted by certain media. Well, Mr Speaker, Sir, again the provisions of this Bill in no way restricts the freedom of expression of people on a broadcasting channel if the latter is not in breach with any of the sections of this Bill and of the Constitution.

Permettez-moi de citer ces mots de Voltaire, M. le président, qui constituent aussi mon credo –

> « Je ne suis pas d'accord avec ce que vous dites, mais je me battrai jusqu'à la mort pour que vous ayez le droit de le dire »

Exprimer, oui, M. le président, mais pas au détriment de l'autrui. Exprimer, oui, mais pas en mettant en péril l'harmonie sociale. Exprimer, oui, mais pas désinformer. Soutenir, oui, comme l'honorable Anquetil a dit, mais pas encore une fois créer des *disbalances.* L'honorable Ms Anquetil a aussi soulevé - les femmes qui ont justement eu recours à des radios privées pour en parler de la situation suite aux violences domestiques. Bien sûr, on encourage les médias, on encourage justement mêmes les Apps pour qu'on puisse soutenir nos personnes et surtout ceux ou celles qui sont en détresse, excluant comme sa oui, mais avec responsabilité.

M. le Président, un simple fake news *ou désinformation peut nuire à toute une nation.* Certain information, wrongfully or negligently or unlawfully broadcasted may cause harm to our social fabric which is so fragile, as we live in our multi-cultural society and indeed can have a serious implication on our public safety and public health. Can we imagine the impact of one piece of unconfirmed information broadcasted on the proliferation of the COVID-19 variant on our society? Misinformation can be the most dangerous virus which is propagated within seconds and can add to *masse psychoses*. We also remember during the first year of the pandemic where it was expected that all broadcasting institutions be responsible. But alas, certain misinformation and disinformation led to panic buying in supermarkets. The

implementation of this piece of legislation is not inconsistent with the provisions of the Constitution since it is attempting to protect reputation, public health and public safety.

Mr Speaker, Sir, *parfois juste un point d'interrogation sur une émission ou même dans la presse écrite, peut détruire complètement des vies entières et aussi causer beaucoup de peine.* Hence, through this Act, any person who feels aggrieved by a broadcast may, within 30 days of a broadcast, effect a complaint to the Director. I hereby refer to subsection 29A of the Act where the Director feels that a licensee may have committed a breach under the Act or has committed a financial crime offence or has not complied to laws of Mauritius or no longer satisfies the Act for grant of the license, he can refer the matter to the authority for a decision and the latter may impose an administrative penalty or refer the matter to the appropriate body.

Mr Speaker: Time to conclude!

Ms Jutton: Okay. So, we all know, Mr Speaker, Sir, but unfortunately no news means that bad news sell more than good news and especially for profit broadcasting corporations, there should be an endeavor to focus on programming that would not just attract the largest number of auditors or viewers but also be responsible broadcasting. According to researchers, broadcasting is the systematic dissemination of information, entertainment, education and other features for simultaneous reception by a scattered audience individually or in a group.

So, Mr Speaker, Sir, these broadcasting corporations have an immediate impact and can potentially have a wide outreach as well as have the ability to transcend the banners of literacy and education to a particularly diverse audience which is why, the amendments of the IBA Act are so important. I hereby congratulate the Leader of the House, the hon. Prime Minister, for this commendable piece of legislation which helps to instill a stronger sense of responsibility, reinforce discipline amongst those who are in control of such powerful tools and to provide the safety valves for ensuring that our social harmony thrives. These amendments not only help to establish the extent to which broadcast is genuine by identifying its source but it also reminds the broadcasters that they cannot forget the social responsibility to the disadvantage of the citizenry.

Allow me to conclude, Mr Speaker, Sir. Freedom and responsibility go hand in hand and the Press has to be periodically reminded of its responsibility. Ownership of media must go with the responsibility of broadcasting information to the public. Media is free in Mauritius and will remain free but no one is allowed to broadcast anything without verifying that what is being

broadcasted is *bona fide*, genuine and true and as my colleague, hon. Toussaint mentioned earlier, it is verily to protect the consumers, especially our children who are consuming anything they hear or see and taking them as gospel truths.

With this, Mr Speaker, Sir, I commend the Bill to the House. Thank you!

Mr Speaker: Hon. Nagalingum!

(10.56 p.m.)

Mr D. Nagalingum (Second Member for Stanley & Rose Hill): Thank you, Mr Speaker, Sir. My first observation regarding the introduction of the Bill, I would say, is wrong timing. We are in the midst of a pandemic which has caused deaths and suffering. The priority of the Government is to focus on finding solutions to get Mauritius out of the sanitary crisis. Instead, the Government wants Parliament to debate amendments to the IBA and the population fails to understand the sense of priority of the Government. Secondly, what is the process of consultation with the stakeholders before drafting the Bill? The broadcasting operators have been taken by surprise; no dialogue, no consultation. Is this the way to achieve consensus? I ask the question.

Clearly, Mr Speaker, Sir, the Government is using the present COVID-19 situation so as to prevent stakeholders and the public at large, from organising demonstrations against the Independent Broadcasting Authority (Amendment) Bill. And like my other colleagues have said, in normal times, there would be a hue and cry. Just recall what happened when the Newspapers and Periodicals Bill, in 1984, to make it mandatory for newspapers to deposit a financial bond of Rs500,000 - if I am not mistaken - to be allowed to continue to operate, the Bill was unanimously opposed by the media, 44 journalists were arrested at that time and the news went around the world. The Government had to back down.

What is the strategy of the Government behind the Bill? Simply, it wants to crush the free expression of broadcasting stations by imposing severe financial penalties and threat of prison sentences and revocation of licences. This is senseless to say the least, it goes against our Constitution and I am sure that it will not pass the constitutional test.

Let us look at some of the priorities of the Bill. The IBA should be empowered to impose administrative penalties as it deems fit. Why do we have to give such wide powers without

proper definition to the IBA whose independence has been questioned many times in the House and elsewhere? Disclosure of source of information in Section 18A, the Judge in Chambers will decide on the matter. Does it mean that each time there is a case for disclosure the IBA will have to rush to the Judge in Chambers? The Judge will, of course, have to ensure that his ruling does not infringe any constitutional provision. The matter might very well end up in the same Supreme Court and eventually in the Privy Council. The Bill provides for an Independent Broadcasting Review Panel and scraps the Standard Committee and the Complaints Committee. As the name suggests, the panel is empowered to review decisions of the IBA Board contended by the broadcasting operators.

However, Mr Speaker, Sir, the Review Panel will not be "bound by the rules of evidence", as mentioned in Section 30F(4) as the Review Panel does not bear its decision on the rules of evidence, then, we should ask ourselves on which premises will decisions be made.

The composition of the Review Panel is problematic. Section 30 stipulates, that the Review Panel shall consist of –

> "A Chairperson, (...) a barrister-at-law of not less than 5 years standing (…) appointed by the Minister; and
>
> 2 members (…) appointed by the Minister."

How independent the Review Panel will be remains to be seen when the Chairman and members are appointed by the Minister. Are we building confidence in a new institution or are we doing the exact contrary?

The Government should be wise to withdraw the Bill and go into a consultation process with the stakeholders. I would advise the Government, like my colleagues have said before me, to read the 2013 Report of Geoffrey Robertson on the Media. We should come with a well thought-out package of measures which could include the following –

- Appointment of a Media Ombudsman and two Assessors, Judicial and Legal Service Commission;
- Appointment of a Press Council, a revamped media trust as a body devised to set standards of journalism instead of the present one; a proper freedom of information.

Robertson cautioned us that when drafting the legislation, we should ensure that we do not go against the European Convention on Human Rights.

As I do, so I must confess to my sentiments of despair and my utter frustration to see the rulers of the day taking our beloved country on a path which is contrary to what the founding fathers of our Constitution and of democratic Mauritius has fought of.

M. le président, le projet de loi que nous avons devant nous et que nous débattons actuellement est un de tous les tourments. C'est un projet de loi qui vise à empêcher, à restreindre, à limiter et à interdire. C'est donc à tout point de vue une loi régressive et non-progressive comme toute nouvelle loi devrait être.

But, first and foremost, Mr Speaker, Sir, it is pertinent to raise the question of why was there any need to come with an amendment of such an offensive and aggressive nature to the existing Independent Broadcasting Act. I have been racking my brain to try to find a plausible answer to that question. I must confess that I have not been able to find a good one. The nearest I found was that probably Government was concerned about the voice of democracy or orchestrated by the private radio channels and other social media platforms.

Indeed, Mr Speaker, Sir, what was the reason, as said in the Explanatory Memorandum to the Bill, to give the IBA additional powers to impose administrative penalties? What was the reason to make better provisions in the Act? Are there provisions really better as the Government is trying to convince us or are they worse as we are seeing day by day in the light of the growing parliamentary and extra parliamentary opposition to the Bill? What is the real reason to provide for better synergy and create a breach between an already powerful IBA and equally powerful ICTA?

I will say and maintain, in an unequivocal term, that the IBA is in fact a very powerful regulator which has ample means and its disposal to effectively regulate the broadcasting sector and all that goes along with it. It has in the past taken sanctions. It has in the past heard parties and issued warnings. By and large, the operators have complied with the IBA's directive. There is no known case of overt declaration of war between the IBA and their operators. So, where is the problem which alerted Government and urged it to come with such a drastic Bill? I am disappointed and frustrated because I am still looking for that reason, Mr Speaker, Sir.

I know that the Opposition has its say and the Government has its way. But the Government is duty bound to listen to the people and people do not talk to please Government, but to warn Government. The private radio channels are nothing but operators listening to the people and giving them an outlet to voice out within the parameters of the law and the directives of the regulator.

Mr Speaker, Sir, I wish to gently remind the Government that in our democratic system, they have been voted into power by the people and they should not forget the greater good of the people. In this respect, this is what Winston Churchill had to say in the House of Common, on 21 October 1944, and I quote –

> "At the bottom of all tributes paid to democracy is a little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of that point."

Mr Speaker, Sir, I maintain that it is most inexperienced and inappropriate for Government to come up with such a Bill at a time when our country is facing one of the darkest chapters of its history. Mauritius is going through a period of upheaval and great distress. We are losing our citizens, old and young alike, in horrific circumstances. We are being attacked by a cruel and unscrupulous enemy undergoing constant mutation. In such a situation, the country should stand as one people, as one nation as a demonstration of solidarity to fight the enemy. Government should call for this solidarity and this cannot and will not be achieved by decision giving rise to discontent and frustration outside.

The social media and the Press bear testimony of this fact. No Government can rule without criticism and finding ways to cumbersome criticism is mere perversion of democracy. I heard the other day, the Prime Minister thanking India, its Prime Minister, Shri Narenda Modi at a function. May I refer him to what Shri Narenda Modi recently said, I quote –

> "The basic of democracy is tolerance to criticism. If you cannot face criticism, if you cannot accept it then you cannot guard democracy, you are not eligible for it."

With these words, Mr Speaker, Sir, I thank you.

Mr Speaker: MP Juman!

(11.11 p.m.)

Mr E. Juman (Fourth Member for Port Louis Maritime & Port Louis East): Merci, M. le président.

M. le président, les intentions derrière ce projet de loi sont claires et nettes. Elles visent à museler la voix de ceux et celles qui s'opposent au gouvernement. Après avoir attaqué aux internautes avec le *Cybersecurity and Cybercrime Bill*, maintenant on vient avec *IBA (Amendment) Bill*. Elles visent à museler la voix de celles qui s'opposent au gouvernement. Elles visent à courber l'échine de ces milliers de mauriciens et mauriciennes que l'honorable Premier ministre et le gouvernement qualifieront certainement d'antipatriotique pour oser dénoncer leurs abus, leurs mauvaises pratiques. Bien sûr pas celle de la MBC car celle-ci se contente de leur rôle de propagandiste à la seule du pouvoir mais plutôt des radios privées qui sont visées. Du moins celles qui sont libres et indépendantes et qui font leur travail sans faveur ni frayeur. Celles qui n'hésitent pas à aborder des thèmes qui font souvent éclater le *tempo so*.

C'est un projet de loi régressif, M. le président. Il est synonyme d'une dangereuse entrave à la liberté d'expression. Pas seulement celle de la presse, mais à travers la presse et des radios, ces milliers de citoyens épris de justice mais qui sont déboussolés par la mauvaise gouvernance et qui n'ont pas d'autres moyens de se faire entendre, que de se livrer à cœur ouvert sur les ondes de ces radios privées.

Supprimer la voix des radios privées est donc égal à supprimer la voix des citoyens car la question se pose pourquoi venir avec un tel projet de loi maintenant quand le pays passe par un pire moment avec la crise ? On est en train de témoigner le jour le plus de notre histoire. Au moment où toute la population souffre, plusieurs dizaines des milliers de nos concitoyens sont en auto-isolement, sont testés positifs au Corona virus. Plus de 500 patients sont hospitalisés dans nos hôpitaux dans l'agonie. On est en train d'enterrer, d'incinérer plusieurs dizaines de personnes tous les jours. Les autorités ont dû étendre les heures d'ouverture de nos cimetières. Nos personnels hospitaliers sont à bout de souffle. Certains sont même…

Mr Speaker: Hon. Member…

Mr Juman: Oui, je sais.

Mr Speaker: Talk on the Bill!

Mr Juman: … alors qu'on aurait dû à ce moment-là, l'opposition, gouvernement, ensemble unis…

Mr Speaker: Talk on the Bill!

Mr Juman: On aurait dû unir aujourd'hui au Parlement pour trouver des solution comment soulager la souffrance de nos peuples mais malheureusement on est en train de débattre ce projet de loi.

Pourquoi venir avec un tel projet de loi en quatrième vitesse sans pris égard sans discussion au préalable avec les *stakeholders* ? Est-ce parce que le peuple se fait de plus en plus bruyant, vociférant contre le gouvernement ? Surtout en cette période de crises sanitaires qui sont relayées davantage sur les radios libres et indépendantes. Vivons-nous toujours, M. le président, dans une démocratie parce que toute atteinte à la liberté d'expression est une entrave à la démocratie ?

Par conséquent, devrait-on s'étonner de voir Maurice encore régresser sur le plan de la démocratie dans les jours et les mois qui viennent si ce projet de loi est voté et adopté ?

D'autant que le dernier rapport de VEDEM n'a pas été très tendre envers nous. Dans le rapport de Reporters sans frontières, mon collègue l'honorable Arianne Navarre-Marie a fait état Maurice a perdu cinq places en 2021. Et dans le rapport, M. le président, on dit que d'un côté la radio/télévision nationale et médias proches du pouvoir versent très souvent dans la propagande. Ce n'est pas moi qui dis ça. C'est le rapport de Reporters sans frontières. Tandis que ceux plus favorables à l'opposition sont susceptibles d'être mis à l'écart. Le quotidien L'express et la radio Top FM ont été systématiquement boycottés pour le gouvernement.

M. le président, ceci dit voyons maintenant de plus près les amendements proposés. Celui-là même qui avait faussement promis d'introduire, c'est ce gouvernement, le *Freedom of Information Act* en 2014. Mais qui fait aujourd'hui tout le contraire de ce qu'il avait promis, prôné auparavant pour instaurer un système répressif contre la presse.

Il y a d'abord une section en particulier qui saute aux yeux et qui ne laisse aucun doute sur l'identité de la radio visée. Je me permets de prendre le nom de cette radio puisque c'est tellement évident. Pour ceux qui ne portent pas de visière, que c'est de la radio *Tempo la so* Top

FM. Pourquoi M. le président, cette radio dérange-t-elle autant le gouvernement pour que l'*IBA (Amendment) Bill* soit présenté précisément pour tenter de le mettre ou pas?

Après ce qu'on a entendu ce que le leader de l'opposition nous a montré, on a non seulement fermé le robinet, on a non seulement coupé publicité. Vous savez le Reporters sans frontières nous dit les pressions économiques et la distribution inégale des revenus publicitaires contribuent également à l'autocensure. Non seulement *SBM*, *Mauritius Telecom*, etc., mais *l'IBA* a aussi demandé à Top FM de fournir la liste de ses clients. Vous savez, M. le président, on a même demandé à *FIU* d'enquêter. On a tout fait après avoir coupé les revenus publicitaires. Essayer d'avoir la liste de ses clients pour faire pression, je ne sais pas. La *MRA*, le leader de l'opposition l'a mentionné, on a aussi doublé 100% d'augmentation pour les *annual fees*, la licence, sortant de R 400 000 à R 800 000. En même temps on supprime la découverte bancaire qu'il y avait à la *SBM*. Tout de suite, dans deux semaines, il doit rembourser son emprunt. Voilà ce qui a été fait à Top FM pour museler, pour l'empêcher d'informer la population, il est clair, selon l'amendement proposé à la section 22, surtout la durée d'une licence de trois ans à un an vise précisément cette radio dont la licence doit être renouvelée bientôt. La seule radio dont la licence doit être renouvelée dans les jours à venir.

Cet amendement, M. le président, dépasse le raisonnement. Je ne conteste pas le fait que la licence doit être accordée pour une durée limitée, loin de là, mais il serait plus sain à mon avis d'accorder les licences pour une durée d'au moins cinq ans à 10 ans à condition bien sûr qu'elles soient conformes à la loi et à l'éthique professionnelle. Comment un business - une radio ou pas - peut-il assurer sa pérennité et l'avenir de ses employés s'il vit dans l'incertitude où n'importe quand leur licence, après un an, peut ne pas être renouvelée par l'*IBA*. Il y a une condition dans la loi qu'on va voter qui dit après avoir encouru des pénalités pouvant aller jusqu'à R 1 million pour chaque infraction commise sur cette loi en vertu de cet amendement proposé de la section 29 sous le volet '*administrative penalty*'. R 500,000 de pénalité ! Vous imaginez si à chaque fois qu'on trouve quelque chose qui n'est pas correcte, quelqu'un monte à l'*IBA*, il dépose une plainte et vous pouvez payer jusqu'à R 500,000. Mais c'est carrément inacceptable, incompréhensible.

C'est un coup de massue pour les radios privées qui pourront du jour au lendemain se retrouver dans une situation financière précaire. D'autant que le frais - et aujourd'hui c'est très

difficile, avec les conditions qu'il y a pour travailler, surtout avec la situation économique, crise sanitaire, difficile de trouver des clients pour les publicités. Au contraire, il faut donner un coup de main. En grosso modo, M. le président, si ce projet de loi est adopté sous sa forme actuelle, on se dirigera vers une mort lente mais quasi certaine de certaines radios libres et indépendantes. On verra à la place des radios dociles, à la sole du pouvoir comme celle de la *MBC* ou encore d'autres plus récentes, proches du pouvoir et financées à travers des placements publicitaires d'une compagnie para étatique, ce ne sera plus la libéralisation des ondes mais plutôt une étatisation des ondes.

Le règlement - et cela s'applique pour toutes les professions - ne doit pas être fait uniquement pour plaire aux proches du pouvoir comme cela avait été le cas dans l'octroi des deux nouvelles licences radio en août 2019. Qu'est-ce qui s'est passé avec Planet FM ? Où est Planet FM ? Déjà, ils ont dû mettre la clé sous le paillasson. Qui a fait le *due diligence ?* Comment on a pu octroyer une licence à une radio ? Pourtant il y avait beaucoup d'*applicants.* Ou pour sanctionner et pénaliser ceux qui sont perçus comme des opposants comme dans le cas de cette radio indépendante qui est de tous les combats contre l'injustice. Le règlement doit être au contraire fait dans un esprit ouvert, de sorte à ce que la démocratie en sorte gagnante, M. le président.

Avec ce projet de loi, malheureusement, on bascule dangereusement vers une mainmise totalitaire sur le contrôle et l'accès à l'information. Avec des amendements proposés à la section 18A, les journalistes pourront se voir dans l'obligation de révéler leurs sources. Déjà, d'avoir des informations c'est un parcours du combattant, maintenant si vous avez cette épée de Damoclès sur le cou, que vous allez devoir…

(Interruptions)

Maintenant, si vous allez devoir divulguer votre source, imaginez pour une seconde comment les journalistes vont travailler, dans quelles conditions, où trouver les informations ? Les *whistleblowers,* il n'y en aura plus, est-ce que c'est cela que le gouvernement veut ? Tuer toutes les enquêtes visant à exposer les maldonnes et mauvaises pratiques dont font souvent l'objet des proches du pouvoir. Comment la population saura-t-elle ce que le gouvernement nous cache si la presse est incapable d'obtenir ou publier des informations cruciales par peur que leurs sources d'information soient sujettes à des mesures répressives.

L'institution d'une *Independent Broadcasting Review Panel* en remplacement du *Complaints Committee*, M. le président, qui jusqu'ici fait preuve de professionnalisme et d'impartialité est également très préoccupant. Ce *Review Panel* sera dirigé par un avocat nommé, tenez-vous bien, M. le président, par le ministre de tutelle et maintenant c'est le Premier ministre. En d'autres mots, c'est un nominé politique qui décidera du sort des radios privées.

Mr Speaker: Two minutes to conclude!

Mr Juman: Déjà?

Mr Speaker: Two minutes to conclude!

Mr Juman: La vraie liberté d'expression, M. le président, c'est le gouvernement Travailliste qui avait la volonté de l'apporter. Le Premier ministre d'alors, le Dr. Navin Ramgoolam, avait fait venir le *Queen's Counsel*, Geoffrey Robertson, qui avait déjà montré la voie à suivre pour consolider la liberté d'expression. En 2013, soit avant que ce gouvernement ne prenne le pouvoir, il n'a pas pu l'introduire; la *Freedom of Information Act* qu'il avait promise. Il aurait pu au moins appliquer le rapport Robertson que le gouvernement Travailliste leur a donné sur un plateau. Mais non, ce régime ne sait que faire taire ceux qui ont des opinions contraires aux siennes.

Je crains, M. le président, que la liberté d'expression ne soit asphyxiée par ce projet de loi, je crains qu'il ne sonne le glas de l'accès à l'information, je crains qu'il n'accélère la régression du pays vers un régime totalitaire, autocratique, je crains pour l'avenir de mon pays. C'est effectivement un *Black Friday* aujourd'hui, un jour noir pour notre démocratie. Merci!

Mr Speaker: Hon. Mrs Mayotte! You have twenty minutes.

(11.30 p.m.)

Mrs S. Mayotte (Second Member for Savanne & Black River): Je serais moins longue que 20 minutes, M. le président. Alors, oui, je serai brève parce que je pense que les membres de l'opposition ont pratiquement fait le tour de la question en ce *Black Friday*. Pour notre ami, l'honorable Juman, c'est le jour le plus sombre de notre histoire. Bien, nous avons chacun nos opinions et notre manière de penser. Pour moi, personnellement, M. le président, la période la plus sombre de l'histoire de notre pays c'était en février 1999 où l'île Maurice avait traversé la

période la plus tourmentée de l'histoire. Notre construction nationale était au bord de la destruction. Depuis l'indépendance, en 1968, jamais notre pays n'avait connu de telles émeutes. Et j'ai entendu tout à l'heure le Leader de l'Opposition, qui me donne l'impression, qu'à chaque fois qu'il intervient, d'avoir comme une boîte d'allumettes dans sa poche, il l'allume, il craque une allumette, il allume un petit feu et il s'en va. Alors, qu'aujourd'hui, nous sommes encore une fois en train de débattre sur un projet de loi de la plus haute importance surtout pour nos amis, collègues et membres de l'Opposition, on peut compter combien sont là, à attendre jusqu'à la fin des débats, et c'est tout le temps la même chose, M. le président.

Aujourd'hui, encore une fois, les membres de l'Opposition se sont exprimés, à haute voix, parce que je pense que quand on parle fort, quand on crie, quand on s'exprime avec la voix qui tremblote, on se convainc soi-même d'abord ; on veut faire croire à soi-même que ce que l'on est en train de dire est la stricte vérité, *nou konn tou*, *nou ki kone*, ce que nous sommes en train de dire est la vérité. Et nous nous arrêtons sur une phrase ou un mot, voilà, ça s'arrête là. C'est ce mot qui fait mal. Cette phrase qui fait mal. J'ai entendu à plusieurs reprises Top FM, Top FM, Top FM. À un moment donné, je me suis dit mais est-ce que les autres radios, - avec tous ces débats qu'il y a eu ces quelques jours - ont déjà mis la clé sous le paillasson ? C'est à peine si on les a entendus citer Radio One qui est la première radio libre de Maurice ; Radio Plus qui fait également un travail formidable et, bien sûr, il y a Top FM. On reconnaît que Top FM fait aussi un bon travail. C'est une radio de proximité. Je suis allée chercher dans ces pages, M. le président, sur le *Independent Broadcasting Authority (Amendment) Bill pour voir* où est-ce qu'il est écrit à la fameuse Section 22 *of principal Act amended* –

> *"(ii) in paragraph (a) by deleting the words "3 years" and replacing them by the words "one year.""*

Est-ce qu'il est écrit à côté '*especially for* Top FM' ?

(Interruptions)

Je suis allée aussi vérifier, un peu plus haut, au paragraphe 18A, *Judge in Chamber*, je cite -

> *"(1) Where a person refuses to give evidence or, to communicate or produce any record."*

Est-ce qu'il est écrit *'where 'Top FM' refuses to give evidence or to communicate or produce any record'*? Non!

Part V – Administrative Penalty and Independent Broadcasting Review Panel, est-ce que c'est écrit juste à côté '*exceptionally for* Top FM'? Non, M. le président ! Alors, est-ce que nous devons avoir autant peur que les membres de l'Opposition veulent nous faire avoir ce soir ?

Comme toutes les lois, M. le président, celle qui se rapporte à l'*IBA* est appelée à évoluer en parallèle avec son temps. Vous conviendrez, M. le président, qu'une loi statique est on ne peut plus obsolète dans une démarche de modernisation.

En égard à l'amendement de l'*IBA Act*, il est grandement question de liberté d'expression. Nous avons tous notre propre interprétation de la liberté d'expression. Mais indépendamment de notre conception je reste convaincue, M. le président, que nous tenons tous à cette notion dont les deux mots 'liberté et expression' sont non seulement lourds de sens mais vitaux dans une démocratie. La liberté d'expression est un droit fondamental. Et dans une société qui a pour socle les principes et les valeurs de la démocratie, la liberté d'expression est intrinsèque à un engagement qu'est le respect des uns et des autres.

M. le président, de par mon long parcours dans la sphère audiovisuelle, je sais que ce soir l'opinion ne manquera pas de peser dans la balance mes propos sur *l'Independent Broadcasting Authority (Amendment) Bill*. Et d'avance, je respecte pleinement tous les critiques qui en découleront car l'ouverture d'esprit va indéniablement de pair avec la liberté d'expression. Et dans la même foulée, M. le président, il est important, voire primordiale pour moi, de préciser que je suis, et je serai toujours en faveur de la liberté d'expression. J'ai eu la chance d'avoir évolué dans le giron des médias. J'ai moi-même été longtemps associée aux médias. J'en ai fait ma profession et c'est grâce aux médias que je suis ce que je suis aujourd'hui. Pendant presque trente ans j'ai pratiqué ce métier qui m'a rapproché des Mauriciens, et je suis aussi reconnaissante envers les grands, les vétérans de la profession qui m'ont accompagnée et inspirée jusqu'au bout dans ma carrière. Et je voudrais profiter de cet espace, de ce débat, M. le président, si vous me permettez, pour rendre hommage à ces hommes et femmes de la grande famille de l'audiovisuel qui m'ont forgée, m'ont inspiré parmi Jacques Maunick, Marie-Josée Baudot, Noël Souriah Sylvio Hécube, Pamela Patten, Finlay Salesse pour ne citer qu'eux, et

l'honorable Nando Bodha qui était, oui, le directeur général de la *MBC* à un moment donné, et moi j'étais employée de la station nationale. Et l'inoubliable feu Marguerite Labat qui ne se lassait jamais de raconter l'histoire de la radio à Maurice, dont le pionnier était Charles Jolivet en 1927. Les studios radiophoniques se trouvaient alors dans l'Hôtel de ville de Curepipe et, en 1944, la *Mauritius Broadcasting Services* est créé.

En trois décennies, M. le président, sur les ondes publiques et privées je n'ai jamais cessé d'apprendre, et ce, en toute humilité de mes aînés et anciens collègues des différents départements de la télévision et des radios. Les valeurs sont immuables, M. le président, leur transmission est primordiale. Et, aujourd'hui, il est de mon devoir d'écouter et d'essayer de comprendre leurs appréhensions face à ces amendements et de les rassurer. Je veux surtout pouvoir les rassurer.

M. le président, les radios privées sont indéniablement liées à notre presse locale. Ces journaux, cette presse locale qui a vu naître le plus ancien journal de l'hémisphère sud et du continent africain. C'était le journal 'Affiches, Annonces et Avis Divers', qui fut lancé en 1773 par Nicolas Lambert dans ces colonnes où il était surtout question des annonces d'administration coloniale concernant la vente des esclaves. Et puis, il y a eu la création du journal *Le Cernéen* en 1832 par Adrien d'Épinay. Eugène Leclézio lança un an plus tard, en 1833, le journal 'Le Mauricien' et s'ensuivent alors d'autres grands fondateurs de notre presse mauricienne comme Remy Ollier, Raoul Rivet, Guy Forget, entre autres. Encore faut-il rappeler l'émergence des journaux associés à des partis politiques dans les années soixante-dix, les années de braise où la liberté d'expression était plus que jamais revendiquée, non seulement à Maurice mais partout dans le monde.

Aujourd'hui, M. le président, il est bon de se rappeler de ceux qui des premiers ont milité pour la libéralisation des ondes, et parmi Jacques Maunick et Jean-Claude de l'Estrac. Mais il ne faut surtout pas oublier ou alors détourner l'histoire.

Prenons cette opportunité pour saluer la mémoire de Sir Anerood Jugnauth, un des artisans de la libéralisation des ondes qui inaugura le 12 mars 2002, la première radio privée de l'île qui sera dirigée par mon très cher ami, le très regretté, Jean Michel Fontaine, ancien rédacteur en chef de Radio Réunion dont je salue la mémoire.

M. le président, la libéralisation des ondes au cours de l'année 2002, a permis de donner naissance à trois radios privées, la Radio publique de la MBC, complétant le paysage radiophonique local. En 2002, l'île Maurice dispose d'une presse libre et pluraliste, garantie par la Constitution. Ce droit d'expression s'exprime dans un cadre légal, régi par les lois sur la diffamation qui autorise, en cas de dérapage, de poursuivre les journalistes ou la presse en question, en justice.

M. le président, depuis la libéralisation des ondes, la radio a évolué. Le ton a changé, faisant souvent place à la concurrence, à la guerre des *Scoop*, à l'exclusivité, à plus de visibilité, plus de débats, d'échanges de factuels et aussi une situation financière florissante, avec un espace publicitaire bien sûr. Pour plus d'équité et de responsabilité entre diffuseur et auditeur, la promulgation de *l'Independent Broadcasting Authority Act* devient une réalité et s'en suit la création de l'*IBA*.

M. le président, je vous parlais justement de l'évolution dans la sphère radiophonique, une évolution en équation avec l'évolution de la société, une société en mouvance, qui demande encore plus le droit de se faire entendre. Mais, M. le président, n'est-il pas logique, qu'après 19 ans, les lois de l'*IBA* soient revues ? Je sais que la situation économique est difficile, comme nous l'a bien rappelé tout à l'heure l'honorable Juman, dans divers secteurs et on entend des commentaires de la part des membres de l'opposition concernant les amendements apportés à la Section 22, sous-section (2), sur la *Duration of Licence*, qui passe de 3 à 1 ans. Je ne pense pas, M. le président, qu'un législateur veuille amender une loi dans le but de toucher une radio ou une personne. Les supermarchés, les petites boutiques au coin des rues, les boites de nuit qui ne travaillent pas, soit dit en passant, en ce moment, doivent également payer leur licence annuellement, tout comme la *Gambling Regulatory Authority*. Alors, cela ne veut pas dire que l'État va à l'encontre d'une section particulière de la Constitution, qui, à la base, hermétise la liberté d'expression.

Je crois, M. le président, que l'intention de ce projet de loi est d'établir un équilibre dans un écosystème où il y a non-seulement l'intérêt des auditeurs, du public et aussi des radios et c'est une loi qui s'inscrit dans cette dynamique. Donc M. le président, je suis sûre et certaine qu'à partir de demain ou même après-demain, quand ces amendements seront apportés au projet de loi, car ce projet de loi sera voté aux petites heures du matin à l'heure où certains seront déjà

au lit, comme l'a dit si bien l'honorable Arianne Navarre-Marie. Et bien je suis sûre et certaine M. le président, qu'il n'y a aucune radio qui devra arrêter les débats. Les citoyens continueront à appeler et à donner leur opinion à l'antenne. Les *talk shows* existeront toujours. Les auditeurs appelleront toujours pour leurs doléances, les radios continueront à être des plates-formes interactives par excellence car ce projet de loi n'est pas pour bâillonner la liberté d'expression. La radio existe à Maurice depuis très longtemps et a toujours occupé un rôle de proximité avec les citoyens et nous n'en demandons que d'avantage.

La question ici est tout simplement un appel à la responsabilité. L'objet de ce projet de loi est de modifier la loi sur l'autorité de radiodiffusion indépendante afin de fournir un meilleur cadre juridique pour réglementer les titulaires de licences vis-à-vis de l'autorité. Donc il faut être prudent M. le président, par rapport à notre harmonie interculturelle. La radio ou les radios font partie d'une société et par rapport à cette société, il y a des règles tout comme le code de la route, on en a parlé lors du dernier projet de loi. Il faut respecter le code de la route.

Les médias numériques y compris traditionnels attirent de plus en plus la génération Z qui peut utiliser divers techniques pour exprimer leur créativité ; ce qui est aussi rassurant M. le président car c'est cette même génération qui va pérenniser l'avenir de l'audiovisuel. Dans cette optique, la formation de tous ceux qui exercent un métier dont la finalité et l'information, s'avèrent indispensables. Et dans cet ordre d'idées, l'éthique et la déontologie ne sont pas malléables et il est de notre devoir M. le président, de nous en assurer. M. le président, ces amendements au projet de loi, de l'IBA, ne seront pas votés pour créer la peur mais au contraire pour protéger les droits fondamentaux des Mauriciens, acquis, grâce à notre système démocratique. Alors oui, M. le président, ce soir je recommande ce projet de loi.

Je vous remercie pour votre attention.

Mr Speaker: MP Dr. Gungapersad!

(11.47 p.m.)

Dr. M. Gungapersad (Second Member for Grand'Baie & Poudre d'Or): Thank you, Mr Speaker, Sir. I will have the privilege of starting my speech on a Friday night and to end it early on Saturday morning. Tonight, when I am intervening on this Bill, my country cries and

mourns the deaths of so many children, adolescents, adults and senior citizens in the wake of COVID-19 pandemic. Tonight, allow me to convey my condolences and our prayers to all those bereaved families who are living the darkest hours of their lives.

Mr Speaker: Come to the Bill!

Dr. Gungapersad: I hope our prayers will help these bereaved families to heal. Tonight we are debating a Bill, which we, on this side of the House, we are afraid, is going to impact directly and drastically on basically 3 independent radios that we have, namely Radio One, Radio Plus and especially Top FM.

Let me start with the following words of Barack Obama, the former President of the USA, I quote -

> "I accept that people are going to call me awful things everyday and I will always defend their rights to do so."

I am intervening on the Independent Broadcasting Authority (Amendment) Bill tonight, knowing fully well that -

1. No matter what we say on this side of the House, no matter how hard we try, no matter how much we attempt to make the mover of this Bill and his acolytes to see things from our perspective, they will still finally vote for this Bill.

2. No matter how much the Civil Society, lawyers, Trade unionists, media people warn this Government about the dangers of this Bill, it will still go ahead because it has the tyranny of numbers.

Mr Speaker, Sir, like my friends on the Opposition side, like thousands of Mauritians, irrespective of political or religious or social background, I also, I have strong reservations against the following Sections and subsections of this (Amendment) Bill. Let me enumerate the contentious sections -

1. Section 5, 18A, dealing with disclosure of source of information which is the life-blood of investigative journalism.

2. Section 7 (a) (ii), where the renewal of licence changes from 3 years to 1 year henceforth.

3. Section 7, parts (4) and (5) regarding the past conduct of a licensee prior to determining whether or not to renew a licence.

4. Part V which comes up with the creation of an Administrative Penalty and Independent Broadcasting Review Panel.

Mr Speaker, Sir, we need not be great seers to understand that the tacit ploy of this Bill is directed towards one specific radio station. It is the Top FM.

Le *CEO* du Top FM a lancé ce cri de cœur lorsqu'il intervenait au *Cœur de l'info*, sur Radio Plus, le 22 novembre 2021 -

> « Ne vous en prenez pas aux autres radio privées si vous avez une dent contre moi. Pour l'avenir du pays, je suis disposé à me retirer de Top FM si c'est moi qui suis visé. »

What more do we need to understand? Who is being targeted?

Mr Speaker, Sir, private radios, online virtual platforms have emerged as the latest tools and medium used by disheartened people, by disillusioned population, by the public at large to vent their anger and bitterness, their grievances against Government's malpractices, abuses and excesses. This Bill has borne in mind that over the past two years with the lockdowns and ongoing pandemic, the number of people turning to virtual media and private radios to express themselves has increased significantly. The live comments on Facebook or the comments when live radio programmes are going on do not please this Government. These comments hurt. No matter what type of artificial window dressing this Government tries with the support of the MBC or some bogus radios, the overarching truth about this Government cannot be hidden.

The Bill is an answer of a Government which is allergic to criticisms which in general is self-congratulatory, which gloats in self-praise, which glorifies itself at every nook and corner of this country. It is allergic to the independence of some private radios. They feel that *Kozé Do Mo Pep, Enquête en Direct ou Au Coeur de l'Info* are increasingly becoming indigestible for this

Government. The testimonies of the common people afflicted by social and economic problems, different administrative ordeals, these testimonies have become the bitter pill to swallow. That is why we have come with this amendment Bill to use it as a *rotin bazaar*, as a weapon, as a deterrent, as a legal means to silence, to anesthetize, to gag all those voices which are there to speak against the abuses, excesses, discriminations, corrupt or malpractices of this Government. Today, more than ever, Governments are easily cornered over their shortcomings, their lies, their false promises, their excesses because their actions are scrutinised by independent radios and online or virtual media.

Like in other autocratising countries, here in Mauritius also the sad tendency of coming with legal silencers, legal provisions to gag the voice of the common men is more than obvious.

Mr Speaker, Sir, as long as the authorities sanction the diffusion of fake news or manipulation of information which is susceptible to create riots or communal tensions or which go against the harmony of the country, I have no problem. As long as the authority punishes the wrongdoers in all fairness without fear or favour, without *get figir,* in all impartiality, I have no problem. However, the amendments in this Bill part ways from democratic principles. This Bill tends to impose and dictate. It is autocratising in many ways.

Now, I will quote what a few persons related to this field, who have expressed themselves publicly on the Bill have said. Hon. Nuckcheddy referred to Mr Ashok Radhakissoon and he quoted one of his sentences where the former Chairman of the IBA said –

«Il faut agir comme un député responsable. »

This is what he said. But he did not read the next sentence of the same person. The next sentence says, I take both sentences together –

«Il faut agir comme un député responsable. Je ne crois pas que leurs mandants seront d'accords avec une telle loi.»

This is the whole picture. *M. Ashok Radhakissoon s'est exprimé sans langue de bois sur* l'Independent Broadcasting Authority (Amendment) Bill. *Je le cite –*

« L'objectif de ces amendements est de pénaliser, pénaliser et pénaliser. »

He further says, *autre élément qu'il a sévèrement critiqué* –

> *« le fait qu'à travers une simple loi, le gouvernement touche à la liberté constitutionnelle. Selon lui, lorsqu'on vient faire des changements qui viennent toucher à la Constitution, il faut qu'un gouvernement obtienne trois-quarts or deux-tiers de vote à l'Assemblée nationale. C'est donc un subterfuge pour venir enlever la liberté d'expression à travers une simple loi. Ce sont les radios qui sont pénalisées car elles sentiront qu'elles ne pourront plus opérer. Au bout de compte, elles seront contraindre de déposer le bilan, exception faite de celle qui sont des* chosen ones, *a-t-il déclaré. »*

Mr Speaker, Sir, let me now refer to Mr Ehsan Kodarbux, the Executive Chairman of Radio Plus, who on 23 November 2021 makes it clear –

> *« L'amendement est anticonstitutionnelle. »*

And he says –

> *« On impose, on dicte, on ne fait pas ça dans une démocratie, dans un pays civilisé. »*

Mr Speaker, Sir, let me refer to the Human Rights on Freedom of Expression 2020. I will quote pages 5 and 6 –

> "Section 2. Respect for Civil Liberties, Including -
>
> A. Freedom of Expression, including for the Press
>
> The Constitution provides for freedom of expression, including for the press, but the government did not always respect this right."

I repeat the sentence –

> "The Constitution provides for freedom of expression, including for the press, but the government did not always respect this right."

And I will quote from page 6, one incident which is mentioned there –

> "On October 13, police questioned Top FM journalist M.B. at Police Headquarters over a 2019 video that raised corruption allegations against the CEO of Mauritius Telecom, who is close to Prime Minister P.J."

Mr Speaker, Sir, some people may not be happy that I have quoted these people!

Let me quote one Member of this present Government when he was not elected at that time. Let me quote him and afterwards I will tell you who he is –

> *« Le citoyen a peur de critiquer le pouvoir. »*

It is not Labour Party, MMM or PMSD saying this. *Tout à l'heure, je vais vous donner le nom de cette personne –*

> *«Le citoyen a toujours peur de s'exprimer surtout pour critiquer le pouvoir en place. Chaque citoyen ressent cette frayeur quand il s'agit de faire savoir son opinion ouvertement. Surtout quand c'est une désapprobation qu'il exprime. Les menaces de suspension de licences des radios sont souvent liées justement au programme où les citoyens appellent afin de commenter l'actualité, fait connaître sa désapprobation, exprime son mécontentement. »*

La même personne dans la même interview, je cite –

> *«Les circonstances jusqu'à présent ne tendent pas à montrer que l'autorité régulatrice devrait procéder à la suspension des licences de qui que ce soit. D'autres sanctions peuvent être prises comme d'accorder un droit de réponse à quiconque se sent lésé mais une suspension, je pense, serait trop drastique. »*

Cette personne n'est autre que le présent Attorney General *de notre pays ! J'ai cité Me Maneesh Gobin, qui dans une interview dans le Capital de l'édition 69, mercredi 14 mars 2012 disait ceci.*

Mr Speaker, Sir, silencing the independence of private radios in general or attempting to silence TOP FM through the amendment of this Bill is a pernicious, wicked, malevolent, malicious act of those who are bent on stifling democracy and freedom of expression.

To conclude, Mr Speaker, Sir, let me end with a long quote, the words of wisdom of a learned Senior Counsel, Me Antoine Domingue who said, my quote starts now –

> "IBA and those in power have TOP FM in their sides and this Bill is obviously an ad-hominem piece of legislation.

I do not know of any other licensee which has several pending judicial proceedings against IBA and whose private commercial radio license is up for renewal. I was serving as Ag. Chairman at the MTA when the private commercial radio licenses were first issued. The Chairman of the MTA was then an ex-officio member of the IBA. It is now the reverse. Once the Bill becomes Law, the Chairman of the IBA shall henceforth be an ex-officio member of the ICTA. Given the track record of the IBA, this does not augur well. I foresee a string of court cases and possibly applications for constitutional relief on account of breaches of fundamental rights, both on the IBA and on the ICTA front, following the other Cybersecurity and Cybercrime Bill. Both Bills go hand in hand and are meant to curb freedom of expression whenever it is expressed against the Government of the day.

I have said it, Mr Speaker, Sir.

Thank you very much.

Mr Speaker: Hon. Members, good morning! I invite the hon. Deputy Speaker to take the Chair.

(00.02 a.m.)

At this stage, the Deputy Speaker took the Chair.

The Deputy Speaker: Thank you very much. Please be seated!

Hon. Bodha, please!

Mr N. Bodha (Second Member for Vacoas & Floréal): Good morning, Mr Deputy Speaker, Sir.

The Deputy Speaker: Good morning to you too.

Mr Bodha: It is always an honour to have you in the Chair. Thank you for that. I would like also to thank hon. Mrs Mayotte for her kind words. In fact, she was the presenter of a programme called 'Teens plus one', which was then broadcasted on TV5 and it was a brilliant piece of work.

Mr Deputy Speaker, Sir, broadcasting is a very complex profession which requires a lot of excellence. And, Mr Deputy Speaker, Sir, it is also a very sophisticated business sector. It requires professionalism, excellence, and latest technological means but, above all, it requires a very conducive freedom of expression environment to be able to play its role to uphold a very vibrant democratic society.

Mr Deputy Speaker, Sir, we have a new Bill in front of the House as an utmost priority. My friends on this side of the House have said that, today, the country is in the tragic grip of the COVID-19 pandemic, but still, we are debating the Bill after midnight on this important day. And this morning, the Leader of the Opposition made a request for a debate on the whole COVID-19 issue, which was not allowed.

Mais la question que je me pose, M. le président, pourrait-on pour autant verrouiller la parole du peuple ? Si le débat n'a pas lieu ici, il aura certainement lieu dans la rue, devant les antennes de la radio, sur les réseaux sociaux, sur les chaînes de télévision, sur l'internet, parce que la parole d'un peuple qui se sent réprimé va se libérer d'une manière ou d'une autre, M. le président.

La nouvelle loi crée un nouvel arsenal de contrôles et du verrouillage. Je vais en parler tout à l'heure. Mais je souhaiterais quand même parler de l'état de la situation mediacopolitique et l'état de la situation audiovisuelle à Maurice. Qu'est-ce qui s'est passé ? Nous avons eu pendant longtemps la voix sacrée de la radiotélévision nationale, radio et télévision. Et on disait à cette époque « *monn tan sa lor radio* », donc, c'était officiel, c'était vrai.

Par la suite, il y a eu l'avènement de la télévision, de la radio privée en 2000 et il y a eu un phénomène qui s'est produit. Ce phénomène c'est que la radio et la MBC a perdu cette bataille de crédibilité par rapport aux radios libres, parce que les radios libres avaient fait de l'innovation, avaient été beaucoup plus percutantes sur les programmes d'information. Donc, la MBC Radio a perdu depuis longtemps la bataille des radios, et la preuve en est, par exemple, si vous écoutez la radio de la MBC aujourd'hui, les recettes publicitaires sont très maigres et, finalement, cette radio n'a pas pu concurrencer et être une voix de communication face aux radios privées. Qu'est-ce qu'il en reste alors ? Il reste la télévision publique et nous savons ce que la télévision publique est devenue aujourd'hui. On l'a vue depuis longtemps ; bon, ça continue. On parle de '*His Master's Voice'*. Et dans ce paysage audiovisuel, l'État, le régime actuel souffre de ne pas accepter la critique même si elle est constructive, les propositions mêmes si elles sont bonnes. Il y a de l'autre côté une radio publique qui ne peut pas concurrencer les radios privées, une télévision publique qui est devenue une boîte de propagande et il y a un contrôle de la publicité gouvernementale parce que certains titres n'y ont pas accès et finalement c'est un échec désastreux. Par rapport à ça, comment réagit le régime ? Le régime réagit par rapport à la critique parce qu'en attendant les radios privées ont occupé un espace critique, stratégique au niveau de la communication et sont devenues des espaces audiovisuels de proximité et tout le monde pense aujourd'hui qu'il a accès à la radio. Il peut lever son téléphone, il peut avec son smartphone participer à tous les programmes, exprimer ses doléances et faire ses critiques à l'égard du pouvoir, à l'égard de l'Opposition, à l'égard de l'Opposition extraparlementaire. Et le peuple a aujourd'hui une voix extrêmement percutante et pertinente. Mais dans le contexte actuel, face à beaucoup de problèmes que le gouvernement n'arrive pas à gérer, ou gère très mal, il y a énormément de critiques, notamment la gestion de la crise de la Covid-19. Et de l'autre côté, nous avons la radiotélévision nationale qui demeure une institution en situation de monopole.

Et mon intervention portera aussi sur ce que moi je pense est aujourd'hui nécessaire dans une île Maurice des années 20. Ce n'est pas de verrouiller les radios, mais c'est de libérer la télévision. Le moment est arrivé pour Maurice d'avoir une télévision privée pour qu'à 19h30 ou à 20 heures, on puisse s'asseoir chez soi et avoir un choix de bulletins et non pas se trouver confronté systématiquement au journal de 19h30.

En 2014, j'ai fait partie d'un comité du gouvernement qu'on avait mis en place à l'époque pour voir comment on pourrait donner à la *MBC* un nouvel élan. Alors, tout le monde a parlé. Le Premier ministre d'alors était là, Sir Anerood Jugnauth, le Premier ministre de maintenant et, à un moment donné, tout le monde a parlé et quand je suis intervenu j'ai posé une question : quand allons-nous libéraliser les ondes ? Parce qu'il nous faut cette date pour préparer la *MBC* à jouer pleinement son rôle dans une île Maurice des années 2000, du troisième millénaire. Il faut préparer la radiotélévision nationale pour qu'elle puisse jouer son rôle par rapport à la télévision privée et par rapport aux radios privées. Qu'est-ce qui s'est passé en attendant ? La radiotélévision nationale continue, s'est empirée dans son rôle d'être la voix du régime. Et de l'autre côté qu'est-ce qui s'est passé c'est que les radios privées ont développé à partir des réseaux sociaux des télévisions qui sont devenues aujourd'hui quelques soient les émissions où nous passons, on passe à la fois et le son et l'image et avec Facebook on s'est retrouvé dans un développement technologique extraordinaire, ce qui fait que finalement nous sommes dans une situation où effectivement il n'y a pas de télévision privée, il y a une télévision publique nationale mais il y a énormément de possibilités de voir sur notre *smart phone*, chez-soi tout ce qu'on souhaite voir au niveau des grandes émissions. Pour participer à une émission vous êtes en direct et tout le monde peut vous voir, en attendant l'Assemblée nationale a aussi sa télévision. Effectivement, il faut amender la loi de 2000 mais il ne faut pas amender la loi de 2000 pour verrouiller les radios. Il faut amender la loi de 2000 pour aller vers le progrès et comme l'a dit mon collègue le député Nagalingum, il faut aller dans le sens du progrès et il faut aller dans le sens de l'ouverture de l'espace démocratique.

M. le président, je prends deux cas, le Council *de ce qu'on appelle* the ICASA Council, *c'est-à-dire pour la communication, pour la télévision en Afrique du Sud.* I am going to read what it is about –

> *"The ICASA Council is the highest decision making body of the authority and consists of eight members and the Chairperson. Now, these councillors, they are appointed by the Minister on the recommendation of the National Assembly according to the following principles: participation by the public in the nomination process, ici aussi nous avons une autorité; transparency and openness, and the publication of a short list of candidates for appointment. Persons appointed by the Council must be committed to fairness,*

freedom of expression, openness and accountability and must be representative of a broad cross section of the population of the republic."

Cela s'est pour l'Afrique du Sud.

En ce qui concerne l'autorité, le CSA en France –

« Le CSA est une autorité publique indépendante, le CSA rend compte de son action aux pouvoirs publics mais n'est pas soumis à l'autorité du gouvernement. »

So, if we were to amend the Bill and the Prime Minister came with some very lofty words, he said some very nice words about it. He said we have dramatic changes and he spoke about effectiveness of the system, he spoke about fairness, about being objective, about being independent and he said that this Bill will create a new broadcasting environment where we are going to have all this. I do not think so at all, Mr Deputy Speaker, Sir. I think that if the Prime Minister and the Government want to have a fair independent and objective broadcasting medium in the country, we cannot do what we are doing.

My friends have spoken about the duration of the licence, how can somebody spend millions to set up a radio and then he has no predictability as regard to his business. This is no business sense at all. How can he recruit a star to present a show to be able to have the advertising revenue when he does not know what is going to happen next year. Tomorrow, now, the new Bill relates also to TV because when we say broadcasting here, broadcasting means to emit sound and/or images by means of the Hertzian waves, satellite or a wired electromagnetic system for the reception of the public. So, this Bill, the new Bill, the amendment, applies also to TV. Now, how can somebody invest – I think it should be costing about USD2-3 m. today to setup a studio and to setup a private radio channel – how can that person invest more than Rs100 m. for a television channel when he knows that the duration of his licence is only one year? It is impossible, how can somebody, and you can have somebody, let us say you have a TV star who presents the bulletin at eight o'clock and he becomes a star, he would not come there, he does not know what is going to happen to him in a year.

So, Mr Deputy Speaker, Sir, this issue of the one year is unacceptable, we cannot do that and the reason which was given by the Prime Minister saying that because we pay the licence over a year does not hold water at all.

Now, when it comes to the issue of the disclosure of a source of information by a journalist or a reporter, *mais le sacro-saint principle du journaliste c'est de ne pas révéler ses sources* and you will never have any investigative journalism, you will never have any leaks, you will never have any scandals which are uncovered because the whole issue of responsible journalism lies in the fact that you cannot reveal or disclose the source of your information and can you imagine Mauritius being such a small place, if we apply this then no journalist will have access to any information.

We have some other issues which have been debated by my colleagues on this side of the House, they have raised the issue of the license fee which has been multiplied by two and then you have the administrative fines that are being applied and the cost of it, about Rs500,000 for one complaint. Now, Mr Deputy Speaker, Sir, we know how the radios today have a huge problem as a business concern. It is not easy to run a radio today because when you are in a private radio, you depend almost entirely on advertising and sponsorship. Today to be able to run the radio, it is not going to be an easy thing. I think that it is a harsh punishment.

In the excerpt that hon. Dr. Gungapersad mentioned he said that the now Attorney General raised the issue of *droit de réponse.* In a democratic society, this is the way to deal with a number of issues and we go to Court or we go for criminal defamation only in very strict, serious cases but for the day-to-day running of broadcasting we cannot have harsh penalties, we should have a system which is operational, efficient and where we can control the efficacy.

Mr Deputy Speaker, Sir, I have a question for the Prime Minister. We have been talking a lot about Top FM. I have been informed that Top FM has sent two renewal letters, hon. Prime Minister. One by dispatch on 25 August 2021 and the second one by registered mail on 03 September 2021 and both have been acknowledged. It goes with the law because in the past renewal had to be done not later than three months before the expiry of the licence and this time we have an amendment saying that it should be done ninety days before. If I understand, the application for renewal of Top FM is already at the IBA since the month of August and the

renewal should be done by the 12 December. Does it take so long from 25 August up to now to have the licence renewed? A lot has been said about what has been done to Top FM, so I am not going to indulge on that. But, my question, to the hon. Prime Minister is: why is it that the application, which has been done so early, has not yet been considered; and why are we changing the law now; and whether the application is going to be considered under the new law as soon as it is enacted? So, this is my question to the hon. Prime Minister. And, I think, that for the sake of clarity, a lot had been said on the other side of the House, that this is not being done for Top FM. So, I think this is an answer that we require from the hon. Prime Minister.

In the end, Mr Deputy Speaker, Sir, the Government has a majority and whatever we are going to say, whether we say we have the pandemic, that there is a lot of criticism and they do not want this criticism, the Bill will be passed. Top FM, which I believe, has already made, as I said, the application. So, we want to know when this application will be considered; why it was not considered under the old law before when it was made.

And what I advocate, Mr Deputy Speaker, Sir, is that this law has to be scrapped - you will have your way - but it will have to be scrapped so that we have a broadcasting authority, which will fit the ideals of Mauritian democracy. The advent of a private television network cannot be stopped, Mr Deputy Speaker, Sir, it will come. On this side of the House, I hope, and I believe my colleagues wish so, and on my part this is a very important priority as soon as possible because I know outside that our people want it, our people deserve it, and our democracy deserves it. And if we were not in this pandemic today, I think we could have had one of the biggest demonstrations because *on ne peut pas étouffer la voix du peuple*.

Merci, M. le président.

The Deputy Speaker: Thank you very much. Hon. Mrs Luchmun Roy, please!

(12.23 a.m.)

Mrs S. Luchmun Roy (Second Member for Port Louis North & Montagne Longue): Thank you, Mr Deputy Speaker, Sir. Imagine my privilege talking right after my predecessor who was a former Director General of the Mauritius Broadcasting Corporation. But, imagine my deception when I heard him saying –

"MBC is *la voix du régime*"

And that, rightly so, MBC was once your *gagne pain* as we say. Talking more about what he has been saying.

(Interruptions)

It is normal that I rebut what you have been saying. With all due respect to my predecessor, because when I joined the media industry, Radio Plus, where I did 12 beautiful years, and when I got into politics people compared me to the hon. Nando Bodha because he was in the media and he is here. We have some former Members of Parliament like Mireille Martin, who was also from MBC and who was a former Member here. So, which means that the media, Parliament and politics are always interconnected. And, saying so, I would like to say that I am very grateful to the MBC, I am very grateful to those people who have inspired me. There is one thing that I would love to share with you, which I am sure my friends from the media would appreciate. I have been listening to Members on the other side, who have been treating media, who have been discussing about different medias, different quarters of the media as being business. Radio is not about business. This is where the hon. Member gets it wrong. So, now I understand why he is not the Director General because radio can never be a business; you are not selling feelings there. Radio is about emotions, radio is about what you can make people feel and this broadcasting law is about media, is about radio. If you get into the logic of making the broadcasting world as being a business, this is where you get out of the code of deontology. This is where you go out of what you believe to be true to yourself. Like for example, there are things which you are not allowed to say, but radio being business becomes sensational as my hon. colleague, Sandra Mayotte mentioned. At one point of time there was a craze about breaking news, why because all the private radios wanted to have their share of the market to position themselves as the number one. I have witnessed it; I have been part of that media that is why I can say that being here, you cannot treat radio as being business. If you get into the logic of business, then this is where you will fail.

Mr Deputy Speaker, Sir, there is one thing which I would love also to share in this House, I am not intervening because I am a former member of the Press, I am not an expert journalist in Communication and neither am I a legist. Because since the beginning of this debate, we have

been made to understand that we are the legist, we are the legal person. Hon. Shakeel Mohamed has been like coming forward and saying: ‘Yes, I know law, it is not here and there; it is not freedom of information here and there, no’. Some Members on the other side of the House pretend to be the one who knows everything, and we, Members on this side, knows nothing. And I think this is quite a bad attitude from a former Member, from a senior Member in this House, which I would love to highlight here.

I would like to begin my contribution to this Bill by acknowledging the work conducted by the different medias in Mauritius. They have been relentlessly working for Mauritian citizens, be it for some shows like he has been mentioning: *Tempo la so, Explik Ou Ka* or anything else. And I would like also to acknowledge that I have been part of a beautiful 12-year journey in a private radio; a private radio which has forged my dream, which has forged my character.

(Interruptions)

I am not sharing my life; you need to know about it. You need to learn about it and respect it when a Member is talking. Thank you, hon. Member. During those 12 years of the radio, I have had the opportunity to be trained by senior members of the Press like Marie Michèle Etienne, Marie Josée Baudot, Richard Ramasawmy, Rabin Bhujun, Jugdish Joypaul or even Nawaz Noorbux and the late Nadarajen Pillay to name very few of them.

And today, I am all grateful to lend my voice to such an important Bill, a Bill which is important for all the Mauritian citizens who feel that his or her rights have been *bafoués* as we are saying.

Being mindful of the time given to me, Mr Deputy Speaker, Sir, I shall focus my intervention on Section 18A, Judge in Chambers, which has been subject of extensive debates in the different quarters, rightly be so, as it is what we call the democracy. But given the opportunity to lend my voice to this debate, I would like to dwell upon the role of the media, and more specifically, journalism and democracy. This is where I feel the deception on the other side, the legists who are there writing about laws and everything failed to talk about this. My predecessor, who spoke right before me, failed to mention this. Democracy, which has been mentioned here in this August Assembly, is considered to be a rule of the people through their

elected representatives. One of the merits of a democratic system is the freedom of expression and the space that is provided to disagreement by different sections of society. It has mainly four pillars as we say it: the judiciary, the legislative, the executive, and the media. The three former ones maintain a system of checks and balances in the normal context whereas the latter, the media is the most powerful entity on earth. And coincidence be it that I shifted from the fourth pillar to join the second pillar of the democracy, the legislative.

Over the period of time, Mr Deputy Speaker, Sir, the media has grown in power although its fundamental objective remains to serve people with reliable and accurate news, views, comments and information on matters of public interest in a fair, accurate, unbiased and in a decent manner. It is considered that some journalists, media houses enjoy privileges because they are part of what is considered as *quatrième pouvoir*. And with such power and influence, they tend to manipulate the public opinion. And I think those Medias should not lose sight of their primary duty and obligations towards the population. With this power comes some sense of responsibilities on commenting and disseminating authentic information in fairness.

Mr Deputy Speaker, Sir, the role of a journalist is of paramount interest, but that does not make the journalist above the law. We have been debating about this Bill, but no one mentioned about who is a journalist. What is his role? Talking about laws, the very fundamental of journalism is the Code of ethics; *déontologie de la presse,* a Code of ethics which is unfortunately not documented here in Mauritius and I am sure the hon. Member, on the other side, Eshan Juman, will agree with me because he is a journalist too, that we do not have a *code de déontologie* here in Mauritius. And sadly be so, in 2021, the news media still does not have one.

I know *La Sentinelle* had one of their Code of *déontologie* which was written in 2013 or something like that but funny enough, we are here debating about the *liberté d'expression*, we are here talking about the role of the media but we do not have a proper document which a journalist or anyone who joins the Media Industry gets a proper document saying that: Okay, these are the rules, the do's and the don'ts. So what happens is you learn the work '*lor terrain'* as we call it.

I would like to quote here Roukaya Kasenally who mentioned in an article in l'*Express* -

> "I would like to reiterate the case of excellence in journalism, a craft that matters where professionalism, ethics, truth and balance remain balance remain cornerstone features despite the advent of new and disruptive technologies."

And this, Mr Deputy Speaker, Sir, brings me to another theme, the incestuous relationship between journalists and politicians, which no one mentioned here, and yet, we are here debating about democracy, about freedom of expression.

Mr Deputy Speaker, Sir, this Assembly has witnessed, as I mentioned previously, a *défilé* of former journalists, of *rédacteurs en chef*; just to name few of them, we have de l'Estrac who was there, we have Mireille Martin. We have the hon. Nando Bodha, just to name a few of them. But the question today should not be about the timing. I put the question forward to the hon. Members on the other side. The ethical demarcation line between journalists and politicians has never ever been clear and this is a fact that we do not have a clear-cut Code of Conduct for the Press, and today, the same Press is coming forward, saying: 'C'est notre voix…*vox populi*…this is la *voix du peuple* and so on. *Tempo La So* and so on'. No, but where does the freedom of the journalist stop? Where is that *déontologie?* Where is the respect of the institutions?

Mr Deputy Speaker, Sir, how many media houses, how many radios? This is the question which we need to ask right now. How many journalists, how many *rédacteurs en chef* have been advisors to politicians? This is a fundamental question to which I am sure hon. Bodha will answer, maybe off-air, as we say it.

So, how many journalists do we have who have been working as advisors, who have been advising into communication matters? So, why are we here like faking the debates? Even the MMM Government had some former journalists with them. Even the PTR, the PMSD had some former journalists. So, we come here forward and talk about *liberté de la presse*; we come here to talk about freedom of expression, but you should tell us, young Members in this House, you should tell the population outside where is that demarcation between you as politicians and the journalists because I am sure we all have our networks, we all share information. So, let's not fake the debates, Mr Deputy Speaker, Sir.

Today, what we call *la liberté d'expression,* is being unjustly used by some quarters for a political objective while journalism is meant to be impartial and well-balanced. With the change

of the audio-visual world, we saw different media houses taking different stands on news which are meant for consumption of general public and media houses have no right to feed or manipulate information with the idea of influencing public opinion. Sadly, but each time, a Government has come forward with some constructive propositions - I will just go back in time. In 2007, there was the News Editors and Publishers Association (NEPA), which came forward with a Code of Conduct drafted by a committee which comprised of members of major media house. It was not adopted and NEPA no longer exists. In 2013, under the PTR Government, Geoffrey Robertson submitted a report to the Government, 'Media, Law and Ethics' and in the recommendations, it mentions that IBA is, I quote -

"the toothless tiger."

So, why being selective when you refer to the Media, Law and Ethics in Mauritius?

Mr Deputy Speaker, Sir, this Bill comes to help any individual who feels that he or she has received an unfair trial by media. Furthermore, for any media person who feels that he has unjustly been ill-treated, he always can have recourse to Section 30, Part 2 of the Bill that also can have recourse to 30 (L) for a judicial review.

To conclude, Mr Deputy Speaker, Sir, being mindful of the time, I will not be long. I would like to recommend and to propose to this House that we need to also set up a Press Council which is of utmost importance. We need to have drafted rules and regulations, Code of Conduct for journalists because it is a *métier* and it needs to learn the boundaries, how to respect the privacy of others. And talking about privacy, we have so many cases which I personally witnessed. There were some journalists who took pictures of bodies of murders, published them in newspapers. They were sued for it. There are some journalists who, once you give them a mobile phone, they can just drive and think they can just go anywhere. A recent one was the death of a jockey, which was live and direct broadcast on the net from the funeral pyre. Just imagine how the family felt! It was live on a website. This is not journalism, it is sensational because you want to sell the media, you want to sell your platform. And you know, there is a famous quote which I continue to use very often -

"Lalang pena lezo"

The tongue does not have bones. So we better be careful in what we say and not shield behind the freedom of expression. One more point, Mr Deputy Speaker, Sir, we all citizens, we are all human beings. We have the right to an opinion until we do not present our own opinion as a fact. And, as very often mentioned, comment is free but facts are sacred. So, your opinion cannot become facts and facts cannot become one's opinion. This is how media houses should work and this where this Bill comes into action.

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

Mr Deputy Speaker: Thank you very much. Hon. Ramful, please.

(00.39 a.m.)

Mr D. Ramful (First Member for Mahebourg & Plaine Magnien): Thank you, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, I sincerely hope that the people can see the difference between a Government led by the then Prime Minister, Navin Ramgoolam, and the present Government when it comes to the freedom of the Press.

In August 2000, under a Certificate of Urgency, the Labour Party brought the Independent Broadcasting Authority Bill (IBA Bill) to the House *afin de liberaliser les ondes radios*, setting a legal framework so that licenses can be granted to private radios.

On the other hand, today, coincidentally under a Certificate of Urgency again, the MSM-led Government is bringing amendments to the Bill, introduced by the Labour Party *avec un agenda clair de museler une section de la Presse.* I sincerely hope that they do not get booted out from office with a Certificate of Urgency from the people.

When you look at those amendments, *l'intention est clair, M. le président, n'allez pas chercher des justificatifs qui ne tiennent pas la route. L'agenda de ce gouvernement est clair, les critiques contre ce gouvernement pleuvent sur les ondes des radios privées. Il fallait à tout prix contrôler jusqu'à même bâillonner ces radios.* This is the only and malicious objective of this Bill, Mr Deputy Speaker, Sir. When it comes to the timing, many of my friends have mentioned about the timing, when the people out there are facing so much difficulties, there are going through a difficult time, hundreds of families are mourning the loss of their dear ones due to COVID. We, representatives of those people, we are meeting at 1 o'clock in the morning not to find solution to the COVID situation, but debating on a Bill that is going to have severe

consequences on the freedom of expression! I am going to come to some of those clauses in a minute.

We have all witnessed during those difficult times, those private radios have been doing the liaison between the affected families and the authorities to try to find solutions to their problems. Now, we are coming with a Bill curtailing, Mr Deputy Speaker, Sir, rather than promoting the freedom of the Press!

Also we know, there is no debate about this, the intention is clear, singling out one particular private radio, TOP FM, which has had, we know, a lot of disputes with the IBA and which does not share any insensuous relationship with Government unlike certain radios. We know the licence of TOP FM is going to expire in 16 days as from today, on 12 December. So, there is no doubt that these amendments are being brought at this particular time to hold TOP FM at ransom to the line or else *l'épée de Damoclès va tomber* and your licence shall be revoked. You can try and silence the voice of TOP FM but try as much as you can, you will not be able to silence the voice of *ces milliers d'auditeurs et des* followers *de* TOP FM, *M. le président*.

Mr Deputy Speaker, Sir, to come to the timing, the timing of these amendments is, therefore, very telling. Now, this is not the first time that Government is going against private radios. This year itself, *le 22 mars 2021*, the Prime Minister approved a Regulation under the IBA Act *afin de doubler les* licence fees *des radios privées, sortant de R 400,000 allant jusqu'à R 800,000 avec effet rétroactif, s'il-vous-plait, depuis le début de l'année et en s'assurant que cette augmentation des* licences fees *ne s'appliquent pas aux radios obtenues leurs licences moins de 5 ans. Et comme pure coincidence, seule Wazaa FM en profite.*

Mr Deputy Speaker, Sir, I am not going to be very long because we have had quite extensive debates on the different clauses, but let me come to a few of those clauses that, in my humble view, constitute *une érosion de la liberté de la presse.*

First of all, we have this Clause 3 which phases out these two committees, the Standards Committee and the Complaints Committee. So, we are doing away with those two committees that were truly independent. They are composed of members appointed by the authority, not by

the Minister. These two committees were acting as mediators between the authority and the licence holders. Now, these committees are being replaced by a so-called Independent Broadcasting Review Panel and the Chairperson is going to be appointed by the President on the advice of the Prime Minister after consultation with the Leader of the Opposition, I take it.

Now, let me come to Clause 4 which is about criminalising the failure of a licence holder if it fails to comply with written directions from the authority. Mr Deputy Speaker, Sir, this is the most dangerous amendment in this Bill, and you know why? Because you are giving power to an authority controlled by Government to give written directions to licensees and the types of directions it can give has not even been defined in the law. So long as this was not being criminalised, so far as failure to comply with the directions was not an offence, so be it. But once you decide to criminalise it, you have to define what kind of direction. It cannot be left open. The authority can give any kind of direction to the private radio: I am directing you to stop criticising the Government. If you do not comply, you are committing an offence. You can be prosecuted. You can be imprisoned up to 5 years. So, this is a very dangerous amendment giving wide powers to the Authority to give directions to private radios. I heard the hon. Prime Minister saying that the IBA was a bulldog sans dents but with these amendments we are creating an IBA which will become a monster, *un monstre* with all these powers. You do not define what kind of direction the Authority can give to the radio.

Then, there is this issue about the confidentiality. So, if a journalist working in a private radio has obtained privileged information, the Authority can ask the radio to disclose the source, - let alone the information - the source of the information. And if he refuses, the Authority goes to the Judge in Chambers, satisfies the Judge in Chambers that it *bona fide* needs that information and the radio will have to disclose it. Therefore, Mr Deputy Speaker, Sir, do you realise that from the time we vote this Bill, the journalist’s right to privileged information, which has always been an absolute right - so far, a journalist’s right to privileged information, not to divulge the source of the information has always been an absolute right - when this Bill is going to become law, this absolute right is going to be eroded and journalists as from then are going to have only a qualified right because from now on, they can be ordered to divulge the source of the information by a Court Order.

Let me come to this issue about the duration of the licence which is going to be one year. Well, this can only happen in a banana republic. Sorry to say that. Only in a banana republic you can see a Government reducing the duration of the licence from three years to one year. The hon. Prime Minister was making reference to international practices. I think the Leader of the Opposition said it earlier on; in the UK the minimum is five years. In India, the duration of the licence can go up to 15 years. *15 ans!* And here we are reducing the duration from three years to one year. And also in deciding whether to renew or not to renew the licence for one additional year, the Authority will take into account previous sanctions that have not been prohibited by the Court. So, even if a previous sanction is presently being contested in Court and the Court has not yet ruled upon the legality or illegality of that sanction, the Authority can take into account that sanction in deciding whether to renew or not to renew the licence of that private radio. Have you ever heard of this in a democracy?

There is no respect even to the Judiciary. This is a clear disrespect in the face of the Judiciary. There is no respect to the principles of separation of powers. I don't know, maybe for the MSM it is normal, but what about those *soi-disant grands défenseurs des droits humains, les anciens militants*, the Deputy Prime Minister, the Vice-Prime Minister, Minister of Environment, *les anciens militants, grands défenseurs des droits humains*? I don't hear them. All of them are lawyers. *Vous êtes disposés de mettre de côté vos principes et de voter ces amendements* that do not respect the principles of separation of powers between the Judiciary and the Executive.

And then, there is this issue about the administrative penalty. So, now, over and above criminalising, failure to comply with a direction from the Authority which can lead to a penalty of Rs500,000 or imprisonment up to 5 years, despite the fact that the Authority has also power of suspension of licences and revocation of licences, these sanctions are not enough. Now, the hon. Prime Minister feels that we have to introduce a new sanction, imposing administrative penalty up to Rs500,000 on private radios. And this is going to be over and above all those sanctions, suspension of licence, revocation of licence, making an offence if you fail to comply with the directions. Over and above all these sanctions, now we are going to have an additional sanction which is going to be an administrative fee.

Now, therefore, Mr Deputy Speaker, Sir, let me conclude. I will not go into all those clauses because as I have said, a lot has already been said about those clauses. Let me conclude

by making reference to our Constitution, Section 12. Many of the interveners have made reference to Section 12 which deals with the freedom of expression. Yes, I agree that Government can pass law to regulate private radios but what the Constitution also says is that the law has to be reasonably justifiable in a democratic society. Those amendments have to be justifiable in a democracy like Mauritius and these, therefore, lead me to the following questions –

- Is it acceptable in a democratic society that an authority is given wide powers to give any written direction - not even defined what kind of direction - to a radio and asks it to divulge confidential information?
- Is it acceptable in a democratic society to make it an offence if that radio refuses to divulge information based on a directive which is not defined?
- Is it acceptable in a democratic society for an authority in total disregard of the principle of separation of powers to apply sanctions that are being contested before a Court of law?
- Is it acceptable in a democratic society that a private radio be punished more than once for the same act?

And is it acceptable in a democratic society that Government passes an *ad hominem* law, singling out one particular radio. I hope that we get the answers to these questions in the very near future.

Thank you, Mr Deputy Speaker, Sir.

The Deputy Speaker: Thank you. Hon. Aadil Ameer Meea, please.

(1.01 a.m.)

Mr A. Ameer Meea (Third Member for Port Louis Maritime & Port Louis East): Mr Deputy Speaker, Sir, since the introduction of the IBA Amendment Bill, there has been a unanimous public outcry, uproar, be it from all parties of the Opposition in this House or outside this House, *le monde syndical, des éminents juristes, des* lecturers, just name it.

Mr Deputy Speaker, Sir, a*près avoir muselé Facebook à travers le* Cybersecurity and Cybercrime Bill, *maintenant c'est une attaque frontale aux radios privées à travers les*

amendements au IBA Act. *C'est une tentative de museler la radio libre et le but c'est d'avoir une mainmise totale sur les radios, donc, de l'information.* In the Explanatory Note of the Bill, *inter alia*, the Bill aims for more synergy between the authority and the Information and Communication Technology Authority and so on.

Mr Deputy Speaker, Sir, it would have been expected that some synergy between the two authorities should have taken place by, for example, aligning the validity of licenses, which in the case of ICTA, licenses are granted from five years to 15 years whereas, with this Bill, the license of a radio is being reduced from three years to one year. Let me come into the details of this Section, that is, Section 22 of the present Bill. As I said, license will be renewed by one year instead of three years.

Mr Deputy Speaker, Sir, I do not know who got this brilliant idea. Here, I am referring to an economic point of view. By doing so, is Government helping the radio or destroying the latter? Do you know the type of finance you need to setup, to build, to operate a radio company? It is a massive investment that you need to build, to operate a radio company, Mr Deputy Speaker, Sir. Which bank will finance a radio company with a one-year license?

Mr Deputy Speaker, Sir, with these trying times that we are living now, do you think that this regulation will help? We say that Mauritius is *un État de droit* and we work hard to attract foreign investors. Do you think that a foreign investor will rush to Mauritius to invest if we send this kind of signal that is, amending the law, reducing what has been granted in the past? Never, Mr Deputy Speaker, Sir! With this Bill, it is a big step backward for the reputation of Mauritius on the international front. Let me remind the House that the law was amended through the Finance Bill in 2019, that is, to increase the shareholding of a foreign investor to 49.9% in a radio or television company. The law was amended to attract foreign investors up to 49.9%, now we are changing the rule of the game! Did you see any investor rushing to Mauritius to invest in a radio or a television company? You will never see it, Mr Deputy Speaker, Sir. Very often, we take UK and India as examples for historical reasons. In UK and India, radio and television licenses are granted for ten years, here, we are doing exactly the contrary. Why are we bringing such a legislation that will create so much havoc? This will not only affect the radio owners or its shareholders, but it will have a direct impact on the employees working at the radio. Let me give you an example. Say, for example, an employee makes an application for a home loan in a

commercial bank, for a housing loan, for a long-term loan, do you see the bank giving a loan to someone working in a radio company who has license for one year? We are putting at risk so many employments and all this in these dire times that we are living, Mr Deputy Speaker, Sir. I think that this change in our legislation will have enormous consequences.

Mr Deputy Speaker, Sir, now let me go to Section 30 of the Bill, that is, the Independent Broadcast Review Panel. The review panel consists of only *three members, but they are appointed by the Minister, in this case, the Prime Minister.*

M. le président, nous savons et nous voyons comment se comportent les nominés politiques. Est-ce que l'on fera confiance à un nominé politique pour qu'il soit indépendant ? Il va être naturellement redevable pour sa nomination et cela est très dangereux. Contrairement au *Chairman* de l'*IBA* qui est nommé par le Président de la République, après consultation avec le Premier ministre et le Leader de l'opposition. Ici, le président du *review panel*, qui aura des pouvoirs énormes, sera nommé uniquement par le Premier ministre et avec cet arsenal juridique pour réglementer le fonctionnement des radios libres, les radios privées devront s'aligner sur la *MBC*.

M. le président, est-ce que vous avez déjà vu ou entendu la *MBC* critiquer un gouvernement ? Est-ce qu'on a déjà vu la *MBC*, les radios ou bien les chaînes de télévision de la *MBC* critiquer un gouvernement ? *What kind of information will we get if our radios, our private free radios have to align on the MBC? Is it this kind of society, is it this kind of country that we want to have in 2021*?

M. le président, nous avons l'impression que l'on cherche à instituer un tribunal, et là, je parle toujours de la section 30, c'est-à-dire, le *Independent Broadcasting Review Panel.* Un tribunal par ce que le *IRP* a toutes les attributions, section 30H *'Powers of Review Panel'. Le Panel* aura comme pouvoir de *summon a person to appear, to give evidence, to produce documents named in the summons*. M. le président, c'est un *quasi-tribunal*. Et moi je pense que si quelqu'un a fauté, il doit payer. Et l'*IBA Act* avait déjà tout ce qu'il fallait. Mais, M. le président, s'il y avait une nécessité pour instituer un tribunal, il fallait le faire sous la juridiction du Judiciaire. En instituant un vrai tribunal, cela aurait plus de crédibilité et aurait inspiré plus de

confiance. Mais avec trois nominés politiques, nous savons en avance quel va être le résultat, M. le président.

Mr Deputy Speaker, Sir, in the IBA Act 2000 under Section 7, Disqualification, *section (1) (b) –*

"No person shall be appointed under section (…) if –

(b) he is an office bearer of a political party or political organisation"

Et section (2) –

"A member shall cease to be a member where –

(b) he becomes a member of a political party or is actively engaged in politics"

Ça, c'est dans la loi de 2000. Mais dans la nouvelle loi, in the Bill that we are debating today, in the Amendment Bill rather, with the creation of a Review Panel, nothing is mentioned in relation to an office bearer of a political party. Nothing! Nothing is mentioned in terms of political organisation. Nothing, Mr Deputy Speaker, Sir! Nothing is mentioned for the IRP.

Par contre dans cette même Section, Termination of appointment, *section 30B (2), Breach of Trust, on parle de* 'breach of trust'. Mr Deputy Speaker, Sir, what is 'breach of trust'? On which grounds we can say that there has been a breach of trust? Nothing is defined in the Bill. Nothing will be defined in the Act, in the Law, and still, it has been mentioned that on breach of trust there can be termination of appointment. No mention is made in relation to file judiciary duty, Mr Deputy Speaker, Sir.

Et là, M. le président, comme mon collègue, l'honorable Dr. Gungapersad, qui m'a précédé, moi aussi je vais citer

(Interruptions)

Non ! Molière doit se retourner dans sa tombe s'il entend ça. Moi, je vais citer Monsieur Maneesh Gobin. J'ai imprimé deux copies, une en blanc et noir et l'autre en couleur, que je vous demanderai de faire encadrer dans la bibliothèque de l'Assemblée nationale parce que c'est

vraiment un chef-d'œuvre. Laissez-moi aller dans les détails, M. le président. Vous savez, très rarement je mets mes lunettes, c'est que pour les grandes occasions généralement …

(Interruptions)

Non, les caractères sont très petits ! Donc, M. le président –

> « Le citoyen a toujours peur de s'exprimer surtout pour critiquer le pouvoir en place. Chaque citoyen ressent cette frayeur quand il s'agit de faire savoir son opinion ouvertement, surtout quand c'est une désapprobation qu'il exprime. Les menaces de la suspension des licences des radios sont souvent liées justement aux programmes où le citoyen appelle afin de commenter l'actualité, faire connaitre sa désapprobation et exprime son mécontentement. »

(Interruptions)

The Deputy Speaker: Order!

Mr Ameer Meea: *Mr Deputy Speaker, Sir, this person is now the Attorney General of our country.* Quelle honte! Quelle honte de tenir de tels propos et, aujourd'hui, venir avec une loi pour faire exactement le contraire de ce qu'on a tenu avant, *Mr Deputy Speaker, Sir*. Et il y a plusieurs sections, mais comme je l'ai dit, je vais déposer ça pour faire encadrer, donc, tout le monde pourra le consulter. Et je garde un dernier paragraphe qui est –

> « Est-ce normale qu'il n'y ait pas une seule télé locale en 2012 ? »

Et la réponse –

> « Ça bloque quelque part. *Something is rotten in the kingdom* …»

So, if this something was rotten in 2012, do you imagine what the state is now? Do you imagine what the state now is, Mr Deputy Speaker, Sir?

So, I will try to conclude because my time is already up unfortunately. *M. le président,*…

(Interruptions)

The Deputy Speaker: Order!

Mr Ameer Meea: *M. le président,…*

(Interruptions)

Non, mais to pe gagn traka Ramgoolam. Okay, it's good!

The Deputy Speaker: Hon. Ameer Meea, look at me!

(Interruptions)

Mr Ameer Meea: Okay. I am really shocked not to see my good friend, the Deputy Prime Minister, on the list of orators. He is a champion of democracy - so-called champion of democracy. He said he will do politics *autrement*, and today, he is not on the list of orators. When you take a look at the list of orators, you can see 15 Members of the Opposition and 10 Members of Government. *M. le président, c'est un aveu. C'est un aveu, il a honte ! Il a honte de parler ! Il aurait dû mettre son nom.*

(Interruptions)

An hon. Member: *Dir li ; dir li !*

Mr Ameer Meea: Donc, M. le …

The Deputy Speaker: Order!

Mr Ameer Meea: M. le president …

The Deputy Speaker: Order!

Mr Ameer Meea: … avec ces amendements, c'est un autre clou qu'on enfonce dans le cercueil de la démocratie. C'est un grand pas dans la démarche du gouvernement d'intimider et de museler les opposants du régime. Nous avons un gouvernement allergique aux critiques. Nous savons que ces lois seront appliquées de façons discriminatoires. Ce gouvernement a touché le fond de l'impopularité. La colère gronde mais il fait la sourde oreille parce que toutes les institutions sont à sa commande. Quand l'heure sonnera pour rendre des comptes, on verra, M. le

président. Plus un gouvernement devient impopulaire, plus il devient dictatoriale et antidémocratique.

Merci, M. le président.

(Interruptions)

The Deputy Speaker: That's enough ambiance for this morning! Hon. Minister Hurdoyal!

(1.19 a.m.)

The Minister of Public Service, Administrative and Institutional Reforms (Mr T. Hurdoyal): Thank you, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, I am humbled and privileged to intervene in the context of the debates held in this august Assembly on Independent Broadcasting Authority (Amendment) Bill which is being brought by the hon. Prime Minister.

Let me express my appreciation and gratitude to the hon. Prime Minister for the insightful amendments brought in the Bill. Indeed, those are in line with the requirements of the current broadcasting landscape, both locally and at global level, which are, by and large, driven by innovative and disruptive technologies.

As a responsible and caring Government, it is important that there exists the right ecosystem in the broadcasting landscape which promotes democratic values such as freedom of speech and opinion that are enshrined in our Constitution. Besides, it is equally important that there exists a conducive, legal and regulatory environment that upholds stability, peace and harmony of our rainbow nation.

Mr Deputy Speaker, Sir, history will retain that it is under the abled leadership of late Sir Anerood Jugnauth, that the audiovisual landscape of this country has been liberalised and democratised. Recently, in July 2019 and March 2021, amendments were further made to the IBA Act in view of technological convergence of the telecommunications and broadcasting sectors. Today, our country has a diversified, rich and vibrant broadcasting landscape where the citizen has a free and wide choice of radio and TV programmes.

It is therefore obvious and necessary that, in view of profound changes that had occurred in the past twenty years, the IBA Act needs to be further amended in order to provide a better legal framework to regulate licensees of the Authority.

Mr Deputy Speaker Sir, indeed, we live in a time of inexpensive, limitless digital capabilities and fast internet connections that transcend national boundaries. Innovative technologies are more than just a powerful cog in society but it has the power to bring deep changes with unintended consequences. That is why, it is important for any responsible Government to go to the drawing board, when the need arises, in order to redefine the statutory and regulatory contours of institutions such as the IBA that have the daunting responsibility to regulate a changing and complex environment where several aspects have to be factored in.

Mr Deputy Speaker, Sir, it is a fact that the ease and propensity to spread falsehood, fake news, nurture religious and racial hatred under the pretence of freedom of expression and opinion has never been as acute as before. No one could ever imagine that those unintended consequences would be a source of great concern for a responsible Government when the IBA Act was initially brought in the National Assembly in the year 2000.

Mr Deputy Speaker, Sir, I belong to the generation who joined the political arena by conviction with deep sense of duty to serve the people of my country to the best of my ability. I am imbibed to by the principles of democracy, justice and fairness and will always promote and defend freedom of expression and opinion. Allow me here, Mr Deputy Speaker, Sir, to quote Voltaire –

> "I do not agree with you what you have to say, but I will defend it to the death your right to say it."

But freedom of expression and speech has never been an absolute right, particularly when the very freedom that we have fought, becomes under attack.

Mr Deputy Speaker, Sir, this Government will never allow anyone to dent social harmony to bring this country on its knees and will stand firm to deal firmly with those who cross the red lines to put in peril the future of our peace-loving country. I have read and listened carefully to the comments from representatives of private radios, the Opposition and many others

including, from lawyers of global law firms such as Dentons. Whilst I respect the opinion of everyone, I cannot agree with those who have their own vested interests to defend. I am however pleased and comforted of the expert opinion of distinguished lawyers who have given a balanced and objective account of the philosophy of the amendments being brought to the IBA Act.

Mr Deputy Speaker, Sir, moreover, I strongly reject the baseless and unsubstantiated insinuation made to the fact that the Bill is being brought to the National Assembly in order to single out one specific licensee, that is, the TOP FM. Nothing can be further than the truth as the Bill debated today is meant to regulate indiscriminately all the licensees of the IBA.

Mr Deputy Speaker, Sir, the very gist of the Bill is to provide a better legal framework to regulate licensees of the Authority and there are certain pertinent aspects of the Bill that have been subject to extensive and passionate debates, in the Press and private radios. I would have expected that in a vibrant democracy like ours, a more mature debate involving both proponents and opponents to the Bill. Alas! I must say that too often the interventions were one-sided, repetitive, and many have been hasty in drawing conclusions. These have created some confusion in the population.

Obviously, *la majorité silencieuse* will never buy in but rather understands and welcomes the amendments brought by the IBA Act which are necessary for a greater good of the nation.

Mr Deputy Speaker, Sir, let me start with the new Section 18A of the Bill which deals with the disclosure of information to the Director of the IBA which, in common language, relates to the principle of *secret des sources* viewed as *la vache sacrée* of the profession. However, in the mind of a reasonable person, the right of any journalist to deny the source of privileged information cannot be an absolute one in a democratic society. I would like to ask to the other side of the House: what happens when such secretively kept information, has the potential to put in jeopardy the security, safety, fundamental rights of individuals?

Mr Deputy Speaker, Sir, for example, someone intervenes on radio informing that he holds credible information of an orchestrated and impending commotion and worse still, of a terrorist act and that person is unwilling to refer the matter to the Police. Or, tomorrow, the bank details, credit cards transactions of law abiding citizens are, out sheer acts of voyeurism, aired in an endless loop on private radios. Let me remind the other side of the House that similar legal provision exists in other countries with unblemished democratic practice. As a matter of fact, -

(i) The Belgian Protection of Journalistic Sources Act of 2005- Under article 4 of the Act, a journalist or editorial staff can be forced to disclose protected information to a judicial authority on the condition that the information at issue is likely to prevent certain crimes which pose a serious threat to the physical integrity of one or more persons;

(ii) Under the Law on Protection of Journalistic Sources in Ireland – (2009) - Journalists will still be compelled to answer questions or reveal sources by a Court if disclosure is deemed justified an overriding requirement in the public.

(iii) The US Supreme Court held that the First Amendment of the US Constitution's protection of free speech does not grant journalists the privilege to refuse to divulge names of confidential sources.

(iv) The Supreme Court in Netherlands has held that "the position that a journalist has a right to protect his sources cannot be accepted as a general rule"

Mr Deputy Speaker Sir, in the proposed Bill, the power to order a person holding information does not, in effect, rest on the IBA should the person refuse to divulge the source of information. No one can impose upon him to do so except on the express order by a Judge in Chamber of the Supreme Court which is the guardian of our Constitution. I, therefore, fail to understand the argument of the Opposition and unjustified apprehensions in some quarters on the provisions of this section of the Bill.

Mr Deputy Speaker, Sir, the second salient aspect of the proposed Bill relates to the power given to the IBA to impose administrative penalty on licensees who refrain from complying, or negligently failed to comply, with the Act or regulations made under the Act, Codes, any direction of the Authority or any conditions of his license.

Mr Deputy Speaker Sir, I have come across many comments on this important role of the Authority. Some have argued that it is only a Court of Law that can impose such penalty, as mentioned earlier by hon. Reza Uteem in this speech. I cannot agree with this argument. I have gone through the governing legislations of similar regulatory and other institutions such as the Financial Services Commission, the Competition Commission of Mauritius Revenue Authority. All of these institutions have statutory provisions that allow the imposition of administrative fines in line with the tenets of transparency, equity and fairness. This is no different in the proposal of the IBA Amendment Bill, Mr Deputy Speaker Sir. Moreover, there have been

arguments on the severity of the penalty imposed that may be up to Rs500,000. I find it absolutely justifiable in a democratic society that fines act as a deterrent for those bent to propagate and magnify falsehood, fake news, hate speech, racists and communal language which have the potential to stir social unrest and put in jeopardy peace and harmony of our multicultural society.

Mr Deputy Speaker, Sir, the third aspect of the Bill relates to the setting up of an Independent Broadcasting review panel where baseless and totally unfounded statements have been made, particularly on the constitutionality of the section.

Allow me here to quote Me Arshaad Inder from Sir Hamid Moolan Chambers who clearly states that, I quote –

> "*la mise sur pied de* l'Independent Broadcasting Review Panel *n'est ni arbitraire ni anticonstitutionnelle*".

In fact, similar set up are common in similar regulatory bodies such as the Bank of Mauritius and the Financial Services Commission. Nevertheless, I have taken the pain to go scrupulously through Section 30 of the Bill, which deals with the setting up of the Independent Broadcasting Review Panel. And I note the following -

> First, the Chairperson will be appointed by the Prime Minister and should be a barrister-at-law with at least 5 years' experience.
>
> In addition, two members of the panel having wide experience in the field of broadcasting policy and media issues are also appointed by the Prime Minister.

Mr Deputy Speaker, Sir, I find it very unfair, inappropriate and disgraceful to challenge the independence of the Review panel on the basis that the appointment is made by the Prime Minister. On the contrary, such high profile appointment by no less than the Prime Minister is poised to instil trust in the proposed setup.

Let me also remind the Opposition that Section 30A subsection (2) expressly and cogently highlight that the Review Panel shall, in the exercise of its functions not be subject to the direction or control of any other person or authority. So, I fail to understand the unconvincing arguments of the Opposition on the independence of the Review Panel

Second, Mr Speaker, Sir, Section 30G subsection 1 requires that the Review Panel shall hold hearings which shall be conducted in public unless otherwise directed by the Independent Broadcasting Review Panel. This provision which I qualify as "*avant-gardiste*" cannot be a

clearer indication of the commitment of Government for a free, unhindered access and watchful scrutiny of the public on the hearings of the panel.

Another interesting point raised as to why a judicial framework for the Review Panel is inappropriate and has been righty pointed out by Me Rubes Domon of Dentons Mauritius, who states –

"*Le législateur semble se pencher vers une structure plus simple et moins procedural.*"

Notwithstanding, Section 30F Subsection (3) (a) stipulates that any party to the proceedings before the Review Panel may be represented by counsel or attorney or other representative duly authorised by him who shall be allowed reasonable opportunity to present the case.

Mr Deputy Speaker, Sir, I believe that the Review Panel is the best instrument to deal promptly and expeditiously with complaints made by aggrieved parties. Once again, any aggrieved party has the possibility to challenge the decision the Review Panel by way of Judicial Review which is an instrument to ensure that any administrative decision passes the test for reasonableness in line with the Wednesbury Principle.

Mr Deputy Speaker, Sir, lastly, I would like to briefly comment on the Section 22 of the IBA Act, which is being amended to bring down the renewal of a license under the Act from three to one year, and such renewal is subject to sanctions imposed and past conduct of the licensee. I fully agree with this amendment and is in line with other regulatory institutions such as the Gambling Regulatory Authority.

Mr Deputy Speaker, Sir, we stand at a time where lives and livelihoods have been shattered by the disruptive forces of the COVID-19 pandemic. We are in a new normal, we like it or not. Nothing will be the same as before. By any stretch of the imagination, who would have imagined that stringent regulations such as vaccinations, wearing of masks and social distancing would govern our daily life, as stated earlier by hon. Toussaint in his speech.

The Deputy Speaker: Hon. Minister, your time is almost over; is over, in fact. Try to conclude, please.

Mr Hurdoyal: Yes, under the abled leadership of our Prime Minister, there is a delicate balancing act to be made, on one hand, in ensuring economic recovery and progress and, on the other hand, ensuring stability, peace and harmony in our country.

Mr Deputy Speaker, Sir, it is more than ever important that each and every one of us pulls together and avoid being distracted with arguments and discussions that serve no purpose than to promote division and unrest. The Bill is extremely important and comes at an opportune time, which will enable us thrive in the right path towards progress. We need to act now because tomorrow will be too late.

Mr Deputy Speaker, Sir, to conclude, I would like to refer to a famous quote from Nelson Mandela, one of the greatest freedom fighters of our time. I quote –

> "The time has come to accept in our hearts and minds that with freedom comes responsibility."

Thank you for your attention, Mr Deputy Speaker, Sir.

The Deputy Speaker: Thank you Minister. I see the name of Dr. hon. Boolell who is absent.

The Prime Minister: Is he still suspended?

The Deputy Speaker: No, he is not since 23 November. He would have got the message by now.

Hon. Doolub!

(Interruptions)

The Deputy Speaker: We will catch up next time. Hon. Doolub!

Mr Doolub: Mr Deputy Speaker, Sir, I now move for the adjournment of the debates.

The Deputy Prime Minister seconded.

Question put and agreed to.

Debate adjourned accordingly.

ADJOURNMENT

The Prime Minister: Mr Deputy Speaker, Sir, I beg to move that this Assembly do now adjourn to Tuesday 30 November 2021 at 11.30 a.m.

The Deputy Prime Minister seconded.

Question put and agreed to.

The Deputy Speaker: The House stands adjourned. Thank you very much. I don't see any hands raised.

At 1.44 a.m., the Assembly was, on its rising, adjourned to Tuesday 30 November 2021, at 11.30 a.m.