

# Official Report

*PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2015-2017) OF THE ELEVENTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA HELD IN THE PARLIAMENT CHAMBER, PUBLIC BUILDINGS, BRICKDAM, GEORGETOWN*

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63<sup>RD</sup> Sitting

Thursday, 13<sup>TH</sup> April, 2017

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*The Assembly convened at 2.39 p.m.*

*Prayers*

*[Mr. Speaker in the Chair]*

## **ANNOUNCEMENTS BY THE SPEAKER**

### **Leave to Members**

**Mr. Speaker:** Hon. Members, leave has been granted to Hon. Bharrat Jagdeo, Hon. Mohamed Irfaan Ali, Hon. Africo Selman, Hon. Nigel Dharamlall and Hon. Gail Teixeira from today's Sitting.

## **PRESENTATION OF PAPERS AND REPORTS**

The following Papers and Reports were laid:

1. Minutes of Proceedings of the 7<sup>th</sup> Meeting of the Committee of Selection held on Monday, 9<sup>th</sup> March, 2017. [*Mr. Speaker – Chairman*]
2. Annual Report of the Guyana National Shipping Corporation Limited for the year 2015.
3. Annual Report of the Atlantic Hotel Inc. for the year 2014.
4. Annual Report of the Guyana National Newspapers Limited for the year 2014.

5. End of Year Outcome – 2016.
6. Loan Contract No. 3798/BL-GY dated February 21, 2017 between the Co-operative Republic of Guyana and the Inter-American Development Bank for US\$15,000,000 for the purpose of financing the Sustainable Agricultural Development Program.
7. Loan Contract No. 3779/BL-GY dated February 21, 2017 between the Co-operative Republic of Guyana and the Inter-American Development Bank for US\$8,000,000 for the purpose of financing the Support of Improved Maternal and Child Health Project.
8. Loan Contract No. 3824/BL-GY dated February 21, 2017 between the Co-operative Republic of Guyana and the Inter-American Development Bank for US\$9,000,000 for the purpose of financing the Enhancing of the National Quality Infrastructure for Economic Diversification and Trade Promotion Program.
9. Loan Contract No. 3876/BL-GY dated February 21, 2017 between the Co-operative Republic of Guyana and the Inter-American Development Bank for US\$8,000,000 for the purpose of financing the Support for the Criminal Justice System Program.
10. Dollar Credit Agreement dated February 22, 2017 between the Government of the Co-operative Republic of Guyana and the Export–Import Bank of India for US\$4,000,000 for the purpose of financing the Procurement and Installation of High Capacity Fixed and Mobile Drainage Pumps and Associated Structures from India.
11. Amendatory Agreement dated March 6, 2017 between the Co-operative Republic of Guyana and the Inter-American Development Bank for the purpose of amending the Executing Agency for the following Loan Contracts:
  - (a) No. 2215/BL-GY, Road Improvement and Rehabilitation Program entered on March 21, 2010.
  - (b) No. 2454/BL-GY, East Bank Demerara Four Lane Extension entered on December 8, 2010.
  - (c) No. 2741/BL-GY, Road Network Upgrade and Extension Program entered on March 15, 2013.

(d) No. 2270/BL-GY, Expansion and Integration of Basic Nutrition Program entered on February 17, 2010.

(e) No. 3369/BL-GY, Citizens Security Strengthening Program entered on February 19, 2015. [*Minister of Finance* ]

## **REPORTS FROM COMMITTEES**

The following Reports were laid:

1. Third Report of the Committee on Appointments in relation to the Appointment of the Members of the Ethnic Relations Commission.
2. Fourth Report on the Committee on Appointments in relation to the Appointment of an Accountant to the Financial Intelligence Unit (FIU) within the Anti-Money Laundering and Countering the Financing of Terrorism Authority Act No.1 of 2015. [*Minister of Social Protection*]

## **REQUESTS FOR LEAVE TO MOVE THE ADJOURNMENT OF THE ASSEMBLY ON DEFINITE MATTERS OF URGENT PUBLIC IMPORTANCE**

**Mr. Speaker:** Hon. Members, on Wednesday, 12<sup>th</sup> April, 2017, I received a letter from the Hon. Member, Mr. Anil Nandlall, in which he informed the Speaker that he intends to seek leave to move the adjournment of the Assembly for the purpose of discussing:

“...a definite matter of urgent public importance in accordance with Standing Order 12 (1).”

He also attached to the letter a copy of the motion. The learning on this matter tells us that an adjournment motion is a very potent and effective device to enable a Member to bring to the attention of the Assembly any matter which has arisen suddenly and is of public importance.

The duty of the Speaker, in the face of such notification, is to examine the proposed motion to see whether it qualifies as a matter for which, in the circumstances of the particular instance, the business of the Assembly must be adjourned to permit a debate on the particular matter.

Standing Order 12 (2) provides that the Speaker shall refuse to allow the claim unless he or she is satisfied that the matter is definite, urgent and of public importance.

The Speaker holds that the matter of which he received notification is definite and it is clearly of public importance. The matter appears to the Speaker, however, to be lacking in urgency. The event which has led to the request for the adjournment occurred on 11<sup>th</sup> March, 2017, over four weeks ago, and the Hon. Member is now, at this time, some four weeks later, seeking to act upon it.

Standing Order 28 (3) allows a Private Member's motion to be placed on the Order Paper within 12 days of the date on which the notice of a motion was published on the notice paper. The fact that the matter complained of is still in existence does not render it urgent.

In the circumstances, I rule that the motion does not meet the threshold required for such a motion. It is, therefore, out of order and is disallowed.

Hon. Member Mr. Nandlall, do you wish to speak against the Speaker's ruling?

**Mr. Nandlall:** No, Sir. I wish to be heard, Sir.

**Mr. Speaker:** Are you rising against the Speaker's ruling?

**Mr. Nandlall:** No, Sir. I wish to be heard though. My application has not been presented to the House. I would like to, at least, present it and then Your Honour can rule.

**Mr. Speaker:** Hon. Member Mr. Nandlall, I have heard you. The motion is disallowed.

**Mr. Nandlall:** But, Sir, I have not presented the motion to you. Are you preventing me from presenting my motion?

**Mr. Speaker:** If that is so, then so be it, Hon. Member. Please resume your seat.

**Mr. Nandlall:** [*Inaudible*] 18 Members...[*Inaudible*]

**Mr. Speaker:** Hon. Member, perhaps more than 18 but the numbers would not make a difference. I would suggest that you and the Hon. Members study the Standing Order. I have ruled that it is out of order and I will not permit it, and there is nothing in the Standing Orders

that allows that to be reversed if the Speaker is so satisfied; those are the words that control everything. We have had this once before. There is quite a misunderstanding as to what is there. Your request is disallowed. Please resume your seat, Hon. Member.

**Mr. Nandlall:** [*Inaudible*] ...allow me to read the motion and you disallowed me.

**Mr. Speaker:** Hon. Member, I will not allow that. Please have a seat.

**Mr. Nandlall:** Sir, we are standing in accordance with Standing Order...[*inaudible*] I will read from the Standing Orders.

**Mr. Speaker:** Hon. Member Mr. Nandlall, I am very familiar with the Standing Order. I have studied it before today. I would advise that you take your seat and abide by the Speaker's ruling.

**Mr. Nandlall:** Very well, Sir.

2.54 p.m.

## **PUBLIC BUSINESS**

### **GOVERNMENT'S BUSINESS**

#### **BILLS – Second Readings**

#### **STATE ASSETS RECOVERY BILL 2017 – Bill No. 2/2017**

A Bill intituled

“An Act to establish a State Assets Recovery Agency in consonance with the United Nations Convention Against Corruption 2003 headed by a Director who shall be a corporation sole to recover through civil proceedings State property unlawfully acquired by a public official or any other person, to provide for investigations leading to the granting by the High Court of Restraint and Civil Recovery Orders in respect of unlawfully acquired property, to engage in international cooperation in the recovery of stolen assets of States within the contemplation of the Act, and for related matters.”

[*Attorney General and Minister of Legal Affairs*]

[*Interruption*]

**Mr. Speaker:** Hon. Members, to make it quite clear, we will not have a shouting match here. I am prepared to act on my request. I will have Hon. Members understand that we cannot continue to disregard the rules and decorum of this House. We cannot continue to do that. [*Interruption*]

Hon. Members ought not to try to speak above the voice of the Speaker. We need to be clear about what we are doing. There are rules. Hon. Members who do not agree with the decisions of the Speaker know what they must do. First, we must be familiar with the rules of this House.

Hon. Members, we have 18 speakers on this list and we have until 10.00 p.m. I put that to you so that you can be guided by that.

**Attorney General and Minister of Legal Affairs [Mr. Williams]:** If it pleases you, Mr. Speaker, I rise to make my presentation almost as if I were before a certain place a couple of days ago. I suppose it is because this Bill will impact the regulatory landscape of Guyana. The State Assets Recovery Bill 2017 will strengthen Guyana's ability to fight corruption.

On 16<sup>th</sup> April, 2008, Guyana ratified the United Nations Convention against Corruption of 2003. The Convention was the world's response to a universal problem and, in particular, a Guyanese problem now, as to the ramifications of corruption which really are felt by everyone. Guyana's obligation under the Convention is as set out under Article 65:

“Each state party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.”

Corruption is morally and ethically wrong and it hinders sustainable development and economic growth by deterring both local and foreign investors. I will give illustrations shortly.

**Mr. Speaker:** Hon. Members, I interrupt the Attorney General to remind Members that they are free to use their cell phones outside of the House. Let us show some respect for the House and not do what we know we ought not to do here.

Please proceed, Attorney General.

**Mr. Williams:** As I was saying, corruption affects the integrity of financial institutions and undermines public confidence in the financial system. As noted by Mr. James D. Wolfensohn, the former President of the World Bank:

“Corruption is the largest single inhibitor of equitable development.”

Corruption gradually removes public confidence in the government, causing mistrust in state institutions and law enforcement. Corruption erodes good governance which has, as some of its underlying principles, transparency, accountability, the rule of law and public participation. Corruption does not bode well for our people as, ultimately, corruption leads to poverty. This is a proven fact. As stated by Mr. Kofi Annan:

“Corruption hurts the poor disproportionately - by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance and a major obstacle to poverty alleviation and development.”

We do not have to look too far back in the past to see how corruption has affected our nation and its people. The Human Development Index (HDI) prepared by the United Nations Development Programme is a summary measure of average achievement in key dimensions of human development, a long and healthy life, being knowledgeable and having a decent standard of living. Guyana’s Human Development Index value for 2014 was 0.636, which puts the country in the medium human development category, positioning it at 124 out of 188 countries and territories. Between 1985 and 2014, Guyana’s HDI value increased at a slow pace from 0.545 to 0.636. It is to be noted that the closer to ‘1’ that the country is, the more developed it is said to be. In 2014 Haiti’s HDI ranked 163 and its value was 0.483, placing the country in the low development category. As is well known, Haiti is the poorest country in the Region and Guyana, under the last Administration, only ranked higher than Haiti. These scores may be linked to corruption since it was seen that, in 2012, Guyana’s Corruption Perception Index was 28 and our HDI score was 0.629. As we know, one of the by-products of corruption is poverty and this is shown in our low employment score.

As at 2014, Guyana's employment to population ratio, ages 15 and older, was approximately 54.5%, indicating that around 45.55% of the population that could work was unemployed. The ratio of Haiti was 61.2%, indicating a higher percentage of persons employed. This shows that, despite being in the medium development category, Guyana still had a higher unemployment rate than Haiti.

It was under the watch of the People's Progressive Party/Civic that the word "scam" came to prominence. Under the previous Government, there were several instances of mismanagement and misuse of Government's resources. These included, but sadly are not limited to, the fuel scam – ghost names and companies drawing fuel from the Guyana Oil Company Limited (GUYOIL); the stone scam – poor quality stone used for construction *via* a Trinidadian construction company; the gold scam; the export of dolphins - through investigation into the purported irregularities in the wildlife would reveal the involvement of a high level Government official who exported a shipment of 11 bottle nose dolphins to Mexico; the missing law books scam where the former Attorney General used bought Commonwealth Law Reports for his own personal use and admitted that it is normal for a public official to use public property for their personal use. I do not want to continue with the others. What we are saying is that over US\$200,000 in a contract was given to a friend of the last Administration to update the law books. We had the polar bear scam and the alleged collusion by customs officials with the officials of a certain company. **[Bishop Edghill: Is that what this Bill is about?]** It is about corruption, corruption, corruption. There was the Cane Grove Conservancy scam and a whole host of scams. As a result, this issue of combating corruption should now be examined under the present Administration.

To say that corruption was rampant under the past Administration is an understatement. Our commitment to the Guyanese people is to remove the perception and incidence of corruption in all aspects of public life. *[Interruption]* I think I should be carefully listened to.

One way of combating corruption is through the implementation of a legal mechanism to recover stolen state assets. This is a deterrent to corruption and is recognised by the United Nations Convention against Corruption. Part V of the Convention calls on states to implement appropriate and effective measures to enable the competent authorities to recover stolen assets, whether within the state party's borders or beyond.



Mr. Ban Ki-moon, former Secretary General of the United Nations, recognised the implementation of the Convention to be pivotal in the fight against corruption. According to him:

“The United Nations Convention against Corruption...is the paramount global framework for preventing and combating corruption. Full implementation depends crucially on effective prevention, law enforcement, international cooperation and asset recovery.”

Therefore, bringing to the National Assembly the State Assets Recovery Bill, a Bill that implements the provisions of the Convention as it relates to asset recovery, demonstrates this Government’s continued commitment and political will not only to its international obligations, but also to the people of Guyana who have, over the years, felt the corrosive effects of corruption. I say continued commitment and political will because this Administration, upon taking office in May, 2015, has embarked on a vigorous campaign to ensure that there is no safe place for corruption to hide.

For instance, in the area of money laundering and countering the financing of terrorism, the Coalition Government took positive steps to ensure that Guyana became fully compliant with the recommendations of the Financial Action Task Force (FATF). Among the steps taken were the legislative amendments to the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Act namely, Act No. 1 of 2015, Act No. 10 of 2015, Act No. 15 of 2016 and the appointment of a Director and Deputy Director of the Financial Intelligence Unit (FIU). At the last plenary in Paris, November, 2016, the FATF congratulated Guyana for the significant progress it has made in addressing the AML/CFT deficiencies earlier identified and included in its action plan. As a result, Guyana would no longer be subject to the FATF’s monitoring under its ongoing global AML/CFT compliance process.

*3.09 p.m.*

We will continue to work with the Caribbean Financial Action Trask Force (CFATF) to further strengthen our Anti-Money Laundering Combating the Finance of Terrorism (AMLCFT) regime. Due to these positive changes the US Department of State and the International Monetary Fund (IMF) have congratulated Guyana. We have also made the Special Organised Crime Unit, better known as SOCU, operational.

Additionally, we have also passed the Anti-Terrorism of Terrorist Finance Related Activities Act of 2015, bringing in to force specific article of the International Convention for the Suppression of the Financing of Terrorism, 1999, the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, the Vienna Convention and the International Convention against Organised Crime, and the protocols there to, of 2004, the Palermo Convention. Further, in the very near future, we will be introducing the Witness Protection Bill and, the protective disclosure, the Whistle-blower Bill which would help to bring and to promote integrity in the justice system and strengthen the mechanism for crime detection and prosecutions by empowering citizens to address and report corruption.

We have also demonstrated our zero tolerance approach to corruption by conducting several forensic audits on Government bodies since taking the reign of Government. There were 36 audits published which results revealed that there was rampant corruption. For example, the audit showed that Government funds were being misappropriated and that there was the inadequate management of state assets. It is because of the several measures implemented by the Government to combat corruption. The Corruption Perceptions Index by Transparency International has shown that Guyana has improved in the area of combating corruption. Guyana current score on how much corruption exists in the country is 34 and this would also mean that our score on the Human Development Index would also improve. While the previous administration was in office, Guyana scores were 28 in 2012, 27 in 2013, 30 in 2014 and 29 in 2015. In 2016, the score leaped by 5 points to 34, which indicated that distinct and international measures were taken to combat corruption. In comparison of these figures, from 2010 to present, it has shown that there was a marked decrease in corruption after 2015. The former years have not seen a fluctuation scores as it relates to the fight against corruption.

However, while we have done considerably well as a country in the fight against corruption, there is still much more to be done. That is why the State Asset Recovery (SAR) Bill is needed. The Bill fills the lacuna that prevents the Government from affectively going after those who seek to plunder the assets of the state, thereby depriving the country and its people of its resources. The SAR Bill sends a strong message that corruption, at every level, will not be tolerated by this coalition Government.

The SAR Bill as an anti-corruption tool: The SAR Bill 2017, once law, will complement the other anti-corruption tools that the Government has implemented and will subsequently implements. The Bill introduces legislation to combat unlawful conduct and corrupt practices in relation to property and other assets owned by the state or in which the state has an interest. The Bill rationale is that those who commit unlawful activities should not be allowed to profit from their crimes. These proceeds must be forfeited. It implements the necessary regulatory framework to facilitate the tracing, the freezing, the seizure, forfeiture and return of stolen assets owned by the state, or in which the state has an interest. This is done through civil recovery and gives effect through the non-conviction base asset recovery recommendations containing in the United Nations Convention against Corruption. As stated in Part IV of the Bill:

“(1) all proceedings under this Act shall be civil proceedings.

(2) The rules of evidence applicable in civil proceedings shall apply to proceedings...”

It is meaning that:

“(3) The standard of proof required to determine any question arising under the Act shall be on the balance of probabilities.”

Non-conviction asset-based forfeiture is a critical tool for recovering the process and instrumentality of corruption, particularly in those cases where the proceeds are transferred abroad. It is an action against the property itself and not against the individual. Non-conviction base asset recovery is especially essential where the offender cannot be prosecuted. For example, where the offender is dead, has fled jurisdiction, is immune from criminal prosecution, is unknown and assets are found and if the relevant property is found by a third party, this type of asset recovery is a powerful tool and will be effective in denying the politically corrupt of the fruits of their ill-gotten gains and restore it to the people what has been stolen from them.

Apart from the mode of recovery being civil Part IV of the Bill notes:

“Part IV of the Bill contains provisions under which the Director may undertake a civil recovery investigation; seeks the preservation of property; sets out the circumstances in which disclosures of information may be made to, and by, the Director; and the procedure

for commencing civil recovery actions in relation to property obtained through unlawful conduct.

Conduct is unlawful if it amounts to an offence under any of the laws of Guyana, or if committed overseas would amount to an offence there and under the laws of Guyana...

...to facilitate the investigation the Director may apply to the Court for the issuance of one or more of the following orders, namely: a Disclosure Order, Customer Information Order, Production Order, Search and Seizure Warrant or an Account Monitoring Order..."

That part also makes provision for the disclosure of information.

"22. (1) Information obtained by or on behalf of the Director in connection with the discharge of any of the Director's functions may be used by the Director in connection with the discharge of any other functions of the Director.

(2) Any person may disclose information to the Director if the disclosure is made for the purposes of any of the functions of SARA."

Further,

"Information relating to any unlawful conduct, tax or financial impropriety of any person, or any other relevant information that may assist the Director in discharging his functions, which is held by, or on behalf of, a permitted person..."

It is including the Director of Public Prosecutions, Commissioner of Police, the Director of Finance Intelligence Unit, the Head of SOCU and the Head of Customs Anti-Narcotics Unit.

This disclosure of information is paramount, as cooperation is needed to successfully go after stolen assets to avoid the dissipation of those assets.

Part IV of the Bill also sets out three important orders, namely the Restraining Order, Ancillary Order, and Civil Recovery Order.

"Where the Director considers that there is a risk that property may be dissipated, destroyed or removed from the jurisdiction, he will be able to apply to the High Court,

without notice, for a restraint order (section 27). For the order to be granted under this section, the Director must satisfy the court that there are reasonable grounds to believe the property identified in the application has been obtained through unlawful conduct.”

As it relates to Ancillary Orders:

“The Court may, when it makes a Restraint Order or at any later time, make any Ancillary Order, whether or not affecting a person whose interests in property are subject to the Restraint Order, that the Court considers appropriate...”

With respect to the Civil Recovery Order:

“An application for civil recovery may be made against any person believed to be holding or have held recoverable property (section 41)..., however, if during the recovery proceedings a person establishes lawful ownership of the property concerned, the property may not be recovered; nor will property be recoverable from persons who are able to prove that they purchased it for full value, in good faith without notice of its unlawful origins, thereby protecting third parties able to claim an interest in the property (section 42).”

The property may not be recovered.

This shows clearly, one, the provisions of the Bill really are court driven. Two, the persons are not targeted, but property, and, three, the director has to take all matters to court and it is the court that makes the determination as to whether any order shall be granted or whether any property should be subject to a Civil Recovery Order.

It is important to note.

“...the Bill contains other safeguards to ensure fairness in civil recovery proceedings. Accordingly, parties are permitted the same rights of appeal as in other High Court actions; victims of theft are granted protection (section 48); if an application for civil recovery is unsuccessful, the court will be able to award compensation for any financial loss suffered by the respondent as a result of the restraint order applying to his property (section 51); there is a financial threshold of ten million Guyana dollars below which

civil recovery may not be pursued; there is a 12-year limitation period on when civil recovery proceedings can be brought (section 53)...”

A person claiming an interest in the property subject to restraint order can apply to the court to have the order vary or discharge. They can also apply for living expenses,

“A statement made or document produced by a person... may not be used in evidence against him...”

Which is a very powerful concession or in criminal proceedings.

“...and the Court has an overriding discretion...”

I wish to emphasise that.

“...the Court has an overriding discretion not to make a civil recovery order if satisfied there would be a serious risk of injustice in doing so.”

The naysayers - should I say the soothsayers - they were all whipping up hysteria in this nation when there was no need for hysteria. There is no element that the presumption of innocence has been eroded. There will be no person being arrested, charged or prosecuted and or convicted under the provisions of this Bill. This is strictly going against stolen Government’s property, the people’s property.

Based on the foregoing, it is clear that, once law, this Act will serve as a legislative mechanism to deter and prevent activities, that misappropriation of public property, money laundering, tax evasion, bribery and embezzlement from taking place in the future. Overall, the Bill will help to promote and strengthen measures prevent and combat corruption efficiently and effectively by promoting the tenets of good governance and proper management of state assets.

I wish to reaffirm the Government’s position on corruption, which is, there should be no safe haven for corrupt persons in this country. It is the responsibility of our administration to fight corruption by implementing affective reforms. This should also be the responsibility of us, as legislators, that the well-being of our people should always be paramount. Our position as law maker should always be zero tolerance to corruption. Fighting corruption, as we know, is an uphill task, but this Government commitment has been shown by the implementation of

legislation, setting policy directive and initiative in the fight against corruption. Our Government's vision is to build institutions based on justice and integrity.

Therefore, Mr. Speaker, I have no difficulty in commending this Bill to this honourable House for passage. I thank you. [*Applause*]

*3.24 p.m.*

**Ms. Manickchand:** Sir, ordinarily, I would trash this Bill. This Bill is worthy of being thrown into the garbage. Contrarily, though, I have actually opened the folder for the Bill for State Asset Recovery Agency, the draft that we have now and the documents that will follow. I believe strongly that this is a defining time in our nation's history. In years to come, our children, will rely on these documents to say when we actually made that turn, definitively, in the honourable House, because there are many things that have been happening, circumstances, which have given rise to the objections to this Bill, have been happening here and there and every day, protest here and there. I think this Bill, in these circumstances, concretises what this Government is and our move into a descent in this nation.

I want to say very clearly, from the beginning, that we are not against asset recovery. I believe the concept of asset recovery is excellent; it is needed; it is timely; but it is the way it is being done. We are not against corruption or dealing with corrupted politicians. That is why it was us, on this side of this honourable House, who brought a motion to this National Assembly. The one that states, "declare your assets". Let the public know what you have in our bank account when you are beginning and let them know what you have after. Tell us about that Swiss bank account that you have, Mr. Ramjattan. That is what we, on this side of this honourable House, did, Sir.

**Mr. Ramjattan:** I do not understand. I am a drunk and now I am an owner of a Swiss bank account. I do not know what is happening to that pair over there, Sir. I am asking for them to withdraw that.

**Mr. Speaker:** Hon. Member, thank you. Hon. Member Priya Manickchand...

**Ms. Manickchand:** Sir, is Mr. Ramjattan saying that he does not hold a Swiss bank account?

**Mr. Ramjattan:** Oh my goodness, what is the matter with you, Ms. Manickchand? I do not have a Swiss account. Please withdraw it.

**Mr. Speaker:** Hon. Member Ms. Manickchand, unless you can substantiate what you are saying, please withdraw and let us proceed.

**Ms. Manickchand:** I am grateful for your guidance and I am happy that Mr. Ramjattan is on record saying that he does not have a Swiss bank account. I withdraw it, but I wish to say, Mr. Speaker, that had the Government Members of this honourable House not voted against the motion to disclose their assets then, we could not be in this conundrum. Sir, a Government that is interested, a Government that is sincere and fighting, and dealing with corruption, in addressing corruption...

**Mr. Speaker:** Hon. Members, I must ask you not to make *ad hominem* attacks on other Members, please proceed. [Interruption] Hon. Members, I believed that each of us would have his or her turn according to the list. Allow the speaker on the floor to continue, please.

**Ms. Manickchand:** A Government, which was genuinely serious about addressing corruption, would have voted in favour of the motion that called on every Member of this House, including the Hon. Members of the Opposition, to declare his or her assets and bank accounts, whether they are Swiss or they are local. Declare your assets; make it public for the nation to know. We like the fancy language, but we believe that Guyanese can live in a fancy country if your actions were to meet your fancy words and we do not see that as yet, please, Your Honour.

There has been widespread condemnation and I really want to be careful. I mean, we listen to Mr. Williams waxed about four papers of the speech. He read about things that are wholly irrelevant, speaking about the Human Development Index without addressing the circumstances as this nation knows them to be. Fortunately, what we know is that in 1991 the World Bank did a report on Guyana and said that 62% of its people, that means out of every 100%, was living in poverty and 35% was living in desperate poverty.

In 2007 the World Bank did a very similar study and said that poverty had been cut in half and now there is 32% of our people who are living in poverty. That is what the People's Progressive Party/Civic (PPP/C) did in this country. We know also that when PPP/C left office in 2015 the



United States (US) dollar rate was \$260 for one and it is \$230 for one under your administration. If you want to talk about development, let us talk about what development really means.

The problem with addressing everything Mr. Williams said would realise on the fact that we would not address what is essentially a very serious piece of legislation for this country that was said in Mr. William's, the Hon. Attorney General's own words, "will impact the regulatory landscape in a major way". Those words really lend themselves to..., I do not know, perhaps, the Commission of the European communities minimum standards for when the Government should consult, how good governance works. What is said, very clearly in this document, is that you have to consult, when, in his words, what is going to be done will *inter alia* be among other things, impact significantly on the lives of the people. They give minimum standards, very minimum, of what you must do, what must happen when you are going to pass laws, such as this one, that would impact, in the Attorney General's own words, "significantly on the regulatory landscape of our country." You must talk to the people of the nation; you must talk to the interest groups; hear from them and that is how you must guide yourselves on what must be in the Bill. I do not believe Mr. Williams, the Hon. Attorney General, is unaware of this.

Here is Mr. Williams on the 22<sup>nd</sup> April, 2010, Mr. Speaker, and I am quoting directly from the *Hansard* of this honourable House, Sir.

"... process that was engendered to reach here is what the People's National Congress would like to focus on in the first instance. This Bill is one of the few that has applied article 13 of our Constitution. That article envisages a consultative democracy, a participatory democracy, consultations, before one comes to attempt to foist legislation on the people.

I must congratulate this young Minister. I believe because she is young and has not hardened within that edifice that she is forward thinking. I wish to congratulate her on her efforts of getting the people to speak to these issues which trouble them. The people after being consulted suggested their solutions, and once the people's wishes are there they must be honoured and respected. That is the position of the People's National Congress Reform. We wish that all other Ministers would emulate - I see the Hon. Attorney General is looking at me – what this young Minister has done. Because we cannot have

legislation that is intended to transform dramatically the lives of the Guyanese people without consultation.”

I repeat.

“Because we cannot have legislation that is intended to transform dramatically the lives of the Guyanese people without consultation.”

Later on the Hon. Attorney General, then, before he was the Attorney General, said:

“...As I said we support the Bill. We think it is a laudable Bill. It is timely. Overwhelmingly we support it because of the process that was engendered to reach here - the consultative process - and we would like that to be emulated to most Bills that affect and impact the Guyanese people.”

Where is that, Mr. Williams? Where did that go, Mr. Williams? This was in the Opposition, all these “laudable” comments on what consultation, how important it is. That was Mr. Williams speaking on the Sexual Offence Bill.

This Bill has received widespread condemnation from every quarter in this country. People, who had condemned, had condemned it based on... I will give four main things, because we have time limitation, that there was no proper consultation, that this Bill undermines the constitutional offices of several office holders, that there are reckless disregard for our local laws and the supreme law of the land, the Constitution. In the contents of this Bill, and as a result of which the Bill is poorly drafted, I understand the Attorney General’s Chambers was very isolated in the drafting of this Bill. It was kept away from the consultants who drafted this Bill and the partisan nature of the maker of this body and the intention of this body, the SARA.

Let us talk about the no proper consultation. We are very clear. Article 13 mandates us in this National Assembly to pass legislation. It mandates the Government, if it is interested in governing, engaging in good governance, to engage in a political system:

“ ... to establish an inclusionary democracy by providing increasing opportunities for the participation of citizens, and their organisations in the management and the decision-

making processes in of the State, with particular emphasis on those areas of decision-making that directly affect their well-being.”

In the words of the Attorney General, “impact” their well-being. That is article 13 of the highest law of this land, the Constitution. Then, I go to the manifesto of the A Party of National Unity and Alliance For Change (APUN/AFC). It is very clear. Its first foundation;

“Foundation 1: National Unity”

“National unity is the essence for the coming into being of the APNU+AFC Coalition. This spirit and imperative of unity, consultation and cooperation will inform all decision-making with respect to political, economic and social development issues...”

Then it goes on again, in that same manifesto... The manifesto is riddled with the philosophy. The first philosophy:

“Establish and entrench an inclusionary democracy through the appointment of a Government of National Unity which would create opportunities for the participation of citizens and their organisations in the management and decision-making processes of the state, with particular emphasis on the areas of decision-making that affect their well-being.”

Sir, we heard from, no less a person than the Hon. Prime Minister, just recently, that article 13 should be used as the sword and shield - fancy words. Where is the good intention that accompanies that? Where is the implementation of those fancy words? Sir, the economist, someone relies on heavily, by this Government, has criticised this Bill heavily. Mr. Christopher Ram in his weekly columns... As you know, Sir, I am embarrassed about who spoke, just now, through its Attorney General of audit, which by the very audits, and not advertising and choosing people and handing out money, one of its choice auditors, is now being laughed at because his opinion differs from that of the Government, and that speaks to the kind of governance we have been seeing.

Mr. Ram in his weekly column published in a national newspaper, the *Stabroek News*, has said very clearly that if the Bill for SARA is not radically restructured, it will be challenged in the courts. He has spoken at length and very clearly about what is wrong with it and why it needs to

be either withdrawn and redrafted or sent to a Special Select Committee. That is a man, a citizen of this country, who, I would like to believe, supported your election to office, as you claim that you have been elected to office.

3.39 p.m.

[**An Hon. Member:** Who told you that?]                      That is one person.

The Guyana Human Rights Association (GHRA) stated on Tuesday, 16<sup>th</sup> August, 2016 in relation to this Bill published on the *Demerara Waves* website that the Bill risks prolonging ethnically polarised politics. We should hear that. Oftentimes we are afraid to use words such as “ethnic” and “ethnically polarised politics”, because we are afraid that people accuse us of being racist. Why would the GHRA states that if you do not go back to the table with this Bill, you are going to be most likely be polarising the people ethnically?

I want to put on the record the official response of the Government. None of these people are worthy of being listened to. None of them are worthy of being listened to. The same people in the Government would have us believe that all of these people are against you. Who voted for you? Did you really rig that election? Who voted for you, if everybody is against you? Who voted for you?

The GHRA has been very clear that this Bill does not conform with the United Nations Convention against Corruption (UNCAC) and it stated why. It expressed grave concerns about the composition about the proposed unit and how the director is going to be appointed. It states very clearly, why. Let us examine why it thinks that this could ethnically polarise us. Could it be because – I am asking a question, Sir – actions thus far have been against one ethnic group? Those are things that you have to address if you want to talk about cohesion. Those are things you have to talk about and address if you want to talk about moving this country forward. Those are the concerns that you have to address if you want to talk about equality in dealing with the people of this country. That is the Guyana Human Rights Association.

The Private Sector Commission has said, very clearly:

‘ “The SARA Bill 2016 is not a good signal to investors who will require access to State resources such as land, licences, access rights etc., as the Bill provides opportunities for legitimate investors to be harassed and politically victimised,” ’

Politically victimised!

If you want to sit in this House and pretend that the nation does not believe these bodies are being used to politically victimise people, to target people who have exercised their constitutional right to associate freely, then you are fooling yourselves. It states:

‘ “...the Government of Guyana does not know what it owns...” ’

It is working on the premise that the Government does not know what it owns and what the state has lost over the years and it is on a fishing exercise.

‘ “this is a complete affront to the fundamental rights of citizens and if such powers are granted, they can be used to marginalise, suppress and take advantage of vulnerable members of the population through political intimidation.” ’

That is the Guyana of 2017. We have returned to political intimidation described in the pages of Father Andrew Morrison’s book, “Justice: *The Struggle for Democracy in Guyana, 1952-1992.*” The Private Sector Commission has stated very clearly that it wishes - I believe that Your Honour has been written to by that body, a body that has wide membership - to ask that this Bill be sent to the Special Select Committee. It has also complained that the draft legislation, which was presented to it, was not changed in any way after it made its contributions at the “consultation” – I put that word in uplifted commas – that was hosted. They were not changed in any way. Consultation – I hear a mumble coming from over here – is a term of art. It does not mean to hold a meeting. It means hold a meeting, listen to what the people say and have what they say, inform what is going to be in your legislation that will impact the population. That is what consultation means.

I come back to the first limb that people have complained about, that there has been no proper consultation on this Bill as a result of which it needs to be either be withdrawn and allowed and the input of the Guyanese people, who this Bill will impact, be allowed unto the Bill or that it be

sent to a Special Select Committee where voices can be heard, where people can be invited to speak and their contributions heard.

Undermining of constitutional offices: This is the strangest Bill ever. This Bill will allow the Minister of Public Security... The Minister has been denuded of what used to be that Ministry, I believe. Well, let me not speculate as to why he was denuded of his responsibilities, but the Bill proposes to allow that Minister to give to the director and other officers the proposed agency the powers of the police. We have a Constitution. It is one that states that the police must be appointed by the Police Service Commission. The frightening thing is that the honourable person, who holds that office right now, is a lawyer of many years standing and he is going to stand here and defend that today. This Bill allows... [*Interruption*] You were speaking about *ad hominem* comments, Sir.     **[Mr. Ramjattan:** Of course, your arguments are so misconceived.] Disclose your Swiss bank account.

**Mr. Speaker:** Hon. Members, if you must interject then you must do it through the Chair. Unless I give you the floor, you ought not to be speaking. Please proceed.

**Ms. Manickchand:** This Bill seeks to say to the Minister of Finance... We are not talking about a person here, we are talking about an office, and that is the problem with passing legislation such as this. It will live. It will live to come back. What we are doing here is that we are asking, through this Bill, that the Minister of Finance be given power to appoint persons to be customs officers and revenue collection officers, and so on. The Guyana Revenue Authority (GRA) Act is clear about how that is done. That is done through the authority. This Bill here seeks to undermine the Director of Public Prosecutions (DPP), the Commissioner of Police and the GRA. These are all constitutional office holders. That is one of the complaints of the people of this nation. That is why we are saying to go back to the drawing board. Let us fix these issues and come back with a Bill that really addresses the issue that you say you want to address, corruption and ill-gotten gains. That is what we want to do. Let us go and bring a Bill that will do it.

Why are you bringing a Bill that you know will be challenged, that you know will be halted before its implementation could even begin? You know why I think they are doing that. It is because I think that people sit down and understand that if you take a scholarship and you were not supposed to get that scholarship, that is theft of the people's money, as a result of which you

have disposable income you could build a kitchen, SARA will now be able to go and seize that kitchen. Or it is if you appropriate unto yourself 50% more of what used to be allowed as a salary increase and you now have more disposable income to go and buy something, SARA could go and seize that something. Maybe you want the Bill to be stalled up in a court action, because that is what we are talking about here. There is the reckless disregard for local laws.

We heard much about the United Nations Convention against Corruption. That is a convention that has to be applied like any other convention. In conformity with our local laws and our Constitution, as other countries, which have done something similar, have done. What we are coming to do here is to bring a Bill to the National Assembly very much as a Bill that has now effectively been abolished in England. England brought something, such as this, in the year 2000, this Bill that we seek to bring here, and then discovered all that was fundamentally wrong with it and it had to abolish it. Guyana has gone and brought the same Bill to this National Assembly. They are asking us in 2017, 17 years after a Bill was passed in another country and abolished, us to pass that piece of legislation here. We should be ashamed of ourselves if we pass this piece of legislation. It is not as though we do not pass this legislation we will not be able to address corruption. We have a plethora of local laws that can address the issues that we seek to address while we finalise this Bill, it is not as though it is never going to come. While we finalise this piece of legislation to make it into something that does not clash with our Constitution.

The thing that, I believe, has been most offensive to many is the makeup and the apparent motivation and intention of the body. Only yesterday, the SARU – it is presently SARU. I understand that it will change if we do the unfortunate thing and pass this today - officers of the SARU along with our Hon. Attorney General had a press conference and those officers said very clearly, once the Bill is passed today, they are ready to go to court tomorrow. Nobody is appointed. This Bill states how you should be appointed. The Bill states that the appointive committee of the National Assembly must appoint the director and must appoint the Chief Executive Officer (CEO) and that is how they will be appointed. That is one of the complaints by the GHRA that it should be a two-third majority vote and not a simple majority. My point is that with the present makeup we cannot – unless you want to bury your head in the sand – possibly think that the present director and present officers of that agency can be legitimately called fit and proper in the context of the way fit and proper has been defined. Fit and proper has to be

devoid of political association. Fit and proper cannot be someone who has said clearly... Recently the Leader of the Opposition, a constitutional office holder, the General Secretary of the People's Progressive Party (PPP), the largest political party in this country, and in this part of the region, made certain comments and the CEO of SARU referred to his romantic life. "I do not take him seriously because I know something about his wife," and so on. That is what was said in the press.

**Mr. Speaker:** Hon. Member, let us go along to stay on the matter before us please.

**Ms. Manickchand:** Sir, the matter before us is that there is a complaint pending by many organisations and the entire Opposition party and all their supporters that the way this Bill seeks to appoint a director and a CEO is flawed and needs to be withdrawn and redone.

*3.54 p.m.*

The complaint lies in the fact that the persons who are there and who hold themselves out as being able to go tomorrow and file actions in the court, pursuant to this Bill, are politically motivated and will act as political appointees. In fact, one of the organisations, I believe it was the Guyana Human Rights Association (GHRA), which was objecting to this Bill, said that the present Director can be considered no less than a political commissar. That is the objection. I am on point with the Bill.

I am saying, very clearly, that one of the objections is the partisan nature of the present makeup of that body. If we were unsure about whether it was partisan or not, this is a body speaking about corruption last year and corruption 12 years ago, but it does not address the bond scandal. It does not address bond gate, which the Cabinet stated was an inappropriate contract that they entered into, but they continued to pay their friend. They continue to pay their political supporter. The State Assets Recovery Agency (SARA) has never addressed that issue and the money that we are bleeding monthly, the money that is being raped from Guyana monthly to pay him. The State Assets Recovery Unit (SARU), SARA and the people thereat, who are based at the Ministry of the Presidency, have never addressed the scandal that has become the D'Urban Park, where moneys have been lavishly given by the people of this country, collected on behalf of the people of this country and alleged to have been expended there without accountability.



Recently, the *Stabroek News* had an editorial addressing the issue of the seizure of computers from a predominantly People's Progressive Party (PPP) area by the SARA and the Ministry of Public Telecommunications, when none of them had the authority to do that. But we cannot hear from the Government about the bond scandal, about scholarships that were handed out to Ministers of the Government, about the 50% increase and we cannot hear about the \$600 million drug deal that just went down. That is why I am not going to speculate and give my opinion.

**Mr. Speaker:** Hon. Member, you have one minute more.

**Ms. Manickchand:** Thank you, Sir. This is why people believe that this organisation, working out of the Ministry of the Presidency, is politically motivated and that the provisions of this Bill give them teeth they never had before. That is why the people of the country - your people, the people you stood here and held your *Bibles*, *Karans* and the *Bhagavad Gitas* and swore to serve - are asking you to have a second look. We are asking, on their behalf, to have a second look at this Bill, send it to a Special Select Committee, sit and look at it and let us come out as a model country that actually passes legislation that conforms to the United National Convention Against Corruption (UNCAC).

I thank you, Sir. [*Applause*]

**Minister of State [Lt. Col (Ret'd) Harmon]:** Mr. Speaker, it is an honour to be associated with this piece of legislation that will change the landscape of this country forever. First, I must address some of the ramblings of my Colleague on the other side that actually addressed, in fact, sought to debate a Bill and it appears as if not one single reference was made to the Bill. I do not understand. It is as if someone took all of the criticisms made about this Bill in the consultations which took place, which she said never took place, and made that the speech. I could not understand this. The Hon. Member said that there was no consultation, yet, all of what she spoke about were the contents of those who responded, based on that consultation. What is going on?

[**Mr Nandlall:** You are mixing up the two.]

I am not mixing up anything.

I will address the question of the appointment of members of the State Asset Recovery Agency at an appropriate time.

But first of all, I would like to say that my Friend has given up almost nine years of the PPP's reign. She said that "when we left Office in 2006, all of these things were what we left". It seems as though the PPP had nine years of liaises-faire and that it was never responsible for what happened. This is the reason why we are faced with this situation now of assets all over the place. [Ms. Manickchand: That is a big point.] It is a big point. What we are talking about here is a mind-set which said that, after 2006, nothing that was taking place was of Government. It was a thoroughfare, liaises-faire situation.

I wish to, as I said, give my support to this Bill. There are two fundamental pillars of this Bill that I would wish to address in this National Assembly. First of all, this Bill contributes to the establishment of a legal framework to give effect to commitments made to the people of Guyana by the A Partnership for National Unity/Alliance for Change (APNU/AFC) Administration, by President David Granger, to stomp out corruption and to restore the principles of good government, accountability and transparency in public life in this country. His Excellency the President iterated his commitment as recently as 13<sup>th</sup> October, 2016 in his Address to this august House. When he alluded to strengthening of our legal architecture and stated that, and I quote:

"Your Government, in this regard, is committed to promoting standards of probity in public office. We will ensure, also, that those who unlawfully expropriate State property are brought to justice. We will pursue the recovery of all stolen State assets."

This Bill also seeks to bring Guyana into compliance with its international obligations under the United Nations Convention Against Corruption, of which Guyana is a signatory and which the previous Administration ratified but did nothing to bring into effect. We are bringing it into effect now.

This Convention which we ratified describes corruption as:

"...an insidious plague that has a wide range of corrosive effects on societies."

And that it:

"...erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish."

The Convention also posits that in the developing world, places such as Guyana, that the effects of corruption are most destructive.

Our commitment to the global effort to ensure state asset recovery is strong and unequivocal, is an acknowledgement and endorsement of the view expressed by the former Attorney General of the United States of America (USA), Mr. Eric Holder, at the Global Forum IV, in Doha, Qatar, in November 2009. Mr. Holder said this:

“We must work together to ensure that corrupt officials do not retain the illicit proceeds of their corruption. There is no gentle way to say it: When kleptocrats loot their nations' treasuries, steal natural resources and embezzle development aid, they condemn their nations' children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative.”

It may be recalled that, upon the Government's accession to Office in 2015, we made an appeal, on behalf of the new Administration to all concerned to return state assets in their possession. A reluctance, and in many cases failure to do so, precipitated the establishment of the State Assets Recovery Unit, within the Ministry of the Presidency, to recover the properties of the State. The objectives of SARU were to:

- I. To recover stolen state assets within and outside of Guyana;
- II. To prevent corruption and the misuse of public assets;
- III. To work for strengthening the regulatory framework at all levels; and
- IV. To further increase the transparency and accountability of financial institutions in this country.

It was soon realised that the range and magnitude of misuse and misappropriation of State assets required a much more robust and a more comprehensive approach to assets recovery. It was also realised that the approach to state assets recovery should not address just the past, but deal with the present and the future so as to ensure the integrity of State property.

We are passing legislation in this House that will affect us as well. There have been questions about the need for an state assets recovery agency. In this regard, Professor Clive Thomas in

writing about the criminalisation of the Guyanese State, which was serialised in the *Stabroek News* newspapers, posited that:

“There is the existence of a cabal or coterie of persons comprised mainly, but not exclusively, of selective crime bosses, State officials, political bosses, advisers and other insiders. The combination is unique and derives from the particular historical antecedent as well as social, economic and political circumstances in Guyana. This group, as identified, wields enormous power as well as commands considerable economic wealth. As the ruling elite, this group has placed itself above the reaches of domestic law, while at the same time leading the political charge in Guyana for law, order, public safety and human security.”

His Excellency, President Granger, in his speech on 28<sup>th</sup> May, 2016, at the launching of Mr. Anand Goolsaran's book *Governance, Transparency and Accountability*, also stated that:

“It is my view that corruption in Guyana is most widespread outside of Government. The crimes of tax evasion, contraband smuggling, narcotics trafficking, trafficking in persons, money laundering - all contribute to corruption.”

The President observed that:

“some people described corruption as the abuse of entrusted power for private gain, but in reality the real sources of corruption are evident in other crimes such as bribery, contraband smuggling, clientelism cronyism, fraud, graft and nepotism.”

*4.09 p.m.*

However many of these crimes are committed in collusion with public officials and also involve the misuse or illicit disposal or acquisition of State property. A lot of the data and information that prompted the views and sentiments expressed by both his Excellency and Dr. Clive Thomas, are in the public purview. In addition, several of the forensic audits that have been conducted have indicated, quite clearly, the position that I am speaking about.

The Attorney General, Mr. Basil Williams, spoke extensively about those issues. It is therefore clear that there is indeed a great need for the State Assets Recovery Agency Bill to give legislative effect to the establishment of a state asset recovery agency.

One can only imagine what would be the result if the resources that were stolen and/or misappropriated were put to meaningful use in the development of our country. The passage of this Bill will result in the replacement of the existing State Asset Recovery Unit (SARU) with the State Asset Recovery Agency. An autonomous agency and I want to emphasize on this because the last speaker went on at length to speak about the process of selection of the Director and Staff of the agency. This is why I am saying that, when one is debating a bill, the first thing that one has to do is to read the Bill.

The Bill speaks about an autonomous agency with the authority and appropriate powers to recover State property, through asset tracing, freezing and seizing and by way of restraint orders and confiscation. In addition, this Bill will also seek to prevent corruption and the misuse of public assets now and in the future. It will also strengthen our regulatory frameworks at all levels to increase transparency and accountability of our financial institutions.

The passage of this Bill will establish an agency that will recover State property, proved to be the proceeds of unlawful conduct by public officials and/or any benefit obtained in that regard, by way of civil asset recovery. Civil asset recovery is a mechanism by which, in the absence of criminal proceedings, the proceeds of criminal activity can be forfeited so as to deprive a person of illicit gains in this process. The action is directed at property, and not against the holder or holders of property. Under this Bill, civil asset recovery, which can only be pursued through the High Court, is specifically aimed at the recovery of State property or other benefits obtained, directly or indirectly, from a public official or other persons' unlawful conduct in respect of State property and that is very simple. These recovery proceedings are set out in clause 4(1) of the Bill. However, it must be pointed out that concerned parties' right to be informed about any recovery action to be taken by the Agency, their right to defend their legitimate interests and to appeal against any granted order, are contained in clauses 42(6), 43 and 48 of the Bill.

There has also been mention in the public domain, that this Bill violates fundamental constitutional protections, breaches human rights and interferes with constitutionally protected

property rights. These assertions are based on claims that civil recovery proceedings are in fact criminal proceedings, depriving the holders of suspected property of normal criminal law protections, such as the presumption of innocence and the requirement to establish guilt.

The record has shown that these matters have been considered by courts in several foreign jurisdictions, including the United Kingdom (UK), United States of America (USA), Canada, South Africa, the Republic of Ireland and the European Court of Human Rights. Their decisions are available in various law reports. My Friends are talking about going to the Courts. I have no doubt that that the High Court will benefit from those decisions, when it has to grapple with challenges in the course of dealing with any civil asset recovery applications – clear precedence there.

There have also been utterances about a “Government witch-hunt” in relation to the establishment of SARA. It has also been alleged that innocent people will be targeted by the agency for all sorts of reasons. I wish to make it extremely clear, pellucid, that there is no intention on the part of this Government. In any relevant matter, due process will be observed and the Bill speaks of due process in sections 81(1) and 55 (1) and 55(2).

Also with regard to the talk about witch-hunt, I wish to reiterate that this Bill seeks to establish an assets recovery agency to deal with the integrity of State property in the past, at the present and in the future. So in this regard, I must point out that the Statute of Limitation for the recovery of State property, as stated in section 53(1) of this Bill, is 12 years. Thus, there be no sacred cows – 12 years. So, when persons feel that they are immune from the conditions in this Bill, that it is just about us, they have to understand it is 12 years going back. That is where it is and there will be no sacred cows.

We in this Administration will hold ourselves accountable as well, with regard to the operations of the Agency to be established. When the people of Guyana elect their leaders, they are, in fact, entrusting their national resources to them with the legitimate expectation that those leaders will be judicious in the management of those resources; ensure value for money; and that they would act in the best interest of the citizens and the overall development of our country. Therefore, our Government will not relinquish its fiduciary duty to ensure prudent management, preservation and protection of State assets and State property for present and future generations.

Concerns have also been expressed about the impartiality of the State Assets Recovery Agency to be established under this Act. Let me take this opportunity put this fallacy of politicisation of the Agency to rest. The expressed purpose of this legislation is to replace the State Assets Recovery Unit, which now operates out of the Ministry of the Presidency, with an independent agency that is not subjected to Ministerial oversight, but reports to the Parliament, as stated in Schedule (7) of this Bill, to ensure insulation and to remove any perception of interference. In addition, the Director and Deputy Director, as outlined in Schedule (1) (1) (a) and (b), will be subjected to appointment by the bi-partisan Committee on Appointments of the National Assembly. That is where they will be appointed, not by me or Mr. Basil Williams or Mr. Khemraj Ramjattan, but by this process here. So read the Bill and you will understand that. This bears testimony to our Government's commitment to transparency. The National Assembly will also have responsibility for the remuneration of the staff of this Agency, as well as oversight of the Agency's budget and financial activities, by way of the requirement of having to approve beforehand, its annual plans. It is here the annual plans will be approved, not at any Ministry.

In addition, the National Assembly will also be required to approve a Code of Conduct and a Code of Practice for all of the Agency's staff. So we would all have an opportunity to do all of that. If you read the Bill you will see that there.

The passage of this piece of legislation will form part of the actions that will result in Guyana's continuous upward movement on the Transparency International's Corruption Perception Index. Guyana has moved from 119, with a score of 29, in 2015 to 108 with a score of 34 in 2016. We have no doubt that this performance will continue as we move on.

As I commend this Bill to this honourable House for adoption and passage, I wish to take the opportunity to thank the Attorney General and his hardworking staff, Professor Thomas and his staff, the World Bank and the British Expert Mr. Brian Horne for the outstanding work which they have done on this comprehensive piece of legislation. The people of Guyana will forever be indebted to you all.

I thank you very much. *[Applause]*

**Mr. Speaker:** Hon. Members, we are now at 4.20 p.m. We will take the suspension at this time, and we will return at 5.20 p.m. Before we do that, I must request or invite the Members of the

Special Select Committee on the Food Safety and Animal Welfare Bill to meet with me in my Chambers for the purpose of electing the Chairpersons of those two Committees.

*Sitting suspended at 4.21 p.m.*

*Sitting resumed at 5.45 p.m.*

**Mr. Gill:** Mr. Speaker, corruption is not about politics, for corruption adversely affects everyone, more so the poor and average working class Guyanese family. My party, the People's Progressive Party (PPP), unequivocally, denounces corruption in any form. Unfortunately, corruption seems to be in the Deoxyribonucleic Acid (DNA) of too many Guyanese and must be rooted out wherever it festers. Although there is justification for a Bill to discourage and punish those who engage in corrupt activities, this is not it, for this Bill is dangerously flawed.

*5.47 p.m.*

Not so long ago, in this very House, the Leader of the Opposition, the Hon. Mr. Bharrat Jagdeo, made an impassioned plea to the Members of Parliament (MP) on both sides of this honourable House to submit their income tax returns dating back 10 years. This was rejected by my Colleagues on the Government's side. The same Government that promised the Guyanese people transparency and accountability, while in Opposition, are unwilling to have public disclosure of their earnings and assets. If the Government was truly interested in keeping politicians honest, it would have unanimously supported this initiative by the Leader of the Opposition.

For many years and more so during the 2011 and 2015 elections campaigns, successive People's Progressive Party/Civic (PPP/C) Administrations were branded as corrupt. Earlier this year and, again, repeated yesterday, the SARU's Chief Executive Officer (CEO) told the press and the nation that there is evidence to show that since 2008, the country lost \$300 billion a year from corruption under the PPP/C. He said that from \$28 to \$35 billion was lost every year through procurement fraud; \$90 billion through illicit capital flight; and another \$188 billion through the underground economy. Let me put these figures into perspective. According to the CEO of SARU, under the former PPP/C Administration, Guyana lost over \$300 billion a year due to corruption. By any yardstick this is a lot of money. So, now that the PPP/C is out of Government, this Administration should be saving this \$300 billion every year or \$600 billion



since taking office, but where is this money? Surely, the Government does not have it, for they would have had enough money to pay the Police officers and the military personnel the 20% salary increase they promised, but this did not happen. If this ridiculous allegation was true, there would have been no need for this Government to add 14% Value-Added Tax (VAT) on water, electricity and private education. And, they certainly would not be asking civil servants to recycle envelopes. But talk is cheap and so, they continue to feed the nation the same lies that got them elected in 2015.

The truth is, after 23 months and intensive scrutiny by SARU, an Agency that is aggressively looking for any evidence to put the former President and his Ministers behind bars, this massive corruption cannot be found. How can a hostile Government-funded agency, with unlimited investigative powers and resources, not find what would have added up to an astronomical \$2.7 trillion stolen over a nine year period? Instead of admitting that the level of corruption under the PPP was greatly exaggerated to gain political mileage, the Government, under immense pressure to show results, encouraged SARU to arrest and question the Leader of the Opposition and former PPP/C Ministers about house lots they had purchased in Pradoville Two below a market value. Is this the best they could do?

Since coming to Office, this Administration, apart from what was paid for by the Inter-American Development Bank (IDB), spent about \$130 million of taxpayers' money on an ongoing witch-hunt campaign. Thirty five forensic audits were carried out at Government agencies, targeting former PPP/C Ministers and senior Government functionaries with suspected ties to the PPP/C. Billions of dollars were expected to be found stashed away or laundered in real estate development and foreign bank accounts. They have all come up empty handed.

Since its creation, the State Asset Recovery Unit has not even recovered the \$130 million spent to carry out these forensic audits. They should be disbanded for being such a failure. Let us not be mistaken, this is undoubtedly a vindication of allegations of corruption made against the People's Progressive Party. Truth be told, the PPP Administration inherited a bankrupt country in 1992, compliments of the then Minister of Finance, the Hon. Mr. Carl Greenidge. The same party they accused of being corrupt was able to leave over US\$400 million in foreign exchange reserves for this Administration to squander on exorbitant salary increases and new executive

vehicles for themselves and the renting of a pharmaceutical storage bond for over \$12.5 million per month, from a man who contributed significantly to their election campaign.

With all the infrastructural revolution that transformed the Guyana landscape from 2001 to 2015 and the prosperity that all Guyanese enjoyed during that period, how corrupt could the PPP have been? This Bill that has been written would deter investors and drive fear in every Guyanese living in the diaspora, who is thinking about returning home one day to start a business. It is simply not investor friendly. Even the private sector has condemned this Bill calling it draconian and in conflict with the rights enshrined in the *Constitution of the Cooperative Republic of Guyana*. This Bill has no safeguard to ensure that the person being appointed Director of this Agency will not be a political hatchet man and this is a real concern.

Despite the misleading statement made that work, which will be done by SARU, is no vendetta against anyone, the drafters of this Bill seem determined to go after former PPP/C Ministers at all cost, so much so, that if this Bill is allowed to past, SARU will have the authority to violate the constitutional rights of all citizens and we cannot let that happen.

This Government is in the habit of shamelessly and deliberately misleading our people. They promised rice farmers \$9,000 a bag for paddy, they lied; they promised police officers and the military a 20% salary increase, they lied; they promised transparency and accountability ...

*Mr. Speaker hit the gavel.*

**Mr. Speaker:** Hon. Member, I would want to suggest that you use different language.

**Mr. Gill:** Sure. They promised transparency and accountability, they deceived the nation; they promised the nation that not one cent of taxpayers' money would be spent on the D'Urban Park Development Project, but later came to this honourable House for a bailout of almost \$1 billion, again they deceived the nation; they promised to give top priority to education, but added 14% VAT on private schools, they deceived school children; they promised all Guyanese a 'good life', but burdened them with VAT on electricity and water and over 200 new tax measures, again they deceived the nation. Now, the Hon. Attorney General is again misleading the nation that the SARA Bill is:

“...strictly a civil recovery proceeding and not criminal...”

He stated:

“...in other words, there is a proceeding in which no one will be arrested; no one will be charged; no one will be prosecuted; nor are there any questions under this Act that anyone could be given a custodian sentence.”

He also said that:

“...there is nothing criminal about the provisions of this Bill.”

In this Bill, section 7(3), “Functions of the Director”, it is written and I quote:

“In discharging the functions of SARA the Director shall consider whether the recovery of State property may be better secured by means of criminal investigations and criminal proceedings.”

This Agency will be given the sweeping powers to go after property and assets not only owned by the State, but those in which the State has interest in. *To rub salt in the wound*, the Director of SARA and its entire staff will be given full immunity from prosecution.

Section 104 (1) of the SARA Act reads:

“No proceedings or other action shall be brought or instituted against the Director or member of SARA staff, any person acting on behalf of SARA, an Asset Manager or other person appointed by the Court for any act done in good faith in the performance or intended performance of any duty under this Act...”

Seriously, Mr. Speaker, how does one justify seizing a man’s property or assets in good faith? Any victim who even threatens or in any way intimidates an agent of SARA, commits an offence under sub-section (1) which punishable to imprisonment for two years. So, it is a criminal act as well. How can the learned Attorney General say, in good faith, that there is nothing criminal about the provisions of this Bill?

This Bill has the real potential of causing a victim to become very violent when he is about to lose his property and assets to a SARA seizure. When a man loses everything, he becomes desperate and desperate people do desperate things, which may even lead to suicide. If the

seizure is wrongfully executed by some Administrative error the victim has no legal recourse. The Director and members of the SARA staff must not be given full immunity. We must let the Courts decide who qualifies for immunity.

In the United States of America, police officers are often given qualified immunity as a legal defence against lawsuits arising out of life and death street confrontations, often with criminals. Before this immunity is granted by the Courts, there has to be a qualified immunity test which asks the question, was the constitutional right alleged to be violated clearly established? If a person's constitutional rights are trampled upon by the illegal seizure of property or assets, it should not be left to SARA to offer compensation. The victim must be able to seek justice in a court of law. A citizen's constitutional rights must never be denied by the umbrella of immunity that this Bill provides. Could one imagine what will happen if law enforcement officers in New York are given immunity from prosecution when they enrol as police officers in the New York Police Department (NYPD)? Some would use that as an excuse to shoot any drug dealer and troublemaker, whether or not they pose an imminent threat, especially if they are minorities.

The granting of immunity places SARA, the Director and anyone working on their behalf above the law and runs the risk of turning Guyana into a Police state. We have seen that in action before with the unlawful arrest of the Leader of the Opposition by overzealous SARU agents and the illegal seizure of computers from the Enmore Neighbourhood Democratic Council (NDC). We must allow the courts to do its work in granting qualified immunity on a case by case basis. This A Partnership for National Unity/ Alliance For Change (APNU/AFC) coalition should be very careful not to create a monster that the next Administration could use to prosecute some in this very House when they lose the election in 2020.

*6.02 p.m.*

This Bill is too dangerously flawed to be given passage in this honourable House. Unless the Government can come up with another Bill that does not trample on the constitutional rights of our citizens, I cannot support this Bill. I thank you. *[Applause]*

**Minister of Public Telecommunications [Ms. Hughes]:** Despite all of the hysteria that is being created in some aspects of our society and by many in this honourable House, the State Assets Recovery Bill, Bill No. 2 of 2017, has one fundamental purpose which, clearly, the last speaker,

Hon. Member Gill, did not understand and missed completely. That one fundamental purpose is to recover, through civil proceedings – note that I said “civil proceedings” – state property that is unlawfully acquired. What is critical to note is that these are civil proceedings. – I keep emphasising the word “civil” and I will tell you why I am doing this – and these are not criminal in nature, meaning that there are no criminal sanctions. There would be no arrest of persons; no charge; no conviction; nobody would get arrested; and nobody would get locked up under this Bill.

The focus, instead, is on the investigation and recovery of assets belonging to the State, which have been unlawfully procured. It is, therefore, an action against the property and not the person. Just to highlight the hysteria that my Colleagues on the other side of this honourable House continue to promote, I would like to refer to an article in the *Guyana Times* of 15<sup>th</sup> January, 2017. Of course, we are assuming that the *Guyana Times* is reporting this information accurately. So, forgive me if it is not. Nonetheless, the comment in relation to the article is a quote from the Leader of the Opposition, Hon. Bharrat Jagdeo. It states:

“The latest decision by Government’s illegitimate anti-corruption body to scrutinise owners of high-rise buildings in the country has great potential to drive away investors, former President and Opposition Leader Bharrat Jagdeo has warned.”

It goes on to state and they quote the Hon. Leader of the Opposition:

“He said once SARU, which will be renamed the State Assets Recovery Agency (SARA), gets its legal framework, it will spare no time in going after these individuals.”

This is the hysteria and misinformation that is constantly being peddled regarding this Bill. Nobody is going to be charged. The State has a right to go after, in the interest of all Guyanese, property that belongs to the State.

This fundamental approach is in harmony with international standards and trends. The Bill, as its basis, has the fundamental principle for the return of assets, as promulgated in the United Nations Convention against Corruption (UNCAC). The UNCAC is a result of the international community recognising corruption as a global epidemic that hinders economic and social

development. The UNCAC is, therefore, the first treaty to reference the recovery of stolen assets as a priority against corruption. In fact, the Preamble of the Bill clearly states that this Act is:

“to establish a States Assets Recovery Agency in consonance with the United Nations Convention Against Corruption 2003”.

Thus, it is keeping Guyana in harmony with international standards.

I want to refer to some of the comments of my most Hon. Sister who spoke previously. To quote her directly, she said:

“This Bill has a reckless disregard for local laws.”

In our own Constitution, Hon. Members, let us look at article 19, which articulates:

“Every citizen has the right to own person property which includes such assets as dwelling houses and the land on which they stand, farmsteads, tools and equipment, motor vehicles and bank accounts.”

It goes on even further, in article 32, to place an obligation on the State, society and all individuals. It states:

“It is the joint duty of the State, the society and every citizen to combat and prevent crime and other violations of the law and to take care of and protect public property.”

This Bill provides a mechanism by which the State Assets Recovery Agency will be able to take to the courts and investigate property that has been unlawfully acquired by a person or persons and to use evidence gathered to persuade the High Court to grant restraint orders or civil recovery orders in respect of that unlawful acquisition of property. Again, we are talking about property alone.

It is difficult to oppose or argue against such a basic principle. If someone takes or unlawfully acquires something, that person needs to return it to the rightful owner.

At this point in time, without saying too much on those 15 computers, they were being removed from the lawful owners – the State of Guyana. The fact that we would allow an individual, along

with a friend of his, to make a decision to sell the computers, without the consent of the entire community, is totally unacceptable.

It is important to note that the sanctions or punishment for doing the crime, as us non-lawyers would put it, would take place in a criminal court, meaning if one has a problem in a criminal sense, one would take it to the criminal court, but not in the civil proceedings, which is what we are talking about. This concept of 'civil proceedings' is fundamental to today's debate. I say to the people of Guyana who are listening and to all of the citizens out there, "Do not listen to the hysteria that is being created. Nobody is going to be arrested."

The other criticism has been that this Bill is dictatorial. The State Assets Recovery Agency would be headed by a Director who, contrary to the statement made by Members of the Opposition, would be held accountable to the highest standards. Clause 13 of the Bill provides:

“(1) The Director and staff of SARA shall be subject to a Code of Conduct as prescribed in Schedule 2 of the Integrity Commission Act.”

It is easy for us to reference that Act and to see all of the protections that are there. It is in this that the conduct of the Director and his staff are subjected to. But it even goes further in Clause 13 (2). The Bill provides that:

“Subject to subsection (1), the Director shall prepare a code of practice as to the discharge of the functions of –

- (a) the Director;
- (b) staff of SARA;
- (c) accredited financial investigators.”

It goes further in Clause 13 (4). The code of practice is to be laid before the National Assembly. Therefore, the ultimate and the final arbiter is, in fact, this honourable House, this National Assembly. In fact, Clause 12 (1) provides that:

“The Director shall, at least three months before the beginning of each financial year, prepare a plan setting out how SARA intends to discharge its functions, including an estimate of revenues and expenditures for that financial year.”

Clause 12 (2) provides that:

“The annual plans shall include a statement of –

- (a) SARA’s objectives for the financial year;
- (b) any strategic plan for the financial year, whether or not relating to his objectives;
- (c) SARA’s priorities for the financial year;”

And it goes on.

Sub-clause (3) provides, again, that the annual plans shall be presented to the National Assembly through the Minister. It is not as if the Minister has the ability to act single-handedly. Everything has to come to this honourable House.

Clearly, the activities of the Director and his staff would be subject to oversight and accountability. This is further exemplified in Clause 106 (2).

“Within a period of not more than four months from the date of commencement of this Act, the Parliamentary Committee on appointments on the notification of the Minister shall recommend to the National Assembly a person to be appointed as the Director of the SARA.”

When we talk about the safeguards – that is another area of hysteria – in keeping with the issue of oversight, we need to be cognisant of the role of the court.

Clause 27 provides for the application to grant a restraining order by an officer to the court who has to weigh the evidence before granting the order. It should be noted that Clause 27 (2) exempts property from being subject to a restraining order if the value of the property is less than \$10 million. Also, applications can be made to the court to vary or discharge that restraining order. What I am trying to show is that the protection is inbuilt.



Further, in order to recover assets, Clause 41 provides that the Director or any authorised officer has to apply to the court before a civil recovery order is granted. However, it is to be noted that Clause 43 protects the *bona fide* purchaser for value without notice that it was recoverable property.

The other area is the whole argument about this being a criminal witch hunt. This is an area that the Hon. Member Gill got a little confused. Most of the other clauses of the Bill give SARA the power that is required only to thoroughly and properly investigate the matters before it. It is not a critical witch hunt. The criminal penalties are there to address those who would falsify or destroy evidence which is requested by the Director or ordered by the court. I think that it is that aspect of criminality that my Hon. Friend on the other side of the House is getting a little confused with. But we understand. They are under pressure.

Clause 21 makes it a crime to (a) make a disclosure, which is likely to prejudice the civil recovery investigation and (b) to falsify, conceal, destroy or otherwise dispose of or cause or permit falsification, concealment, destruction or disposal of documents which are relevant to a civil recovery investigation.

Sub-clauses (3) and (4) of the said Clause 21, however, provides for the protection of attorney-client disclosures and disclosures made in connection with legal proceedings or contemplated legal proceedings.

Clause 61 makes it an offence to fail to comply, without reasonable excuse, with a requirement imposed under a disclosure order and to make a statement which is knowingly false or misleading in a material particularity.

The other area that there is a lot of misinformation on is this issue of agency corporation. In this area, again, my Hon. Friend on the other side of this House talked about the “partisan makeup of those involved with this law”.

*6.17 p.m.*

Hon. Members, people of Guyana who are listening, this Bill, under Clause 11, lays the foundation for a multi-agency cooperation and coordination. The Clause provides for the sharing of information between Government agencies and the SARA, including sub-cause 3 – the

requirement of mutual cooperation between the Director of Public Prosecutions and the Director of the Financial Intelligence Unit (FIU).

Sub-clauses 4, 5 6 and 7 provide for wider assistance from the Commissioner of Police and also the Guyana Police Force in the discharge of the functions of SARA and the mutual requirement of sharing information regarding any criminal investigation, criminal proceedings or any criminal recovery investigation or proceedings

Sub-clause 8 further provides for a memorandum of understanding, regulating cooperation among appropriate entities or agencies.

We, on this side of this honourable House, as reflected in this Bill, make no exceptions for illegality that might be based on race, ethnicity or political affiliation. The startling revelation was when my Hon. Friend on the other side of the House mentioned and spoke of the theft of the 15 computers that happened in a People's Progressive Party/Civic (PPP/C) area. That has absolutely nothing to do with the recovery of stolen property. Regardless of what race I am, it has nothing to do with that.

Theft is theft and corruption is corruption in any way, shape or form. [*Interruption*] I know why you are screaming and shouting. You know from direct experience. We are bold enough to stand here and pass this Bill, a Bill that we would also be accountable to. We stand firmly on theft of state property, regardless of whoever the person is, which political party he or she comes from and his or her ethnicity. Theft is theft; corruption is corruption; and honesty is honesty.

At the end of the day, citizens elect officials and place them in a position of trust. No person in such a position should abuse the trust or the assets he or she has been given to manage. My Hon. Friend on the other side, my good Friend, Mr. Ganga Persaud, let me give you a classic example that may highlight my point even more. In no way, shape or form should one specific group of individuals be allowed to purchase ocean-front property or land that is below market price, that belongs to the Government; land that has not been advertised for sale; land that anybody in Port Mourant, Georgetown, Albouystown or anywhere could have had the opportunity to purchase. Worse yet, talking about *hearsay*, for example or maybe not a real example, it is quite possible for individuals to have a modest business; it could be a legal practice. Imagine that person in a modest business being able to purchase this land below market price building a house and then

selling the house for \$100 million. Some persons would sell for \$1.2 million, but who am I to say that the scenario that I just created is real? Therefore, I say that there are no exceptions to this Bill. It applies to Government and officials in the past, present and future. Should this occur, the State must be able to always recover what rightfully belongs to the State in the public interest. These assets belong to every Guyanese, to each of us in and out of this House.

I say to the people of Guyana: I want you to go online; take time to research this Bill and be weary, as always, of the orchestrated campaign to fool you on all that I have said.

I take great pleasure in recommending the passage of this Bill. *[Applause]*

**Mr. Seeraj:** Thank you, Cde. Speaker. My Colleagues on this side of the House and I want to state clearly that our position on corruption is very clear. It is wrong; it is illegal. We tried to weed it out to the best of our ability. The former President, Mr. Donald Ramotar, spoke on this matter. If we listened to the last speaker, Hon. Minister Hughes, one would think that, before the passage of this Bill, you could have taken state assets or state property at *whims and fancies* without anything happening. It would appear that, with the passage of this Bill, such practices would be discouraged.

From the time of civilisation, rules and regulations governed the way we operate. As a child growing up, I have heard stories of persons being prosecuted or punished for stealing or, as was known in those days, “thieving”. If you thief a fowl or a sheep, you would get locked up. If you steal anything, you would get locked up. It is not dependent on the passage of this Bill to make these kinds of activities illegal.

The Hon. Minister Hughes said that no one would be locked up and no one would be arrested. I recall that, only a few weeks ago, some members of law enforcement entered the Office of the Leader of the Opposition and arrested a gentleman who cannot walk without aid and took him to Camp Street. Yet, we are being told, in this House, that no one would be arrested. **[Mr. Williams: SOCU...*[inaudible]*]** They say SOCU. This matter had to do with state property. Mention was made about Pradoville II, ocean-front state property and state property and the gentleman was arrested in relation to state assets and state property.

There are laws and rules and a number of legislation that go after criminals. The Hon. Minister also said that there would be no criminal witch-hunting. I agree that this Bill, in most parts, is not targeting criminals. This Bill appears to be crafted to go after political opponents. This Bill is sending a clear signal to the Opposition and persons who are right standing and who are prepared to stand up against this Government that, if you do not *toe the line*, then the Government would find a way to go after you, and that way is by this Bill. This Bill has nothing to do with criminal witch-hunting.

This Bill is targeting those who do not *play ball* with the Government. In this piece of legislation, with numerous pages, there are numerous instances where cause could be found to go after persons if they show any dissent against this Government. This Bill is making it legal for this Government to impose authoritarian, dictatorial behaviour on our people. That is the genesis of this Bill.

We have existing legislation and a number of agencies that are adequately equipped to deal with any illegal behaviour, including the recovery of state assets. Theft is theft, whether it is from the State, your neighbour or whoever. Our laws, as they exist now, adequately provide for those persons to be disciplined - to be arrested, charged and taken before the Courts.

Although it was said that, under this Bill, people would not be arrested, my belief is if one steals, one should be arrested. If one commits an illegal act, one should be arrested and criminal charges should be instituted against that person.

If you are saying that it is proper and okay, under this Bill, to take state assets and that you would not be charged and arrested and that only the property would be taken away from you, I do not really understand why there is this Bill for only that. It is stated in this Bill that the authorities would go after anyone under numerous causes and excuses. As stated in this Bill, the Director only needs to have a belief and reasonable grounds established by himself or herself for any cause or any reason to go after persons.

When the Hon. Attorney General and Minister of Legal Affairs began his presentation, he spoke about scams and, I recall clearly, polar beer scams. I do not know whether Polar Beer was stolen from the Government or from the State and if the Government was trying to recover the Polar Beer and so that is why the Hon. Attorney General and Minister of Legal Affairs mentioned that.

What the Hon. Minister failed to mention - and I am certain that these matters are very fresh in his mind - that there are more recent and more significant scandals and scams, including State resources.

I recall only in May, 2015, there was a major scandal. We are still to be told how much moneys were spent for the Inauguration Ceremony here at the Public Buildings and at the Guyana National Stadium.

I do not know why the Hon. Attorney General and Minister of Legal Affairs went way back in the past to talk about Polar Beer without mentioning the inauguration scam.

In May, there was also the removal of eight containers of steel worth millions of dollars from the compound of the Ministry of Public Health. This removal was in violation of a court order. This Government allowed, and I am certain, facilitated the removal of eight containers of steel from the compound. Those were State properties.

One would also recall, without any difficulty, the awarding of a contract for the specialty hospital by this Government to Fedders Lloyd Corporation Limited, a company that was delisted or blacklisted by the Inter-American Development Bank (IDB). There was public outcry about the move by this Government to get involved in that scandal without, in any way...

6.32 p.m.

[*Mr. Speaker hit the gavel.*]

**Mr. Speaker:** Hon. Member, you have risen.

**Minister of Finance [Mr. Jordan]:** Mr. Speaker, Standing Order 38 (3) (b). Mr. Speaker, I think you would recall that you had cause to, on a point of order, correct or ask Hon. Member Teixeira to withdraw similar comments that are being made now by this Hon. Member, and you can check the Hansard. There has never been an award of a contract to Fedders Lloyd Corporation Limited by this Government – never. [*Applause*]

**Mr. Speaker:** I thank the Hon. Member. Hon. Member Mr. Seeraj, you would want to correct that.

**Mr. Seeraj:** I would have no difficulty, Sir, in withdrawing my comments as it relates to the award of a contract by the Government to Fedders Lloyd Corporation Limited.

**Mr. Speaker:** Thank you.

**Mr. Seeraj:** What happened was that the Government entered into a memorandum of understanding with Fedders Lloyd Corporation Limited to proceed with...and it was only after the Export-Import (Exim) Bank and the Government of India withdrew their support that that particular project was not proceeded with. Those are not scandals from which Members of the Cabinet are still benefiting.

*[Mr. Speaker hit the gavel.]*

**Mr. Speaker:** Hon. Member, you really must address the Chair. Let us do that.

**Mr. Seeraj:** Thank you, Cde. Speaker.

Sir, there is also another scandal in my mind which Members of the Cabinet continues to benefit from. And that is the increases which they sneaked in upon the people of Guyana. When it was said that some media houses revealed and leaked – it was leaked to some of the media houses – that the Government was contemplating a huge salary increase, I think it was Hon. Minister Raphael Trotman who denied, initially, that the Government was even thinking about salary increases. But then, as we all know, the rest is history.

Rudisa Beverages & Juices N.V.: A settlement of approximately US\$16 million...

*[Mr. Speaker hit the gavel.]*

**Mr. Speaker:** Hon. Member, are we still on the Bill? I asked that question because I seem to recall that some of the points that you are making were made in another instance in another debate. I am just wondering whether we are simply repeating ourselves.

**Mr. Seeraj:** Mr. Speaker, the State assets, in my mind, relate to the property at Pradoville II and moneys that are spent for settlement for, let us say, Rudisa Beverages & Juices N.V., as the example I was on. This is State property. It is also related to the settlement to the Demerara Distillers Limited (DDL). Again, this is State property or State asset that was used for these

kinds of settlements, which were uncalled for. And I think that the examples that were cited by the Hon. Attorney General and Minister of Legal Affairs, as it relates to other similar incidents, in my mind, opened the door, and I am merely bringing to the House's attention most recent occurrences where State assets were used, not in compliance with the law, to make these settlements reality and where the country, our people, the Guyanese people, have lost billions by the reckless behaviour of this Government. And they stand to lose billions more because, as you are aware, I think Banks D'Aguiar Industries and Holdings (DIH) has now initiated legal action against the Government also to get similar benefits like DDL. And the amount that is likely to go to Banks DIH will far exceeds that which was given to DDL, and these are really State assets.

The House should be reminded that, whilst we could speak of Polar Beer and taxes associated with the Polar Beer, there are very much recent instances where state assets are given away by this Government at the *whims and fancies* of whether the Cabinet as a whole or individual Ministers coming to really approving settlements that benefit a few at the expense of all Guyanese. As I said, I would bring these few examples to bear, whereby we can demonstrate where State assets were not handled in the manner one would have expected by the custodians of State assets. And, in that light, too, one can easily go on to say that friends, cronies and families benefitted from these settlements.

Haags Bosch Sanitary Landfill Site facility: A contractor was paid a settlement for the dumpsite there; I think it was for some US\$10 million. The contract was for a five-year duration and that contractor was taken off the site after two and a half or three years for poor quality performance and then the settlement was made by this Administration, using State assets, for the entire five years. This shows how it is that this particular piece of legislation can be used not in the manner that it is stated, but can be used by the political directorates, and makes it a political tool in the hands of a Government that is intended to be repressive against political opponents.

There are many other instances whereby the double standards that are being used by this Government in going after persons who are not deemed to be their supporters can be seen. One can recall the matter with the Guyana Elections Commission (GECOM) where the audit revealed that over \$700 million were spent by virtue of sole-sourcing. But what happened? The Chief Executive Officer (CEO) was not reprimanded; he was not sent on leave, unlike other agencies. In other agencies, where it is not even so clear, just because the CEOs, managing directors or

general managers were perceived not to be in support of the Government and any small thing that came up, they were dismissed, sent on leave and fired. Yet, this matter is ongoing at GECOM. The \$700 million, I think, is only the tip of what the auditors have revealed. We need to be even-handed. If action is being taken against the General Manager of the Georgetown Public Hospital Corporation (GPHC), the National Industrial and Commercial Investments Limited (NICIL) or the National Drainage and Irrigation Authority (NDIA), why is it that the CEO of GECOM, who was implicated in over \$700 million, whether it was by not following the proper procedures, a fraud was committed... There is this unevenness in handling different situations. So one can only wonder about how it is that this Bill will be used selectively against political opponents. And that is our concern. If we are going to go after state assets, one would think that the Government would find it beneficial to have all participating, to have the endorsement of partners in civil society and different organisations playing a part in coming up with a piece of legislation that will achieve its objective. *[Interruption]*

*[Mr. Speaker hit the gavel.]*

**Mr. Speaker:** Hon. Member, please resume your seat.

There is a constant noise that rises from my left, moves to my right and moves back to my left. Hon. Members, I am going to have to name Members if this continues. **[Mr.**

**Nandlall:** Please do, Sir.] I see that Mr. Nandlall wishes to help me. Please proceed, Mr. Seeraj.

**Mr. Seeraj:** Thank you, Mr. Speaker. So, in my mind, the concerns have nothing to do with the recovery of state assets. The concerns of the political Opposition, the concerns of civil society, the concerns of the Private Sector Commission and the concerns, as the Hon. Member, Ms. Priya Manickchand, mentioned of an auditor who was appointed by the Government, who was appointed to do audits - and when he found this reprehensible and not in keeping with good practice and spoke out against it, he is now being deemed to be a supporter of the PPP - are genuine. These are people who want us to develop in an orderly manner, who want legislation that promotes best practices, but we do not want legislation for this House to approve Bills that can be repressive and that can be used against political opponents.



That is why we are saying that, with the involvement of all stakeholders, we can come up with a piece of legislation that will achieve all of our objectives, to stamp out corruption and to discourage any instances where one would utilise state assets or state resources against established rules, regulations and procedures for one's private gain. But what we are seeing here is a move afoot in this Bill to establish an entity that, to my mind, the Director would have more power than the President; it is only dependent on his belief, his thinking or his inclination in whatever way to go after people.

Under Clause 23, where it is titled: "Disclosure of information to Director by permitted persons upon request", all these other agencies like the Director of Public Prosecution, the Commissioner of Police, the Director of the FIU, the head of the Special Organised Crime Unit (SOCU), the Chairman of the Integrity Commission, all these people on these agencies, some constitutional bodies, will come under the Director of SARA. Where are the checks and balances? How are we going to ensure that this Director, who is being empowered with all this authority by virtue of this Bill so that he can summon all the heads of these agencies, and not the ordinary constable or sergeant, a police officer not below the rank of an inspector... How is it that we can exercise oversight over such a person?

It is stated in the Explanatory Memorandum that the Committee on Appointments would find it but, as we know, the Government will have majority there and the Government will, I suppose, ensure that who it is that the Government wants to put there will go there. And when such a person with this amount of power goes there and calls up any individual to talk with him or her, any person reading this particular piece of legislation will be very uncomfortable going against the wishes of the Director of SARA or going against the wishes of the Government.

Like I said, this Bill is intended to ensure that there are no dissenting views or persons and it is to ensure compliance and, whatever happens, it is for us to take it quietly and for us to not raise our voices. I suspect, under this Bill, the members of the Movement Against Parking Metres can be called up one day and told that an investigation will be initiated into their business just because that person might come in front of City Hall with a placard to register their concern against the parking metres. Some might receive a call; it happens all the time.

Let me draw your attention to this: this Bill that we are debating today, already, commercial banks, in this country, have what is called politically exposed persons. I learnt of this only two days ago that, already, politically exposed persons are on the radar at banks.

6.47 p.m.

And these are not political persons across the spectrum, but political persons on one side of the divide. Already, it has started. It is not only the politically exposed persons, but also their families are coming under the radar for more scrutiny by banks. We are seeing the beginning of an operation which is going to cause a lot of problems in society. Sir, I suspect there are many reasons why civil society, members of the Private Sector Commission and other bodies and, like I said, even accountants, are against the passage of this piece of legislation in its current form.

I want to join my Colleagues and to establish that we all must join together to ensure that assets of the State remain assets of the State. If persons have interest in any asset of the State, then there is a procedure through which a person could get land or whatever is the case. We should all work towards that, but we also have to work towards legislating that which is best practice, legislating that which all of us are comfortable with, legislating in a manner so that there would be checks and balances, legislating in such a way that all in our society are comfortable and all will give their full support.

With those few words, I want to recommend to this National Assembly that this piece of legislation be sent to a special select committee so that it could benefit from the input of Members of Parliament, members of civil society and, generally, from all Guyanese. That would be my recommendation.

Thank you, Sir. *[Applause]*

**Minister of Natural Resources [Mr. Trotman]:** Mr. Speaker, it had not been my intention to speak on this Bill, but the Chief Whip, in her wisdom, asked me to. I always bow to her wisdom because, in matters parliamentary, she is the longest serving Parliamentarian in this House and I respect here wisdom and foresight. I never thought I would have to speak, but I am pleased that I have been included.

I have heard some statements made this evening, which, I believe, have taken us from the sublime to the ridiculous, some which stretch the credibility both of this House and of some of the Members. We have heard reckless statements being made about bank accounts elsewhere. We have heard statements made about former Ministers having gold bars. We have heard statements about banks in this country being organised to go after a newly found and discovered group known as politically exposed persons. Any person who stands as a leader in this country ought to be aware that, for the last two decades, this label has been ascribed to all of us. In every Bill that has to do with financial matters, we have all been labelled, long ago, by all the banks, locally and internationally, as politically exposed persons. What is insidious, what is dangerous, is the statement which implies that we are going to go after the leaders of the Movement Against Parking Metres. It is the kind of statement which my sister, the Hon. Member, Ms. Catherine Hughes, spoke about. It is intended to drive fear in the society, to raise the boogie man that says that we are coming after you and that the banks of Guyana are preparing dossiers against certain Members of Parliament.

There are freedoms of expressions and this House has freedoms, but those freedoms have to be circumscribed. Many years ago, when we were sending a delegation of the armed forces to a certain territory to perform peacekeeping functions, a Member of this House, almost *sotto voce*, asked: are they going to go there to torture? That Member was brought before the Committee of Privileges and sanctioned even though the statement was made as a heckle. There are some boundaries which we should not cross. When we hear statements that the banks of Guyana are now being organised only against a select few and that we are going after Members of the Movement Against Parking Metres, that Members have bank accounts in Switzerland and gold bars, we are stretching dangerously into the realms of unparliamentary conduct, conduct which is not only being viewed and heard here, but viewed and heard by persons in and out of Guyana.

If I could, for a moment, take up some of the comments of the Hon. Member who just spoke, Mr. Seeraj, the Hon. Member made a very strange comment that it is better to lock up the person than to get the property back. In all my years as an attorney-at-law, practising at the criminal bar, I know of no person who has stolen property who would not wish to have the opportunity to return that property. I could see no reason why a Bill, which gives the State or a state institution the option of either going after the property or the person, could be such a wrong thing. In fact, this

Government should be applauded for giving an option between criminal proceedings and civil proceedings. Hitherto, there was only one option and that was to lock up the offender and to have him or her charged and prosecuted and, perhaps, incarcerated. Now, there is an option which states that the property could be brought back and there would be no need to go to Lot 12 Camp Street. I could see the Bishop nodding in approval. As I said, as a practising Attorney-at-Law, I could not believe that I heard a Member of this House saying that it was a ridiculous notion to suggest that the option should be given.

Also, there were repeated references made to the CEO of GECOM, a person who could be easily identified. It has been identified, as a practice of this House, that we do not go after people and their characters in the way that that statement was made. Again, the insidious implication was that this officer of an independent constitutional agency is acting as an agent for the Government. The Guyana Elections Commission is an independent arm of the State. It is not for this Government to go in there and start charging people. We do not have such a remit. It is akin to someone coming into this House and starting to arrest officers of the Parliament. We do not have such a remit. That would be an offence to the Constitution of Guyana.

As I began, I heard some statements which frightened me, in as much as the other side appears or pretends to be afraid of this Bill. I should say that I believe that there was genuine cause for concern when a Bill of this nature appeared. As a responsible Parliamentarian, I did ask of my learned Friend, the Attorney General and Minister of Legal Affairs, Senior Counsel (SC), and the Minister of Public Security for their own opinions on certain clauses in this Bill. Some of the matters raised by the Hon. Member, Ms. Manickchand, I did question. I was satisfied, beyond reasonable doubt, that this Bill cannot and will not be used as a weapon, but can be used because it is circumscribed – and I will come to that later – by certain provisions which allow the court to make certain decisions only.

There are some fundamental truths I wish to bring to the attention of the House. Those may be even referred to as some inconvenient truths, depending on who is hearing them.

The first is that there is the United Nations Convention Against Corruption which was enacted in the year 2003. That is the first inconvenient truth for the Opposition. The second truth is that Guyana is a signatory to that Convention. On 16<sup>th</sup> April, 2008, Guyana ratified that Convention.

Which was the Government in 2008? Who was President of Guyana in 2008? Who was the Minister of Foreign Affairs or who represented the Ministry of Foreign Affairs in April, 2008? It was not the A Partnership for National Unity/Alliance For Change (APNU/AFC) Government.

Another fundamental truth is that it was the intention of the Government of Guyana of that day to implement its Treaty obligations. If not, it would not have signed a treaty. Why would one sign on to a treaty which one had no intention of honouring or respecting. Mr. Speaker, with your permission, I would refer to the vernacular. Was the Government *mamaguying* the United Nations or was it serious? There are, in law, a presumption of due regularity and a presumption of good faith. I extend that presumption, unless it is dispelled otherwise. I presume that, when we ratified this Treaty in 2008, it was our intention to honour those obligations, to take seriously the Treaty obligations which we signed on to. I have heard nothing, particularly from the Opposition which was then in Government, to suggest that Guyana had no intention, though it ratified this Treaty, to respect, to honour or to implement the Treaty.

There is another fundamental truth, one which we have been grappling with all day. That one is that there is corruption in Guyana, whether real or imagined. That is why we ratified that Treaty. Every speaker for the Opposition has conceded that we have a problem of corruption. The last speaker said that there is a problem, but let us work together to craft legislation to attack it. With all due respect to that speaker, who spoke before, you had since 2008 to do so. Why did you not do it? How is it that all of a sudden you want to work together? The Treaty came into existence in 2003; it was ratified in 2008; and, in 2017, like *Rip Van Winkle*, you have awakened to the fact that you now wish to work for its implementation. To use the vernacular again, someone is trying to *mamaguy* us.

With these fundamentals established and against a backdrop of difficulties, reigning in the incidents of public officials expropriating, misappropriating and confiscating public property for their private or elicited use and with the coming oil production and financial windfall that this country is going to get, which paints a canvas before us, Government believes that this law is not only necessary but it is also imperative and critical for what is to come. We are a nation of less than 800,000 people and the coming bounty will require every measure and very strong measures to protect and preserve the State of Guyana. I say that because recent history has shown, nearby to us, that threats are not only external or from insurgents and terrorists, but that economic

crimes have been found to be as crippling and as devastating as a civil war or an earthquake. We have to protect ourselves. This Bill, in keeping with the steps taken by the former Government, is once such measure that will take us towards that protection.

Despite all the bluster and the scaremongering to invoke the spirit of *doom and gloom* and a sense that we are teetering into the bliss of anarchy and becoming a despotic state, this Bill is very targeted and focused against a particular class or a particular group of citizens. Here we are talking of ‘public officials’, which is defined in the Bill itself. With your leave, Sir, I quote from clause 2:

““public official” includes any person holding or a person who has held a legislative, executive, administrative or judicial office, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority, or any other person who performed or performs a public function, including for a public agency or a public enterprise, or provided or provides a public service;”

7.02 p.m.

This in and of itself puts to rest the nonsense, if I can use such a strong word, about us going after parking meter protesters. We are speaking about a particular genre... [Ms.

**Manickchand:** Is that bothering you?] It does bother me because it is false. It is wrong.

[Ms. **Manickchand:** The President said they are not paying their taxes.] That is a different matter. There is a law for that.

Mr. Speaker, with respect, my apologies. This Bill sets out the category, the class, the genre of persons that will be captured by it. When we hear about the people of Guyana trembling and this is a defining moment in the history of our country, we are talking about a fraction, a decimal point of our society. We are talking about 72 Members of Parliament at any one time, one President of Guyana, 15 judges, ten Regional Chairmen/Chairpersons, 10 Regional Executive Officers, six military and senior police officers and, by my count, that is 114 persons we are to be speaking about. If I am to be generous, I will add another 86 of others to give us an even number of 200 persons. The point I wish to make is that at no time, either in the past, present or going into the future, will this Bill whether it is enacted become an instrument that goes after more than 200 persons.

When we are told that people are trembling, it is not so. We are not after the farmer; we are not after taxi driver; we are after the fishermen; neither are we after the vendor; neither are we after the public servant, the nurse; we are not after the soldier; we are not after the cook; we are not after the cleaner; nor neither are we going after the business person. We are after persons like you and we are after persons who are even on this side. As Hon. Member Mr. Harmon rightly said that this is not a Bill that comes after you. It is a Bill that comes after all of us, including all of us. What must be said of a Government that is prepared to enact legislation that will bring even its own Members to heel. This talk about us going after people on the road, business person, and only for some reason Members of the Opposition who are politically exposed. We are more exposed than they are, because we are the ones who are in Government.

We have the courage and we have the sincerity to enact a law that stretches 12 years, even after we come out of office, whenever that day is appointed by God. We have bound ourselves not to a one-year time, *in futuro*, but to 12 years. I emphasise the point that, in fact, this Bill seeks to protect the 780,000 odd members of the society for the 200 who have the tendency, the propensity or the proclivity to want to steal state asset. This Bill is not against the masses; it is for the masses of Guyana. I said that because I juxtapose the statements made earlier by the Hon. Member Ms. Manickchand who remarked that “this Bill is intended to dramatically transform the life of Guyanese people”, quote and unquote. Those are your words. I wrote them down.

[Ms. Manickchand: I repeated what he said.]

[Lt. Col. (Ret'd) Harmon: I said that.]

Well, this Bill will dramatically transform - it will bring a better life. There is going to be a dramatic transformation indeed, but it is going to be a transformation that will positively impact the masses, more resources will now be available for the people of Guyana.

Before I close I wish to speak only about the governance position of this Bill. My colleagues have spoken about the basis of the Bill. We believe in its justness. We believe in its timeliness. In fact, it is overdue, because since 2008 we were enjoined to do something about it. We have now come 9 years after, and we are enacting that which we have written and signed to do, and we should be commended for that.

I wish to add to the good arguments already presented a few other points. This Parliament, as every other Parliament in the Commonwealth, is enjoined to pass laws for the peace, order and good government of the country. An elected Government, which is the executive, working with

the National Assembly, which is the legislative arm, will together pass these laws. Law making is not child's play. It is not a game even though some liken politics to a full contact and blood sport. Therefore when we come to make laws we do so being very mindful and almost sacred trust is placed in our hands. We have to ensure that we weigh each Bill, each clause and each provision precisely and delicately, so as to ensure that our intention meets the standards which are set out in article 65 of our Constitution. I will repeat that standard, that we must pass laws for the peace, order, and good government of the country.

This Bill may be unpalatable to some, it may make some nervous, be filled with fear and trepidation, but at the end of the day it strengthens the fabric of the state of Guyana. Imagine, given the perceptions of corruption real or imagined which no Member of the Opposition has denied. Imagine that this country has a windfall from oil revenue and we do not have a fiscal in place. That we lack the discipline to manage and that we pass over glaring and obvious cases of corruption, whether it is that that wealth will bestow into our hands in a few short years without laws to regulate, laws to investigate, laws to prosecute and laws to punish, we will run amok. As I said before, a nation with plan, without any order, will find itself as a failed state. It is not due to imprudent thoughts or insurgencies, not due to riots, not due tidal to waves and earthquakes, but due to theft and kleptocracy. That has ruined many countries in the world and this Government, whether it has the reign of Government, placed into its hands by the people of Guyana, is going to ensure that it does what it has to do to protect future generations of this country and we make no apologies for that.

Government is not unmindful of the powers that this Bill will place into the hands of a unit that is going to be called the State Asset Recovery Unit. This is why there have been layers of insulation and various checks and balances, both built-in around this unit, and in the exercise of its powers. We have heard of the National Assembly itself having a role through the Committee on Appointments. What is strange, again, there was a reference a few minutes ago to the Committee on Appointments with the Government having a majority and therefore will have its way. How is it that we were able to settle down when that side had a majority and had its way because the process was a bypassing process. We allowed appointments to be made; we accepted the appointments and we supported the appointments. All of a sudden the very process, which



worked before, is now held up as being a model of distrust and a model of something that is broken and no good and cannot work. It is amazing how night changes to day so quickly.

A second layer of insulation is the High Court of Judicature itself. We know, those of us who practise and have some legal training, how zealously the courts guard their role and their function to enquire into and to ensure that the rights of citizens are not trampled upon. We know that there is a constitutional right to hold property and, therefore, we have built into this Bill the right of the court, not the right of the director. I laughed when I heard a statement was made that he is even more powerful than the President. **[Ms. Broomes-Charles:** It was a wild

statement.] It is a wild statement. Thank you. The President of Guyana is not circumscribed by all of these checks and balances. The President of Guyana does not have to go and prove his case with an affidavit as to why he needs to search a particular property. The President of Guyana does not have to present evidence of any kind before a High Court judge or a Court of Appeal, if it comes to that. How could you make a statement that the head of SARU will be more powerful than the President? It is irresponsible. The right to free speech in this House does not give us the right to abuse that free speech.

The third check and balance is the Integrity Commission Act. This Bill demands that members of the unit function, within the unit of the Integrity Commission Act, subscribe themselves to a code of conduct, in which the code of conduct will have the force of law. What else should we do? We have been told to take the Bill to a Special Select Committee, but it is interesting that there has not been one suggestion for its improvement. It is just to take it to Committee, just do not pass it. There has not been one suggestion to say that there are three checks and balances here, may I suggest to you a fourth and a fifth. Instead, we just get a bland, "No. We should not pass it." Perhaps the most potent of these checks and balances, as I said, is the judiciary itself and this has been explicitly explained and delineated, both in this House and in the Bill itself.

I need not go through the individual clauses, but suffice to say that the role of the High Court to both regulate and protect is unquestionable. On this side, we do not tremble at the call to the court to review the Bill. We, in fact, applaud when we hear that, because we recognise that we pass laws with the best intentions for the peace, good order, Government of the nation. We recognise that the High Court has the constitutional duty and responsibility to review our work, because untrammelled power is dangerous power. We are happy that there is another institution

that is appointed to review even our work. Those who believe that we will be cowed and threatened, or filled with fear when we are told that we were going to the High Court, we are excited, because we are proud of what we do, we are confident in our work, and we welcome the intervention of the courts. We invite the judiciary to review all legislation enacted by the Parliament. What we will not do, as I said, is be cowed in fear and be overcome by doubt and indecision. It is nine years since we have ratified this convention and it is time that we pass it.

I wish, Mr. Speaker, before taking my seat to just quote from the convention itself so that Member may become familiar and *au fait* with some of its terms. It is the United Nations Convention against Corruption, a copy of which is available online, but I got this from your library this afternoon when I realised that I had to speak, I quote from article 3:

“*Urges* all States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;”

The word “rapid” is defined here.

I turn the House’s attention to article 51 under the rubric “Asset Recovery.” It is not something that we have dreamt up and coined the words “asset recovery”. It is in the convention signed by the PPP/C administration. It states:

“The return of assets pursuant to this chapter is a fundamental principle of this Convention.”

I will repeat that;

“The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.”

The last reference with, your leave, Mr. Speaker, article 65:

“Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.”

*7.17 p.m.*

We have done nothing wrong; we have done nothing abhorrent; we have done nothing immoral; we have done nothing unethical; we have done nothing that is partisan or bias against any group or anyone. All we have done is pick up a convention which had been ratified in 2008 and are giving it life as we were mandated to do. What could be so wrong about that? We were not the ones who ratify this convention. How is this now morally reprehensible when it was they who started us on this course? We are finishing what we started.

With those words, I come to the end and I leave us with a quote, a quote by a name that some of us would be familiar with, J.K. Rowling, the author of the *Harry Potter* series. She said in one of her books, which later found its way into a movie, “The fear of a name increases fear of the thing itself”. Long before this unit was created, the fear of SARU pervades the land. This monster is coming. We have not even enacted it yet. The name brings fear of the thing itself.

As I said before, we would not call and we would not diminish our stands. We will stand because we have been given a responsibility by the people of Guyana to govern this country, according laws and according to the treaties which we sign on to. That is our mandate and we will fulfil it, as I said, until the day that God appoints us to demit office.

With that said, I thank you. I commend this Bill for passage. [*Applause*]

**Mr. Speaker:** Hon. Members, we are now at 7.20 p.m. We will take a short break and I would urge you to return 10 minutes to 8 o'clock.

*Sitting suspended at 7.20 p.m.*

*Sitting resumed at 8.10 p.m.*

**Mr. Lumumba:** I rise to speak on the Bill No. 2 of 2017 which is named the State Assets Recovery Bill 2017. As my previous colleagues, I object to the passing of this Bill and my objections are not for frivolous reasons. It appears that the basic objective of this Bill appeals to modern day politics, in particular on the issue of discouraging political leaders and public officials who enter Government to prevent them from stealing, pilferage and filling their pockets. In

essence, no serious parliamentarian will object to the concept of this Bill. Our disagreement is not over concept. Our disagreement is over implementation and what might be the motives.

We in the PPP/C believe that the Government must be clean and that those who are elected must understand that the assets of this state is to be used to develop the economy, use to stabilise the society and to be used to reduce poverty and illiteracy from our society. In essence, the overall purpose and objective of this Bill, from my interpretations, speak to the following: The Bill introduces legislation to combat unlawful contact and corrupt practices, in relation to property and other assets owned by the state or in which the state has an interest. In context, the Bill provides for the establishment of the State Asset Recovery Agency which has its primary function. The civil recovery of state property obtains through the unlawful conduct of our public official or other persons or any benefits obtain in connection with that unlawful conduct by way of civil proceedings taken in the High Court for a Civil Recovery Order. The granting of Civil Recovery Order will invest in the state ownership of any property, subject to the order. The State Asset Recovery Unit (SARU) has a director with the responsibility of defecting management and execution of its functions. The issues of our objections are the potential constitutional conflicts that this Bill presents and the dictatorial element that it introduces through the powers given to the director of the proposed agency. I am not an attorney-at-law, but as a political activist and a person with some level of formal education. I could detect the challenges that this Bill seeks to bring to the table.

The private sector is very important in our society. It has a fundamental role in our society and often serves as a bridge between Parliament and society, but this Government has shown total disdain of the function of the private sector and the general consensus from the private sector and from many, that this Bill might be a fundamental step towards totalitarianism and an introduction of a one-party rule on our society.

This Bill is too important. Its ramifications are too broad and too wide that we can sit here and pass it by a one vote majority. It is either this Bill goes to a Special Select Committee or this Bill accepts its passage by two-third majority. This Bill, in many way, challenges the Constitution of the country and we, as a body, and you, as a Speaker - I know you have rule in many matters, and I do not want to test you - I want to suggest to you, of course through your brilliance, that you might consider the fact that this Bill might be improperly laid before us. In essence, it might

need to be questioned on whether a Bill of such importance can pass without the two-third majority and that is something for you to consider. Sometime tonight, before we vote, you may decide that you need to make a ruling.

The objective of this Bill has already been carried out or implemented by many Acts of Parliament and can be implemented through existing agencies. Mr. Speaker, such authority exists under the followings. I have identified six Acts that come under different agencies that can either carry out the suggested activities promoted by this Bill or create conflict by this Bill.

- The Criminal Offence Procedures Act
- The Summary Jurisdiction Procedures Act
- The Custom Act
- The Hijacking and Privacy Act which provide for forfeiture and restraining orders and civil asset forfeiture
- The Narcotic and Drug Act
- The Anti- Money Laundering and Countering the Finance of Terrorism Authority Act.

This Bill represents gross duplication.

Representatives of the private sector and several prominent leaders of society, including attorney-at-law Christopher Ram, have raised particular questions as to the power of the director of the proposed agency. I do not want to say that the power we are proposing for the director makes him as powerful as the President. I would not dare to say that, but in many ways he has president-like powers and a president-like authority. Again, as I said earlier, I want to believe that such power cannot be carried by any public official without a two-third majority of the Parliament or a national referendum on this issue which could be another option. I say this because of the importance of this Bill. It is a very fundamental Bill and it is a needed Bill. It is required. I am wondering whether it breaches our Constitution and if it does not, and if it could be, the right to do is to seek two-third majority. I am not saying the two-third majority because it gives us a chance to vote. I am saying two-third from a technical and constitutional sense. I see the lawyer, Hon. Minister Khemraj Ramjattan, is shaking his head and I know he is thinking. I

know that Minister Trotman is behind him, but I notice the Speaker is listening to me with a certain level of attention. I do appreciate that, Sir.

**Mr. Speaker:** Hon. Member, I give that attention to every Hon. Members who speak here.

**Mr. Lumumba:** Well, as you know, we have a special relationship, Mr. Speaker.

This part of my presentation is critical to the power given to the directors and the constitutional conflict that would arrive at the heads of other agencies, such as the Commissioner of the Guyana Revenue Authority. At this point, I would like to highlight some of the issues.

Under clause (7), the director will be tasked with discharging the functions of SARA.

“...in the way which the Director considers is best calculated to contribute to the reduction of crime and the recovery of State property derived from unlawful conduct.”

It is a term that is widely defined. He may do anything.

“...including the carrying out of investigations, which the Director considers appropriate for facilitating, or incidental or conducive to, the discharge of the functions of SARA.”

The director can also consider ...

“...the recovery of State property may be better secured by means of criminal investigations and criminal proceedings.”

This position here clearly conflicts with what the Hon. Attorney General said earlier in his presentation. The director also has the power to determine...

“...which particular operations are to be mounted by SARA and how those operations are to be conducted.”

Mr. Speaker, these are president-like powers. I notice that you are not taking any notes, but I believe that you are listening carefully to me. Listen to this piece, this will attract your attention and if you are tired you would not sleep after this one.

“The Director and named members of SARA staff may exercise the powers of police, customs and immigration officers if so designated by the relevant Ministers, upon the Director’s request (section 9).”

The last set of people who had this power was the SchutzStaffel (SS) in Nazi Germany, the last set of unit - you could do your research of the SS - could penetrate any department or division, the army, the police and the secret service - the proposed authority of ludicrous.

In addition:

“Where the Director, for any reason, decides civil recovery proceedings are not appropriate he may assume the tax collection functions of the Commissioner-General...”

Tell me, Mr. Speaker, my Comrades on the other side, do you really believe Mr. Godfrey Statia, the Commissioner-General of GRA, would stay on his job after you pass this Bill? Let me read this to you. Let me tell you what you are doing to the Commissioner-General. You are taking away the authority. He may assume the Minister of Finance is in the honourable House, I think. Yes, Mr. Jordan, how are you, Sir? Good night.

“...he may assume the tax collection functions of the Commissioner-General in relation to a person’s income, profits or chargeable gains...”

Why do you need GRA? Why do we need the Commissioner-General? Why are we paying two salaries?

*8.22 p.m.*

It is either we make the Commissioner-General of GRA the head or make SARU’s head the Commissioner-General. However, before doing so the director must serve an appropriate notice to that effect on the Commissioner-General. The notice does not divest the Commissioner-General of the assumed tax function but he must cooperate with the director – he must.

With this new Bill the director can do anything which he considers appropriate, incidental to the discharge of his function.

It is much wider than the director of assets recovery under the United Kingdom (UK) procedure of crime. In the UK the director's function did not include the recovery of state property derived from unlawful conduct, but we want to do this here in Guyana. In the United Kingdom, it saw it fit not to give it such authority. A greater country than ours at this point in time, a more developed country, yet it decided that that section of it should not be included.

Effectively, the director can assume function of the Commissioner-General, the Commissioner of Police. He can assume the power of the Commissioner of Police. This is dangerous. He can assume the power of the Director of Public Prosecutions. This is more dangerous. This is crazy. He can assume the power of the Commissioner-General, GRA; he can assume the power of the DPP; he can assume the power of the Commissioner of Police. This is madness. Where in the world have we seen this? Most frightening is that the director can actually contract out the powers. He can contract out his powers or some of his powers. He can sell some of his powers. The potential for constitutional conflicts are not only enormous but vulgar. I am amazed that a democratic society, as ours, wants to propose laws that present a back door attempt to weaken the Director of Public Prosecutions, to weaken the Commissioner-General of GRA, to destroy the integrity and authority of the Commissioner of Police and create another tsar who may be not be as powerful as the President, of course, not because the President probably can fire him, but the minimum he can walk with his shoulders up.

Let us look at the potential of these constitutional conflicts, the role of Ministers, the role of the DPP. Let us just vaguely look at them. I just want to touch on them briefly. I am trying my best not to be an attorney here, tonight, but this Bill is very technical.

Role of Ministers: The Minister of Finance is authorised under clause 9 of the Bill to designate the director and other named official SARA persons having the powers of revenue and customs office. This is as strange. Let me go back to this one again. Earlier we were told, and from this Bill, that the director will be appointed by Parliament. It states here:

“The Minister responsible for finance on the request of the Director may in writing instruct the Commissioner-General to designate in writing the Director and other named officers of SARA as persons having the powers of a revenue and customs officer.”



There is a conflict there and that is why these things need to go to Special Select Committee. There is a conflict there. I may not be bright as the Minister of Finance. I think he went to Queens College. I did not go to Queens College. He is a very bright young man. I know Hon. Member Dr. Roopnaraine went to Queens College, the well spoken English professor.

Under the Guyana Revenue Act, the power to appoint revenue and customs officers rests in the Guyana Revenue Authority. Proposed provision is either an amendment by implication or disregard the Act. It seems improper and legally impossible for a Minister to exercise a statutory power which Parliament has vested in the governing body of the GRA. It is another conflict. This Bill is flawed. It has serious conflicts. I do not have to be a lawyer to see the conflicts. Why do we want to rush this? It is crazy.

Let me go back to this here, again, the role of Ministers. The Minister of Finance is authorised under clause 9 of this Bill on a request from the director "...to designate the Director and other named officer at SARA as persons having the power of a revenue customs officer."

Holy Ghost, look at this: Under the Guyana Revenue Act, power to appoint revenue and customs officer rests in the Guyana Revenue Authority. Proposed provision is either an amendment by implication or disregards the Act. It seems improper and legally impossible for this to happen, but yet it is happening. Why can we not all get along and look at this? Let us work together, let us all get along. Look at this impossibility.

Similarly the Minister responsible for Public Security is now being conferred with powers to designate the Director and other named officers of SARA as persons having the powers of police officers and immigration officers. He is making policemen. He is creating his own police force – shades of the late Forbes Burnham. Minister Roopnaraine, you may have to burn again. Parliament has conferred the power to appoint police officers and immigration officers on the Police Service Commission, and the Commissioner of Police. The objection in relation to GRA applies to this provision as well. Again, conflict.

Director of Public Prosecutions: Article 187 confers on the DPP exclusive power to institute, undertake and discontinue criminal proceedings against any person before any court. Article 187 provides that in the exercise of these powers. "The Director shall not be subject to the direction or control of any other person or authority." Let me go back this again. I am glad the Hon.

Attorney General just entered the chamber. Article 187... Hon. Attorney General [Mr. Williams: You are grazing.] I am not an attorney, so I have to graze. ... confers on the DPP exclusive powers to institute, undertake and discontinue criminal proceedings against any person before any court. Article 187 provides that in the exercise of these powers "...the Director shall not be subject to the direction and control of any other person or authority." Should we proceed with this Bill, it will make the Hon. Member Nandlall's work very easy in front of the court - conflict again.

The mandatory requirement of clause 11, that the Director of Public Prosecutions informs the director of any criminal investigation or criminal proceeding involving state property which may become subject to forfeiture, confiscation and serial recovery, seems to be in violation of article 187.

The requirement in clause 23, that the DPP disclosed information related to any unlawful contact, tax or financial of any person, seems similarly unconstitutional.

The mandatory requirement of clause 11, that the Commissioner of Police informs the director of any criminal investigation or criminal proceeding involving state property, which might become subject to forfeiture, confiscation or civil recovery, seems to remove any exercise of judgement in connection with police.

When all the powers and functions of director are taken as a whole, together with the status of corporate sole, the director has no powers and is subject to fewer restrictions than the Commissioner of Police, the Commissioner-General and the Director of Public Prosecutions.

If I am allowed, I want to repeat this paragraph. I want all the honourable attorneys-at-law, who represent the Government, to listen carefully. Many of them are my friends and I respect them tremendously. I do not want them to be blind and just follow the oxen, the blindfold and then fall of the cliff. "When all the powers and functions of director are taken as a whole, together with the status of the corporate sole the director has more powers and is subject to fewer restrictions than the Commissioner of Police, the Commissioner-General and Director of Public Prosecutions." We are not in the Stone Age. We are a developed country. Look at all these flaws. What is the rush? What is the motive? It looks as if there is a hidden motive. We can we not all get along? Why can we not sit down for a couple days and sort this out?

My conclusion follows the script of attorney-at-law Christopher Ram. The proposed Bill seeks to achieve far too many objectives - the reduction in crime, the recovery of state assets and the introduction of a system of civil asset forfeiture. The consequences of this overambitious approach is a frightening array of overlapping laws, concentration of power, violation of the Constitution and constitutional principles, violation of the Standing Orders of the National Assembly and potential reduction of civil liberties, due process and presumption of innocence. I dealt with the issue of the two-third majority. I am dealing with the issue of whether this Bill, as proposed and as proposed before the National Assembly, is a violation of the Standing Orders.

I believe, with due respect of the Speaker, that the Speaker has an obligation to at minimum take some time off and look at this carefully to see whether there is gross violation in this National Assembly today, because at the end of the day if it goes to court it has to be an issue. The Speaker not only is he brilliant in his own way, but he is an honourable man. If the Speaker sees us going down on a road that is bumpy and the brakes are falling off, then the Speaker needs to pull all of us up. I have seen you pulled persons up to get it. Something is wrong with this Bill. It has too many flaws. I am begging you to take time off tonight, take a few minutes and look at this Bill carefully and you will probably see the flaws. [Mr. Nagamootoo: Are you going to lecture to the Speaker?] I am not lecturing; I am asking the Speaker. I am begging him.

Mr. Speaker, this Bill is seriously conceptually flawed. It appears that the drafter was not sufficiently familiar with Guyana's Constitution, its statutes and certain principles. The method of appointing director and his deputy in his appointment as a corporate sole shows lack of understanding of important principles and this was compounded by some unfortunate drafting errors.

In closing, I support strong measures against tax frauds, I support the civil assets forfeiture concept, but extending this to all forms of loosely defined concepts of unlawful conduct is a step too steep. It is dangerous and unworkable. Therefore I call on this National Assembly to reject this Bill, send it to a Special Select Committee or the Speaker, with the powers that you have or the powers that are beholden in you, to use the Standing Orders, that you have power to, to remove this obese Bill from in front of us. [Applause]

**Minister within the Ministry of Communities [Ms. Hastings-Williams]:** Mr. Speaker, you can clearly see that state assets, in detail, in order to avoid any misunderstanding and to ensure that any unlawful acquisition of state asset may not undergo personal use, but may be used for the benefit of Guyana, as a whole. It is important to note that if the previous administration was so serious about avoiding corruption during its tenure of Government, why did it take so long since 2008? I have been hearing from previous speakers, on that side, that consultations were not done. They had a lot of time to do all the consultations they had wanted to do throughout the length and breadth of Guyana. If they were so serious again, we would have had a lot of *villes* throughout this country. I can imagine my little village would have been *Kakoville* by now.

8.37 p.m.

We would have had *Roraimavilles*, *Pakaraimavilles* and *Kanukuvilles* and not just *Pradovilles* and *Oceanvilles*. I say this because State assets that are recovered will be linked to the development of this country.

The *Stabroek News* dated 26<sup>th</sup> October, 2015 stated:

“...the government has been mum on the findings and has not released the report, a sign, observers say, that it is not prepared as yet to follow through on the consequences of the audits it has ordered.”

It is not that the Government was “mum” in regards of the audit findings. This Administration has been putting systems in place for the enforcement of the law in the most transparent way by using well designed and effective mechanisms and instruments. As such, the SARA Bill, which seeks to do that, should be passed without any hesitation.

Since the establishment of the State Assets Recovery Unit in July 2015, it has faced serious challenges because the unit did not have the legal authority to do what it had to. SARU will become SARA and will be able to complete operations in a more efficient manner.

There is a fear-mongering that the passing of this Bill may mark the beginning of a witch-hunting season. This Bill is not new. It is a Bill that was initiated by the previous Government, the PPP/C Government, and these rumours are totally F-A-L-S-E, they are totally false.

I am going to refer to an article in today's *Kaieteur News, Dem Boys Seh*, which is one of the favourite articles that I love to read. *Dem Boys Seh*:

“Jagdeo set up SARU but now SARU upset he”

The Bill is a civil recovery and civil remedy Bill, which means that it is non-conviction based, as the previous speakers would have stated eloquently. Not only were consultations with local stakeholders and governmental authorities sought on the Bill, but it was drafted with the input from representatives of the World Bank, the United Nations (UN) and British Expert, Brian Horne, actions which evidence the APNU/AFC Coalition's intention to ensure transparency and accountability, besides ensuring the SARA Bill is in alignment with the United Nations Convention Against Corruption (UNCAC) 2003.

The SARA Bill seeks, as well, to be an example of the existence of a self-sustainability system in public institutions, since it makes provision for the establishment of a State Assets Recovery Fund which will see SARA utilising 25%, while the remaining 75% will go into the Consolidated Fund and not for personal benefits. Noteworthy is the fact that the new staff of SARA will have to be appointed by the National Assembly within six months of the Bill's passage. Such proceedings are done to ensure governmental transparency and accountability to the people of Guyana.

The APNU/AFC Coalition Government is committed to ensuring transparency and the prevention of corruption within the various governmental entities and agencies. A total of 46 forensic audits have been conducted and most of their findings are outrageous. By the introduction of the SARA Bill, Guyana is keeping in alignment with its obligations as a State Member of the United Nations Convention Against Corruption and the Inter-American Convention against Corruption (IACAC).

The same way how the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Act of 2009, with the relevant amendments in 2016, is designed to fight and prevent money laundering operations and the financing of terrorism nationwide, the SARA Bill of 2017 will fill another gap in Guyana's anti-corruption legislative landscape: The recovery of State assets unlawfully obtained.

It is noteworthy to mention the process of refining the amendments of the Integrity Commission Act, which will be expanded to include the *Ten Principles of Public Life*. These are: Accountability, Dignity, Diligence, Duty, Honour, Integrity, Loyalty, Objectivity, Responsibility and Transparency, in order for the said commission to have the authority to investigate all disclosures made by the public, and for the commission have its own corruption prosecution division.

The APNU/AFC Coalition Government is putting systems in place for future generations and with the blooming of the oil extraction and production that Guyana will experience in the near future, the implementation of the SARA Bill and the revenues that will be obtained from the oil sector, it will be difficult to divert from the original purpose. If we fail to do so as the Government, then the squandering and the interception of State assets will not be as the Bill intends. For Guyana and for the citizens of Guyana, this Bill will be passed this evening.

SARU, in a public statement, has indicated the following:

“In some areas of corruption, the size of loss speaks for itself. Before the change of Government, the nation was losing \$28 billion to \$35 billion each year through procurement fraud.”

If it was serious, the previous Government could have recovered those assets and we would have had highways and byways, linking regions to regions throughout Guyana. By now, the coastland would have been linked to the hinterland. Given the purpose of the Bill and the damaging losses to the economy, as stated above, it is imperative that the Bill be passed immediately. The stain of corruption discovered by SARU to date is astounding. The Guyanese population is eager to see the country's assets recovered.

I will respond to the Hon Member Ms. Manickchand to say this: Yes, we listened to the people and the people listened to themselves. In 2015, they said “enough was enough”. Guyana does not deserve to be exploited and looted. Real development needs to be seen in the country and the recovering of State assets would indeed ensure that development takes place throughout the entire country.

I will not hesitate and I will not say much for longer because all of my Colleagues, those who are practicing lawyers, did explained very clearly what the Bill intends to do. So I will seek every Member to support the passage of this Bill.

I thank you. [*Applause*]

**Bishop Edghill:** Mr. Speaker, I rise tonight to make my contribution in this debate on this Bill No. 2 of 2017 – the State Asset Recovery Bill. I will seek to make my presentation as brief as I can, but allow me just to make some opening comments, which are necessary.

We were told by the Attorney General, in his statement that he read for the House tonight, that this Bill is about fighting corruption and that it was about satisfying the UN Convention Against Corruption. The Hon. Raphael Trotman joined in that line of argument by seeking to use the UN Convention as the guise for bringing to this House this piece of legislation. But careful reading of the UN Convention Against Corruption speaks to some very important issues that the Bill does not address. If we really want to stop corruption, why are the preventative measures, which are stated in the Convention, not being addressed? One of the very important preventative measures is to deal with the issue of campaign financing. Why are we silent on that, especially when there are Ministers in this House who have said to the nation that political investors need to be rewarded? That is the highest form of corruption that is taking place in Guyana today. Do not come to this House and say that this Bill is to stop corruption, when there is an admission from the Government's spokespersons that political investors need to be rewarded. That is why there is a drug scam, whether it be at the bond or in the procurement process. This is because it is the political investors that need to be rewarded. If you are serious about fighting corruption why are you not dealing with that? If the APNU/AFC Administration is serious about fighting corruption, then I have a number of recommendations to make. It is in your power, Members of the Government, Prime Minister and others, to establish the Integrity Commission and to make declarations.

We have a new Government, since May 2015, and as a Member of this Parliament I am yet to receive a package from the Integrity Commission that states MP, this is your form, fill it up and get it to 'X' office. Even if one goes online and download the form, one does not know where to take it. If this Government wants to have any moral authority to lecture this country that it is

fighting corruption, let it state the date that any one of them have filed their integrity commission declaration since they assumed office. That is when it will have the authority to bring a Bill like this.

I also have another recommendation to make. If we are serious about fighting corruption, let the Minister of Finance, who has responsibility when it comes to the National Procurement and Tender Administration Board (NPTAB), bring legislation or regulations to this House that will address the issue of debarment of contractors who used their finances to influence the outcome and evaluation processes in the award of contracts. Let us gazette all of those persons who would have been blacklisted – companies and individuals – so that everyone can know who the corrupt people in this country are. It will be a mechanism that will prevent public officials from being corrupt.

*8.52 p.m.*

If you are serious then you should do that. If we are serious about fighting corruption, then let us strengthen the Audit Office of Guyana. Do not cut its budget. Let us make sure that it has its money to have a proper Forensic Audit Department in place that it would be able to go after corruption wherever it is and expose it publicly as a statutory body. That is what we should be doing.

I also want to recommend that if we are going to fight corruption, why do we not look at the Public Service Rules? And the Minister responsible for the Public Service is in the House? Where once somebody is taken to Court and they are acquitted, they are precluded from proceedings to deal with their misconduct or the alleged act, departmentally. Why do we not adjust the Public Service Rules that would still allow departmental investigations? So that if there is a technicality and someone gets off in the Courts, we could still purge the Public Service through departmental charges and we can be able to have this address. Why do we not do that?

**[Mr. Greenidge: Why did you not do it?]**

Well, you are there now, Sir.

Why do we not strengthened the Judicial Service Commission (JSC), giving it necessary financial resources and personnel, in keeping with the reports that have come back from our assessment under this very same Convention, which will allow for training of Judges, Magistrates and ensuring strong disciplinary measures and actions against Judicial Officials. This



is because, if one is going to purge a country of corruption, it is not only politicians; it is even the Judiciary that needs to be addressed. So why do we not deal with that? I am making these recommendations and I am saying to this House that, if we are serious about fighting corruption, we have to be able to deal with these issues.

A number of my Colleagues would have addressed what they see as problems with this Bill, but I want to make known to this House, what I see as the grave gross inconsistency of this Administration. We have a Financial Intelligence Unit (FIU) with new financial Anti-Money Laundering and Countering the Financing of Terrorism legislation. There is a Director in that Unit. That Director is subject to an authority. The principal agency for fighting money laundering and the financing of terrorism in Guyana, the Director is subject to an authority. This Bill makes the Director of the SARA a corporation sole, answerable to no one and besides that, is given immunity.

The learned Hon. Member, Mr. Raphael Trotman, spoke about the Committee on Appointments. The Committee on Appointments, as established in the Constitution, was situated to deal with Constitutional bodies. We have since broadened the scope of the Committee on Appointments by way of legislation that we are now hiring Director, Deputy Director, Accountant and Lawyer for the Financial Intelligence Unit. So we are now a recruiting agency. We are now hiring Director and Deputy Director for SARA. But this is where the veil needs to be pulled and the people of Guyana needs to understand that, as it relates to rights and all the sections of the Constitution, where rights are given and where Constitutional rights are to be protected, a special majority is required. So when someone comes to the Committee on Appointments, it is not a partisan approach, but a special majority is required – two-thirds, so there is need for consensus building at the Committee on Appointments.

When it comes to these other agencies for which the Committee on Appointments is asked to make appointments, FIU and now SARA, it is a simple majority, since the Government is appointing who it wants under the guise that it is a bi-partisan approach. It is the Government appointing who it wants. It has the majority in the Committee and it has the simple majority in the House. It is the Government appointing their appointee, but guising it as if it is a consensus bi-partisan approach and that needs to be exposed.

When we look at the SARA Bill, apart from what has already being established about the powers and the scope of the Director, which I will come to just now, there is a very unique development where we are now having the establishment of a fund. SARA will be funded by the Consolidated Fund. So it will be receiving money from the State to fund its operations, just like the Judiciary, the Director of Public Prosecutions (DPP) and the Police. But there is a big difference now. SARA can keep portions of its money to finance part of its activities – 25 %. The Judiciary cannot keep any money. All the fines and everything that is paid, goes to the Consolidated Fund. The Guyana Revenue Authority (GRA), which is funded from the Consolidated Fund, when it collects revenues or if it fine taxpayers for their delinquent behaviour, all of that money goes to the Consolidated Fund. But there is now an agency that is now a Commission Agent. It gets paid and is financed through the Consolidated Fund, but it can have an incentive that it can keep 25% of the benefits from its seizures for its own. So it becomes a bounty hunter. That is what is troubling.

Having read all 107 clauses of this Bill because, having had all the public debate and the exchange of the letters and all the rest of it, apart from being a Parliamentarian and my duty to read and understand the Bill, I went after the information to really understand why would every Civil Society Organisation in this country cry out against this Bill? The Hon. Member Ms. Manickchand spoke of that, so I do not want to repeat - the Guyana Human Rights Association and the Private Sector Commission (PSC) and they gave their cases.

Having gone through this Bill, I have discovered, and I am no lawyer Sir, like you and the rest of it, if this this Bill is passed, it can be described, on its passage, as Colourable Legislation. Let me explain to the House why it would be considered Colourable Legislation. It is because, in law, as I understand, one cannot seek to do something indirectly that one is prohibited from doing directly. That is a fundamental principle. One cannot seek to do something indirectly that he/she is prohibited from doing directly. In this Bill, these 107 clauses, when one goes through them, as draconian and authoritarian as they are and I daresay also unconstitutional, that runs in conflict with many of the laws that are established in the country. **[Mr. Williams: Show us.]**

I will show you. The Police get their power from the Police Act; the Minister of Public Security does not give the Commissioner of Police, Police powers. So the Minister of Public Security cannot give to SARA's Director and/or any agent of SARA a power that he does not have by the

Police Act. This Bill is stating that the Minister of Public Security can give to the Director of SARA Police powers. The Minister of Finance is not the one who gives to the Commissioner General of the Guyana Revenue Authority his power. It is the Revenue Act and there is a governing board. This Bill states that the Minister of Finance can give to the Director authority that he does have. This is what we are passing tonight. So I join with Mr. Odinga Lumumba to appeal to you as a legal luminary, maybe we should stop this debate right now and withdraw this Bill and then let us come back with something that really makes sense. The sides can meet and put something to you. Sir, this is a very serious matter. It is because, in reading and researching, one would discover that, if this Bill is passed, which I have already described, based upon the Constitutional Law and the Doctrine of Colourable Legislation, this, when challenged in court, will have serious problems and I do not know how the Attorney General will be asking this Assembly...

What is important, as it relates to this matter, according to Desi Kanoon - *Law, Economics and Politics*, the literal meaning of Colourable Legislation is that:

“under the colour or guise of power conferred for one particular purpose, the legislator cannot seek to achieve some other purpose, which it is otherwise not competent to legislate on.

This is where we are running into conflict tonight. The maxim implies, where anything is prohibited directly, it is also prohibited indirectly. In common parlance, it is meant to be understood as whatever legislator cannot do directly, it cannot do indirectly. This Parliament cannot give to a Minister, powers that he does not have. This Bill is, tonight, seeking to give to two Ministers powers which they do not have. Are we going to allow this injustice to pass in the name of “we have to get”? This issue that is before us tonight is one that is very serious and should not be treated lightly.

9.07 p.m.

The Hon. Mr. Raphael Trotman spoke about the inconvenient truth. Sir, let me tell this House about the inconvenient truth; let Mr. Trotman, listen to the inconvenient truth. Clause 106 of this Bill tells us that at the passage of this Bill tonight, the current SARU becomes SARA - right away SARU turns SARA. While I am on this, I would like to say to the Hon. Madame Dawn

Hastings-Williams that PPP/C never created a SARU; we created a Special Organised Crime Unit (SOCU). They are two different things, so you should check on it. So, immediately, SARU becomes SARA, but look who the people are that presently comprise SARU. There is a big difference between fighting corruption and witch-hunting political opponents - a big difference. All of the people who are the public figures and known operatives of SARU, are political people, who have been on the political hustling for years in this country and who have fought against the PPP and the PPP/C.

Mr. Speaker, let me tell you what another inconvenient truth is. It was Enmore that SARU went to. It was not Mocha or Buxton. That is an inconvenient truth and let us record that as an inconvenient truth.

We have a real situation where, while people are talking about us projecting hysteria and we are seeking to create hysteria in this society, these are real issues. I was told here tonight by the Hon. Attorney General, the Hon. Catherine Hughes and the Hon. Raphael Trotman who all said that no one would be arrested, but a businessman was picked from his place of business, taken to the Ministry of the Presidency, where SARU is located and questioned. I am talking about SARU. A gentleman who he is associated with in business was also summoned to the Ministry of the Presidency where SARU is located. If SOCU had arrested the businessman he would have gone to Camp Street and not to the Ministry of the Presidency, so do not come now to say it was SOCU.

Mr. Speaker, we were told that no one would be arrested, but can you imagine if an entity that presently does not have any legal status or any legal authority is doing that, could you imagine what will happen when it takes on a legal framework? We need to stop this madness in the country; tonight we need to stop it because this is an abuse of the process and abuse of the people of our country. It is the abuse of power. *[Interruption]*

*Mr. Speaker hit the gavel.*

So, we must not come here tonight and try to tell people that this not about any and everybody. I would like to disagree, I do not generally like having public disagreements, but if I have to I will. I will like to disagree with the Hon. Member, Mr. Raphael Trotman, the Minister of Natural Resources, about his 200 number. Public officials are not limited to Members of Parliament,

Ministers, *et cetera*. Every gazetted chairman of a board and director of a board are public officials; every Permanent Secretary (PS) of this country is a public official; every Regional Executive Officer (REO) is a public official and every person who is the holder of a constitutional office as a commissioner or chairman of a commission is a public official.

When one reads this Bill, which the Hon. Attorney General did not expound in any way in his presentation, I hope he does that in his rebuttal, he did not tell us that, in going after the civil proceedings for forfeiture of assets purported to be owned by the State, it is not only if it is in the individual's name, but even it is in somebody else's name. So, if the property is in the name of one's niece or nephew, reputed wife, cousin, business partner, associate, it is not just only 200 persons, Mr. Trotman. This Bill will affect every person in this country, once the Director of SARA sits in his home or in his office and thinks, maybe we should check out the taxes of Mr. A, B and C. If he forms an opinion that a person's building, wealth or assets is as a result of one not paying his or taxes, action will be taken.

**Mr. Speaker:** Hon. Member, you have four minutes remaining.

**Bishop Edghill:** Thank you Sir. *Stabroek News*, Thursday, 9<sup>th</sup> March, 2017, had a screaming headline. People were criticising the Bill before it came here Sir. This was the Chief Executive Officer of SARU responding:

“Some critics of the SARA Bill benefited from theft of national wealth”

Do you know what that says Mr. Speaker? That they already have a list; they already know who they are going after. So, tonight's action Sir is not about putting in place just a legislative architecture to safeguard the country and corruption. It is to pursue their vendetta and their witch-hunt against a predetermined list that will be done by people who are known political operatives, operating out of SARU in the Ministry of the Presidency. That is where I have a contention.

I could speak tonight and I do so boldly because I have no fear of the witch-hunt. But do you know what I am concerned about Sir? It is the shake down of the ordinary man. I think I am strong enough and confident enough and have the resources of help, where it is needed, that if SARU comes after me in a political witch-hunt, I will fight them in Court. Do you know why I

stand here tonight, Sir? It is not to represent me; it is to represent the ordinary man who figures that he has to tremble in his boots when SARA shows up at his gate because he will be in danger. We need to guard against that. *[Interruption]*

*Mr. Speaker hit the gavel.*

**Mr. Speaker:** Hon. Members, we must allow the speaker on the floor to complete his statement.

**Bishop Edghill:** I want to refer to clause 7 (3) as I close.

“In discharging of the functions of SARA the Director shall consider...”

It is up to the director to determine:

“...whether recovery of State property may be better secured by means of criminal investigations and criminal proceedings.”

This House was told tonight that this is all about civil proceedings, nothing criminal; no one would be arrested and all the rest of it.

**Mr. Speaker:** You have two minutes remaining.

**Bishop Edghill:** The inconvenient truth is being spoken. The law that is being passed determines whether they will go criminal or whether they will go against the other power, civil procedure. It is either one or the other. There are other legislation already in the country that deals with embezzlement and there are charges that could be brought through criminal proceedings, of which the Director of Public Prosecution (DPP) will pronounce on and they will be prosecuted in a court. But now you have the all-powerful Director who is appointed by the Government under the guise of a Committee on Appointments and a simple majority in the Parliament, but it is all Government’s action, that answers to no one, doing whatever they want to do.

This legislation, this Bill, if it is passed and assented to by His Excellency the President, would be considered a travesty of justice. It will be considered as a low for this Parliament. It will speak as it relates to the capacity of this House to understand its functions and its legislative mandate and it will speak to our willingness or unwillingness to correct our ways when we are found out.

Thank you very much, Mr. Speaker. *[Applause]*

**Mr. Trotman:** Mr. Speaker, may I crave your indulgence?

**Mr. Speaker:** Hon. Member, you have the floor.

**Mr. Trotman:** I am grateful Sir. Under Standing Order 44, I crave your indulgence and ask that the question be now put, having heard the full exposé and exposition of the Hon. Member, Bishop Edghill. Given the fact that this is Holy Thursday and we are approaching the hour of 10.00 p.m., I ask that the question be now put.

Thank you Sir. *[Applause]*

**Mr. Speaker:** Hon. Members there is a motion before the floor that the debate be now ended and that the question be now put.

*Question put and agreed to.*

*The debate was ended.*

*Question and agreed to.*

*Bill read a second time.*

**Mr. Speaker:** Hon. Members, I must ask you, if you are leaving your seats to do so quietly.

Hon. Members, you are on your feet. Either you regain your seats or if you are in the process of leaving, then please do so now.

*Opposition Members left the Chambers.*

*9.22 p.m.*

*Assembly in Committee.*

## **Clause 1**

*Clause 1 agreed to and ordered to stand part of the Bill.*

## **Clause 2**

**Mr. Chairman:** There is an amendment to clause 2, Hon. Members. Hon. Minister, you have the floor.

**Mr. Williams:** Mr. Chairman, the following amendment is proposed to clause 2. In the definition the word “money”, substitute for paragraph (c) the following as the new paragraph (c). It reads:

“(c) money in any electronic form, including direct deposit, electronic funds transfer, virtual currency and digital gold currency.”

*Amendment put and agreed to.*

*Clause 2 as amended, agreed to and ordered to stand part of the Bill.*

### **Clauses 3 - 10**

*Clauses 3 to 10 as printed, agreed to and ordered to stand part of the Bill.*

### **Clause 11**

**Mr. Chairman:** Clause 11 has a number of amendments. I invite the Minister to present them.

**Mr. Williams:** In clause 11 (2), substitute for the word “persons” the words

“subject to subsection (11), persons”.

In clause 11 (3), I propose that we substitute for the word “there” the words

“subject to subsection (11), there”.

In clause 11 (5), I propose that we substitute for the word “the” the words

“subject to subsection (11), the”.

At clause 11 (11), I propose that we insert a new sub-clause (11) as follows:

“(11) In subsections (2), (3) and (5), the Director of Public Prosecutions shall have a discretion as to the extent and to the degree of co-operation to be rendered or the nature of the information to be shared with the Director”



*Clause 11 as amended, agreed to and ordered to stand part of the Bill.*

**Clauses 12 - 22**

*Clauses 12 to 22 as printed agreed to and ordered to stand part of the Bill.*

**Clause 23**

**Mr. Chairman:** There is an amendment to clause 23 (2). Hon. Minister.

**Mr. Williams:** I propose that we insert immediately after the word “imposed” the words

“except that in the case of subsection (4) (a), the Director of Public Prosecutions shall have a discretion as to the extent and to the degree of the disclosure.”

*Clause 23 as amended, agreed to and ordered to stand part of the Bill.*

*9.37 p.m.*

**Mr. Chairman:** Hon. Members, I crave your indulgence. I am trying to align our work in a particular way. There are no other amendments to the Bill. With your cooperation, I propose that Clauses 24 to 107 as printed, stand part of the Bill.

**Clauses 24 - 107**

*Clauses 24 to 107 as printed agreed to and ordered to stand part of the Bill.*

**Mr. Chairman:** We now turn to the Schedule. I propose that clauses 1 to 8 of the Schedule, as printed, stand part of the Bill.

*Clauses 1 to 8 of the Schedule agreed to and ordered to stand part of the Bill.*

*Assembly resumed.*

*Bill reported with amendments, read the third time and passed as amended.*

**Mr. Speaker:** Hon. Members, this concludes our work for this evening. We would now invite the Hon. Prime Minister to move the adjournment.

**ADJOURNMENT**

**First Vice-President and Prime Minister [Mr. Nagamootoo]:** Mr. Speaker, kindly allow me, before I move the motion to adjourn the Assembly, to convey to Your Honour and to your family, the Clerk of the National Assembly and Members of the staff of the National Assembly, members of the media and all Members of this esteemed National Assembly greetings on the occasion of the holy week preceding Easter.

I wish, in particular, to convey, on behalf of the Government of Guyana, warm greetings to all Guyanese inside and outside of this House and inside and outside of Guyana, especially our Christian compatriots.

Tomorrow, Good Friday, holds the lesson of ultimate sacrifice for the greater good. This lesson is indeed timeless. On Sunday, we would observe the triumphant resurrection of our Lord, Jesus Christ. Indeed, it is inescapable that this is a season or time of reflecting not only on faith and sacrifice, but also on renewal, revival and redemption. It is also a time for compassion, charity and goodwill. We look forward, as we observe and celebrate Easter, that we do so with optimism and that Easter would bring to us the same resurrection of hope as the kites weigh in to fly on Easter day.

I would also like to take the opportunity to wish all those who would observe and celebrate the Easter weekend to do so responsibly. Whether you are heading to the Rodeo in Lethem, the Regatta in Bartica or kite flying at No. 63 Beach and elsewhere, do so in safety and do so knowing that we would want no tragedy or ill to befall any of our fellow citizens.

In saying this, I reserve, once again, the esteem honour to wish Your Honour a happy birthday, which I understand you would be celebrating on Monday. Tonight, I believe, is a good occasion where we all could revel in good spirit in anticipation of you enjoying a wonderful birthday and that you live many more happy and healthy years ahead of you to provide the excellent stewardship that you have provided to this august Assembly. Therefore...

**Mr. Speaker:** Before you move the adjournment, Hon. Prime Minister, I want to offer my appreciation and thanks for your kind wishes.

Allow me to join the wishes which you showered on the Assembly for this blessed time ahead of us. I hope that we would all see each other again, God's willing, on the new adjourned date you would give.

**Mr. Nagamootoo:** I wish to move that this House be adjourned until Monday, 8<sup>th</sup> May, 2017 at 2.00 p.m.

**Mr. Speaker:** I thank the Hon. Prime Minister. Hon. Members, please stand adjourned until Monday, 8<sup>th</sup> May, 2017 at 2.00 p.m.

*Adjourned accordingly at 9.49 p.m.*