

# Official Report

*PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2012-2013) OF THE TENTH 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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66<sup>TH</sup> Sitting

Thursday, 19<sup>TH</sup> December, 2013

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*The Assembly convened at 2.20 p.m.*

*Prayers*

*[Mr. Speaker in the Chair]*

**Mr. Speaker:** Members, I feel at this time we need to also say a silent prayer for Members who are ill, hospitalised or dealing with grief or sorrow. Let us remember that the less fortunate are with us and those who are in distress at this time of year, looking always for the things that unite us and not the things that divide us. Life is too short and too precious to do otherwise. Thank you.

Please be seated.

## **ANNOUNCEMENTS BY THE SPEAKER**

### **Leave Granted to Members**

**Mr. Speaker:** Hon. Members, leave has been granted from today's Sitting to the Hon. Members, Minister Robert Persaud and Hon. Deputy Speaker Mrs. Deborah Backer. I also have a number of other announcements.

### **Expression of Sympathy for the late Assistant Commissioner of Police Derrick Josiah**

**Mr. Speaker:** On behalf of the National Assembly, I wish to express our sympathy collectively on the passing of Assistant Commissioner of Police (ACP) Mr. Derrick Josiah, who passed away on the 7<sup>th</sup> December, 2013. ACP Josiah was undoubtedly an honourable and outstanding member of the Guyana Police Force, who discharged his functions professionally and efficiently. This National Assembly was privileged to have benefited from his involvement in our many undertakings and activities. So, we wish his colleagues in the Guyana Police Force and his grieving relatives and friends our heartfelt sympathy. May his soul rest in peace.

#### **Grant by United Nations Development Fund (UNDP)**

**Mr. Speaker:** The National Assembly received a quantity of computer equipment to the value of US\$ 45,000 or just over GYD \$9 million from the United National Development Fund to aid in our work towards establishing an e-parliament, whereby most of our information, it is hoped, will be shared and exchanged electronically, thus avoiding the use and waste of volumes of paper, as we currently do, which is my opinion.

So, I will be speaking to representatives of both Government and Opposition for them to be able to identify the respective MP's who will agree to be part of our pilot project. We have received, as part of the grant, 15 Samsung tablets, which we hope to use, giving five to Government, five to Opposition and five to be used by the Parliament Office to share and exchange information with the hope that come next year we can start to move fully into having a completely electronic Parliament. Equipment was also received to upgrade our resource centre. So, we thank the UNDP.

#### **Gratitude to Organisers of Parliament's Annual Children Christmas Party**

**Mr. Speaker:** I also personally wish to thank the organisers, in particular Ms. Onieka Walton, for the excellent provisions put in place for the successful holding of the annual Christmas party for children which was held yesterday in the compound. You could never tell, having come in this morning.

#### **Gratitude to Members of Parliament (MPs) for attending Parliament's Annual Children Christmas Party**

**Mr. Speaker:** My gratitude is also extended to the Hon. Prime Minister, who very thankfully came, and to the Leader of the Opposition, who was also here, the Minister of Human Services and Social Security, Ms. Webster, and Members of Parliament (MPs) Mr. Bulkan, Dr. Norton, Ms. Selman and others who came by. We were able to take care of gifts and meals and entertainment, Dora and Diego and others, for over 300 children from the Mahaica Home for Children, the Sophia Care Centre and the Drop In Centre, and, of course, children of staff. Ms. Shadick as well was here and relatives of hers. A grand time was had by all yesterday.

#### **Courtesy Call from Minister of Tourism**

**Mr. Speaker:** Yesterday, as well, the National Assembly received a courtesy call from the visiting Minister of Tourism who was here with the Ambassador from Argentina. So, we welcome him.

#### **Letter Calling on the Speaker**

**Mr. Speaker:** Members, I observed today an odd letter in one of the daily newspapers calling on the Speaker, that is Yours Truly, to publish the reason for His Excellency's non assent of a Bill. I wish to remind Members that this was done at the last Sitting of the National Assembly where both Members of Parliament and the press was provided with the actual copies of the letter written by His Excellency the President. I just wish to say that sometimes a simple enquiry could clear up unnecessary speculation and misconceptions.

#### **Birthdays of Members**

**Mr. Speaker:** On brighter note, we celebrate the birthday of Dr. Frank Anthony. This week two birthdays passed. They were the birthdays of Mr. Christopher Jones and Mr. Keith Scott. I know recently that Mr. Neendkumar also celebrated his birthday - last week. I wish to note that I do not anticipate a Sitting on Christmas Day or on Boxing Day. So, I wish to say in advance that the Hon. Prime Minister will celebrate his birthday next week Friday. To all of you we would like to say happy birthday. The Speaker also has a birthday next week Friday.

#### **Recognition of Presence of Deputy High Commissioner of the United Kingdom to Guyana**

**Mr. Speaker:** We recognise in our presence today Mr. Jim Cousins, the Deputy High Commissioner of the United Kingdom to Guyana. We welcome you, and hope that your sojourn here is a fruitful and rewarding one.

### **Motion Surrounding Activities of Hon. Minister of Finance**

**Mr. Speaker:** Members, I have observed, as most of you would have – some of you would have had more intimate knowledge than I do – that in the newspapers on Tuesday a motion has been submitted for debate surrounding the activities of the Hon. Minister of Finance. I have not as yet formally seen this motion. The Clerk advises that he is in receipt of it and is currently going through it with his staff. I wish to assure the House that it will be dealt with as every other motion is, that is, in a timely and professional manner.

The Committee of Privileges process is not meant to be a lynch mob. Its function is to review the question as to whether a Member has violated any Standing Orders of the National Assembly and privileges of the House. In due course, this motion will be dealt with. Those are my announcements for today.

### **REPORTS FROM COMMITTEES**

The following Report was laid:

First Report of the Committee on Appointments in relation to the Appointment of Members of the Ethnic Relations Commission [Dr. Norton]

**Mr. Speaker:** Thank you Dr. Norton. I would like to congratulate you and Members for presenting this Report. I know the painstaking process involved and the time that it took. So, the nation thanks you for that.

### **ORAL QUESTIONS WITHOUT NOTICE**

#### **Renovation of the Kumaka/San Jose Bridge**

**Mr. Speaker:** Hon. Members, earlier this morning, I received a request from the Hon. Member, Mrs. Garrido-Lowe, to ask a question without notice, an oral question that is, to the Minister of Local Government and Regional Development pertaining to a bridge across the Kumaka River in

Moruca, Region 1. I have given permission for that question to be asked. Mrs. Garrido-Lowe, you may proceed to ask the question.

**Mrs. Garrido-Lowe:** Thank you, Mr. Speaker.

In view of the fact that the renovation of the Kumaka San Jose Bridge in Moruca, Region 1 has turned out to be an absolute disaster after spending sums of \$28 million and then a further \$15 million to fix it, and where the residents of Moruca, most of all the school children, who have to traverse it on a daily basis to go to school, the residence of Moruca would like to know from the Hon. Minister what are his plans to solve this problem and in what time frame since the whole community is affected and has been bearing up with this terrible situation since renovation works began in November, 2012, when they were told that the job would be completed in December, 2012. It is now December, 2013, a whole year after the deadline given to them.

**Mr. Speaker:** Hon. Minister, there is some preamble there, but the question is about the state of the... I did receive a photograph from Moruca on Saturday, showing the bridge and the approaches to the bridge under water. Could you provide the House with a response, please? Thank you.

**Minister of Local Government and Regional Development [Mr. G. Persaud]:** Thank you very much, Mr. Speaker. You are correct. I was waiting to hear the question. Thank you for helping me to understand it. The work indeed started, as the Hon. Member would have explained, in November of 2012. The scope of the work was then changed and added. Because of that, right here in this National Assembly, we would have approved supplementary sums for the additional works.

The bridge is completed. The question, I think, is focusing on the revetment aspect, which has also been completed, and the land filling is in progress. Heavy weather caught the process. With fair weather, as of Sunday of this week, the backfilling in the revetment has commenced. My understanding to this date is that it is 50% completed. I have been assured that within another seven days the backfilling will be completed.

**Mr. Speaker:** Thank you very much for the response, Hon. Minister.

## **QUESTIONS ON NOTICE**

## **For Written Reply**

### **1. ESTABLISHMENT OF A STANDING COMMITTEE TO ADDRESS BORDER AND NATIONAL SECURITY ISSUES**

#### **Leader of the Opposition [Brig. (Ret'd) Granger]:**

- (i) Could the Hon. Prime Minister inform the National Assembly whether the Government intends to work towards establishing a Standing Parliamentary Committee to address, specifically, border and national security issues as recommended by the Border and National Security Committee in its Report of 21<sup>st</sup> June, 2001?
- (ii) Could the Hon. Prime Minister inform the National Assembly of the proposed date for the establishment of the recommended committee, if the Government intends to establish the committee as recommended?
- (iii) Could the Hon. Prime Minister inform the National Assembly, in the event that the Government intends not to act in accordance with the said recommendation, of the reasons for not establishing the Standing Committee?

#### **Prime Minister and Minister of Parliamentary Affairs [Mr. Hinds]:**

- (i) The Government has no current plans to establish a Parliamentary Committee to specifically address border issues.
- (ii) Taking account of (i) there can be no date.
- (iii) There is already the parliamentary Sectoral Committee on Security established by constitution amendment which is intended to be the forum for parliamentary consideration of national security matters.

### **2. VISIT BY DEPUTIES OF ASAMBLEA NACIONAL DE VENEZUELA INTO THE TERRITORY OF GUYANA AT ETERINGBANG IN THE CUYUNI-MAZARUNI REGION**

#### **Brig. (Ret'd) Granger:**

- (i) Could the Hon. Prime Minister inform the National Assembly of the circumstances surrounding the visit of Deputies of the National Assembly of Venezuela into Guyana's territory at Eteringbang on or about Sunday, 10<sup>th</sup> November, 2013?
- (ii) Could the Hon. Prime Minister inform the National Assembly of the actual time and duration of the said visit and of the names of Members of the National Assembly of Venezuela who participated in the visit?
- (iii) Could the Hon. Prime Minister inform the National Assembly of the administrative procedures prescribed by the Government of Guyana and of the actions required of members of the Guyana Defence Force who were stationed at Eteringbang, with regard to such visits?

**Mr. Hinds:**

- (i) On Sunday, 2013-11-10, at some time after 15:30 hours, a group of Venezuelan persons, said to be legislators in Venezuela from Opposition parties at various levels, landed at Tabat landing on the Guyana shore of the Cuyuni River, opposite the village of San Martin on the Venezuelan side. The persons landing are thought to be all civilians. They were observed taking photographs. The members in military uniform of the National Guard remained in the boats.

At the time that they visited Tabat landing, no ranks from the Guyana Police Force or the Guyana Defence Force were present. No names were given or recorded.

- (ii) The time of the landing was reported as some time after 15:30 hrs. The time of departure was not recorded – it seems that their stay was not long, not more than half hour. No names were given or recorded.
- (iii) I have been advised that information on those procedures and actions is restricted.

**3. LEASES/LICENCES/PERMITS ISSUED IN THE AREA OF NEW RIVER TRIANGLE OR CONTIGUOUS AREAS**

**Lt. Col. (Ret'd) Joseph Harmon:** Could the Hon. Minister state with respect to leases/licences/permits issued by the Ministry of Natural Resources and the Environment in the

area of New River Triangle or contiguous areas over the period 1<sup>st</sup> January, 2012 to 1<sup>st</sup> November, 2013?

- (i) How many leases/licences/permits were issued?
- (ii) To whom were the leases/licences/permits issued?
- (iii) The consideration for issue of leases/licences/permits?
- (iv) Were the ISO 9001 procedures followed in the issue of leases/licences/permits?
- (v) Could the Hon. Minister also provide copies of all leases/licences/permits issued during the period for the said areas?

**Minister of Natural Resources and the Environment [Mr. Persaud]:** The Guyana Geology and Mines Commission has received thirty two (32) applications in 2010 for Prospecting Permit Medium Scale in the New River Triangle area but none was granted.

One permission for Geological and Geophysical Survey (PGGS) was issued to Muri Brasil Ventures Inc. in the said area on the 7<sup>th</sup> November, 2012. The ISO 9001 certified procedures were adhered to as it relates to the issuance of the PGGS. This was done via a public advertisement for submission of proposals. Permission for Geological and Geographical Survey (PGGS) is a property exclusive to exploration and does not include any mining and/or profit related activities. Neither is it in anyway related to a Prospecting License, Mining License or Mining Permit.

#### **4. ALL LEASES/LICENCES/PERMITS ISSUED FOR MINING OPERATIONS IN REGIONS 7, 8 AND 9 OF GUYANA**

**Lt. Col. (Ret'd) Joseph Harmon:** Could the Hon. Minister state with respect to the period 1<sup>st</sup> January, 2012 to 1<sup>st</sup> November, 2013 the full particulars of all leases/licences/permits issued for mining operations by the Ministry of Natural Resources and the Environment in Regions 7, 8 and 9 of Guyana?

*See appendix.*



**5. FULL DETAILS OF ALL FORESTRY CONCESSIONS ISSUED OVER THE PERIOD 1<sup>ST</sup> NOVEMBER, 2012 TO 1<sup>ST</sup> NOVEMBER, 2013 IN REGIONS 7, 8 AND 9 OF GUYANA**

**Lt. Col. (Ret'd) Joseph Harmon:** Could the Hon. Minister provide full details of all forestry concessions issued by the Ministry over the period 1<sup>st</sup> January, 2012 to 1<sup>st</sup> November, 2013 in Regions 7, 8 and 9 of Guyana?

*See appendix.*

**6. COURSES OF INSTRUCTION ATTENDED BY FOREIGN SERVICE OFFICERS**

**Brig. (Ret'd) David Granger:**

- (i) Could the Hon. Minister inform the National Assembly of the courses of instruction attended by Foreign Service Officers of the Ministry of Foreign Affairs from 2002 to 2012?
- (ii) Could the Hon. Minister, in so doing, state the institution, title, dates and numbers of students attending each of the courses and the countries in which those courses were conducted?

*No answer provided.*

**7. COURSES OF INSTRUCTION CONDUCTED BY THE FOREIGN SERVICE INSTITUTE**

**Brig. (Ret'd) David Granger:**

- (i) Could the Hon. Minister inform the National Assembly of the courses of instruction conducted by the Foreign Service Institute of the Ministry of Foreign Affairs from 2002 to 2012?
- (ii) Could the Hon. Minister, in so doing, state the title, dates and numbers of students attending each of the courses?

- (iii) Could the Hon. Minister also state the names of the Director of Studies and the permanent instructors and lecturers at the institute during this period?

*No answer provided.*

## **8. FIRE HYDRANTS INSTALLED IN THE VARIOUS NEW HOUSING SCHEMES**

**Ms. Baveghems:** Can the Hon. Minister provide this National Assembly with the total number of fire hydrants that have been installed in the various new housing schemes throughout the country?

**Minister of Housing and Water [Mr. Ali]:** Installation of fire hydrants does not fall within the ambit of the Central Housing and Planning Authority (CH&PA); however, the water infrastructure network is designed in such a manner that fire hydrants can be accommodated.

## **PUBLIC BUSINESS**

### **GOVERNMENT BUSINESS**

**Mr. Speaker:** Hon. Members, listed on the Order Paper as the first act of Government's Business is a motion, a tribute to His Excellency the Former President of South Africa. Hon. Prime Minister, do you wish to proceed with this motion now or do we go to the Bills? What is the desire?

**Prime Minister and Minister of Parliamentary Affairs [Mr. Hinds]:** Mr. Speaker, I propose that we go to the Bills, which are also very important. Let us start with the Anti-Money Laundering and Countering of the Financing of Terrorism (Amendment) Bill.

**Mr. Speaker:** Hon. Members, at the last sitting, the Government introduced for the first reading, the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill 2013 – Bill No. 22/2013, which was published on the 10<sup>th</sup> December, 2013. Under the Standing Orders, the introduction of a Bill by Government for its first reading does not require leave of the House. However, the Standing Orders are quite clear that for such a Bill, that being a Bill which is the same or has the similar content to one which was introduced previously, to undergo a second reading, leave of the House is required. So, at this stage, I invite a motion for the House to give its approval for this Bill to be proceeded with.

**Mr. Hinds:** Mr. Speaker, I would like to move that Standing Order No. 69, which deals with Bills containing substantially the same provisions, be suspended so that we can proceed with the second reading of the Anti-Money Laundering and Countering the Financing of Terrorism (AMLCFT) Bill.

**Ms. Teixeira:** Mr. Speaker, this is not to interrupt you but just to remind you that the Procurement (Amendment) Bill 2013 comes before the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill. Once the suspension is accepted, can we go back to that if possible? Thank you.

**Mr. Speaker:** Hon. Members, my apologies. We will hold in abeyance the motion for the suspension of the Standing Orders. I wish to invite the Hon. Prime Minister or the appropriate minister to move the second reading of the Procurement (Amendment) Bill 2013 – Bill No. 17/2013.

## **BILLS – SECOND READING**

### **PROCUREMENT (AMENDMENT) BILL 2013 – BILL NO. 17/2013**

A BILL intituled:

“AN ACT to amend the Procurement Act.” [*Minister of Finance*]

**Minister of Finance [Dr. Singh]:** Thank you very much, Mr. Speaker. I rise, Sir, to move that the Procurement (Amendment) Bill 2013 – Bill No. 17/2013 be read a second time.

In doing so, Sir, permit me to provide some prefatory remarks by way of background. This honourable House will recall and will indeed reflect in its record of proceedings that in 2003 a Procurement Bill, Bill No. 7/2003 came before this very House for consideration. The Bill sought to put in place a modern and robust legislative framework to govern public procurement activities.

Included amongst its various provisions was a clause 54 that had five sub-clauses and which together addressed the matter of review by Cabinet. Indeed, the said clause, clause 54, carried the marginal note, ‘Review by Cabinet’. In essence, Sir, that clause 54 provided for Cabinet to have the right to review procurement transactions, the value of which exceeds a certain threshold. The

threshold stipulated in sub-clause 1 of clause 54 was that it be \$15 million, but be subject to subsequent review, with a view to revision.

The clause went on to articulate the circumstances under which Cabinet may object to a procurement transaction and what happens once such an objection might have been raised. The clause stipulated explicitly that it shall not in any way be construed as authorising the Cabinet to award a tender to any other supplier or contractor.

It is apposite to note that in sub-clause 1 of the said clause 54, as I just mentioned, provision for review of the threshold, annual review indeed, defining which procurement transactions would be subject to Cabinet review was stipulated. In fact, clause 54(1) in the Bill read as follows:

“The Cabinet shall have the right to review all procurements the value of which exceeds fifteen million Guyana dollars. The Cabinet shall conduct its review on the basis of a streamlined tendered evaluation report to be adopted by the authority mentioned in section 17(2). The Cabinet and, upon its establishment, the Public Procurement Commission, shall review annually the Cabinet’s threshold for review of procurements, with the objective of increasing that threshold over time so as to promote the goal of progressively phasing out Cabinet involvement and decentralising the procurement process.”

That is what clause 54(1) stated. During the course of consideration of the said Bill, and at some point of time before its passage, it appears, Sir, and there have been various accounts on events that led to this development, that sub-clause 6 was proposed as an amendment to the Bill for insertion. This newly inserted sub-clause 6 provided as follows:

“Cabinet’s involvement under this section shall cease upon the constitution of the Public Procurement Commission except in relation to those matters referred to in subsection (1) which are pending.”

I do not wish, Sir, to speculate on what may have transpired on that evening when the discussions would have taken place, involving Members on both sides of this House, or the House at that time, and which led to the insertion of this clause 54(6). I believe there are still

Members of the Tenth Parliament who were Members of that Parliament and who might be better placed to recall the events of that evening.

Suffice it to say, there emerged from this House, a Procurement Act that was to become Act No. 8/2003 which included the now amended Section 54 with its six sub-clauses, one to five as originally proposed in the Bill and six as amended on the floor of the House that evening.

One can immediately focus one's attention on the evident contradiction between Section 54(6) and 54(1). Section 54(1) clearly recognised a role for Cabinet even if that role would progressively diminish with the raising of the threshold, whereas Section 54(6) prescribed an immediate proscription of Cabinet's involvement. That would appear to my layperson's eyes to be an evident collision or contradiction between the two subsections. It would appear that this House legislated in Section 54(1) that Cabinet will review contracts above a certain threshold and grant its no-objection before the award of the said contracts and that even after the Public Procurement Commission would have been appointed, that Cabinet's involvement will continue and that that threshold would be subject to annual review.

Section 54(1) is quite clear in describing a state of the world that was anticipated to exist subsequent to the appointment of the Public Procurement Commission. Section 54(6) then came and described a diametrically different state of the world to obtain after the appointment of the Public Procurement Commission. That would seem to me to be an evident, a clear and an obvious collision.

Like I said, it is not for me to speculate on what might have been the intentions of those who proposed and drafted the amendment at the time, but the result was legislation. The result was a principal Act that we now have before us that has written into it an inherent contradiction, placing us in a conundrum. By which subsection of Section 54 are we to be guided in the world that will prevail subsequent to the appointment of the Public Procurement Commission?

Are we to be guided by Section 54(1), which contemplates continued involvement of the Cabinet, or are we to be guided by Section 54(6), which prohibits Cabinet involvement? By which are we to be guided? Which is superior? Both are subsections of a single statute, that is to say the Procurement Act.

This is the circumstance in which we find ourselves today. Recall, Sir, that the Cabinet's right of no-objection is one that is exercised right now, appropriately and lawfully so under the Procurement Act. Indeed, prior to the enactment of the Procurement Act and its coming into operation, the Cabinet, in fact, had a prior involvement that at that time was not no-objection, but at that time was approval of contracts above a certain threshold. The Procurement Act reduced Cabinet's involvement to mere no-objection and to contracts only above a certain threshold.

In contemplating a world where the Public Procurement Commission is imminently to be appointed, and I hasten to add that the constitutional article that establishes the Public Procurement Commission, that is to say Article 212W, exists in the Constitution and enjoys constitutional status, because both sides of this House voted in its favour. It would not have been able to secure inclusion in the supreme written law of our land had it not enjoyed support from both sides of this House.

Contemplating a world where this Commission is imminently to be appointed, we have before us a conundrum. We have a contradiction to be resolved. It is that conundrum that the Bill currently before us, that is to say the Procurement (Amendment) Bill 2013, seeks to resolve. Put simply, Bill No 17/2013 seeks to repeal subsection (6) of Section 54, that is to say to remove the amendment that was inserted on the floor on that fateful evening and to restore Section 54 to its original formulation, that is to say the formulation in which it came before this House in Bill No. 7/2003. Hence, Bill No. 17/2013 has really just one substantive clause, that is to say clause 2, which states very simply:

*2.50 p.m.*

”Section 54 of the Principle Act is amended by the deletion of sub-section 6.”

That is all that this Bill seeks to do. There is an array of much more fundamental issues relevant to consideration of this Bill. One could say simply that the Bill seeks to correct the contradiction in Section 54, remove the anomaly that was created by the amendment moved on the floor on that night, and resume one's seat. That temptation is before me. I will resist it though on this occasion because I believe firmly that there are fundamental issues at the core of this matter. What are these fundamental issues? This is an issue that has generated much public debate and

discussion, much commentary. It is important that certain key issues be acknowledged, put on the table and ventilated in their fullness.

First of all, is the Cabinet's involvement in procurement a novelty? Are we seeking by Bill 17 of 2013 to introduce something that does not exist right now? The answer to that is, of course, a resounding no. Prior to 2003, Cabinet approved contracts above a certain threshold. In fact, dating back to the earliest days of our financial regulations - and here I speak of decades of financial regulations - principle acts passed by our distinguished predecessors and Parliaments that have preceded us- and regulations made there under for decades now, provided for a hierarchy of authority as it relates to contractual approval- procurement approval. Contracts below a certain level or the authority, as it relates to contracts below a certain monetary level, that is to say, small or petty contracts, was delegated to individual technical officers within Ministries, Departments and Regions. So an Administrative Officer or a Permanent Secretary enjoyed full and unfettered authority to award and to execute procurement transactions for contracts below a certain threshold for smaller contracts.

A hierarchy within that was established. Contracts below threshold required no competition, that is to say, for very small transactions like if you were going to buy a single item of nominal value; if you were going to buy a staple machine or a box of paper clip, I gave perhaps an exaggerated example, but most of us in this House would be familiar with this hierarchy - very small procurement transactions, goods and services of nominal value could be procured without public advertisement. Once a certain threshold was hit, that is to say once the size of the transaction achieved a certain threshold, competition was required; so three quotations. Once a certain other threshold was achieved, public open tendering was required - advertisements, receipt of tenders in a sealed box, public opening, et cetera. Once a certain higher threshold was achieved, then the involvement of the Cabinet was invoked. This system has been in existence in one shape or another for a considerable length of time.

In fact, in 2003 the new procurement act enacted sought to change the Cabinet's role from one of approval to merely one of no objection, and specified the circumstances under which Cabinet could express its no objection. Cabinet having expressed its no objection for larger contracts then, the contracts get referred back to the decision making board which is the National Procurement Tender Board. That is the system that obtains today. Many of us, all of us in this

House, should be well aware of the considerable progress that has been made in making our procurement system an open and transparent one. All of us would be aware of the gains that have been made and progress that has been achieved in establishing an open and transparent procurement system.

There is no need for one to speculate about this matter. Let us simply peruse the archival records, let us examine the newspapers and advertisements carried in them for procurement transactions. One knows at times when the national newspapers carried virtually no advertisements for procurement transactions. Today, if we pick up the newspapers, we witness a plethora of advertisements for public procurement transactions. This is a matter of public record. I invite those who are inclined to examine this matter with any degree of rigour to simply peruse the newspapers. Is it that prior to 1992 nothing was being procured? There were no advertisements in the newspapers to suggest that anything was being procured. Is it that under Mr. Greenidge's tenure no goods and services were being procured? One merely has to pick up any newspapers dating from those days to see the striking absence of advertisement of public procurement transactions. *[Interruption]* Mr. Greenidge asks about Guyana's rank. I hear a heckle, but I know you frequently admonish us to remain unaffected by the heckle.

However, it is difficult for one to resist the temptation. I should say it is difficult for me to resist the temptation when I hear Mr. Greenidge ask. I see the Leader of the Opposition smiling in acquiescence. I believe that he understands the temptation that I feel. It is difficult to resist the temptation when Mr. Greenidge invites us to speak of Guyana ranking prior to 1992. That would take us down a journey that I daresay will embarrass the Hon. Member and sully and tarnish his reputation. I do not wish to do that, so I will resist the temptation. *[Interruption]* You asked about the ranking, Sir. Unless I am mistaken, I thought you were presiding over the economic affairs of the country, but, perhaps, I am mistaken in that regard.

Nevertheless, I note your silent admonition. Suffice it to say that I invite anyone interested in a dispassionate examination of this matter to compare the column inches of national newspapers devoted to public advertisement. This is a simple invitation that I am issuing – take a newspaper of the late 1980s or early 1990s and examine the number of instances in which a public procurement transaction was advertised and take a contemporary national newspaper and the conclusion is an unavoidable, inescapable and inevitable one. Today, we have a system that is



open and transparent. Not only are the transactions advertised publicly, but today, those advertisements indicate at the bottom that tenders will be opened on “x” date, at “x” venue. In most instances, it is the National Procurement Tender Board.

Mr. Speaker, I will go further. We enjoy the circumstance in Guyana today where the mass media is free to attend the opening of tenders and they do so. They report publicly and we welcome this interest and scrutiny. They report publicly who the tenders are and what are the prices tendered. That information is carried in the national newspapers. What is more, when an award is made, that award is publicly announced, made publicly available and published on a website. It is placed in the public domain and becomes part of the public record. So there are public advertisements, public openings, public announcements of the successful tender, a documented and well established mechanism for protests if one feels one was treated unfairly. There have been instances where persons have complained or have enquired why they were unsuccessful and they were advised that their bid was compliant or non-compliant in whichever respect it was or was not. So let us be clear that as far as the relevant standards of rigour are concerned, Guyana’s public procurement system can withstand any degree of scrutiny.

Mr. Speaker, firstly we have the fact that this Bill does not seek an increase, an embellishment, or an enlargement of the authority that is currently enjoyed by Cabinet. That must be made clear. This Bill does not seek to clothe the Cabinet with any additional authority that the Cabinet does not currently enjoy. That point needs to be made.

Secondly, the argument has somehow crept into the public consciousness that the Public Procurement Commission can somehow discharge or will somehow discharge this function and that this Bill seeks somehow to diminish or reduce the mandate or authority of the Public Procurement Commission. That is the second issue that I wish to address. The Public Procurement Commission is a constitutional commission. It is established by virtue of Article 212W, inserted into the supreme written law of our land by a constitutional amendment act passed by this honourable House – again passed by our distinguished predecessors with a vote in favour from both sides of the House in 2001. I believe it was act No. 5 of 2001 that inserted the said Article 212W. That Article stipulated:

“There shall be a Public Procurement Commission, the purpose of which is to monitor public procurement and the procedure therefore in order to ensure that the procurement of goods, services, and execution of works are conducted in a fair, equitable, transparent, competitive and cost effective manner according to law and such policy guidelines as may be determined by the National Assembly.”

That Article having established the Commission, the next article spoke of the Commission’s composition, Article 212X. Article 212Y spoke of the procedure for its appointment. Importantly, Article 212X says that the Commission shall be appointed by His Excellency the President after its members shall have been nominated by the Public Accounts Committee - which we know is chaired by a front bench Member of the Opposition by Standing Orders – and after such members shall have been approved by not less than two-thirds of elected Members of this National Assembly. Article 212Y speaks of appointments and vacancies. The next article about the secretariat and the next Article 212AA speaks of functions of the Public Procurement Commission; monitor, review, promote awareness, safeguard national interest, monitor again, monitor and review, investigate complaints, initiate investigations, etcetera. Article 212AA is instructive.

There is nothing that can be done by simple majority that can limit, reduce or otherwise alter these constitutionally enshrined functions of the Public Procurement Commission. So that is the second key issue that I would like to address. Does the Procurement Amendment Bill currently before us seek somehow, put simply, does the preservation of the Cabinet, no objection in any way limit, restrict, proscribe, or hinder the functions or discharge thereof of or by the Public Procurement Commission. The answer to that would have to be equally a resounding no. We cannot by simple majority reduce constitutionally enshrined functions that were vested in this Commission by a two thirds majority, unless of course we apply the interpretation that some of my friends on that side of the House would like to apply to the entrenchment clause of the new Constitution.

If we apply that interpretation, I see my friend the distinguished Hon. Member Dr. Rupert Roopnarine, who served on that constitutional commission, and who I believe must be shuddering to think that these wonderful 2001 constitutional articles can now all be swept aside by way of simple majority. Somehow I doubt that the Hon. Member Dr. Rupert Roopnarine,

distinguished Member as he was... *[Interruption]* I hear Mr. Greenidge saying he cannot speak. It sounds like you would like to speak for him. I would not dare to do that. I should not paint all Members of that side of the House with the same brush as I paint Mr. Greenidge. I really should not do them that disservice. Unless one applies Mr. Greenidge's unique interpretation of the 2001,... *[Interruption]* I hear some Members on this side of the House urging me to paint them all with the same brush.

**Mr. Speaker:** To paint what, sorry?

**Dr. Singh:** I hear some Members on this side of the House suggesting that the brush with which I paint Mr. Greenidge should be applied more widely. I was saying that unless one applies Mr. Greenidge's interpretation... **[Mr. Williams:** My own too.] ...and Mr. Basil Williams' now confessed interpretation of the constitutional entrenchment clause which suggests that the overwhelming majority of these 2001 constitutional amendments can now be swept aside by a simple majority, then we cannot vary the functions of the Public Procurement Commission by simple majority. I wish to make the point emphatically, that the preservation of Cabinet's right of no objection for contracts above a stipulated threshold, that is to say the legislative amendment sought, the status quo to be accomplished by the legislative amendment sought by Bill No. 17 of 2013, could not and does not and will not in any way reduce, diminish or restrict the functions of the Public Procurement Commission.

Those functions remain constitutionally protected unless Mr. Greenidge does injury to them; they remain enshrined in the comfort of the supreme law; they remain intact. Once the Commission shall have been appointed one can only assume they will be discharged in their fullness. This Bill currently before us does no injury, does no harm to these functions. The Public Procurement Commission (PPC) will function and will discharge its constitutionally vested functions; let us be clear about that. Let us not run around creating the impression that somehow Cabinet's no objection will mean that the PPC will not be able to do its work. Nothing could be further from the truth. The PPC will of course do its work; its functions are protected in the constitution. So that is second major issue I would like to put on the table.

Thirdly, I would like to address the issue of whether and why Cabinet should have the right of no objection. This in fact goes to the very core of the constitutionally enshrined role and

responsibility of the Executive. It goes to the very core of the concepts of accountability and responsibility. [Mr. Williams: What about transparency?] And indeed transparency, but more particularly accountability and responsibility; it goes to the very core. I will return and elaborate on this matter before I conclude.

Let us examine whether Guyana displays any uniqueness or any novelty in Cabinet's right of no objection or Cabinet's involvement more generally in a function such as this. Let us examine, before I get to the comparative jurisdictional example, our development partners, the donor agencies. They have mature procurement regulations and guidelines that are in existence, approved by their respective boards and that are in operation. One merely has to examine any one of them to see that in all of their activities, whether it is the Inter-American Development Bank (IDB) or the World Bank or the European Union, they all have the right of no objection before a procurement transaction can be executed using funds sourced from their treasuries. Let us examine the European Union's... *[Interruption]* We are getting to that. I can understand your eagerness to hear what I have to say. Let us examine the European Union's procurement guideline. There are lengthy guidelines; I only extracted the relevant paragraphs. I should have gone back and said in the case of the European Union copies of the tenders are submitted to the relevant European delegation in the applicable jurisdiction whether Guyana or wherever. They would have had to receive and given their no objection to the tender document in the first instance.

I will go straight to where it says:

“Before signing contracts ...”

And they are very lengthy guidelines, in fact, I have only extracted the relevant paragraph.

“... the contracting authority submits ...”

In fact, I should have gone back and said in the case of the European Union, copies of the tenders are submitted to the relevant European delegation in the applicable jurisdiction whether it is Guyana or wherever. They receive copies of the tenders; in fact, they would have received and given their no objection to the tender document in the first instance.

“But before signing contracts, the contracting authority submits the results of the evaluations for approval to the European Commission that verifies conformity with applicable procedures. It also sends the contracts to the European Commission for endorsement before signing them.”

This is replicated everywhere if you look at the World Bank Procurement Guidelines. I will read from Procurement of Goods, Works and Non-consulting services under IBRD Loans and either Credits and Grants, January, 2011; procedures were applicable not only to Guyana but to any borrower from the World Bank. I will read from page 39. Again, I have lengthy sections highlighted, but I will go straight to the point.

“The borrower shall award the contract only after receiving the no objection from the bank.”

That is the World Bank Procurement Guideline. If you are procuring something funded by the World Bank, you are required to obtain, prior to the award of the contract, World Bank no objection. It is very standard practice.

*3.20 p.m.*

If one were to look at the IDB policies for the procurement of goods and works funded by the IDB – this is a document dated March, 2011 – one will see, the document says at page 28, “After bids are received...” and again this is applicable not only to Guyana, but to every borrower from the IDB, for every transaction that is funded by IDB resources. At page 28, the procurement guidelines read as follows:

“After bids have been received and evaluated, the borrower shall, before a final decision on the award is made, furnish to the bank, in sufficient time for its review, a detailed report on the evaluation and comparison of the bids received, together with the recommendations for award and such other information as the bank shall reasonably request.

The bank shall, if it determines that the intended award would be inconsistent with the loan contract and or the procurement plan, promptly inform the borrower and state the

reasons for such determination. Otherwise, the bank shall provide its no objection to the recommendation for contract award.”

This is the IDB procurement guidelines. I will read again...

**Mr. Speaker:** One second please Hon. Minister, your time is up. You need to request an extension.

**Mr. Hinds:** I move that the Hon. Minister of Finance be given fifteen minutes to continue his presentation.

**Mr. Speaker:** Hon. Members, there is a motion on the floor for the Hon. Minister to continue. Please note that in our neighbouring Trinidad and Tobago, Members time has been abridged to 20 minutes per presentation as of Monday.

*Question put and agreed to.*

**Dr. Singh:** Thank you, Sir. The IDB guideline said very clearly,

“The bank shall provide its no objection to the recommendation for contract award.”

It goes on to say,

“The borrower shall award the contract only after receiving the no objection from the bank.”

There you have it. This responsibility is discharged, not by some nebulous entity called the bank. It is discharged by staff of the bank. It is not staff’s money. This is a function that is discharged by agents of the bank – management and staff, not by some nebulous concept out there; some ethereal concept out there called the bank. *[Interruption]*

I can understand the agitation over there. I am told by more experienced Colleagues, that when my friends on that side of the House become agitated, you must be doing something right. I can understand their agitation, it is a measure of the gravity by which they are struck at the arguments I am making. Were they to be sitting silently, I would be worried; I would be thinking of myself as ineffectual.

Let us turn to the Caribbean – comparable jurisdictions. Let us turn to Jamaica – the Contractor General Act. Let us examine the functions of the National Contracts Commission. My friends on that side of the House, I can see their excitement at the Jamaican example because they clearly have not studied it. They see the odd newspaper report about the Contractor General in Jamaica and they become excited. They clearly have not studied the Jamaican example. [**Mr. Nandlall:** Why are you surprised?] I am told I should not be surprised by the fact they have not studied it. I still give them the benefit of some doubt.

Let us examine...

**Mr. Speaker:** Okay, Hon. Members, let us settle down so that we can have this debate continue please. Proceed please, Mr. Minister.

**Dr. Singh:** Thank you, Sir. I am told that when one meanders into irrelevances it is a sign of a man clutching at straws.

**Mr. Speaker:** You should know when the Speaker says let us settle down, it is on both sides. I advise that you proceed with your presentation.

**Dr. Singh:** Thank you Sir. Let us examine the Jamaican example. Within the Jamaican regime, is provided as follows: the establishment of a National Contracts Commission. Amongst the functions of that National Contracts Commission are as follows – I read here now from section 23 (d) (c):

“In the case of Government contracts above the specified limits making recommendations to the Cabinet regarding the award of such contracts.”

That is the Jamaican law. If Members want to have that further elaborated, I invite for your consideration, the Government of Jamaican Handbook of Public Sector Procurement Procedures, Volume One of Four. General provisions, Ministry of Finance and Planning updated, not so long ago, the 14<sup>th</sup> May, 2012.

At page 6, under section 2.2, titled: “Functional Responsibilities” are the responsibilities set out at 2(2) (1) of the Cabinet. I quote Sir, from this Jamaican Handbook of Public Sector Procurement Procedures, as follows, at section 2(2) (1) it says:

“The Cabinet is responsible for setting the national policy for public procurement and directives that governs the procurement process. Cabinet approves the award of contracts with value above the prescribed threshold.”

Permit me Sir to repeat that for emphasis.

“The Cabinet is responsible for setting the national policy for Public procurement and directives that governs the procurement process. Cabinet approves...” Not grant a no objection. “Cabinet approves the award of contracts with values above the prescribed threshold.”

This example replicates itself across jurisdictions throughout our Region. [**Mr. Ramjattan:** The Jamaican Constitution does not have Article 12 (W).] What we have in fact is something superior, with an additional layer of oversight. Not something inferior, but some superior.

This example replicates itself across many jurisdictions. In much the same manner one can example legislation across our Region. In fact, one can go outside of our Region and examine provisions of more developed countries. One can in fact go outside of our Region and go to jurisdictions outside of our Regions – much larger jurisdictions Sir, where in fact the functions of procurement transactions still resides within the Executive authority, subject of course, to controls and systems for disclosure, accountability and transparency. We have no problem with that. In fact, we were the ones who have put this legislative framework on the law books of our country. Make no mistake about that.

The question is, why is it that all of these jurisdictions... if one looked at Canada there is the Treasury Board, which in fact is a Board comprising five Cabinet Ministers that is the ultimate authority for procurement transactions. That is Canada, a mature jurisdiction with a large and complex bureaucracy. The responsibility for procurement transactions rests with the Treasury Board with comprises five Cabinet Ministers.

The question is, why involvement of the Cabinet in any manner shape or form? Like I said earlier, the answer to this question, I would not accuse the Canadians or the Jamaicans of crookedness the way that Mr. Greenidge would like to. The question is why should the Executive



be involved, whether it is the Treasury Board in Canada or the Cabinet in Jamaica or the Cabinet of Guyana – why?

There can be no responsibility without involvement/participation – absolutely none. One cannot hold the Cabinet responsible for the outcome of a process, in which the Cabinet plays no role. That is a very fundamental principle. That is a very fundamental and cardinal principle. How can one hold the Cabinet responsible for the outcome of a process were the Cabinet to be excluded for any involvement in that process? How can one possibly do that? If one plays no role in a process then one must necessarily be absolved of any responsibility of the outcome of that process. It goes without saying. If a person is the Chief Executive Officer (CEO) of a company and they are going to be held accountable, responsible and answerable to the shareholders of their company for a process or an activity of the company, then they must, by definition, be given some authority over that process. If one is excluded from that process entirely and told they have no authority, role to play or responsibility in the function, then surely the shareholders must also say that they are absolving you of any responsibility.

Surely, if any entity or individual is excluded from a process then they must be absolved of responsibility for the outcome of that process. That goes without saying.

It is the Executive/Cabinet, under our Constitution, which has collective responsibility for the execution of the National Budget, the incurrence of expenditure, the completion of projects, ensuring the projects are executed within budgetary allocations and in those instances where projects require additional funding to consider whether we can accommodate the additional funding required fiscally. It is the Cabinet that is responsible collectively for the fiscal outcomes of the country. It is the Cabinet that is answerable to the people of the country for timely execution of civil works, funded by moneys approved by this National Assembly. It is the Cabinet and the Government that is accountable to the people of Guyana for the outcome of those processes. That is why indeed we are subject to the scrutiny of this National Assembly and a most welcome scrutiny it is – a most welcomed scrutiny it is. We have nothing to hide.

This goes to the core of the issue of accountability. If I will hold a person accountable for a process, I cannot exclude them from involvement in that process. If I exclude them from

involvement in that process, I must absolved them of any responsibility for the outcome of that process.

That is the core of this matter. For as long as we will hold the Cabinet and the Executive responsible for public administration in accordance with the laws of our country; for as long as we will hold the Executive and the Cabinet responsible for implementation and execution of the Budget; for as long as we will hold the Executive and the Cabinet responsible for the fiscal outcomes of our country, we cannot exclude the Executive and the Cabinet from involvement in a process such as this. That Sir is my simple submission to you.

**Mr. Speaker:** Hon. Minister you have two minutes remaining.

**Dr. Singh:** Sir, I will not be requiring an extension. So Mr. Speaker, I submit to you, respectfully, that this Bill on the surface appears simple, just restoring the status of the 2003 Bill in the condition in which it came to this House, that is to say by the repeal of clause 54(6). But it goes much beyond that. This Bill addresses very fundamental issues about the role of Government under our Constitutional architecture. I submit to you Sir, that we all acted in error by inserting that section, subsection (6) in clause 54 and I urge this House to correct the dilemma and contradiction that was created by the insertion of clause 54(6), by timely passage; that is to say, passage today of the Procurement (Amendment) Bill, currently before us. With those, perhaps not so few, words, I commend the said Bill to this Honourable House. Thank you very much. *[Applause]*

**Mr. Greenidge:** Thank you very much Mr. Speaker and Colleagues. I must say that I feel privileged to find that my name has featured in this presentation so many times, when the Minister of Finance was making his submission to this House. It takes us to the heart of the issue before us that instead of dealing with the challenges with confront this country; the difficulties which our policies are supposed to solve, we get carried away with broad sides against personalities, even when they are completely irrelevant to the issue. *[Interruption]*

**Mr. Speaker:** Okay Dr. Singh, allow Mr. Greenidge to speak.

**Mr. Greenidge:** Thank you, Mr. Speaker. The only argument that I heard the distinguish and Hon. Minister make with which I can find some sympathy, is the one that suggest that there is

outside and perhaps amongst Members here, a mistaken perception about the role of the Public Procurement Commission itself. But it does not really matter because the Government has never shown any intention of establishing, according to the Constitution, the Public Procurement Commission.

Of course, the Commission is not going to be a guarantee against the manipulation that we currently see in the award of tenders at the level of evaluation and the award of bids. It cannot solve that problem. It is a review body and he is right. The Constitution itself is very clear, it gives it an oversight body to monitor and review the functioning of all public procurement systems to ensure that they are in accordance with the law and such policy guidelines as maybe determined by the National Assembly; not by the Cabinet by the National Assembly. That is the difference. Article 213 A (a)(i).

Mr. Speaker, we are being regaled here by People's Progressive Party (PPP) members concerning the manner by which a consensus – unanimity - was arrived at by this House. We are being regaled about – I was not here, the person who was here that matters is the Speaker – the former Speaker, Mr. Ramkarran. Just for the information of our Colleagues, let me just remind Colleagues that when a Member of this House purported to interpret the process by which that unanimity was arrived at, the Speaker, in very unambiguous language, accused the Member of being economical with the truth, indeed, fabricating the background. The story told by the Minister of Finance here a few minutes ago was no less fanciful. It was another “Nancy Story”.

*[Interruption]*

**Mr. Speaker:** Okay, let us move on. Our Standing Orders say that we must not impute an improper motive on any Member.

**Mr. Greenidge:** Mr. Speaker it is not a motive, I am merely citing the words of your predecessor as regard to the accuracy.

**Mr. Speaker:** I know, but they pertain to a comment made Member, but you have now transcribed and brought them into the House. That is the difference.

**Mr. Greenidge:** Mr. Speaker, I hear you and I am moving on. The point I want to make is that the explanation given as regarding the supposed contradiction between sub-clauses of the Procurement Act No. 8, that is what I am saying is a “Nancy Story” also.

We cannot accept that an entire House would have voted for amendments. A House including senior Cabinet Members, some on the Government side and that a few Members can now come and tell us that that was an error/oversight or that this Minister, who was not there, does not know by what process these clauses were inserted into the Statute. He does not have to know. The fact is, it is there and it was agreed to by this House. That is what matters.

The situation today is this, as regards the issues that we have to agree on. The Government is claiming that it must, in order to be held accountable for decisions regarding the award of contracts, be involved in the decision making. Who can disagree with that? After all, right now, no one will deny the involvement of the Government in the award of contracts and that is the problem- that is the very problem. When the Minister is so kind as to cite the donors with whom the Government or whose practice’s the Government can so warmly and fully embrace, I would want also to be assured that they will embrace the criticisms of those donors about their very procurement process.

Mr. Speaker, the question of the structure – the background – to which the Minister makes reference, is trying to suggest that the involvement of the Cabinet in the specifics so as to be able to give a no objection clause is so critical to the process.

Let me just say something else. The Procurement process in Guyana is supposed to work like this – there is a body termed the National Tender and Procurement Administration (NTPA). That body has operational responsibility for review submissions and awarding contracts. That is what is in place.

The awarding of the contracts by this body has been subject to all kinds of criticism, turning upon corruption, racial discrimination, political discrimination and all forms of corruption - that body and its processes. It is subjected, at the moment, to no oversight because the Government refuses to appoint the Commission. There is good reason why they refused, but let me say that body...

**Mr. Speaker:** One second please. The Hon. Minister, Mr. Ali.

**Minister of Housing and Water [Mr. Ali]:** Mr. Speaker, the Hon. Member has pointed to a very serious issue in which he accused the Government of racial discrimination.

**Mr. Speaker:** No.

**Mr. Ali:** I wish for him to point any document or evidence... *[Interruption]*

**Mr. Speaker:** One second please, Mr. Greenidge.

**Mr. Ali:** ... in his possession to verify this statement that he is making.

**Mr. Speaker:** Hon. Member, I listened to Mr. Greenidge quite carefully; he said there are criticisms and he listed the criticisms. He never said that this is... he said that these are the criticisms that... and those are the criticisms. “We live in this society and we cannot ignore the fact that these are the criticisms”, that is what he said – “The criticism are” and he went on to list, he did not say that the Government is racist.

**Mr. Ali:** Okay, we will be listing the criticisms...

**Mr. Speaker:** Yes, he was listing the criticisms.

**Mr. Greenidge:** Thank you very much Mr. Speaker for paying such close attention to my presentation.

The point I am making is the level at which the procurement system currently works is not subject to oversight or review by any particular body, simply because the Government has failed to establish and put in place either the Ombudsman or the Public Procurement Commission.

The body itself that is working – the body that is operational - has fifteen members. The fifteen members of this body are outlined in the Procurement Act No. 8, to which the Minister made reference of 2003. I ask Members to be patient to just let me cite from where the fifteen members are drawn and who appoints them.

The members of the National Board are to be appointed by the Minister. This is the Minister who establishes the agency. The body shall comprise; Part 3, section 6, sub-section 3 and it points to

not more than five persons from the Public Service; not more than three persons from the Private Sector and so forth. “Two members of the National Board shall serve on a fulltime and the remainder shall serve on a part time basis. The Minister shall appoint the chairman and one of the members.”

The point of import in this is that we have a body completely and entirely appointed by the Minister. It is appointed by the Minister – all fifteen members are appointed by the Minister just for your information. Notwithstanding that, the Government seeks, having appointed all fifteen members, to a power - if one likes - to override, review or negate the decisions of that body. Notwithstanding the fact that, no other body reviews the work of that at National Tender and Procurement Administration Board (NTPA).

We are into an arrangement, a request, for the Cabinet to be given the powers, not merely to appoint the operatives, all of whom are not subject to any... The Minister does not have to have the agreement of anyone in appointing these members. He is not constrained by anything in this legislation. He can appoint those persons; has in fact appointed them and the results, as we have seen, have been a plethora of complaints about the practices and misdemeanours of the Board; the outcomes and results of the Board and its activities.

The point is this, if there is the NTPB and the NTPB has autonomy to do as it sees fit and the all the members are appointed by the Minister, why are we being led to believe that somehow a body that is so fully under the control of the Government would not be behaving in a manner that is consistent with the wishes of the Government? [Mr. Nandlall: Because they are governed by the laws and rules] They are not governed by any rules – that is the problem.

*3.50 p.m.*

What we are seeking the whole idea of the Procurement Commission, is for the Commission to put in place a rule-based regime. That is the purpose of the Commission, not the arbitrary things that go on today that lead to the discrimination that I made reference to that is public knowledge. If you do not know that, Attorney General, then we have a problem. I want to tell you something; the failure of this body to respect rule-based approaches towards decision making as regards the awarding of contracts is what has led us to such a poor ranking in the index used not only by Transparency International, but by all the national bodies of repute, including some of those

named by the Minister, a few minutes ago. That is the essence of the problem. You are seeking to have oversight and further control over a process that you already have 100 percent control over leaving no room for transparency or anything else.

One of the reasons why one has to refuse absolutely to entertain the Government's request for this role to be now enshrined – I do not know about 'restored' – has to do with the fact that the Government, itself, says one thing in public and does something different in private. Before the current President was elected, he was prepared to say that this process was subject to some corruption, that it needed attention and that he would be willing to look at it.

**Mr. Speaker:** The Standing Orders say that the President's name shall not be invoked in aid of any debate. It is noted but move on.

**Mr. Greenidge:** I am not criticising the President.

**Mr. Speaker:** No. It says that it shall not be invoked in aid of any debate; in other words for or against.

**Mr. Greenidge:** I will do that, Mr. Speaker.

**Mr. Speaker:** I am not asking you to remove it. I am just saying...

**Mr. Greenidge:** Just for balance I was going to explain to you that, having been elected, the President then went on to say that he was going to call upon the different authorities...

**Mr. Speaker:** I can tell you that my predecessor never allowed any comment about any President so I am saying that it is noted...

**Mr. Greenidge:** Mr. Speaker, I withdraw.

**Mr. Speaker:** No. I am not asking you to withdraw it. I am just saying that we note that the President has made pronouncements, but I am asking you not to go into depth in them that is all. I am not asking you to withdraw them.

**Mr. Greenidge:** As far as the point that I am trying to make is concerned, is this: The Government is in control of the system in its entirety as regards the work of the National Tender and Procurement Board. The Minister is part of a Cabinet and the Cabinet is the Executive and

the Executive is part of the Government. As far as we are concerned the issue of procurement pervades every single element of the difficulties that we face on an economic front today. If it is not the question of bridges or roads or stone scams, then it is helicopters, the East Bank Highway and a whole range of things, airports and others, in which contracts are awarded and the value of the contracts, the basis of which the contracts have been awarded remain questionable, non-transparent and in almost all cases cost far more than one would have expected and far more than it costs anywhere else. The result of all this is that if one looks at the question of corruption that is why Guyana ranks as the second most corrupt country in the entire Latin American Caribbean Region. As regards the economic freedom, as regards the question of the work of the Government, itself, the United States Department of State which did an examination of the investment climate also refers to corruption as being widespread and reflecting little political will to implement legislation passed on the procurement or in relation to asset declaration. These are not just cases that exist in a vacuum. The World Economic Forum's Global Competitiveness Report ranks Guyana as 115 out of 134 in terms of corruption. In other words, it does not have far to go to be the most corrupt in the world.

As regards the question of the relevance of corruption to procurement let me just say that the World Bank Report, which is jointly done with Transparency International, argues that "whilst the budget process is open to legislative review Government contracts and the management of foreign aid lack transparency and efficiency." As regards Freedom House's Report it says, "in terms of financial management, Guyana's National Audit Reports..." It even cites the report of the Auditor General in relation to procurement. It cites the millions of dollars paid for medical supplies that hospitals could not account for. That is from the report of the World Bank and the TI. It includes several millions paid for medical supplies and hospitals that they could not account for. It also points to evidence of petty and grand forms of corruption in the management of public resources. It relates to the question because I am saying that procurement is affected and it lies at the heart of corruption and why we are ranked so poorly as country.

As regards this matter, the point is that we are in a situation in which the Government argues that it needs to have a 'No-objection clause' and the powers of no objection in order to stop the procurement process leading to progress but right now when it actually exercises those powers and when the NTPB is entirely appointed by the Government we see no effort at all to review the



process in spite of complaints and instead of that the Government focuses upon blocking the establishment of the National Procurement Commission. Therefore that argument that the Minister brings that international obligations, for example, require a no-objection clause is true. That is true that the IDB and many others require a no-objection clause, but the experience that we have had is that the Government exercises these powers without reference to anyone or anybody. Normally, when legislation empowers Ministers to carry out a function at the policy level it normally should be done on the basis of advice from established technical offices. In Guyana, in contradistinction to that, Ministers, including many that are here, exercise these functions completely arbitrarily, capriciously, whether it is in relation to Local Government, personalities that are not qualified or any other. That is the problem, Mr. Speaker. *[Interruption]* I am addressing the Speaker. The problem is that as the legislation currently stand the Government deserves no more involvement and no more power than currently exists because with the power that they have already they already abuse executive office. Therefore there is no merit in this particular contention. If a no-objection clause is needed by an international agency it is not sufficient to write in those powers for the Cabinet especially in the absence of the establishment of the Public Procurement Commission.

What I am saying is, first of all, the supposed conflict that is supposed to be captured in clause 54.1 and 54.6, as articulated by the Minister, we reject completely. No such contradiction exists and, as regards the architecture of public procurement, the architecture already gives the Government powers which are perhaps excessive and they should be ashamed to come back to this House to ask for additional powers or the restoration of powers which, when they exercise them, they exercise almost irresponsibly. For that reason there is no merit in the case being made. The proposal before us should be struck down and I urge the House to reject it as being unworthy. Thank you very much. *[Applause]*

**Mr. Ali:** Thank you very much, Mr. Speaker. I am pleased to be given this privilege to speak on a very important national issue that confronts us as a people and as a country. The issue of public procurement touches on every facet of transparency, accountability and the way in which we carry out public business and public transactions. Indeed, the issue of public procurement is not a static one. It is one that has evolved over the years, globally, where rules are constantly amended and changed based on differentiated situations and circumstances. Prior to 1992, indeed, there

was widespread criticisms in the public procurement process; criticisms leading to the non-existence of a system or a system that was clouded in secrecy; criticisms that ranged from racial discrimination and widespread corruption to open lawlessness in the execution of the functions of the executive in relation to issues relating to procurement, accountability and financial transactions. Those criticisms are of the mischief we sought to correct over the number of years after 1992. As a matter of fact, Guyana is indeed the first CARICOM member state to undertake comprehensive procurement reforms by amending its constitution in 2003. The reforms were based on the United Nations' Trade Act. The reforms were based on the UNCITRAL model law. It was not based in isolation of the best practices and standards that obtain internationally. It was founded in international law and international trade law.

The Hon. Member, Mr. Greenidge, pointed to the clause that was unanimously inserted on that day. We are not denying the fact that this clause was inserted but what we are saying is that the clause flies in the face of some constitutional provisions and constitutional provisions must be superior. What we are seeking to do is to correct something that all of us overlooked on that day, and we all have a responsibility to make that correction today. The Hon. Member said in his presentation that in the existing system there is no process for review. This is far from the factual position of the present system. The present system provides as follows:

“Where a supplier or contractor is dissatisfied, he is entitled to a review by:

1. The procuring entity within five days following the publication of the award
2. An independent authority where the protest is not reviewed by the procuring entity [an independent authority]
3. Under Article 212, A (a) 1 (h) of the Constitution the Public Procurement Commission is empowered to investigate complaints from suppliers, contractors, public entities.”

That is the last here. So to say that there exists at this moment no system or process of review is misleading the nation and misleading our people and we must correct that. In addition to this, the Hon. Member said that there are a lot of papers out there pointing to our system not being transparent. I believe that this is a smokescreen because he has not pointed to a single report or a

single document to demonstrate this point that he has made and I will point out for him the hundreds upon hundreds of ‘no-objections’ received by the Government of Guyana from international financial institutions in the awarding of contracts; ‘no-objections’ from international institutions would mean that all the steps taken in the process and the awarding of the contract were done to the standards of that institution and international best practices. Let us look to the point the Hon. Member made that the Minister of Finance appoints a 15 member board. That is what the Hon. Member said, but let us look at the laws of Guyana. This is problem we have. We have half-baked points, points that are not developed or developed only to the political wonders of the Opposition. This is what the law says in Section 16.3:

“The members of the National Procurement Board to be appointed by the Minister shall comprise:

1. Not more than five persons from the Public Service
2. Not more than three persons from the Private Sector after consultation with the representative organisations.”

“...After consultation with the representative organisations.” The Hon. Member went on to say that the Minister directs the board and the Minister exercises full control over the board. Let us see what the law says:

“The National Board shall be responsible for exercising jurisdiction over tenders, the value of which exceed such an amount prescribed by regulation...”

The board will exercise jurisdiction, not the Minister. The board will appoint, not the Minister.

“...the board will appoint a pool of evaluators for such period as may be determined.”

Not the Minister. This argument that the Minister has this exclusive power, this overriding power, this dictatorial power is one that holds no merit.

Mr. Speaker, let me further say that I can understand where the Member is coming from. I can understand because there is still the unanswered criticisms of the Guyana Telephone and Telegraph Company (GT&T) privatisation deal, the Demerara Timbers, the Linden Mining

Enterprise. These are still... [Lt. Col. (Ret'd) Harmon: Your turn is coming.] We are open. Every single transaction is audited.

The other issue is that the Hon. Member is saying that the Government does not want to establish the Procurement Commission. Let me make it categorically clear that we are ready for the Procurement Commission, but we are not ready to give up our fiduciary oversight role that has been given to us by the electorate of this country. We have a fiduciary responsibility that was given to us by the electorate of this country and this Government is not willing to give up that responsibility which the people have given to us. Blow hot, blow cold, we have a responsibility and we are going to execute that responsibility in keeping with the Constitution of the Cooperative Republic of Guyana.

The Cabinet has power of objection or no objection. [*Interruption*] I will point to it 'Mr. Lawyer'. I will point to it for you. Now we must not mix up this role of objection or no objection. It is not synonymous with the awarding of a contract, a fact clearly established in the Procurement Act 2003 which, according to Section 54.4, says "The Cabinet is not authorised to award a tender to suppliers or contractors". It is very clear. "The Cabinet is not authorised to award a contract to contractors or supplies." The power granted to the Cabinet under the Procurement Act is merely limited to review of the procurement procedures followed by the procuring entity in recommending a contract; a review, not an award role, a review role. Cabinet's power to issue objection or no objection does not collide with or impair or undermine any of the functions of the Public Procurement Commission as set out in 212 A (a) of the Constitution. Let me quote Section 212 A (a) of the Constitution:

"The power of Cabinet to issue objection or no objection merely affords another layer of oversight by the Government which has a fiduciary responsibility to perform."

4.20 p.m.

There is it, Mr. Ramjattan. Do you want to argue against this provision of the Constitution? Do we want to wish away this provision of the Constitution? Do we want to sit here and believe, and appear to believe, that this provision does not exist? We cannot implement the provision of the Constitution in a willy-nilly manner, in a selective manner, in a manner that we think suits our political aim and objectives. The Constitution is there as the guiding light, the guiding principle,

the guiding framework, through which we must manage the country and the resources that we have.

The Constitution of Guyana specifies the functions and responsibilities of the Public Procurement Commission. I heard some of the Members arguing, in the public domain, that somehow or the other the Public Procurement Commission would be empowered to ensure that the contracts are awarded in a particular way. As a matter of fact, in the heckling session, Mr. Ramjattan said that he wants to remove the power from the Government. I do not know if Mr. Ramjattan believes that this power, the power that does not exist,... I do not know if he wants to say that the Public Procurement Commission would have the power to award the contract. **[Mr. Ramjattan: Why not?]** I will tell you “why not”.

The Constitution of Guyana specifies the functions and responsibilities of the Public Procurement Commission. None of the 13 functions and responsibilities listed under 212AA empowers the Public Procurement Commission (PPC) to award or approve or grant a no objection to contract. Not only can the Public Procurement Commission not award but there is also no power to grant a no objection. Where is this oversight layer that the Constitution talks about? Where is the oversight layer?

The Constitution provision does not take away the right of Cabinet, under Section 54 of the Procurement Act, to grant a no objection to a contract neither does it grant the right to the Public Procurement Commission. It follows, therefore, that there is absolutely no contradiction in Cabinet retaining its main no objection power in the awards of contract upon the establishment of the Public Procurement Commission.

The oversight role afforded to the Government, under the Procurement Act 2003 is not unique to Guyana. In fact, the procurement legislation in many advance and regional economies provide the respective Governments with greater latitude in the procurement process for influencing the award of contracts. I wish to turn to Singapore. We always say, in this Parliament, that we should look for best practices, international standards and international benchmarks.

Let us look at what Singapore has. In Singapore the Minister has much wider power in public procurement, according to the Government Procurement Act, Chapter 120, under section 6(1). It states: “The Minister may make regulations to govern procurement subject to the Act.” Further

section 6(2) (c) empowers the Minister to make regulations governing the procedure for the award of a procurement contract and the procedure following such award.

Here, in Singapore, the latitude extended to the executive through the Minister is not only oversight latitude but one that empowers him to make regulations governing the procedure for the award of a procurement contract and the procedure following such award. Such power to regulate procedures could clearly lead to situation of influence. However, in contrast, the Procurement Act 2003 of Guyana empowers the Minister of Finance, under section 61, to merely advise the National Board or the Procurement Commission for the administration of the Procurement Act.

Look at the vastness, the superiority, of our Act in relation to Singapore's.

The State Procurement Act 2004 of South Australia makes provision for the establishment of a State Procurement Board. Section 21 provides that the Minister may give direction to the State Procurement Board. Under section 21 (2) such direction may require the board to take into account a particular Government policy or a particular principle or matter. Moreover, the board is mandated under section 4 not only to listen to the Minister but to comply with any direction given to it by the Minister. **[Dr. Singh: We do not want that.]** We do not want this at all.

In Jamaica and Belize, there exists a well developed Public Procurement System. The Cabinet is responsible for setting the national policy for public procurement and issue directives that govern the procurement process. The Cabinet also approves the contract. **[Dr. Singh: Say that again.]** The Cabinet also approves the contract. **[Dr. Singh: Where is that?]** It is in Belize and Jamaica. In these jurisdictions there is the office of the Contractor General. What and who is the office of the Contractor General? **[Mr. B. Williams: What are its functions?]** I can list all for you. **[Mr. B. Williams: Read it.]** In St. Kitts and the Nevis the Minister of Finance is empowered by the Finance Act to regulate procurement. The Ministry of Finance issues financial regulations in relation to the procurement of goods and services.

**[Mr. Greenidge: When was the last time [inaudible] reference?]** The reference was made to Canada. The Executive Council of Ontario informally, and more commonly the Cabinet of Ontario, plays an important role in the Government of Ontario in accordance with the Westminster system. A council of Ministers of the Crown, chaired by the premier of Ontario, the

Executive Council, always makes up the Members of the Legislative Assembly of Ontario, advises the Lieutenant Governor of Ontario on how to exercise the executive functions of the Ontario Crown. The members of the council are appointed by the Lieutenant Governor on the advice of his or her premier. Though the Lieutenant Governor does not generally attend council meetings, directives – this is the point of interest – issued by the viceroy and on advice of his or her Ministers are set to be ordered by the Governor in Council.

Let us look at the European Bank. Let us look at rule 3.3.1 of the European Bank and this is what that rule states.

“The client shall submit to the bank a report containing the results of the tender evaluation and its recommendation for the award of the contract. The bank will review the findings and recommendations as the final step in establishing the eligibility of the contract for bank financing.”

Even the European Bank understands the importance of this oversight responsibility. It understands the responsibility because it is the bank’s finances, it is the bank’s regulations and the bank is ensuring that it holds that no objection role in the award of the contract.

Let us look at rule 2.6.

“The bank may agree with the borrower to expand or reduce a shortlist, however, once the bank has issued a no objection to a shortlist the borrower shall not add or delete names without the bank’s approval.”

The power enshrined in the no objection clause of this bank is even far wider than what the Cabinet has because if Cabinet has an objection to contract it cannot change the recommendation. The Cabinet can merely send back that recommendation to the National Procurement and Tender Administration Board (NPTAB) with its reasons, outlining its position but has no power or jurisdiction to change the recommendation of the National Procurement and Tender Administration Board.

The Caribbean Development Bank (CDB), rule 1.1 (3):

“CDB does not finance expenditure for goods, works and services which have not been procured in the accordance with the agreed provision in the financing agreement and as further elaborated in the procurement plan. CDB will declare a misprocurement and it is a policy of CDB to cancel the portion of CDB financing allocated to the goods, works and services that is being misprocured.

CDB may, in addition, exercise other remedies provided for under the financing agreement even after the contract is awarded and after obtaining a no objection.”

The CDB’s role is even expanded after the issuing of an objection or no objection. Of course, the Hon. Member cannot understand what this has to do with what we are debating because the Member does not want to take in to account what are the international best practices and standards governing procurement, because it does not suit them.

The mere fact that these international agencies understand that they must maintain a role in offering an objection or no objection tells us that the oversight responsibility cannot be taken away from an entity that has the responsibility to ensure the proper implementation of the project.

In this case it is the Government which has the responsibility of ensuring the implementation of projects, policies and programmes. That oversight responsibility cannot be taken away from the Government in ensuring that its policies, its plans and its programmes are implemented in an effective, efficient, transparent and accountable way.

It is clear that there exists the need for an oversight responsibility. There exists a role of the executive in the procurement of goods and services. We are saying that that role must not be the role to a war; it must not be the role to dictate; it must not be the role to direct, but, merely, we are saying that role must be one that allows oversight of the process and allows the Government to fulfil its fiduciary responsibility to the electorate of this country.

In closing, I would say that I support, completely, the amendment by the Minister of Finance.

Thank you very much. [*Applause*]



**Mr. Speaker:** Thank you Hon. Members. It is an appropriate time for us to take the suspension. We will do now and we will resume in one hour's time.

*Sitting suspended at 4.35p.m.*

*Sitting resumed at 5.34 p.m.*

**Mr. Sharma:** As I make my contribution towards this Procurement (Amendment) Bill 2013, Bill No. 17/2013, I would like to make the observation from the presentation of the previous speaker, and that is to say, that the problem we have in Guyana, and maybe in the National Assembly, is that we apparently know more about laws and regulations of foreign countries more than we know about our own. I say so because in the countries, which the previous speaker referred to, yes, the Minister may have overwhelming power and authority, there is accountability. Even in Canada, when the Auditor General presents a report that report is used to remove Ministers.

In Guyana, we do not have that same situation. In Guyana, Ministers are promoted, maybe they were a junior Minister and then they become a senior Minister or maybe they get two ministries to handle. That is the situation.

Being a Member of this honourable House, I do not know what the big fuss is, about the establishment of the Public Procurement Commission or the removal, in this case, of an amendment to section 54(6) of the Procurement Act.

The Government, with the establishment of the Public Procurement Commission, will still remain large and in charge. It does not have any fear. This is basically the fact of the matter. The Government has always held executive jurisdiction for the award of public contracts and this is how it should be. I am not disputing that. Even when the appointment of the Public Procurement Commission is in place the Government, through NPTAB, remains responsible for the administration of the entire procurement system. I do not see the fear.

The legislation provides for the NPTAB to be appointed - as we heard from various speakers - by the Minister of Finance and not by the Procurement Commission. The NPTAB is a body of the executive arm of the state and is responsible to that arm. What is the problem? I do not know what the problem is and that is what we have to discuss here.

The major problem in the country is the interpretation of our laws and our Constitution and again I am going to venture... Mr. Speaker, I will need your ears into this particular matter because it is going to be a bit complicated for me to explain exactly what happens.

**Mr. Speaker:** I will do my best. Go ahead Mr. Sharma.

**Mr. Sharma:** What we fail to look at in this Assembly is, what many the speakers from the Government side,... I believe they know but they are hiding it. They are living in the past and I have the evidence to back up that they are, indeed, living in the past.

I think the Hon. Minister of Finance alluded that this side of the House does not read and research. I am going to show evidence that the People's Progressive Party (PPP) administration is living in the past because the Members are redoing the wrong Act. I guess I have your attention there Mr. Speaker.

Mr. Speaker, you may be aware - I was not in this House, there were Members in this House - that the Members of this House, in 2002, passed a Procurement Act. That Act was Act 6 of 2002. I do not know if you recall that that Act was passed in this House and it was assented by the then President of this country, if I could mention that, within a number of days. Maybe, it was the next day, I cannot recall, but it could be checked. That is the Act I am referring to when I said that the PPP is living in the past because the PPP is living by Act 6 of 2002 and not the current Act that we are seeking to amend.

The problem here, which I identified to you, is that Act 6 of 2002 spoke about the same areas that were amended in Procurement Act 2003. It is very important to note that this is where the problem of interpretation arises and the PPP is stuck in the past because nowhere in the new Procurement Act speaks about no objection. Then you will ask where the question of objection comes into play. It came into play in the Act of 2002.

Let me read for you, Mr. Speaker, section 63(1) of the Procurement Act. It states, "The Cabinet may issue no objection to a proposed award." Do you hear the language there? This is very important. How does this transcend itself to this Act that we are looking at? It has never. Let me tell you what happened.

In 1996, when Dr. Cheddi Jagan was alive, the PPP was in the process of creating a Procurement Act. It was not thinking about an amendment to the Constitution as yet. In 1996 the United Nations Development Programme (UNDP) had given the Government funds to strengthen the secretariat and it was followed by the Inter-American Development Bank (IDB) which gives this Government a set of money to carry out amendments to the Procurement Act. That was how this Act of 2002 came into being. When it gave the money it hired a lot of lawyers from overseas and they did a lot of work. This Act could not reach the Parliament because of the 1997 Elections and all of the problems there were. That is how the reform to the Constitution overtook the procurement process.

This Act was in the making. At that time when this Act was tabled and debated in this House... The question is why Mr. President rushed through this Act. You know the history of assenting to Bill, Mr. Speaker, but this particular Act, which I am holding in my hands, was linked to a World Bank recommendation. The World Bank requested that the Government carries out serious reforms to the procurement process. Why? It was because it looked at the Auditor General Reports from 1992 and onwards. The Auditor General, in those days, recommended amendments to the country's Procurement Act. The World Bank, apparently... The records will show that the pressure was put on the administration to carry out reforms.

This is where it becomes interested. This Act was assented to by the President, a number of days, after it was passed by this House. The World Bank, after looking at this piece of documentation, the 2002 Act, said that it wanted to amend it further. This Act was assented to by the President on the 28<sup>th</sup> June 2002. The complete Act was repealed. [*Interruption from the Government Members.*]

**Mr. Speaker:** Hon. Members, unless there is a specific point of objection on the floor please allow the Member to continue speaking. Mr Sharma, do not allowed yourself to be distracted, just speak.

**Mr. Ali:** Mr. Speaker, with your indulgence, I am asking the Member to quote the recommendation he was referring to and the report. Thank you.

**Mr. Speaker:** Hon. Minister, Mr. Sharma was making a point of a general nature, that there was a reform of the financial architecture upon recommendations of the United Nations (UN) and he said the recommendation was made to upgrade the Act.

Mr. Sharma, are you in a position at some point in time to supply that information?

**Mr. Sharma:** Mr. Speaker, I will give the Hon. Member and the media an area in which they could probably go and...

**Mr. Speaker:** I will take your word if you say to me that you will be in a position to provide it if not instantly, later on, that is good enough for me. There is nothing to be withdrawn. There is nothing here that is contentious or in any way offensive to any Standing Order.

**Mr. Sharma:** Mr. Speaker, I am quoting from His Excellency, the former President of this country, in an interview that he had given to...

**Mr. Speaker:** If you are going to be that specific you will have to provide, at some point in time, the reference, but if, not let us move on.

**Mr. Sharma:** It is the President who made reference to this. It is not me.

**Mr. Speaker:** You will have to provide it at some time if you are relying on it.

**Mr. Sharma:** I will give you the information now. It is from Guyana Information Agency (GINA), June 28, 2003. It was a report titled, "*World Bank support new procurement legislation*" and President Jagdeo said these words...

**Mr. Speaker:** One second Mr. Sharma. Excellent, well done, you may move on. I think you have met the requirement. Move on.

**Mr. Sharma:** Mr. Speaker, I would like to quote what the president had said, but I am fearful that you would not allow me.

**Mr. Speaker:** The Standing Orders pertains to current presidents, not past presidents, so you may go ahead.

**Mr. Sharma:** The then Mr. President...

**Mr. Speaker:** Mr. Sharma, have a seat. Hon. Members, Mr. Sharma has a unique style. If I may say so Mr. Sharma, there are attempts and tactics being used to get you to move from your style. That is part of parliamentary tactics. That is known. You have to learn to stay focus and to make your delivery the way you intended. Later on you can quote. You keep on the line and length that you want to go on.

**Mr. Sharma:** Mr. Speaker, I was only aware that I had to speak to today...

**Mr. Speaker:** Well, you are doing very well, knowing that you had this late notice.

*5.49 p.m.*

**Mr. Sharma:** As I was saying, this particular Bill, which the President then assented to very quickly, the same way it was assented to it was repealed in its entirety. Now I want to draw the same attention to the example to the anti-money laundering piece of legislation, the 2002 legislation, the amendments to that legislation today and to show an example, a correlation between this Bill here, 2002 Bill with the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill 2013 – Bill No. 12/2013 in which this administration is not serious in what it is doing, what it is producing. This Bill, here, cost a lot of money and within six months it was totally scraped, so that is the point I want to make. The World Bank has a serious problem with it, in 2002 and the Members may want to know the problem. I think we should know the problem. The problem was in relation to the power that the administration had given itself which the World Bank did not want...

**Mr. Speaker:** If you are going to make reference to the World Bank you will have to supply the references.

**Mr. Sharma:** Mr. Speaker, if you want me to withdraw that I am going to withdraw it but I want to assure you that there is something seriously happening here because the World Bank objected to it. If you look at the 2000 and the 2003 Acts you will see the area which was adjusted. The area, which the administration adjusted, is that area of no objection. Hear how this has read originally. Act 6 of 2002, section 63 (1) states, “Cabinet may issue a no objection to a proposed approval.” This is one. Section 63 (2) states, “Cabinet may not offer a no objection to an award of procurement...” Here is where it becomes interesting because it lists two examples where

Cabinet may say no and that did not come back in the 2003 legislation. That is how the administration gave itself a lot of power. How Cabinet can say no to a contract? "...for a reason of policy the procurement could not proceed."

Could you imagine the power there? It had to be that the World Bank wanted this to change, which did not come here. Image the power that it would have given itself. If the Cabinet there had said, for reason of policy, it does not want x, y and z to get the contract it cannot get it, full stop. I know a Minister who likes to say full stop here.

The next reason Cabinet could use to stop the contract is if the supplier or contractor was recommended for an award for the tender by procurement entity manifestly failed to satisfy the objective of the project. Do you understand what this mean, Mr. Speaker, or Members of the House? What does this mean to the layperson? Mr. Speaker, you are lawyer and there are a number of lawyers here, but to the people I am speaking out there, who are listening to this, have to understand what that means. What basic that means is that Cabinet, if it says that this contractor cannot carry out this work - it is not the expert - he cannot carry out the work. That is it. It is full stop again. What I am trying to show you, Mr. Speaker, is that this did not make its way to the new Act. This old Act speaks about no objection. The Minister read the Procurement Act and used the words "no objection" but now here in clause 54 it speaks about no objection. What clause 54 speaks about? Section 54 (2) try to précis this here. It tries to put in short language. This is what section 54 (2) was saying in relation to this. This is what it states, "In conducting a review under subsection (1) the Cabinet may object to the award."

It did not state anything about "no objection". This idea of the Government using the exact words of "no objection" was in relation to the old, so that is why I am saying that the Members are living in the past.

Now, it is very important. I want to point out that this here speaks... I want the PPP Members over there to listen to me very carefully. The old Act, which was repealed, speaks about a proposed award. Proposed means it is not awarded as yet. This here speaks about an award. What Cabinet is currently doing is that it is dealing with proposed award and not award. That is the serious breach. I hope they listened to me. When the NPTAB carries it to Cabinet it carries a proposed, not an award. What this new Act is saying is that it an award which is supposed to go,

not a proposed award. Further, section 54 (5) supports my argument. It states, “Cabinet may not object later than 21 days after and award.” What is happening is that since this here came out, this new Procurement Act, the PPP was in breach by living in the past with the old Act because it was dealing with proposed when the new Act speaks about award.

I will go further in trying to say to the Hon. Minister of Finance..., who I worked a number of years with, and, maybe, my ability to stand here and speak on this matter may be due to him. This here is a next important fact that I want the Members over there to listen to.

**Mr. Speaker:** What you just said is that you were taught by the Minister.

**Mr. Sharma:** Yes.

**Mr. Speaker:** Very interesting to learn that.

**Mr. Sharma:** I do not know if he wants to acknowledge that. Let me now attempt to interpret section 54 (1). It is of the new Procurement Act 2003. Section 54 (1) speaks about this. It states: “Cabinet shall have the right to review...” I want to stress on the word “review” because this particular section has two reviews. They are review one and review two. This is what apparently the Members over there do not understand when they imposed subsection (6). When subsection (6) states: “Cabinet involvement under this section shall cease...” the word “involvement” means review, but review two, not review one. The Members over there are stuck in thinking of review means taking away the power of Cabinet.

**Mr. Speaker:** In your argument you said Cabinet will retain the power to...

**Mr. Sharma:** I did say so.

**Mr. Speaker:** Very well.

**Mr. Sharma:** Now there are two cases of reviews. I do not think the Members did just in presenting the law. The two reviews, which they spoke about, are, one, it is clear here that Cabinet has the ability or it could review all contract in excess of \$15 million. That is one of the reviews. But if you go down further, Mr. Speaker, you are going to see the second review and it starts here: “The Cabinet upon it establishment of Procurement Commission shall review annually the Cabinet threshold.” That is the second review. I hope you were lost there Mr.

Speaker. When the Members had subsection (6) they were speaking about that review power to review the threshold. That is what has to cease from Cabinet.

**Mr. Speaker:** Mr. Sharma, if I could. Section 54 (1), you said, could be divided into two. It has two review powers. The first is review of contracts over \$15 million and the second is the annual threshold. You are saying that section 54, subsection (6) pertains only to the second review, therefore whether this subsection remains in the Act or not Cabinet will continue to have an oversight review of any contract over \$15 million.

**Mr. Sharma:** You are correct, Mr. Speaker, but I just need to add a few final touches to that.

**Mr. Speaker:** I just want you to know I was following what you were saying.

**Mr. Sharma:** No. You are correct. You are a very good student. Taking away subsection (6) would not do anything, so I do not know why the Hon. Minister is wasting our time here with subsection (6). If he had read it the way it supposes to be read... [*Interruption from the Government Members.*] I do not want the Members over there to be too happy because I am going to quiet them just now.

The point, in which you summarised nicely there, Mr. Speaker, I will add to that. Do you remember I spoke of some real serious power in the old Act, well this Act here speaks about the review power of Cabinet and it is not any power; it is powerless. What does it have power to do? This is what it has power to do: “Cabinet may object to an award of procurement contract only if it determines that procurement entity fails to comply with applicable procurement procedures.”

That is no power. Do you know what that means? Procurement has rules and regulations. When a person tender for something he or she has to get compliances and bid security. That is what it reduces Cabinet to. If Cabinet says, “I do not see the Compliance Certificate for National Insurance Scheme (NIS), Pay As You Earn (PAYE); the man did not submit his bid security of 2% of the contract sum”, that is the power that it has; that is no power. That is the reason why I showed you this very large power the Government puts, itself, in this old Act reduces it to nothing, but the PPP still holds to this old Act that it wants this power to review. Is it to review what?



If per chance the Hon. Minister knows or did not know of the way it was interpreted and he decides to amend this and if that side had the majority still it would have meant nothing. Why Mr. Speaker? You may ask the question - why it would mean nothing? The reason it would mean nothing is because the Procurement Commission has the authority and power to review the threshold value, so the Procurement Commission could say now that the threshold value of Cabinet is going to be \$100 million and not \$15 million. As it can be seen, it does not have any power. The Procurement Commission could increase the threshold value and cancel out Cabinet. *[Interruption]*

**Mr. Speaker:** Let us allow the Member to speak, please.

**Mr. Sharma:** I do not see the reason why - this is my second example - there is no reason to trouble this here because the Procurement Commission, when comes into place, will have the second review power and that is to increase the threshold. Now in this 2003 Act it states that Cabinet, in the absence of the Procurement Commission, shall review, it means to increase the threshold value, but since eight years now it has not increased the threshold value. When this was place here it was envisaged for the past eight years that it might be multiplied 15 times by 15, 15 times by 10. I do not know how Cabinet would have increased it but the threshold value would not have been \$15 million. This is what has to be taken into consideration. There is no reason to remove this because the Public Procurement Commission could come tomorrow and say the threshold value is going to be an amount so high that it would not reach Cabinet.

Basically, however, the problem here, with the administration, is that the power it was enjoying is going to be removed but it would not remove and go into the Public Procurement Commission because the Public Procurement Commission is only monitoring. It is going to be removed and put into the various levels of tender board, the highest being the national board. That is where the power will lie. The Minister, who has oversight function of the national board, is now fearful that Cabinet cannot say anything because this is what it states in...

**Mr. Speaker:** Before you read Mr. Sharma, your time is up. You will need an extension to be sought.

**Ms. Ally:** I move that the Hon. Member be given fifteen minutes to continue his presentation.

*Question put, and agreed to.*

**Mr. Sharma:** Mr. Speaker, I do not want to bore you any longer in this Assembly but I am going to close by just quoting what the Act states. The Act states that:

“Cabinet, upon its establishment of the Public Procurement Commission, shall review annually Cabinet’s threshold and review of the procurement with the objective of increasing that threshold over time...”

It was never done.

“...so as to promote...”

This is the important part.

“...the goal of progressively phasing out Cabinet involvement and decentralising the procurement process.”

Subsection (6) cannot be dropped. This one has to be dropped if there is a problem with Cabinet having this power.

Thank you. [*Applause*]

**Mr. Nadir:** Mr. Speaker, following the last speaker’s exhortation to you to listen carefully, I thought that I would also listen very carefully. Clearly, the last speaker is in a different world. The emphasis he has placed was that this Government has been living in the past, in particular been living in the 2002 Act. He mentioned, and he quoted, and he referred to recommendations made by World Bank and other international financial institutions. He quoted the former President as speaking about improving the procurement process, and in particular this Act that is currently before us and is about to be amended. That is the Act of 2003. Here is where he is right. Since the Government changed in 1992, this PPP/C Government took it as its first responsibility to clean up the corrupt practices of the past. That is what it did. I sat in the Opposition and I supported legislation over and over again to so do.

Yes, we had an engagement very earlier on with the international financial institutions to ensure that Guyana could put procurement policies, procedures and legislation that meet international

best practices. That is what we did. In 2002, the first Act was passed and assented to and we went back to that Act in less than one year with the interventions of a number of agencies. Law, as he said, has dynamic changes. It is as the anti-money laundering policies that are currently being forced upon some countries. The Financial Action Task Force (FATF) of the world is saying that from next year those laws will have to change again to include the financing of weapons of mass destruction and so we will have to come back again next year. Yes, this law is dynamic.

There was another process, and I speak from the very top of my head on it because I was very involved. In that process we had again people with the best international experiences coming to assist us. While we had the 2003 amendment basically repealing the 2002 Act and enacting this current Act, there were accompanying comprehensive regulations that were tabled in 2004. In that regard, he is very right. It has been the goal, the first mission, of this PPP/C Government to ensure that we can have transparent, accountable procurement procedures in our country. [Ms. Ally: In what year you became a grasshopper?] I will tell you, Mr. Speaker, the only similarity between grasshopper and me is the colour of my tie.

The last speaker mentioned that as we transition from section 63, subsection (1) of 2002 to section 54 of 2003 that the issue of “no objection” was lost and that we have been living in the past granting no objection. Maybe, it is the wording. A “no objection” is not the same thing as the Cabinet may object to the award of the procurement contract. I see it as the same thing. It might not be letter for letter and word for word but the intent here is that Cabinet has the powers to object to an award, not a proposed award, of the National Procurement and Tender Administration Board. What section 54 (1) states? It states that Cabinet shall have the right to review all the procurements which Cabinet exercises. When the Head of the Presidential Secretariat (HPS) on Friday said that the Cabinet has... [An Hon. Member: Approved.] He never said the word “approved”... granted its no objection - maybe he should have said of the 15 or 20 contracts above \$15 million - it did not have an objection to any. Well, I do not know how different it is to a no objection but the powers are clearly outlined in section 54 (1) and (2) of the Cabinet.

This process is decentralised at the level of the ministries, at the level of the regions, at the level of a district tender board and at the level of the Ministry of Finance tender board. It is only

contracts that exceed \$15 million that will come to the Cabinet for no objection. Clearly, we have many persons in this National Assembly who still have not done their homework. When we debated this Bill in 2003, I had to mention, again, that people were seeing a different Bill than what was before us. Clearly people around us do not want to understand the different levels of checks and balances that are in the system today. In the system, today, we heard much being made of the appointment by the Hon. Minister of Finances of the 15 members of the National Procurement and Tender Administration Board.

The system has many different arms. The Public Procurement Commission is a different arm from the tender board, the 15 members which the Hon. Minister of Finance has to appoint. The laws clearly set out how he must go about appointing these members. From the presentations of the Opposition Members tonight one would expect that all 15 of those members are puppets of the Minister of Finance. It is that those honourable men and women, who have their integrity, their honesty to protect, as we heard from the Opposition, are all puppets of the Minister. The issue also was with the ultimate power, which is vested in the Minister, in terms of the appointment of the board, and the executive functions of Government which resides in the Ministry of Finance, where the procurement is concern. The Opposition said, and the Hon. Member Carl Greenidge mentioned this, that further there could be manipulations. I remembered when we debated this, and I have the *Hansard* here, the Hon. Member Mr. Khemraj Ramjattan, referring to him, when he said that... Sorry.

*6.19 p.m.*

When the Hon. Member Mr. Ramjattan spoke on the Bill of 2003, he made mention of the fact of whom the authority should be vested in, but the minister. It is there on page 14/104 of the...

In Guyana, we do not have the American system where the executive is totally isolated from the legislature. We do not have that! What we have is still lots of remnants of the Westminster system, which draws the executive from the national assembly and, ultimately, ministers are accountable and responsible. What we have tried over the many years, especially in the last decade, was to ensure that there were enough checks and balances in place where subjectivity could creep in to ensure that there are enough checks and balances in place to ensure accountability and transparency.

The Public Procurement Commission (PPC) will have a totally separate function than that of the executive. Its members will set policies and it will sit with the executive and review limits and so forth. There are enough checks and balances.

I want to commend the Hon. Minister of Finance because that night when we were looking to get political consensus... The issue of public procurement should not be one of a tug-o-war among Members of Parliament (MPs). It should be done that it has consensus, political consensus in particular. I know that that evening we all were looking to see a way forward.

From my information, the then Minister of Finance had a very keen eye. You yourself said that he would have done very well as an attorney at law. The current Minister of Finance and the current Cabinet sees the collision that while the Procurement Act looks at doing away eventually with any involvement of the Cabinet, Section 54 (6) talks about the moment the Public Procurement Commission is appointed, the role of Cabinet is terminated. Clearly, that could not have been the intention because we are still in the process of putting all of the protocols in place to ensure that we can have this public procurement provision so implemented that it will stand whatever scrutiny. That is where we stand, Mr. Speaker, because we have to look and see where there have been incidences of interference by the Executive in the award of these contracts which have to get the so-called no objection from the Cabinet.

I remember being at a regional conference about two or three weeks ago and an international delegate asked about the same issue. Since Cabinet has this no objection role, how many times has the Cabinet objected to the award? At that time, I said that it was less than five.

In preparing for this, I looked at the period 2009 to 2013, and what I have before me is what the National Procurement and Tender Administration Board (NPTAB) has reported to the Inter-American Convention Against Corruption as the number of times Cabinet withheld an award. In 2009, it was twice – 0.7%; in 2010, no contracts were withheld; in 2011, 368 contracts were awarded and 0 were withheld; in 2012, 411 contracts and 0 were withheld; in 2013, 380 contracts were awarded and five awards were withheld – 1.3%. If one sums it up, over the five years, Cabinet withheld 13 contracts.

Clearly, this is systematic that the current system is working and working very, very well, but we could still make it better. **[Mr. Greenidge: You are talking nonsense.]** I thought, Mr.

Speaker, that words such as “nonsense” were unparliamentary, but there is a new dispensation today.

**Mr. Speaker:** I am hearing terms going left to right and right to left during the heckling. They are not part of the record but I am hearing terms. I agree that Members ought to show a level of respect.

**Mr. Nadir:** Thank you very much, Sir. It is the hallowed Chamber we are in and it deserves the respect. If this particular speaker on the floor does not deserve the respect, at least the walls of this Chamber do.

We have before us over 1,300 contracts in five years that went to the Cabinet and seven of them had the Cabinet’s objection. As I said, we can make the system even better. None of us are going to work to make it worse.

I mentioned the issue that night in 2003 when we were speaking about the passage of the new amendments to the Act. Subsequently, the late Hon. Member, Mrs. Sheila Holder, had put forward a question to the Hon. Prime Minister – I think it was in 2010. In response, in 2010, to the question about when the Government is going to put the Public Procurement Commission in place, the Hon. Prime Minister again stayed very firm to the commitment that the Government wants to see political consensus on the issue of the Public Procurement Commission.

We have worked to be faithful to the Constitution. Enshrined in the Constitution is the issue of the Public Procurement Commission having a two-thirds majority for passage. This issue of political consensus is not a figment of the Government’s imagination. It is the Government being faithful to the supreme law of the land – the Constitution. It is building political consensus on the issue of public procurement. No matter how much we blow hot and blow cold, as the Hon. Minister Mr. Irfaan Ali said, we cannot have one-sided arguments on the issue of public procurement.

Persons can tie whatever they want to it. They can tie the Harbour Bridge; they can tie the Berbice River Bridge. They can tie anything to it but we must have political consensus.

The Members opposite me do not have a monopoly on knowledge. With their one-seat majority, they operate as if their way must be the only way. Checks and balances, as I mentioned in the

issue of public procurement, have been provided for in our Constitution. When people stand up and talk about Parliament...the National Assembly passing something and the President not signing it does not constitute the Parliament- Consensus.

If there is one thing about the current dispensation of the political electorate, it is that all of us in here should work for the betterment of all, but in consensus, and, as the Prime Minister mentioned in 2010, it should be political consensus.

We have a simple amendment that corrects a contradiction and a collision in one clause. What the Minister of Finance is asking us to do today is to remove subsection (6) and let us continue to work towards removing Cabinet from the process altogether. That process will include us working together to ensure that there is the establishment of the Public Procurement Commission. I know this matter has been put on the table in the relevant committee and I do not want to breach any protocol but I am sure, Mr. Speaker, you will see the reports coming out that will show the same consensus that we are trying to seek here is nearing the goal there.

Whether we put the Public Procurement Commission in place now or not, we will still have the problem of this collision.

**Mr. Speaker:** What about the argument that subsection (6) is just superfluous – that is Mr. Sharma’s argument – and that in or out, hot or cold, it does not interfere with Government’s recognised authority?

**Mr. Nadir:** Mr. Speaker, I can see immediately that when the Public Procurement Commission is set up, somebody will go to the court and say that Cabinet’s involvement must cease immediately because of Section 54 (6). I can see that and I do not claim to have any clairvoyance powers. Mr. Speaker, there is that issue.

We still have to go a little way on the learning curve and that learning curve is to ensure that we can separate some of these issues that have become contentious.

Minister Ali said it correctly: Cabinet has fiduciary responsibility. Someone else said it. If the Government has to act and if the Government has to govern, it must also have some amount of authority. The People’s Progressive Party/Civic (PPP/C) is committed to the removal, eventually, of the role of the Cabinet in the procurement process. Right now the Cabinet cannot propose. If

the National Procurement & Tender Administration Board does not send an award to Cabinet, Cabinet cannot initiate a thing. It is almost similar to how we select a person to be the chairman of the Elections Commission. If the Opposition does not send up a list of names that is acceptable to the President, there can be no chairperson. The initiating of the contract awards starts and ends with the Tender Board.

I agree with the Hon. Minister of Finance that Section 54 (6) does offer a lot of collision. I also subscribe to the view that we cannot immediately remove totally the role of the Cabinet. The Public Procurement Commission will also need some time to get going in order to perform its role of reviewing and looking at policies. The NPTAB looks at a pool of evaluators. There are so many checks and balances in the system today that if the manipulative arm of anyone comes into play, you will see it all over the press. Added to that, today we have a very vocal press, be it electronic or print.

What we ask today is that we remove the contradiction and we allow the process to continue so that we can get on with ensuring that in Guyana, the Procurement Act can withstand any scrutiny, any test and any international best practice.

Thank you very much. *[Applause]*

**Mr. Ramjattan:** What we have here this evening is largely a miscomprehension of what I would call the constitutional history of this Public Procurement Commission and its aggravated miscomprehension coming from people, quite frankly, who knew it all because they were there.

I wish to quote the last speaker when he gave his speech on June, 2003. It is at page 14/53 of the *Hansard*. He, at that stage, in concert with many members of the then Cabinet, including the then Minister of Finance, Mr. Kowlessar, and I also were present and heard and indicated...I was not in concert and that is why there was this massive disagreement. It was because we had to go back to the Constitution, and I will come to that. This is what he said at page 14/53:

“Mr. Speaker, this is a fine piece of legislation, a piece of legislation that I have said is taking away the powers of the politicians to make awards in terms of public procurement...The Government and this side of the House has agreed to significant



changes. Why? Because we want transparency, we want accountability, and we want to take politicians out of the procurement.”

At page 14/59, to crown it all, the Hon. Minister went on to say this:

“Mr. Speaker, the issue for us is: will this Bill give credence? Will this Bill enhance the procurement system today? Is it in need of reform? We all agree, and certainly many of my nights will now be spent more fruitfully, rather than to have to peruse contracts.”

He used to peruse contracts.

**Mr. Speaker:** Hon. Member, is the “he” Hon. Member Mr. Nadir?

**Mr. Ramjattan:** The “he” is Hon. Member Mr. Manzoor Nadir. When I say “him” or “he” that is what I mean – Hon. Member. He then went on at the bottom of that same page to say...I just want to quote it for people to know. He said:

“Nevertheless, the Government is prepared to move in the direction of removing the politicians from procurement. We are going that way. This Bill is a giant step in that direction. While some politicians are stuck in the mud and cannot make a decision, this Bill is going to change the procurement landscape forever.”

Then he went on to say:

“...because this all-encompassing power ascribed to the Minister, to the politicians are being whittled away, thanks to this Government. It should be supported.”

There was no clearer formulation and articulation that they wanted politicians, meaning members of the Cabinet, to be excluded and their role whittled away. That is why that section was put in. My argument when I was trying to counter some Members of the then People’s National Congress (PNC) on that occasion was that up to the point when the Procurement Commission shall be established, the powers generally shall reside, and I quoted Mr. Forbes Burnham, in Ministers. Once the Public Procurement Commission comes into being, it shall be, thereafter, with the Public Procurement Commission.

I want to go down the constitutional history that we have because what we have as provisions in Articles 212W to 212FF came out of a process. What did we have that caused constitutional reform in 2001, Mr. Speaker? We had a huge set...Mr. Robert Corbin in the *Hansard*, if anybody cares to read it, stated what caused us to go into a Public Procurement Commission regime.

Indeed, it is true that all Commonwealth Caribbean countries – and I cannot recall any – which had Cabinets or certain bodies within Cabinets dealing with procurement matters. We had civil strife. We had a series of scams – milk scam, stone scam, wharf scam, fertilizer scam – all of which were spoken about by Mr. Robert Corbin in the *Hansard*. It created the movement that caused civil strife all over Guyana. We then had the Herdmanston Accord and certain other constitutional reforms that came about as a result of us wanting to have consensus and as a result of us not wanting to have bloodshed on the streets. It was a mini revolution. That revolution caused constitutional reform.

Indeed, prior to 2001, there was never ever a procurement regime that was in place. It was largely the executive controlling it, and we never had any Act called the Procurement Act prior to 2002. It was brought into being as a result of that history and so in the constitutional reform process of 2001, we then decided to pass a brand new section called the Public Procurement Commission section of the Constitution and there were so many articles – 212W right down to 212FF.

In that set of constitutional provisions, we made it clear that there shall be established a Public Procurement Commission and, in 2003, when we were debating the Procurement Bill of that year, there was a communiqué that was signed by both Mr. Corbin and the then President that it should be established before the end of the year 2003. It never happened although we passed the Bill and the President assented. We passed the Bill with Section 54 (6) understood by everybody.

It is rather strange today that we are hearing from Mr. Manzoor Nadir, the Hon. Member, that he did not understand what happened at the end point of the debate. I can tell him what happened at the end point of the debate. I was present. The PNC was then making some very serious attacks that they believe that the Minister should not have such powers and they literally walked out of the National Assembly. Section 54 (6) was passed with only PPP/C Members. By the way, sittings were then being held at the Ocean View International Hotel while this building was

being repaired. All those who are there then knew clearly what we were saying when we passed subsection (6) in view of the fact that we had the subsection (1). Subsection (6) states:

“Cabinet’s involvement under this section shall cease upon the constitution of the Public Procurement Commission...”

There was nothing ambiguous, ambivalent or circuitous about that provision. Who passed it? I think there were 38 Members in the PPP/C side at that point in time or whatever it was, but it was a bigger majority than the minority that the Government has now. We all understood it. As a matter of fact, then Attorney General Mr. Doodnauth Singh made it clear to very many Members over there, including myself when I was sitting there at that point, that even if we feel there is going to be a contradiction with subsections 1 and 6, he wanted to let us know that articles 212W right down to the very end of it, 212FF, make it very clear that Cabinet will have no role when the Public Procurement Commission comes into being in relation to matters of procurement; that is, the award.

I want to say this because a lot of them would want to quote the contradiction, but they would not want to quote the other contradiction which is really Section 54 (1) as against the Public Procurement Commission’s provisions of the Constitution. Let me just make mention of the Public Procurement Commission’s constitutional functions.

In article 212AA (1) of the Constitution, the functions of the Public Procurement Commission are to:

“(a) monitor and review the functioning of all public procurement systems to ensure that they are in accordance with law and such policy guidelines as may be determined by the National Assembly;”

It is not for the Cabinet. One could have seen that in the 2001 constitutional reform process, Cabinet’s role was being taken away. It is now coming back to the National Assembly. They did not mind the National Assembly at that point in time because they had a majority. They said that it was alright; leave it there.

Article 212AA (1) states:

“(b) promote awareness of the rules, procedures, and special requirements of the procurement process among suppliers, constructors and public bodies;”

I would not read all because I want you to zero in on what the very important point here is. Subsection (f) is very important. It states:

“monitor and review all legislation, policies and measures for compliance with the objects and matters under its purview and report the need for any legislation to the National Assembly;”

That was a massive power we gave the Public Procurement Commission and it was agreed to by every single Member in 2001. The Commission was to monitor and review all legislation and report the need for legislation to the National Assembly. That, however, cannot be done because we do not have, at this stage, a Public Procurement Commission. That is in breach of that communiqué.

I want to bring this point over clearer to some of the Members on the opposing side who gave the impression that the Public Procurement Commission does not have power to award, in a sense, and to propose remedial action. Subsection (g) states:

“monitor and review the procurement procedures of the ministerial, regional, and national procurement entities as well as those of project execution units;”

That is what it is supposed to do. Subsection (h) states:

“investigate complaints from suppliers, contractors and public entities and propose remedial action;”

I wish to come to that. In the existing system, as it has been since 1992 and before, largely, people will make bids to the NBTAB. That Tender Board has certain constituent parts about it. One is the Evaluation Committee. When the bids go in, let us say for pharmaceuticals, five or six people will bid, after which the Tender Board makes its decision as to who is the best person to be awarded the contract, it says, let us say, company X. If company Y is vexed about it and wants to make a complaint, there was no body that company Y could have gone. [Mr.

**Nandlall:** Yes.]

6.49 p.m.

Prior to 2001, there was no body you could have gone to. [Mr. Nandlall: Fast forward to 2003]. In 2003, where you were supposed to go to, had we a Procurement Commission by that time, it would have been the Procurement Commission. [Mr. Nandlall: But there is a mechanism there now]. Whatever the mechanism, it was intended that that mechanism would have been superseded by the Procurement Commission, and one would have gone to the Procurement Commission. When one would have gone to the Procurement Commission, assuming Mr. X now, the Procurement Commission would have been like a court of some sort and say to bring up all of the documents – Mr. X’s documents, Mr. Y’s documents, and Mr. Z’s documents – and we will check them now: the score sheets, the credentials and so on. If it is the opinion of the Procurement Commission that Mr. X should not get it because he has no history, (like certain people who have contracts to make roads and they did not have any history), it will then propose remedial action. What could have been the meaning of remedial action under the Constitution if not to say that Mr. X ought not to be granted the award and that Mr. Y has made a better case, so it should go to Mr. Y? That is what the purpose of the Procurement Commission is, as I understood it, being at the process in 2001 when it was being drafted, because meaning had to be given to it.

They do not understand that part, Mr. Speaker, and they do not want to. This is exactly what they want: they want to give the impression that the procurement board, the Tender Board, should be the body you go to if Government or anybody has a complaint. How could you go back to the Tender Board or its constituent called the Evaluation Committee? How could you go back to the same Caesar’s court to ask Caesar? We should go to the Procurement Commission. That is the direction of our Constitution.

The Constitution has it there, Sir, and they will want to go and misconstrue that history. The Procurement Commission, under Article 212AA(1)(j) can “initiate investigations to facilitate effective functioning of public procurement systems”.

I want to make the point here. None of these procurement provisions are in the Constitution of Singapore; none of them are in the Constitution of Belize; none of them are in the Constitution of Jamaica. That is the distinction that must be drawn. None of these provisions are in the

International Development Bank (IDB), in the World Bank, in the International Monetary Fund (IMF) or anywhere else; it is in our supreme law. But do you know what? The entire platform of their argument tonight is that our Constitution is wrong. That is what they are coming here to say. [Ms. Shadick: Who said that?] That is effectively what you are saying. “Who said that?” This is exactly what they are trying to say, even if they are not saying it: the Constitution is all wrong. [Mr. Nandlall: I am not saying it.] You are saying it.

I want to bring another bit of constitutional history. When we established the Procurement Commission with all those powers, Mr. Speaker, we then proposed that instead of setting the Procurement Commissioner and then getting the Procurement Commission to report to us what should be a very good law of procurement as per stated in that section that gives it the power to report the need for any legislation in the National Assembly, but the good Government of that day decided that they will come with a Procurement Bill; and they came in 2002 with a Procurement Bill. I must say that it was very advanced. The majority of the provisions there are very advanced, but there was a problem with Section 63 that was quoted by Mr. J. Sharma:

“Cabinet may issue a no-objection to a proposed award, including an award under Section 24(1)”.

Immediately, if one were to read that Procurement Bill and read the Constitution, one would see a collision between Cabinet having what is called a no-objection as against what we were saying in the Constitution, that the Procurement Commission must have that power: doing all the laws, the procedures, the policies, the manual and everything. That is why the reading of the Constitution, the functions of the Procurement Commission shall be all these.

Mr. Speaker, the poor Attorney General will be very ignorant here because he was not at the 2001 or the 2003 process. The Constitution is stating all the functions. The Constitution here... [Mr. Nandlall: Here it says that Cabinet must have a no-objection [...*Inaudible*]] We are saying that is the reason we had the war out there.

**Mr. Speaker:** One second. Hon. Mr. Attorney General, I think you are slated to speak next so allow Mr. Ramjattan... You will have a chance coming next to say what you need to say. Let Mr. Ramjattan speak.

**Mr. Ramjattan:** I want to make a rebuttal here to the AG because he will come later and say all kinds of things. When there was never this constitutional provision, Mr. Speaker, the power had resided in the Executive branch. When the Constitution now stipulates all of these roles and functions for the Procurement Commission, it took it away. [**Mr. Nandlall:** No.] The prerogative of the Executive was then taken away and it becomes a function of the Procurement Commission. That is what we have here. They would never understand that kind of constitutional restraint.

When it was not there, then you gave it... In our country, the Attorney General used to be regarded as the person in control of prosecutions up to 1960, then we put in a constitutional provision that the Director of Public Prosecutions (DPP) would have that power, but it never stated what is being taken away from the Attorney General and given; it had never said so. [**Mr. Nandlall:** It says so.] It does not say so! The DPP section does not say so. But you do not understand your constitutional context and your constitutional text. Hon Member Mr. Nandlall has always had a problem with that.

Now, I just want to make mention of this additional point as regards the history. In the 2002 Procurement Act, there was a no-objection that was given to Cabinet. That no-objection that was given to the Cabinet in the 2002 Act, the IMF, the World Bank and those who were supporting fiscal reconfiguration in this country by virtue of handing a couple million US dollars to transform the very system that was obviously in need of better shape said that they did not like this, and there was some international pressure.

But they agreed - Mr. Manzoor Nadir and all of them - that they are going to change the Procurement Act of 2002; that they are going to repeal it wholly and are going to come in 2003 and are going to put in this little thing here. It was not as if they were going into it with eyes closed; it was with eyes wide open. [**An Hon. Member:** It is almost identical.] That is what I am saying: it was substantially identical, except, Mr. Speaker, for that same Section 54. That Section 54 was more or less the Section 63 in the previous Bill and Act. They knew what it was all about.

I want to say this: we had always wanted - and over there always wanted - to have the Tender Board and its constituent parts, and above it we will have the Procurement Commission. That is

what Mr. Manzoor Nadir spoke about when I quoted him, then Mr. Kowlessar and Mr. Shaik Baksh. You should have heard what Mr. Shaik Baksh and a number of them said here. That was now going to be the structure, the hierarchy. In that hierarchy, in relation to matters that were to be dealt with in relation to procurement, that is, the actual award, who could object and who could not, it was quite clear that once the Government's policy will say that they would like to do a Cheddi Jagan International Airport expansion and they are going to propose in the capital project this year \$52 million to do that. What then is supposed to happen is that the Tender Board is supposed to now put it out for tender, not Mr. Roger Luncheon or anybody, and then bidders will bid.

There might be occasions when there might be singular bids or singular arrangements because the Act has all of that. The whole idea is that assuming now that there are five bidders and one is aggrieved, but, moreover, Mr. Speaker, not only if the competitors are aggrieved, it is also if the public entity is aggrieved, they could go and state their complaints to the Procurement Commission. We have here that even a public entity could complain. And if that public entity is Mr. Robeson Benn's ministry, that says they are going to look after that, they could tell the Tender Board that the fact that you gave it to Mr. Ramjattan as against China Harbour, the Ministry is objecting and will make a complaint. Where is that complaint supposed to be heard?

The complaint is to be heard by the Procurement Commission. Internally, it will come first. Most of the evaluation that they are talking about there will be arithmetical; it is the smaller things. Why did we pass the Procurement Act? Is it so that the Evaluation Committee is going to hear the appeal? That is why we are not getting a proper grasp by those Members over there. It is the Procurement Commission that one will go to for purposes of ensuring that one's complaint is heard. When the complaint is heard, the Commission will then propose remedial action. That is why the remedial action, prior to 2001, was the Cabinet because there was no Bill or Act prior to 2001.

**Mr. Benn:** Mr. Speaker, the Hon. Member, just now, called the name of a company which is in contract with the Government of Guyana.

**Mr. Speaker:** Which one is this?

**Mr. Benn:** He said China Harbour.



**Mr. Speaker:** No, Mr. Ramjattan said you gave it to Mr. Ramjattan but you did not give it to China Harbour. In other words, he put China Harbour in a favourable light. And he said the accusation could be that he got the contract and China Harbour did not and that could lead to a complaint.

**Mr. Benn:** Mr. Speaker, the Hon. Member, I believe, has no reason to call the name of the company. And secondly, Mr. Speaker, the Hon. Member, Moses Nagamootoo, sitting next to him said that they brought a suitcase of money.

**Mr. Speaker:** I did not hear that.

**Mr. Benn:** Mr. Speaker, the Hon. Members in the corner here are succinctly inferring wrongdoing with respect to this company and the contract.

**Mr. Speaker:** The point is noted.

**Mr. Benn:** I would like the remarks to be withdrawn.

**Mr. Speaker:** In the first instance, I did not hear - and I have asked the person seated next to me - any reference to any bag of money, but Members, as we exchange between each other, let us avoid these statements. There is nothing to be struck out because it was not read or spoken into the record.

In the second instance, while Mr. Ramjattan said that the objection could be that he gets the contract and not... It could never mean that he was speaking about a company in a disparaging way. In any event, Mr. Ramjattan, as you give your examples, use either examples in other places or use fictitious [*inaudible*]. In no way was the comment taken in a disparaging way.

**Mr. Benn:** Mr. Speaker, the Hon. Member had no reason to mention the name of the company but to infer wrongdoing.

**Mr. Speaker:** No. Hon. Member, with the greatest of respect, Mr. Ramjattan said that if the contract was given to him without good reason and not to the one that was better qualified, i.e. China Harbour, that could lead to a miscarriage of justice. I see in no way that it was meant to be disparaging.

Mr. Ramjattan, as you are one of the more experienced Members of the House, a skilful debater, try to avoid, as I said, references to existing, extant companies that could cast any shadow of doubt or suspicion over them.

**Mr. Ramjattan:** Thank you very much.

There is a huge point made of the fact that we in this Government, and that is the People's Progressive Party/Civic (PPP/C) Members speaking, must have what is called the fiduciary role that we must play so that we must be accountable and all of that. Mr. Speaker, when our Constitution speaks, we must listen to it because that is where all power emanates. If indeed because of certain crises that happened in the 1999 to 2001 period, we then amended our Constitution to delete certain powers of the Executive by virtue of specifying them in a Procurement Commission, then that fiduciary relationship in relation to procurement obviously is taken away. This is what they do not want to understand.

They are saying, and I will give this as the analogy, that if the people do not like the contract award and they want to complain, they could even go to the court of law. Indeed, we know what is called the prerogative writs, remedies and so on. They can go for a certain *certiorari* to quash, assuming the good judge then says that indeed that award that was made by the Tender Board was corrupt and this complainer, the plaintiff in this matter, who should get the contract, assuming he makes the award, or he takes it away, preferably. Is it not another body other than the Cabinet making a decision? It is another body and we have given inherent power in our court to make those remedial...

**Mr. Speaker:** There is a case of C. O. Williams of Barbados that is exactly on point.

**Mr. Ramjattan:** That is right. It is exactly on point. We cannot go and say to Mr. Ian Chang, assuming Mr. Chang is the judge, to say, "You cannot do that because you are taking away the Cabinet's role." Since when did the court get no-objection? It smacks of a misunderstanding, and a flawed understanding of our Constitution. It is important, Mr. Speaker, that we do not go amiss here by virtue of what those Members are saying, namely, that the law is wrong, the Constitution is wrong and all of that. I want to say our constitutional structure – its infrastructure, the entire framework here – was, when we passed that Procurement Act, that indeed, when it comes into operationalisation, Cabinet's role shall cease.

It cannot be that after 10 years, when you would have delayed and procrastinated and used all machinations and devices to ensure that the Procurement Commission does not come into operationalisation, and now when the Opposition is in a majority and can leverage its coming into existence and its operationalisation, you come to say Section 54(6) was all inherently contradictory! What is that? It is but a political ploy to use, because, had they the majority, they would have never come for all of that, but they now know that they are under pressure and that they want that.

Mr. Speaker, the purpose behind wanting that is for this reason. The Government could then, literally, get all the contracts awarded to whosoever it wants. It has a control mechanism in the appointment of the Tender Board and by virtue of what they now want with an objection that Tender Board will always want to watch over its shoulder and wonder what Cabinet will do. I better give this one because....

**Mr. Speaker:** Mr. Ramjattan, remember your time has expired. You will need to apply for an extension.

**Mr. Nagamootoo:** I ask that the Hon. Member be given fifteen minutes to conclude his speech.

*Question put, and agreed to.*

**Mr. Ramjattan:** I might not need all of that. The point is that we know what our country is. It is also because the substructure of what we call the Tender Board, whether it is regional, national or even local boards, is appointed by the Minister. It meant then we ought to have a hierarchy that will be appointed as the Constitution said. The Constitution makes it clear that they will be appointed largely... We know what consultation means in this country. The word meaningful is not in front of it. It never said advice of or recommendation, after consultation...

I want to make it very clear that the purpose of wanting a no-objection, which was objected to strenuously by the international donor community in 2002, and the reason why it was deleted in 2003, is now for purposes of ensuring, as I have just mentioned, who will get the contract. There is no if nor but about that. They want control and that is what this is all about. They will continue that control without a Procurement Commission. We are not going to allow that, not on the one occasion we have where we can leverage it coming into being.

I want to emphasise an earlier point of a very senior Minister then who knew about all these matters, Mr. Shaik Baksh, to make what I am talking about even clearer. They did not go with their eyes closed and did not know what they were doing. They were not quoting from Singapore and all of those other countries they are now quoting from. This is what Mr. Shaik Baksh said, and he was telling the People's National Congress (PNC) then. It is page 14/94 of the *Hansard* of Thursday, 19<sup>th</sup> June, 2003:

“The one issue that seems to be misunderstood mostly is the role of the Cabinet in all of this, and it is clear, you have an Amendment.”

Do you know what amendment he was talking about, Mr. Speaker? He was talking about Section 54(6).

“You must credit the Administration, that we are flexible. We have an Amendment which the Minister will elaborate on. I hope that with that Amendment you will see the wisdom of supporting this Bill.”

So they knew what they were talking about.

“Now what has been said here? The Cabinet has a minimal role, but it is our duty to the electorate of this country that, in the short run until the National Procurement Commission comes on-stream, there is a teething period, you will recognize that. They have to set up the Secretariat, and all of these things, and therefore, over time, the Cabinet's role will fade away, so to speak. The National Procurement Commission will take hold. Do not be afraid over there PNC, they will exercise their constitutional responsibility as laid down in the functions of that Commission [as per the Constitution]. It will be coming, and it says here, to promote the goal of progressively phasing out Cabinet's involvement, and decentralising the procurement process.”

It is here in black and white.

[**Mr. Nandlall:** It is an award.] Whatever it is – an award or proposed award – it goes to Cabinet. Cabinet must not block it. And that is what you are talking about. [*Interruption*] May I be allowed to utilise my fifteen minutes in fifteen minutes. This is what it is.

“You must understand that this will come in time. So the Cabinet has no vested interest in holding on to these kinds of powers, but we have to give the Procurement Commission an opportunity to strengthen itself and so on. So these are certain important things.”

Mr. Shaik Baksh said that. We knew when we put in here this Subsection (6) and we voted for Subsection (6). I voted for it after it was amended. If I may say so and it will be on the record, Mr. Speaker, the learned Attorney General at that time asked my assistance to draft it so that we can capture the intent. Of course the Speaker then, Mr. Ralph Ramkarran, agreed. When we did this amendment, Ms. Gail Teixeira said, “Wonderful amendment.” I remember that.

For all those reasons, Mr. Speaker, this must not be deleted. I had a role to play. They would want to say it was a bad role this day. Whatever it is, it was a role that all of them commended. Ten years thereafter, they now want to delete it so that they could maintain the monopoly power and the *control freakism* will continue. It will not continue!

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

**Mr. Speaker:** Hon. Members, I propose that in the interest of time we conclude this debate and then we will take a 15-minute recess and then resume on the other matters. If Members wish to be refreshed, I am advised that some snacks have arrived. There are coffee and other refreshments in the... [*Interruption*]

Mr. Ramjattan, you should hear the rebuttal but Members are free to go and refresh themselves and return. I noticed on that note that Mr. Ramjattan left when I mentioned refreshments.

Hon. Attorney General, you may proceed.

**Mr. Nandlall:** Thank you very much, Sir. A lot has been said in this debate on the question of our procurement process and our procurement procedures. A volume of misinformation has been disseminated in this debate and I specifically would like to refer to the misinformation that came from the Hon. Members, Mr. Carl Greenidge and Mr. Khemraj Ramjattan.

Sir, I want to begin by saying that the public procurement process, both in terms of legislation and administrative procedure, in Guyana, stands as one of the most transparent, accountable and fair, with the least executive government involvement in the entire English speaking Caribbean.

7.19 p.m.

When one listens to the Hon. Member, Mr. Carl Greenidge, one believes we have a system here where the Minister picks up the phone and directs a contract to be awarded to Mary Jane. That is the distinct impression we get. [**Mr. Greenidge:** That is how it works.] I am told that that is how it works. That is the level of misinformation.

The entire system of public procurement that employs several dozen Guyanese public servants have been rendered non-existent and have been insulted by the Members of this Parliament. They do not exist. They are puppets taking corrupt instructions from the Government of the day. That is what the Members of Parliament are saying.

We have, Your Honour, a Procurement Act that spans some 46 pages. It establishes an entire system of procurement, starting from the 65 Neighbourhood Democratic Councils (NDCs) level right up to Central Government. Each tier of the system is manned by public servants and persons involved in the area of activity. These persons are appointed by a board, not a Minister. They are situated right across the length and breadth of this country. That entire superstructure which administers procurement in this country has been reduced to a corrupt outfit of the Executive Government by the Hon. Member, Mr. Carl Greenidge. That is what they are speaking about in this National Assembly. Mr. DeClu and all the other people who work at the central Tender Board are all corrupt officers of Dr. Ashni Singh.

This legislation - and it is obvious that it has not been read - when compared to other legislations of the Caribbean stands out as one of the most elaborate structures for public procurement. It speaks of the public tendering of bids, the public opening of those bids, where the press is invited and there is public award of contracts. All of that has been ignored and all we keep hearing is that it is some poppy show going on with procurement in Guyana. It is really sad when the National Assembly can indict so many public servants in the manner that this National Assembly has done today.

I repeat that the legislation has not been read by those who have spoken about it. When one goes through a part from the elaborate legislation itself, there are regulations attached which regulate the rules by which tenders are done, by which they are received and by which they are assessed. There is a process built in the legislation that allows for a protest to be lodged if there is a person

aggrieved by the bidding procedure. One does not hear anything about that. In addition to that, the National Procurement and Tender Administration Board has prepared manuals which are available to the public and available on the website. [**An Hon. Member:** That is irrelevant.] It is irrelevant because you do not care to understand the system. You are a relic of the past. This is a procurement manual prepared by the National Tender Board.

**Mr. Greenidge:** Mr. Speaker, apart from not knowing about relics of the future, I wish to draw your attention to the fact that the Minister is using unparliamentary language.

**Mr. Nandlall:** I was not speaking about him. I was speaking about the procurement process which we are changing; it is a relic.

**Mr. Speaker:** Hon. Member, though the word ‘relic’ is not listed in our glossary of unparliamentary terms, the context in which it was used... You said, “you are”. The Hon. Member, Mr. Sharma, today, made references to the party or the Government being in the past, but in this case there was a particular reference to Mr. Greenidge saying “You are a relic of the past”. That, as we know...

**Mr. Nandlall:** I was not referring to Mr. Greenidge.

**Mr. Speaker:** Because you were not, I need you to clarify and to withdraw it. It was a direct response to Mr. Greenidge. In fact, you also pointed to him.

**Mr. Nandlall:** I was not referring to Mr. Greenidge.

**Mr. Speaker:** But, you did point to him.

**Mr. Nandlall:** Pardon me.

**Mr. Speaker:** You did point to Mr. Greenidge when you said so.

**Mr. Nandlall:** I may have, but I was not referring to him.

Sir, the point I was making...

**Mr. Speaker:** No, the point I am making is that insofar as you pointed to Mr. Greenidge, as you said so, I am taking it to mean that you meant him and I am asking you to withdraw it.

**Mr. Nandlall:** Sir, I was looking to see whether Mr. Ramjattan came back.

**Mr. Speaker:** No.

**Mr. Nandlall:** Sir, if it is felt that I said that Mr. Greenidge is a relic, I withdraw that.

Sir, the point I am making is that we have, prepared by the National Procurement and Tender Administration Board a preponderance of documents. This one is called the Procurement Manual, prepared since 2006. It explains the Act in a most detailed way. It explains how every aspect of the Act is to function and how the responsibilities which are devolved by the Act upon various officers are to be discharged. So, anyone who is unaware of how procurement is done can consult anyone of these manuals.

There is another one called Standard Evaluation Criteria Handbook for Prequalification and Bidding. This is another document that seeks to deal with the issue of prequalification as it is done under our procurement system. There is another one called Procedure Manual, which explains how tenders are processed under our public procurement system. There is another one called Guide to Public Procurement Procedures. All of these manuals are intended to inform those who care to be informed of how public procurement is done in Guyana. So, the impression that is being conveyed that public procurement is clouded in secrecy is one that is a figment of people's imagination and one that is a fabrication.

We have accorded the highest treatment of our public procurement procedures by putting it as part of our constitutional structure. That is the first thing that Guyana, as a country, should take compliment for. We have put public procurement in our supreme law. [Mr. B. Williams: Then ignored it.] I will deal with that just now. We have created for the establishment of the Public Procurement Commission that we have heard so much about this evening.

What we have heard from our learned Friend, Hon. Mr. Ramjattan, is a complete misreading of the Constitution. The Constitution, the Public Procurement Commission, Article 212W that creates it, states this:

“There shall be a Public Procurement Commission the purpose of which is to monitor public procurement and the procedure therefore in order to ensure that the procurement of



goods, services and execution of works are conducted in a fair, equitable, transparent competitive and cost effective manner...”

It is to monitor. [Mr. Ramjattan: Go to the function.] The function cannot depart from the instrument of creation. That is the first thing. The function will expand from this; it cannot deviate from this. So, Sir, it is a monitoring body. [Dr. Singh: It is an oversight body.] It is an oversight body. That is the first thing that we must understand. It is not part of the procurement process; it is at the apex of it. It is to oversee that which is beneath it. That is what you have to understand.

I am going to go to the functions. Procurement involves from the beginning of the tender to the end of the tender. The Procurement Commission becomes involved at the end of the process, if there is a complaint lodged. Only then its process is activated. Only then is jurisdiction invoked. This is simple English language.

All the functions which have been ascribed to this Commission in the Constitution lend to the argument and to the fact that it is an oversight monitoring body - every one of the function. This Commission cannot...and it also has advisory functions. If I am to go through the function one by one, I will do that because of the amount of misinformation which has been peddled. Article 212 AA(1):

“(a) Monitor and review the functioning of all public procurement systems...”

It is to monitor and review, not to get involved in the functioning. It is not to usurp the functions of the procurement entities, but to monitor and review the functions. That is the first role.

“(b) promote awareness of the rules, procedures and special requirements of the procurement process among suppliers, contractors and public bodies;”

So, there is a public awareness component to its function. That is not getting involved in the procurement process.

“(c) safeguard the national interest in public procurement matters, having due regard to any international obligations;”

That is not putting it in the procurement process.

“(d) monitor the performance of procurement bodies with respect to adherence to regulations and efficiency...”

Again, this is a monitoring function.

“(e) approve of procedures for public procurement, disseminate rules and procedures...”

Again, this is a monitoring oversight function, issuing rules and making procedures for the procurement body to operate under. It is not for them to get involved. I am moving on.

“(f) monitor and review all legislation, policies and measures for compliance with the objects and matters under its purview and report the need for any legislation to the National Assembly;”

Again I say, to monitor, to review and to advise. There is nothing to get involved in the actual procurement activities. I am going on.

“(g) monitor and review the procurement procedures of the ministerial, regional, and national procurement entities as well as those of project execution units;”

Again, it is to monitor and review.

“(h) investigate complaints from suppliers, contractors and public entities and propose remedial action;”

That is what I am saying. [*Interruption*] I will wait because the English language is quite formidable tonight for us to understand. “Investigate”, but I said it is an oversight body. It is a monitoring body. It has an investigative function. It is to investigate complaints from suppliers, contractors and public entities, and propose remedial actions. To propose remedial action is that if... [*Interruption*]

**Mr. Speaker:** Allow the Minister to speak please. Continue Minister.

**Mr. Nandlall:** Sir, what this section means is that if a complaint is lodged to the Procurement Commission, it has a mandate to investigate. [**Mr. B. Williams:** Only if a complaint is lodged.] Yes! [**Mr. B. Williams:** No.] It is to investigate complaints from suppliers. I do not understand. Your Honour, can you read with me? English language seems to be becoming

progressively more difficult tonight. It is to investigate cases of irregularities, complaints from suppliers, contractors and public entities, and to propose remedial actions.

Somebody has to activate the process by a complaint. An investigation is then launched. A finding is then made that a wrong may or may not have been committed. When that finding is made, a remedial action is recommended. That remedial action can never be to take the contract from A and give it to B. It can never mean that. [Mr. B. Williams: Why not? What is the matter with you?] It will obviously mean sending it back to the procurement process – obviously! If it has the power to take away a contract from A and give it to B, it means that it is usurping the statutory functions of the Tender Board.

**Mr. Speaker:** Hon. Attorney General, how do you equate this Commission, for example, with the Public Utilities Commission, which has investigatory powers and also is a creature of statute?

**Mr. Nandlall:** I do not know the language. I have to look at the language of that. I am saying that when there is a statutory body created and there is an oversight body to oversight the functioning of that statutory body, that oversight body can never usurp the statutory functions of that statutory body. It cannot be. [Mr. B. Williams: Read (j) now.]

“(j) initiate investigations to facilitate the effective functioning of public procurement systems;”

Again, on their own, they can move into areas to improve the system. I am not disputing that. It can enlist the aids of persons *et cetera* to do so. It goes on in that same vein. So, the argument, Sir, that this is a body that can usurp the functions of the Tender Board is completely wrong. I will draw an analogy since somebody is shouting across the aisle about the Court.

**Mr. Speaker:** Okay, one second. Mr. Ramjattan, I think when you spoke there was rapt attention paid. Allow the Minister to speak please.

**Mr. Nandlall:** Sir, I have in my hand a judgement of the Chief Justice. This case was filed on the 13<sup>th</sup> September, 2013 by BK International Inc. There is a written judgement already handed down on the 5<sup>th</sup> December 2013. It challenges the procurement process conducted by the Guyana Geology and Mines Commission (GGMC) in respect of a road somewhere in Region 7. I pause here to say that those who feel that there is no remedy available against the procurement system,

I have in my hand evidence to show that in two months the High Court delivered a judgement and quashed an award done by the GGMC.

The point I want to make is that the Chief Justice in this case did not take the contract from the awardee and give it to the applicant. The Chief Justice found here that the process used by the GGMC was wrong and he quashed the decision.

**Mr. Speaker:** Did the applicant pray to have the contract passed to him or it?

**Mr. Nandlall:** Yes one of the orders, prerogative writ, was compelling them...

**Mr. Speaker:** ...to be quashed from (a) and given to (b)?

**Mr. Nandlall:** Yes, and the Chief Justice said that he does not have that. He sent it back to be done. That is what the Constitution contemplates. The Constitution will never give an oversight body the function to perform the functions assigned by a statute. That is heresy. Remedial action can never be usurping the functions of the statutory body. [*Interruption*] Sir, I will have to accept that we read and understand the English language differently. I will have to accept that and move on.

Reference has been made to the Caribbean, where Guyana's system has been compared with several jurisdictions in the Caribbean. In 2012, there was a procurement conference held at the Hyatt Regency Hotel in Trinidad and Tobago. It was organised by the Caribbean Procurement Institute. At this forum, there was a review of all procurement systems in the English speaking Caribbean. In fact, it was CARICOM countries. The countries examined were Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Trinidad and Tobago, St. Vincent and the Grenadines, St. Lucia - the entire Caribbean,.

This is what they said about Guyana: Guyana is one of three CARICOM member States which undertook significant public sector procurement reform. Jamaica and Belize are the other two member states. Sir, as I said, we stand out. It speaks about the Public Procurement Commission. It states this:

“In 2000, the Guyana Constitution was amended to provide for a public sector procurement regime for the first time and to provide for the creation of a Public

Procurement Commission as an oversight body. The Constitution empowers the commission to monitor and review all public procurement systems to ensure that they are in accordance with the law.”

It is not to perform the functions of procurement; it is to monitor and review. It continues to explain all the things that we have done.

Sir, Section 54, as we heard was inserting on the floor, the reasons, et cetera...I would not want to revisit it. All that this amendment seeks to do is to delete Section 54(6). Section 54(6) states that Cabinet’s involvement under this section shall cease upon the constitution of the Public Procurement Commission, except in relation to those matters referred to in subsection one, which are pending. If this is taken out...

The impression that I got from Mr. Ramjattan is that this amendment somehow does two things: one, it increases the role of Government in the procurement process or it increases the role of Cabinet in the procurement process. That is the first point he has made about ten times. That is wrong. Nowhere in this does that.

The second point he made is that somehow or the other Cabinet remaining in the process somehow diminishes the role and functions of the Public Procurement Commission. Again, this is another fallacy. The Public Procurement Commission remains intact. It has nothing to do with this amendment. Cabinet’s role, if the amendment is passed and continues, and Cabinet role continues in the no-objection phase, will also be monitored and reviewed by the Public Procurement Commission. Cabinet would be, in a limited way, part of the procurement process and procedure that the Public Procurement Commission would oversight and monitor. All the recommendations which emanate from that Commission and all the investigations which are conducted by that Commission will involve the investigation of Cabinet. I do not understand what the big thing is if Cabinet’s no-objection role is included.

Sir, let me say that the Government’s position is that if Cabinet’s role is excluded, then we will not have a Public Procurement Commission in the near future. The constitutional requirements are that there must be a two-third for the composition of the Commission. So, if we are speaking of compromise politics and we want to build national consensus, this is the most innocuous role

that Cabinet has in the procurement process in the entire English speaking Caribbean, which exists in Guyana.

My Friend, Dr. Singh, spoke of the position in Jamaica, where Cabinet awards the contract. It not only awards the contract. The award comes as a result of a recommendation from a Cabinet sub-committee. So, it is not Cabinet awarding alone. The recommendation upon which Cabinet acts emanates out of a Cabinet sub-committee. So, executive involvement is deep and entrenched in Jamaica. The recommendation comes from a sub-committee. [Mr. B. Williams: Sir, I do not understand what *[Inaudible]* It is not my fault that you do not understand it. I am telling you what the procedure is. [Mr. B. Williams: A cabinet sub-committee is part of the Cabinet.] Sir, as I said, English language is becoming extraordinarily difficult.

I am reading, Sir, from the Handbook of Public Sector Procurement Procedures. This is what it states at 2.22:

“The infrastructure sub-committee of Cabinet is a sub-committee of Cabinet established to recommend contracts for the approval of Cabinet.”

That is Jamaica. So deep and embedded is the procedure in Jamaica. I want to go to Barbados. Barbados is another country where... Your Honour, you made reference to a case when you were speaking to Mr. Ramjattan...

7.49 p.m.

The case is C.O. Williams Construction Limited vs. Donald George Blackman, Minister of Transport and Work and the Attorney General of Barbados. This is a case that went to the Privy Council. Cabinet had awarded the contract of a highway in Barbados. In this case, a particular contractor felt aggrieved by Cabinet’s award and went by way of certiorari for a judicial review of Cabinet’s decision. The first issue that arose was whether Cabinet’s decision can be reviewed. The Privy Council held that where Cabinet is performing its Executive function and because of secrecy etcetera that decision is not reviewable by the courts. But whenever Cabinet embarks upon the performance of functions like the awarding of contracts, which involves millions of dollars, their decision is reviewable, and the decision was reviewed. However, what is important is the Privy Council’s examination of the Bajan system. This is what is says...

**Mr. Speaker:** Before you venture there you would need an extension. I would not want to interrupt you while you are quoting.

**Mr. Hinds:** Mr. Speaker, I move that the Hon. Attorney General be granted fifteen minutes to continue his presentation.

*Motion put and carried.*

**Mr. Nandlall:** They first established the statutes under which Cabinet is created.

“There shall be a Cabinet for Barbados which shall consist of the Prime Minister and not less than five ministers appointed...”

“The Cabinet shall be the principle instrument of policy and shall be charged with general directions and control of the Government of Barbados and shall collectively be responsible therefore for Parliament.

Unlike any United Kingdom legislation of which their lordships are aware, some legislation in Barbados confers specific statutory functions on Cabinet as such, thus specifically Section 39 of the Financial Administration and Audit Act delegates to Cabinet power to legislate over an extensive field in relation to the control of public finance and it is upon this delegated legislation made in the exercise of this power which in turn assigns specific functions to Cabinet.”

So there is a system where Parliament by a delegated legislation has assigned to Cabinet the power to make rules over a whole set of matters dealing with public expenditure. That is the length and breadth of the Executive power in Barbados.

Part 12 of the 1971 rules is headed Governments Contract. The code is to enact in an elaborate way by which tenders are done. I do not have to read all except one of the rules. Rule 148 provides:

“The committee shall send the tenders and its recommendations thereon to the head of department who shall submit the recommendation to the Minister for acceptance. If the Minister does not accept the recommendation of the committee the matter shall be submitted to Cabinet for final decision.”

That is how tenders are awarded in Barbados. It goes first to the subject Minister and the appellate procedure of the Minister is to the Cabinet. That is the depth of Executive involvement in the Caribbean. I chose Jamaica and I chose Barbados.

**Mr. Speaker:** That is correct, but I think there is an excellent series, Attorney General, by a Dr. Ghanie in Trinidad in which he started to argue about how we are drifting from the traditional Westminster White Hall model. Certainly the process we embarked on in 1997 to 2001 with our reforms took us further away from that tradition. I still hold the view that the Executive should have the right to implement and have power over moneys. However, certainly, we are not sitting squarely as other jurisdictions are when it comes to the Westminster model.

**Mr. Nandlall:** I am juxtaposing Guyana to the rest of the Caribbean to show the minimum role that exists now for Cabinet to make my case for that role to continue. That is the point that I am making. If we are going to jeopardise all the glories that this Commission will bring, based upon what we have heard, by rejecting this amendment then all that we have engaged in is a waste of time. That is the point I am making.

My friend Mr. Ramjattan was quoting from the Hansard. I also have a copy of the Hansard, and I have his speech as well. When Mr. Ramjattan spoke here he was speaking about a bill which did not have Section 54(6). That section came at the end of the debate. [**Mr. Ramjattan:** The amendment was before the Parliament.] No. When one reads Mr. Ramjattan speech this is what he said about the Minister's appointment. He stood up there and criticised the Minister's power to appoint members to the tender board. Thursday 19<sup>th</sup>, 2003 page 14/103:

“I wish to make the point that this Bill is in accordance with the Constitution Reform Committee (the Bill then was in accordance with the Constitution) and the Commission that we set up thereafter and even with the provisions that were placed with the amendment of 2001.”

At that time that Bill did not have the Section 54(6), but at that time it complied with all the constitutional requirements according to Mr. Ramjattan. He goes on:

“We have to bear in mind what indeed the framers of the constitution created and what they wanted in this very important area of procurement. It is not simply that the



amendment of 2001 has been desecrated. When we are going to make allegations that too much power is in the hands of the Minister we must create alternatives but where else... I use to, as a little boy, listen to Mr. Forbes Burnham in the National Assembly and he used to ask the question, "Where must that residual power reside if not in the Minister?"

So why are you criticising the Minister now? You stood there and spoke about ten minutes about the Minister's power to advise the board. You were asking "Where do you want us to reside the power if not in the Minister? That is what you were asking the People's National Congress (PNC) in 2003.

**Mr. Speaker:** Address the Chair.

**Mr. Nandlall:** He says this:

"Where must we reside that residual power if not in the Minister? He used to ask emphatically (still quoting Forbes Burnham) if we should have it over in the Opposition. I am certain Mr. Robert Corbin would know that because to be accountable it means you have to be responsible."

That is the point that this Minister is making; to be accountable you have to be responsible. He is lecturing Mr. Robert Corbin. He said to Mr. Corbin:

"I am certain Mr. Corbin would know because to be accountable means you have to have the responsibility, and who else in the National Assembly should have the responsible but the Minister."

And as I said, the amendment was not before them at that time. He was speaking in relation to a bill without the inclusion. He goes on:

"Mr. Speaker, whatever it is the accountability question in the National Assembly must be in the hands of the Minister."

But more than that, the Bill creates a platform of transparency and accountability, full-stop applause.

The Minister must be accountable.

Recall, I had the occasion to produce a copy of the *Hansard* to reveal how the neighbour of Mr. Ramjattan voted once in relation to a certain presidential matter. I have to produce Mr. Ramjattan's speech again to show that he himself said the Minister must have the power to make appointments. The Minister remains responsible because he is accountable to the National Assembly. So when you take out Cabinet's role how are you going to make the Minister accountable for what he has no role for.

We cannot depart from the doctrine of separation of powers because it is the foundation upon which our Constitution is built. Our Constitution has three major edifices: one the legislature, two the judiciary and three the executive. In terms of distribution of functions the Executive is resided with the functions in respect of public finances. The Executive is responsible for public finances. It is accountable to Parliament and it is accountable to taxpayers of this country, how their moneys are spent. Over 90% of public expenditure is done by way of procurement. When you take Cabinet's role out of the procurement process you are leaving Cabinet exposed to a responsibility without any role. That is a transgression of the doctrine of separation of powers.

Sir, if one looks at Article 103 of the Constitution. The Executive authority resides with the President; then the established offices of the various Ministers. Then I go straight to Article 106.

“There shall be a Cabinet for Guyana which shall consist of the President, the Prime Minister, Vice President...” et cetera.

Article 106(2):

“The Cabinet shall aid and advise the President in the general direction and control of the government and shall be collectively responsible therefore to Parliament.”

So Cabinet, not even the Ministers individually, is responsible to the National Assembly for moneys expended. So when Cabinet's role is taken out of the procurement process, as limited as it is, Article 102 says Cabinet is accountable to Parliament in relation to public expenditure, but Cabinet has played no role in the expenditure of the money.

The Government's position is not based upon any whimsical position. The Government position is deeply rooted in a constitutional principle. It is that you cannot hold, as the Constitution currently does, Cabinet accountable and then take away with the other hand Cabinet's role and

function. You cannot do that. Cabinet's role in the manner in which it is contemplated by this Bill is extremely limited. In fact it is the most minimal role that Cabinet plays in the entire English speaking Caribbean in relation to procurement. That is why if we are interested in the establishment of this panacea called the Public Procurement Commission, because all powers seem to be ascribed to this body: this body is supposed to bring all solutions to the ills afflicting procurement in this country. Well, I am here to say if this Bill is rejected then the Procurement Commission will not come into force.

Thank you very much. [*Applause*]

**Mr. Speaker:** Hon. Members it is 8.00 p.m. and the Hon. Minister of Finance will reply. We will take a very short break because we have two Bills and a Motion to go. And Christmas beckons next week. I am told some members will be leaving the country tomorrow.

**Dr. Singh (replying):** Thank you very much Mr. Speaker. Permit me to thank my colleagues on both sides of this House who have contributed to the debate on this Bill thus far, and in particular my colleagues on this side of the House for the customary competent manner in which the merits of this bill were laid abundantly clear before the people of our country.

I will confess my disappointment that my colleagues on that side of the House were unable to be swayed by our arguments. In fact, in some rather striking instances they departed even from positions they had previously taken. Nowhere was this better illustrated than in the presentation made by the Hon. Member Mr. Ramjattan who had on a previous occasion spoken very clearly in rebutting no less a person than the then distinguished Leader of the Opposition, Mr. Robert Corbin, who at the time had alluded to what he perceived to be some desecration of the 2001 Constitution amendments.

In direct response to Mr. Corbin's arguments Mr. Ramjattan made the arguments quoted by the Hon. Attorney General which I will not repeat, except to say that the thrust of his argument was that responsibility must rest with whom we shall hold accountable. For as long as we shall hold the Minister accountable, authority must be vested in the Minister. [*Interruption*] The Procurement Commission was already in place in the constitutional provisions. Mr. Ramjattan was speaking at a time when the status of the constitutional commission was no different from its status today. It was already provided for in our Constitution but yet to be appointed. So in that

respect 2003 was no different from today. Yet Mr. Ramjattan saw it fit, and I feel I must repeat for emphasis what he said.

“I am certain Mr. Corbin would know (lecturing the distinguished Leader of the Opposition) that because to be accountable it means you have to have the responsibility, and who else in a National Assembly should have the responsibility but the Minister.”

I must confess that it is a rather unfortunate argument when political leaders of this country will tender arguments of convenience; arguments not grounded in conviction or in principle or in what is right against what is wrong, but arguments of political convenience. In 2003, Mr. Ramjattan had no difficulty whatsoever advocating ministerial authority and now, conveniently, Mr. Ramjattan casts those arguments aside. Were we even to give him the benefit of the doubt and say, perhaps, he has forgotten we know that he is in possession of the *Hansard*, because he rather conveniently quoted from other sections of the *Hansard* of the very sitting of this National Assembly.

So I believe that much has been disclosed tonight not only as it relates to procurement, and matters of procurement and accountability, and the structure of our procurement legislation, but much has been disclosed too about the manner in which some Members of this Hon. House choose and craft their arguments. I would say it is most unfortunate, this display of abandonment of principle in favour of political opportunity. The fact of the matter is that the Cabinet is clothed with authority and responsibility to this National Assembly.

The Hon. Attorney General alluded to the constitutional article that speaks of Cabinet’s collective responsibility and cabinet’s responsibility to this House. How will we hold Cabinet accountable if we say to Cabinet you have no role? This is the core of the issue as I said earlier. There must be a reason why jurisdictions around the world have vested their cabinets with authority and responsibility and a role to play in functions such as this. I hear our colleagues on that side of the House saying that arguing that Cabinet must be clothed with such authority somehow insinuates that the Cabinet is wrong. We are not saying that. [*Interruption*] Absolutely not; no one has said that. If you cannot be faithful to your own word, Sir, please do not put words in other people’s mouths. Nobody has said that. Let me say that there must be a reason and the

reason is simple. In Jamaica, Barbados and so many other jurisdictions – we heard about Singapore, Canada, and Australia – it has to do with the essence of accountability.

Let us examine the main arguments that have been made. This amendment we seek today does not in any way increase Cabinet's involvement in the process. That has not been disputed, it has not even been disagreed with; it has certainly not been disproven. The preservation of the Cabinet no objection role does not in any way diminishes the functions or limits the discharge of the functions of the Public Procurement Commission. Those functions remain intact and pristine. That has not been disputed, disagreed with, debunked or disproven. That jurisdictions around the world have vested their cabinets with similar authority has not been disproven or even seriously disputed. The argument that there is a principle that attaches accountability to responsibility has not been addressed by our colleagues on that side of the House. None of these arguments have been addressed in any direct or substantial way. Instead there has been the customary resort to anecdote and hyperbole, speculation and political titillation. This has been the approach of the Opposition on this matter.

Mr. Speaker, I have had a number of discussions on this proposed amendment with various stakeholders across the country. I recall being asked a question by a senior member of a large representative stakeholder group in Guyana. I am speaking of the Private Sector Commission. **[Interruption]** Mr. Nagamootoo is trying to distract me from my arguments. Do you know what I told them today?

**Mr. Speaker:** Has he succeeded?

**Dr. Singh:** I must resist the temptation. Mr. Speaker, I do not know what Mr. Nagamootoo is insinuating, but I had several conversations with several stakeholder groups. I was asked in a very direct way were the positions to be reversed, say your colleague on that side of the House, Mr. Greenidge, to be sitting where I sit today... **[Interruption]** This is the question I was asked: What would my position be on the Cabinet no objection were my position to be reversed with that of Mr. Greenidge, were Mr. Greenidge to be sitting where I am and I to be sitting where Mr. Greenidge is? My response was as follows: were the people of Guyana ever to be visited by this most calamitous of eventualities – I see the Leader of the Opposition struggling to restrain the inevitable smile he will break into shortly – I would most certainly insist that the Cabinet's no

objection be preserved. Why? I would want to be able to hold Mr. Greenidge accountable. I would not want Mr. Greenidge to be able to say, “I am not involved; I did not play any role, so you cannot speak to me, go and speak to the Public Procurement Commission.” I would want to be able to hold Mr. Greenidge accountable, were he sitting here and I sitting there, Sir. So, I would insist.

*8.19 p.m.*

Were the Cabinet not to be involved Mr. Greenidge would be able to be like Mr. Pontius Pilate. He would be able to wash his hands and say, “It is not me, it is the People’s Progressive Party Civic (PPP/C).” I would not want to afford Mr. Greenidge such immunity, Sir. I would want to be able to hold him accountable and that was my answer to it. [*Interruption*]

There is a popular character – I think they are called sitcoms, situational comedies – there is a very popular character in a very popular sitcom, I believe his name is Mr. Urkel. He too wrings his hands and say, “Did I do that?” Mr. Speaker, that was my response to the said question.

Let us examine the alternative. Let us say that the Cabinet did not have the right of “no objection”. Imagine the state of the world; imagine the alternative. The Cabinet has no right of “no objection”; the PPP/C has been appointed and the Cabinet’s “no objection” is extinguished. The Cabinet has “no objection”. Let us imagine the evolution of this state of the world. Recall that the PPP/C is an entity of finite life; recall that the PPP/C is a body of finite life - everyone’s term of office is finite... [**Mr. Ramjattan:** No it is permanent in the Constitution.] They are finite Sir. [**Mr. Ramjattan:** The Minister is also finite too.] Let me finish my point, Sir. Recall that the PPP/C is an entity with finite life. I believe a person serves a term of three years and then they are renewed for further three years, but they cannot be renewed beyond the second term, if I am not mistaken. In fact, I believe that some members are appointed for four years in the first instance so that there is a staggering.

If is inevitable that at some point in time members of the PPP/C will find their terms of office expired and find themselves ineligible for reappointment. Imagine the following situation where one has the PPP/C that with the passage of time has had terms of office of its individual members extinguished and this House finds itself in a situation where it is incapable of arriving at point where a 75% majority is achievable. That is not an inconceivable position. In fact, we speak now

about the President appointing the PPP/C, there is a hurdle still to be crossed and that is the attainment of the two thirds majority in this House.

Imagine a situation where we have achieved the two thirds majority and we appoint the PPP/C and the Cabinet's role is extinguished. The first sets of members have had their terms of office expired and so the PPP/C is no longer completely constituted. This House finds itself in a situation where it is incapable of mustering the required two-thirds majority to renew or to make new appointments, so there is an incomplete constituted Public Procurement Commission. Where does this nation find itself? This nation finds itself then without a fully constituted Public Procurement Commission and in the limit, without a Public Procurement Commission because everyone's office would have been expired. It finds itself where the Cabinet has no involvement in the procurement process and so it finds itself in a situation far worse than where we are today. We will not be in a position to even say the Cabinet is to be held responsible. That is not an inconceivable eventually, Sir. That is the reality.

Our argument is that the role of constitutional Public Procurement Commission remains intact. We are not arguing for a diminution of that role. The role of that Commission remains intact. We are arguing that that body is, like the Attorney General said it best when he said that that body is at the apex of the system. It is an oversight entity. It cannot review itself. It cannot monitor what it did itself. One cannot close, as Mr. Ramjattan seems to be suggesting, I trust that he will forgive me if I misinterpreted him, but at one point in time I thought he was suggesting that the PPP/C should somehow play the role that the Cabinet is playing and that the PPP/C should be approving and granting "no objections" for contracts. I do not know if I understood him correctly. *[Interruption]*

How can you say to the PPP/C, "You are the entity that will be making or granting approvals for awards and by the way, the Constitution also says that you will be monitoring." Who will you be reviewing, is it yourself? Who will you be monitoring, is it yourself? The PPP/C cannot substitute for the Cabinet. Like I said, the Attorney General said it well; the PPP/C is, at the apex of the system, an oversight and monitoring body.

None of the substantive arguments made has been responded to. The fact of the matter is that the attempt to exclude Cabinet runs counter to the principle of accountability. It runs cardinally and

diametrically countered to the principle of accountability. One cannot hold accountable someone who plays no role – simple. [Mr. Nagamootoo: Is in awarding contracts?] In anything. If someone is running a company, they cannot hold someone accountable for a department that they have no responsibility for. They cannot be held accountable for the outcome of a transaction or process which they played no part in. This is simple – extremely simple. The world over clearly has learnt this lesson, except for our friends on that side of the House.

I do not believe that additional arguments need to be tendered. I have no doubt that there are other arguments available out there. I believe the case has been made compellingly in favour of the preservation of the Cabinet’s “no objection” in the Procurement Act. I believe that this is, like I said, a compelling case. I believe the merits of the Procurement (Amendment) Bill are evident when the substance of the Bill is examined.

I hope, notwithstanding the arguments made by my Colleagues on that side of the House, that this nation will not be subject to yet another instance of the might of numbers; the power of the majority of one. Defying reason; defying logic; and simply saying, “Even if it is right; even if it makes eminent sense, we will vote against it because we have the power to do so.” Mr. Speaker, with those words I commend this Bill to the House and I appeal, once again, for its unanimous passage. I move that the Procurement (Amendment) Bill 2013 be read the second time.

**Ms. Teixeira:** Mr. Speaker, under Standing Order 57 (2), I would like to amend the Hon. Minister’s motion that the Bill be now read a second time, by deleting the word “now” and changing that the Bill will now be read a second time within six months. Thank you.

**Mr. Speaker:** Hon. Members, there is a motion that we read the Bill a second time and there is also on the floor a proposal that the Bill be deferred for a six months period... [Mr. Ramjattan: I suggested that...] Oh, you did. Hon. Members, we have a proposal on the floor. It is now according to my instrument of time twenty five minutes after eight o’clock. Whether the parties wish to consider it, that is, this Bill, at the second reading, be postponed for six months. Very well I propose that we proceed on a fifteen minutes break. I may need to speak to the Chief Whips about time management, as we go forward into the night, of the other business. I ask that Members consider the proposal before them. We will take a break for 15 minutes. Thank you very much.



*Sitting suspended at 8.29 p.m.*

*Sitting resumed at 8.56 p.m.*

**Mr. Speaker:** Hon. Members, at the moment we took the suspension we were about to consider a motion moved and an amendment to that motion in the name of the Hon. Minister of Finance. That is, that we deferred the second reading of this Bill for a period of six months. I thought that perhaps the period of suspension would give us time to objectively and consider it.

I therefore invite comments on it, not a debate, but Members of the Opposition may wish to speak to the proposal for an adjournment of the second reading that is, for within a six months period.

I see Mr. Nagamootoo indicating to speak. Please go ahead Sir and thereafter, Mr. Greenidge.

**Mr. Nagamootoo:** I am conceding to Mr. Greenidge.

**Mr. Speaker:** Go ahead Mr. Greenidge.

**Mr. Greenidge:** Thank you very much Mr. Speaker. I would like to thank my Colleagues for allowing me to react in the first place.

Mr. Speaker, we have had a very extensive, at times contentious, debate. On this side of the House, mainly we wish to reaffirm that we have studied the proposal, which came from the Government, quite closely. The views that we have articulated are carefully considered and strongly held – the views that we have articulated tonight.

In light of that and in the light of the Government's proposal to deferred the second reading for a period of up to six months, we are willing to go along with that proposal on the clear understanding – there are perhaps two conditions – the deferral will in no way or ought to in no way be used by either side, especially by the Government, to delay, derail or divert in anyway the deliberations that are supposed to be taking place for the nomination of persons, which would eventually come to this House for consideration and a decision. One would hope that that process will continue.

Secondly, the proposal, as currently worded, by the Government will not come back in that form. It would preferably be the subject of exchanges with the other side before they resubmit it. In the light of the points I made about it having been carefully considered and it is after all an attempt to overthrow a unanimous decision by the House. I think in the light of those things, these would be the conditions under which we would be prepared to entertain the deferral. Thank you.

**Mr. Speaker:** I think those are reasonable, except in the case of the second, amendments would have to be proposed, if there is going to be a change. Thank you. Mr. Nagamootoo.

**Mr. Nagamootoo:** Mr. Speaker, thank you very much. This has been a very contentious issue and I endorse from the Alliance For Change (AFC), the views expressed by the Hon. Member, Mr. Carl Greenidge on this issue. Except that we want to say, perhaps in a little piteous way, that someone has written once that, “If you want to paint the mountain top you have to perch yourself in the valley and if you want to paint the valley you have to perch on the mountain top.”

I believe that it is not unreasonable, after having this heated debate, that we seek a way, in a very respectful way, to withdraw ourselves and give ourselves some distance to look at all of the issues that have been raised.

I believe the Hon. Member, Mr. Ramjattan has vociferously place on the table the consistent position of the Alliance For Change with regards to the establishment of the Public Procurement Commission. That case, I believe, has been well made.

However, we believe that the Hon. Attorney General has said, in terms of the requirement of a two-thirds majority to set up the Commission, we would need to have dialogue, discussion, consensus and compromise. So if it is, at this point in time, not really trying to use a strong word, “the withdrawal of the motion” I see it effectively being so - you may say deferral for six months - the second reading – is going to help that process, then I think we will start the new year on a good footing where we leave room among ourselves for negotiations and that we can arrive at negotiated conclusion, rather than voting down or voting out matters that come before the House.

We will agree to the amended motion, except that I concur and agree with the Hon. Greenidge that we should bring certain further amendments for us to come to a position where everything could be realise in a process that have been initiated in the sub-committee of the Public Accounts

Committee. In terms of the other issues that are attached to – that is a strong word – to support for these other pieces of legislations.

We believe that this is a gentle withdrawal and it is perhaps what we need to have at this point in time, as we go into a new year and hope that things will change in this House,

**Mr. Speaker:** Thank you for those comments.

**Ms. Teixeira:** Mr. Speaker, if you would allow me as the mover of the amendment to the Hon. Minister of Finance's motion. It is a rather simple one which said that the Bill be read a second time within six months. Clearly, it leaves the door opened for all sorts of discussions, but I think it would be inappropriate and neither can we on this side, convey, at this point, any commitment or guarantee on the issues raised by the Hon. Member Mr. Greenidge. If it is as Mr. Nagamootoo said that it is for negotiating, we cannot pre-empt or premeditate the results of those negotiations.

We would hope that there be negotiations, but we are suggesting that within six months that hopefully there will be movements and that we would be able to conclude the second reading of this Bill, reaching some kind of understanding between each other, on the matters that have been contentious. The Government cannot and will not at this time, offer guarantee as requested by the Hon. Member Mr. Greenidge. Thank you.

**Mr. Speaker:** Could I just say that, despite this Bill or without this Bill the process has already begun in the Public Accounts Committee for the appointment of the PPS. So I think that it is in that vein that Mr. Greenidge, quite rightly, made his statement. This Bill really should not affect that process which has already begun in good faith. The second part is what he said about changes. There is nothing wrong with a Bill being on the floor and amendments coming to it – that is understood. It is the process of moving forward. That I believe is what I understood Mr. Greenidge to be saying and as I said, quite reasonably so.

Hon. Members, unless Mr. Greenidge you wish to say anything, but that is what I believe we all would like to see, that the process continues to move. Hon. Minister, I would like to put it to the vote. It is going to the vote.

*Question put and agreed to.*

*Bill deferred.*

**Mr. Speaker:** The Second Reading of the Bill is deferred for a period to be named within six months of today's date. Thank you.

Hon. Members, we now move to the second most important matter on our agenda, that is, the reconsideration of the now famous money laundering legislation, if I can just refer to it by its common name. The Hon. Prime Minister was about to move a motion when I interrupted him earlier in the evening, for us to actually suspend Standing Order No.69, so that we can actually consider this Bill at its Second Reading. Prime Minister, I invite you to do so now please.

**Mr. Hinds:** Mr. Speaker and Hon. Members, I move the suspension of Standing Orders 26 (a) and 69 so that the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill (AMLACFT) may be considered at the Second Reading.

**Mr. Speaker:** Hon. Members, we know that this Bill, having been one with the same name and largely the same character as a Bill with the same name, just a few weeks ago, being defeated. It has returned, but it requires the assent of this House for it to proceed.

*Question put, and agreed to.*

*Standing Orders suspended.*

**Mr. Speaker:** We are free to proceed.

**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF  
TERRORISM (AMENDMENT) BILL 2013 – BILL NO. 22/2013**

A BILL intituled:

“AN ACT to amend the Anti-Money Laundering and Countering the Financing of  
Terrorism Act.” [Attorney General and Minister of Legal Affairs]

**Mr. Nandlall:** Thank you very much Sir. Sir, you correctly described this Bill as now a famous Bill. I do not believe that there have been many Bills, which passed through this Assembly in recent times that would have received the acclaimed and public commentary that this Bill has inspired and precipitated.

It is widely known that this Bill has international implications for Guyana. It is widely known that we are required under recommendations promulgated to us by the Caribbean Financial Action Task Force (CFATF) to implement those recommendations within a given timeframe. Thus far we have defaulted badly in our compliance with those regulatory prescriptions. As a result, an adverse public statement has been issued against Guyana in November, calling upon member states that fall under the jurisdiction of the Caribbean Financial Action Task Force to take such measures that are necessary to protect themselves from the risks that Guyana poses as a money laundering and terrorism state.

The repercussions that are flowing from this statement are still being assessed. I stated sometime ago, about three weeks ago, that it will take about a month before they begin to sink in. Unfortunately, I am aware that they have begun to take effect. The Minister of Finance would be better positioned to explain the effect it has had so far on the economy.

I know for a fact that there has been a drastic diminution of remittances. I know for a fact that there is a tremendous paucity of foreign currency at the banks – at the local commercial banks. I know also of several commercial institutions located outside of Guyana, who have had relationships with commercial entities in Guyana. Those relationships have undergone tremendous changes. I know for a fact that the Central Bank of Trinidad and Tobago has issued an advisory and so has many banks – central banks in the Caribbean, advising their respective commercial sector of Guyana's unfortunate position and advising the constituent members to protect themselves against whatever risks emanate from Guyana.

I do not think that anyone can seriously gainsay the importance of this Bill and the importance of it being passed in a timely manner. The Bill is quite a unique piece of legislation, unique in the sense that it deals with an area of activity that is recent, comparatively, with other forms of criminal conduct. It carries with it its own peculiarities and obviously the law, in relations to these activities. I speak of money laundering and the financing of terrorism.

The rules and laws developed to deal with these new phenomenon that have emerged over the last 20 years in the global arena have indeed been different, they have been peculiar and some may describe them, when I read them for the first time I so describe them, as drastic. Some may be described as – drastic is one word – the other word that I used when the Bill was before the

Select Committee, the substantive Act; when it was a Bill before that committee, I cannot remember that word now... drastic and draconian. Because when one examines what it seeks to do, in terms of regulating human conduct; when one examines the onerousness of the responsibilities which it imposes; when one examines the types of offences which it creates; when one examines the magnitude of the penalty which flows from the breach or violation of these provisions, one gets the distinct impression that they are dealing with a different pedigree of legislation.

*9.15 p.m.*

That is what characterises any modern money laundering legislation. In 2009, we passed the Principle Act. At that time we were complying with recommendations dispensed to us by regulatory bodies and the legislation which we promulgated then, which is the Principle Act now, was a model created by a number of international agencies and these models were implemented by jurisdictions all over the world – the CARICOM Region, the Organisation of American States (OAS), Latin America, Europe, North America and elsewhere – in fact it was an obligation and it still is an obligation which flows directly from United Nations treaties and other arrangements so countries did not have a choice, but to implement the legislation.

The legislation comes in a particular way. It has a government structure and it is described as a financial intelligence unit. The language may vary slightly, only in form from jurisdiction to jurisdiction but the structure is the same and that financial intelligence unit is that body that regulates the legislation and ensures that the legislations are complied with and the obligations which it creates are discharged. There are different models which have been used for the creation of that type of financial unit. In fact, the World Bank produced a manual detailing three types of units that have been used in the world and we in Guyana chose, in 2009, the model which is the model used in North America and Caribbean. That is the general structure and of course we have the bill. These amendments are very copious in nature. They are very technical in nature also. All of them have their genesis in recommendations which have been made to us by the Financial Task Force.

The Financial Action Task Force visited Guyana. They examined our financial architecture. They met with the relevant officers of Government. They met with the relevant players in the

financial sphere – the Central Bank, the Director of Public Prosecutions, the Police Force, the Guyana Revenue Authority. They met with a number of private sector organisations, etcetera. They compiled a report and a series of recommendations specific to Guyana and they mandated Guyana to implement those recommendations. The recommendations can be categories into two broad categories, one being that which can be described as administrative recommendations being measures which are to be taken at a Governmental level or via the various organisations falling under purview of the Government and the other component of the recommendations is to be implemented by way of legislation.

The assessor of Guyana assigned by the Caribbean Financial Action Task Force in their assessment of the recommendations have said that 98% - that is their own percentage used – of the recommendations which are to be implemented by Guyana are of a legislative nature and it is that 98% of the regulations which has been captured in the Bill that is before the House. I do not know whether I would want to go through all of them, but I can highlight a couple important ones and locate the recommendations specific to which they relate so that if any Member of the Opposition, or anyone for that matter, would want to question the genesis, the basis, the rationale or the existence of any particular amendment in my presentation I will attempt to link each of the proposed amendments to a particular recommendation.

Clause 4 of the Bill amends Section 9 of the Principle Act and this amendment seeks to satisfy FATF Recommendation 25 which deals with guidelines and feedbacks. The recommendation requires the Financial Intelligence Unit (FIU) to provide financial institutions and designated nonfinancial business or professions that are required to report suspicious transactions with adequate and appropriate feedback. I pause here to say, Sir, that the legislation, the Principle Act and now this Bill has created a network of organisations all under the administration of the FIU and each organisation thus created is intended to record transactions that they are conducting and to pass the recordings of those transactions to a central place where the relevant information would be extracted and this is how the legislation is structured so that one has at some central place a reservoir of appropriate information where an informed decision can be made in relation to money laundering and the financing of terrorism with the hope at the end to institute charges and to prosecute successfully offences where it is believed there is cogent and compelling evidence to do so.

Clause 5 of the Amendment Bill amends Section 11 of the Act. This amendment, again, satisfies Recommendation 14 which deals with protection for the reporting of suspicious transactions. Many a time persons are afraid that should they report any suspicious activities they may be exposed to violence and to their safety being jeopardised. This clause here seeks to confer some type of protection and it also protects the person giving the information in the sense that if the information is made in good faith then the person is not liable, criminally or otherwise, for that information supplied.

Clause 6 of the Amendment Bill amends Section 16 of the Principle Act and this amendment seeks to satisfy FATF Recommendation 5 which requires reporting entities to obtain information, ownership of customers who are legal persons or legal arrangements in order to determine who the natural persons that ultimately own or control the customer are. It expands the due diligence obligation of reporting entities, as such definition of beneficial ownership is put out there with regard to legal entities, etcetera. Sir, you know that there are many legal mechanisms - as a lawyer you would be well aware of it - whereby a person can hide their true identity by utilising several devices which are available both in equity and in law in order to camouflage, disguise or to conceal who may be the true owner and have a person fronting for that concealed person; the Bill addresses that in a very detailed way and has provisions to ensure that at least that type of arrangement is minimal.

Clause 7 of the Bill amends Section 16 of the Principle Act and this satisfies Recommendation 5 by requiring reporting entities to conduct enhanced due diligence measures for high-risk category of customers or where the Financial Intelligence Unit is aware that another country does not apply or insufficiently applies recommendations of the Financial Action Task Force. It is this very section; it is a reciprocal arrangement. The same way that Guyana is now exposed to measures which can be taken against Guyana because Guyana has not satisfied FATF recommendations. Our Financial Intelligence Unit has reciprocal power and can reciprocate such treatment to another defaulting country.

Clause 8 of the Bill amends Section 18 of the Principle Act. This seeks to satisfy Recommendations 11, 13 and 21 to ensure that reporting entities also make records available to the competent authorities and duly authorised auditors. It expands reporting entities obligations to possible terrorist financing offenses to include activities involving funds suspected of being



linked or related to or being used in terrorism, a terrorist act or by a terrorist organisation. There are a series of other similar amendments linked to different recommendations and I do not think that it is necessary for me to detain the House by going through each one except to say that all of these recommendations, when they were crafted in the form of this Bill that is before the House each one of them was sent individually to the Caribbean Action Task Force and they were each approved as satisfying the particular recommendation to which they were attached and that is a fundamental point that I want to make. Later on I will expand on that.

Of course, expectedly, to bring all of these organisations under the umbrella of this Bill and under the umbrella of the Financial Intelligence Unit it was obviously necessary to amend a series of legislation and this bill, by Clause 18, amends the following legislation: The Gambling Prevention Act, the Companies Act, the Insurance Act, the Mutual Assistance in Criminal Matters Act, the Security Industry Act, the Money Transfer Agency Licensing Act, the foreign Exchange Miscellaneous Provisions Act and the Cooperative Societies Act. All these acts have been amended as were required by the Caribbean Action Task Force recommendation. Importantly, Sir, we had a lot of discussions when we were in the Select Committee and even at the drafting stage of the Bill with the Caribbean Action Task Force concerning confiscation, forfeiture and freezing of assets.

As I said earlier in my presentation, this Bill has some provisions that may be considered in the ordinary course of criminal legislation to be Draconian and when one goes through the powers that are granted to seize property and to detain property and to seize property one gets the clear impression of the Draconian nature of these powers but that is the model legislation and that is nature of the beast. Careful attention had to have been paid to the question of constitutionality because whenever you interfere with a person's property one has to take into account the protection which the supreme law of the land accords to private property against interference by the state so Article 142, as a fundamental right, had to have been examined in great detail and each of these provisions which touch and concern property were examined and scrutinised against Article 142 to ensure that they do not infringe or collide with Article 142 because, of course, it would have been unconstitutional. I must emphasise that convincing the personnel at the Financial Caribbean Task Force of our requirement to ensure that we meet the litmus test of constitutionality was not an easy task so long and protracted discussions had to have been held

before they were convinced that certain changes had to have been made to recommendations which they made to bring the bill to constitutional conformity; at least our opinion of constitutional conformity.

Many of the recommendations which came concentrated power in the Executive, including the subject Minister, who is yours truly, and the Minister of Finance and the great circumspection. First of all concerns were raised by both Ministers about the plenitude of unnecessary power which the recommendations seek to reside in the Ministers and every attempt was made to divest these powers away from the Minister. For example, the Attorney General, under the recommendation and in the original formulation which was given to us had the power to freeze a person's account, all the monies in the account, and then go to the court for an order and I argued that that is:

1. An unnecessary power
2. A power that can lead to violation of constitutional rights

I, personally, as the current incumbent office holder would not want to exercise such a power over any person's property and we shifted that power to the court because we feel that if there is any person who should be resided with such a magnitude and plenitude of power it should be the judiciary and whoever wants an order to freeze any person's assets they must go to the judiciary first, get the order, and then the person who is affected by the order can subsequently go there and get the order discharged. There was a deliberate attempt to insulate, away from the Executive, powers which were being trusted upon the Executive via the recommendations of the Caribbean Action Task Force.

Also the Bill details the various amendments to the various legislations and all of these amendments are designed to achieve one thing; to ensure, for example, that those institutions or organisations which fall under the Gambling Act are brought under the administration of this bill. All of the Credit Co-op Societies, for example, that fall under the Co-op Societies Act are brought under this. All of the organisations which fall under the Cambio Exchange Act are brought under the Money Laundering Act. All organisations which fall under the Companies Act and the Friendly Societies Act were brought under the organisation of Money Laundering Act. The whole intention is to create a massive network and a massive umbrella under which there

can be some form of regulation of the activities of these bodies so as to minimise the possibility of money laundering and associated activities.

I also dealt earlier with the head of the FIU and I indicated that the structure used to create that body was in sync with structures used in the Caribbean. The model that we use is described by the World Bank as the Administrative Model and that is the model that has been used in the Bahamas, in Belize, in Grenada, in the Kaman Islands, in Antigua and Barbuda, in Canada, the United States of America, Australia, Trinidad and Tobago, Barbados and the United Kingdom. I say that and I list those countries simply because I heard in the press Members of this House speaking about this matter, expressing concerns, dissatisfaction, discord with the current construct of the FIU and I would like to assure this House that there is nothing deficient, there is nothing peculiar about the FIU, the way it is constructed in Guyana because it is the model that is being used. It is the model that has been recommended by the World Bank and used widely in the Caribbean and in North American and I have just enumerated a number of jurisdictions which have employed the same model.

The other important point that I want to make is the question of timing. If I may read the statement which was issue against Guyana on 20th November, 2013, it reads as follows:

"In November, 2011, the CFATF brought to the attention of its members certain jurisdictions, including Guyana, with significant strategic deficiencies in their AMLCFT regime. With a view to encouraging expeditious rectification of the identified strategic deficiencies Guyana and the CFATF developed an action plan with identified target dates to address the strategic deficiencies that exist in Guyana's national architecture to combat money laundering and the financing of terrorism. As a result of not meeting the agreed time lines in its action plan the CFATF issued a public statement in May, 2013, recommending that Guyana take steps to ensure it addressed its AMLCFT deficiencies. Guyana has made efforts to address its deficiencies, however, it has not taken sufficient steps towards improving its AMLCFT compliance regime by failing to approve and implement required legislative reforms. Guyana must therefore pass the relevant legislation and implement all of the outstanding issues within its action plan..."

Then they detailed specifically what we are to do. Then it concludes:

"Members are therefore called upon to consider implementing counter measures to protect their financial system from the ongoing money laundering and terrorist financing risks emanating from Guyana."

Sir, an examination of this statement would to the inescapable conclusion that the process is time bound. We are already late.

I know that there is a view or there is a feeling or an intension to take this bill to a Select Committee. My preference and the Government's preference is not to go in that direction but having regard to the fact that the bill ought to be passed as a matter of national imperative we are prepared to flex in that direction, but there are two matters of paramount importance which must be emphasised:

1. If we move in that direction then we have to ensure that the work of the Committee is proceeded with expeditiously and with every convenient speed. I cannot overemphasise that this is a time-bound process.
2. If there are any alterations, additions, amendments to be made I ask, respectfully, that we be cognisant of that fact that this bill has already been approved by the Caribbean Financial Action Task Force as satisfying the requirements now, currently. Any interference with the provisions of the Bill in its current state will require going back to the Caribbean Financial Action Task Force for their further approval. That is a time-consuming exercise. Secondly, any alterations to what they have already approved may remove that which has been approved outside of that which has been approved. In other words, whatever has been approved, if it is interfered with in an undue way, can defeat all that has been accomplished.

Sir, I do not think that I need to make the case further of the importance of this Bill also the importance of its passage through this National Assembly be done with every convenient speed. Sir, thank you very much. With those few remarks...

**Mr. Greenidge:** Thank you very much, Mr. Speaker. I wish to concur with both yourself and the Attorney General that this is a very serious matter which is before us and it merits careful attention. I wish to say, however, by way of opening comment that I am heartened that the

Minister now appreciates the necessity for this bill to be taken back to the Select Committee from which it never should have been moved in the first instance because in the course of discussion in that meeting, as I had indicated before to this House, it had been agreed that a process which would take at least another two to three meetings over a period of two weeks or more should have been pursued and that would have allowed stakeholders, including the Guyana Law Society, to not only have their submissions considered but to have the Bar Association to have their recommendations delivered orally and that agreement was not respected. Instead the PPP Members of the Committee attempted to jump the Committee and bring the bill straight here. I hope that a lesson would have been learned from that. That is the first point. In that regard, nothing whatsoever has changed. That process has to be completed. Nothing but nothing has changed.

The second point I would like to make, Mr. Speaker, is that I have heard the Minister regarding the impact of not having passed the legislation yet and I wish to say that I regard the opening comments of that presentation as simply scare mongering. The question of diminution of remittances is a phenomenon being experienced in very many countries, including countries in the Caribbean, and it is not unrelated to the recession in the countries from which monies are remitted to places such as the Caribbean so let us not try to frighten the public by suggesting to them that some action taken in this House has led to that situation. I think that it is also noteworthy that as regards the situation on the Anti-Money Laundering Bill that there are other countries being processed and examined by the CFATF and its sister regional agencies and if one looks at them one will realise the extent to which these processes sometimes fail to strike some sense of balance.

*9.45 p.m.*

We are, for example, in company which includes Pakistan. Certainly, in the context of money laundering and antiterrorism, there is no sense, not even in its worst days, could the current administration and the people of Guyana be cast in the same mould, in terms of dealing with antiterrorism and anti-money laundering. In fact, the Caribbean Financial Action Task Force (CFATF) report of 2011 pointed to the fact that neither it nor the authorities, as it termed them, had any concerns, in terms of the current arrangement for dealing with, for example, antiterrorisms. We must not be frightened or the speakers on the other side must not try to

frogmarch us into something for which they hope we would be hurried into making decisions without looking at these things properly. It is in that context that the observations by the distinguished Attorney General concerning the examination of the existing Bill by CFATF and the claim that if anything is to be changed apocalypse will follow.

This is an entity, this Parliament, that is independent of CFATF and we have responsibilities to carry out to our stakeholder. It is not to be told by a Minister that legislation has already been approved by an external authority and therefore we do not have any scope to change it.

Let me just remind our colleagues that it is also the case that the CFATF report is one that needs to, and we have said this before, take more... It may well be a modelled legislation which has been found useful elsewhere, but as regards Guyana the legislation has to be applied within a jurisdiction that is rather different from any of those, certainly, quite different from Barbados, Jamaica and elsewhere. The context for which this legislation is to be implemented is one in which there is fairly extensively demonstrated lack of will for implementation, problems of criminalisation and the problems of abuse of power and in those circumstances a model that may strike the CFATF technicians as being adequate elsewhere will not necessarily work here.

Let me, for a minute, Mr. Speaker, refer you to some of the comments as regards the report that CFATF produced on Guyana because sometimes we are being, I think, and I did use the word, “frogmarched” in circumstances that are not always very clear. In many ways what is known to us is surely known to CFATF, that legislation passed in the year 2000 has not been implemented in any meaningful way. The legislation passed in the year 2000 did make provision for confiscation of assets. The distinguished Attorney General made reference to that and as though this is something new and the legislation suddenly is to make provision from that.

The report, paragraph 63, for example, points to the fact:

“There is no requirement under the AML/CFTA for conviction of a serious offence in order to prove that property is the proceeds of crime.”

It is section 3(4).

“However, there has been no money laundering prosecutions or convictions where there was no predicate offence. The authorities are of the view that the legislation allows for conviction in such circumstances.”

In other words, they are not pointing here to an inadequacy of the legislation as it exists now but they are pointing to a failure to enforce legislation that is in place. If CFATF is of an inclination to look at legislation and say that it is inadequate and it should be strengthened... There are 107 clauses in the current legislation, they want another 17 changed and they require that as a priority then it surely must follow, very quickly, as night follows day, that they will come back to us very soon about the failure to enforce because it is a bigger problem than the existence or the lack of existence of legislation.

Let me say also that it says in paragraph 75 that Guyana’s legal framework for combating money laundering is robust. These are the words of CFATF and the public must understand this because the Minister tries to give the impression to the public that there is something else going on.

Paragraph 75:

“Guyana’s legal framework for combating money laundering is robust. It has been significantly strengthened by the passage of the AML/CFTA in November 2009. Additionally, at the time of the mutual evaluation, the main agency responsible for the investigations of ML/TF offences was the FIU which only had one member of staff. Given the other functions of the FIU, this would severely limit the ability to carry on ML/TF investigations”.

What is being said here? On the one hand the Attorney General is telling us that we have picked up a model with a structure that is replicated throughout the world. I am positive that no model of this kind has been manned in this way. In other words, there is a structure largely empty with one officer at the time that when it has been examined and even now with the very limited number of persons. It cannot be argued that that is a model replicated elsewhere. This is the main enforcement agency...

**Mr. Nandlall:** Mr. Speaker, I rise to try to correct my friend who is misquoting me. I spoke of an administrative structure. I was not speaking about staffing complement for that structure. It is

a structure setup... He made a point about inadequate staff. I never spoke about staffing. I was speaking about an administrative structure.

**Mr. Greenidge:** As the English would say that intervention speaks volumes. It is hope that you confused the public by playing with words.

Yes, you have a structure that makes provision for certain categories of staff and certain numbers and all of those boxes are emptied. Yes, it is a structure, an organogram which has relations... *[Interruption by Mr. Nandlall]*. Mr. Speaker, can I finish or are we into a dark...? **[Mr. Nandlall:** Why are you speaking to me?] Why do you not take the floor and explain if you need to?

**Mr. Speaker:** Continue Mr. Greenidge, please.

**Mr. Greenidge:** We are saying therefore that the report by the CFATF itself does not lend support to the claims of the Minister as regards the status of the bodies. As regards the legislation and the CFATF report, there are a large number of bodies that are responsible for ensuring enforcement. If I list those bodies then you will understand why it is that there is the big gap between legislation, even as it exists, and enforcement. The problem does not start and stop with the Financial Intelligence Unit (FIU).

Amongst the entities, the report confirms, as having a role and responsible for implementation are the Ministry of Finance, the office of the Attorney General - we need not go any further than that - the Guyana Police Force. The daily problems of the police force, the lack of capacity in terms of financial analytical ability is evident. The report itself cannot point to who within the police force will be carrying out these functions. In so far as, it has identified one entity, the question is whether it has any training, if there is any office which is capable of carrying out this work. In addition to the Guyana Police Force, there are the Customs Anti Narcotics Unit, the Office of the Director of Public Prosecutions, the Bank of Guyana, the Commissioner of Insurance, the Guyana Securities Council, Chief Cooperative Development Officer – mentioned by the Minister not so long ago – the Guyana Revenue Authority, and so forth.

All of us know, from looking each day of the newspapers, that these are entities, some of which are deliberately starved of resources by the administration, especially when some of their best



officers see it fit, perhaps, to criticise or not to embrace things said by the Government. They are weak. If there is to be a closing of the gap between the legislation and enforcement these matters have to be addressed. It is not a matter of coming here and giving us fancy and empty words about what is structured and what is going on elsewhere. Elsewhere, there are effective bodies. In Barbados, in Jamaica and any of the territories, which is care to mention, they have effective bodies and in most instances far more effective than those that we have here. In fact, what makes these entities here even more ineffective is the intervention of the Government. In many instances the activities associated with money laundering and also financing of terrorism are very widespread. They are being increasingly widened with the development of capacity on the digital front. In so far as that is taking place then we need to ensure that our capacities are also strengthened.

#### **SUSPENSION OF STANDING ORDER NO. 10(1)**

**Mr. Speaker:** Hon. Members, we will need to have a motion to move us beyond the 10 o' clock hour to complete our business. I now invite the Hon. Prime Minister.

**Mr. Hinds:** I move that we suspend Standing Order 10 (1) so that we can conclude the consideration of the AMLCFT.

*Question put, and agreed to.*

*Motion carried.*

**Mr. Greenidge:** May I just make sure that the point I am making is clear, that the wide ranges of activities are associated with money laundering and the question of terrorism. In Guyana, a number of those activities - smuggling of fuel, smuggling of gold and related areas - are activities that when the police and the properly authorised entities intercept or interdict agents or persons carrying out these activities. There have been instances when their releases have been ordered. In such circumstances, to draw parallels between ourselves and territories in the region is really quite laughable because we are ourselves, the government itself, undermining the capacity of its executing agencies to carry out the work and the functions set out in this legislation.

I am putting it to the House that inordinate and inappropriate emphasis is being given to the role and importance of legislation. I, for example, utterly reject the interpretation of the Attorney General to the effect that 98% of the requirements, which we have, has to be with legislation. It is absurd. Most of it has to do with execution and that is the point I am making.

Mr. Speaker, let me point you to a report earlier in the year in connection with this question of implementation or execution or enforcement, call it what you will. On March 14, the United States of America (USA) in the International Narcotics Control Strategy Report said that Guyana was not enforcing a number of laws to counter money laundering and drug trafficking and yet the USA is part of this group that seeks to be pressuring us to implement the legislation and it was saying that in this very year. Sometimes I wonder whether a country, which is so advanced and so well organised, at times, has a failure of communication within its administration.

On the one hand, it was saying that Guyana was not enforcing a number of laws to counter money laundering and drug trafficking and the newspapers reported that the Minister responsible for this area... I am going to tell you before hand and before we get to a question of whether or not the Minister is admitting, having said it. *Demerara Waves* of the 14<sup>th</sup> March at 16.34 had a report quoting the Minister. Minister Rohee then explained:

“The laws would be confined to gathering intelligence until money laundering legislation is improved and the financial intelligence unit is strengthened.”

He goes on to say:

“Nothing is stopping the Government. It is just that these things take time.”

What are we being told here? We are being told that the legislation and we are being told by both by the Government and CFATF that the legislation is adequate but the Minister is now telling us, yes, the legislation is adequate but we are using the legislation not to enforce anything but to bug people’s phones and check on their communications. That is what is being said here. The President was asked why the laws are not being used and he added that we got to use them then. That is the report in *Demerara Waves*. We are being told that if we do not jump, seriously, to put this legislation in place apocalypse is going to follow when, in fact, this is what the Minister

responsible is doing with the legislation that is available to him, using it for purposes that, I think, many of us find obnoxious at the best of times, rather than enforcing legislation.

It would have been interesting for the Minister, the Attorney General, to tell us what it is that he told CFATF because CFATF itself must know, as I said, that other people read its reports and if other people read its reports then there is the need to be some consistency in the way that it formulates its recommendations. It cannot, on the one hand, be saying that in the issue of antiterrorism financing and in the issue of money laundering we do not think that that is a massive problem and on the other hand saying that unless these things are strengthened it is going to encourage other countries to take action against Guyana.

The inadequacies of the current legislation as identified in the report...It may be useful, perhaps for the purposes of colleagues, just to mention some of these. I see that in the summary it has that list, and I will not attempt to quote these, but just to say to you that it speaks to offences of illicit trafficking in stolen and other drugs and smuggling are not criminalised. That is one area where improvements can be had.

Terrorist financing has been criminalised, in section 68 of the Anti-Money Laundering and Countering the Financing of Terrorism Act (AMLCFTA), but it states that the definition of property does not include assets of every kind, whether tangible or intangible, legal documents or instruments in any form, including electronic or digital evidencing title to or interest in assets of every kind. There is no provision for terrorist financing to extend to funds from legitimate or illegitimate sources or to apply, regardless of whether persons alleged to have committed the offences is in the same country or in a different one from where the terrorist or terrorist organisation is located or the terrorist's act will occur.

I mentioned this one - it is not meant to be comprehensive - so that people could understand the implications of some of these, especially as regards the antiterrorism dimension. Remind the Members, that the actions of the US Government under President Bush, and even now the activities of the National Security Agency (NSA), and in the United Kingdom under Prime Minister Blair have caused alarm about the rolling back of civil rights, on the part of the Government, under the pretext of fighting terrorism.

We live in a country where, ever so often, especially before elections, people can find themselves rounded up, locked up, and be held in prison for years without being convicted. We do not have any responsibility to put more powers in the hands of such a Government that could find our political stances inconvenient and therefore expand the room and the arrangements for political criminals. We have already had experiences with the...

**Ms. Teixeira:** Mr. Speaker, the Hon. Member made a very sweeping comment. It is either he gives some idea of where he got that from or what it is reference to, but it is absolutely incorrect.

**Mr. Speaker:** Which comment is that?

**Ms. Teixeira:** I heard him say it. He was not heckled. We are very quietly listening to Mr. Greenidge.

**Mr. Speaker:** What I can speak and attest to is that there seems to be, during or just before elections, campaigns where...Young men would come to me and say Mr. Trotman we were liming on the corner last Saturday and the police just arrived and locked us up. I know that that is a practice that takes place. As to whether or not it has political basis, I have no evidence of that, but I know that I have encountered it on many occasions, personally, as a lawyer. I do not know if that is the particular statement that you need clarification on, but I can tell you I am quite aware of it.

**Mr. Greenidge:** Mr. Speaker, I do not know whether it is necessary for me to even say anything further on that, but I do recall, somewhere in the recesses of my mind, the names of Munroe and Wharton cropping up, very recently, as persons who have never been prosecuted but spent a long time in jail. One of them was a woman. I do not know where it is that our colleague wants me to go.

The other aspects raised by the CFATF is that the FIU has the authority to investigate matters relating to money laundering but there are minimal security arrangements for custody of information with the main vulnerability being the Information Technology (IT) support provided by personnel not in the employ of FIU and no guidelines regarding the manner of STR reporting have been issued to financial institutions or other reporting entities. The FIU could publish reports with statistics, typologies and trends on suspicious transfers to the examiners. It is the

view of the examiners that the deficient operations of the FIU has been significantly affected by the lack of resources – a point I made earlier.

“Re: The police and FIU, there are no written provisions for the taking of witness statements for use in investigations and prosecutions.”

**Mr. Speaker:** Are you referring to the same US...

**Mr. Greenidge:** It is exactly the same report I mentioned. It is the same section that I am quoting.

**Mr. Speaker:** Mr. Greenidge mentioned the report of March of this year, the US Drug Control Strategy Report. That is what I understand him to be reading from.

**Mr. Greenidge:** No Mr. Speaker, this particular one, I said, is CFATF itself...

**Mr. Speaker:** Yes. I am sorry.

**Mr. Greenidge:** ...and as regards the penalties for making false declarations, it does not extend it to legal persons, and so forth. There are clearly a number of specific things...

**Mr. Nandlall:** Sir, we corrected some of those things. The whole purpose of this...

**Mr. Speaker:** No Mr. Nandlall. For you to just walk in and, before you take your seat, interrupt a debate, I do not think that I can allow that. The point is not whether they were corrected. The point is that the Member is quoting from a report.

**Mr. Nandlall:** All that I am saying, Sir, is that...

**Mr. Speaker:** Mr. Nandlall, I would not allow that. Mr. Greenidge please proceed.

**Mr. Greenidge:** Mr. Speaker, the Clerk might be advised, next time, to monitor more carefully the access to some of the libations that are available in the room next door.

In our view there is little wrong with the current legislation and we believe that CFATF has placed inordinate emphasis on the question of the new legislation. The point I was making is that if 2011 report is looked, where the performance of Guyana was last reviewed, it will be seen that I am right in questioning this emphasis.

Notwithstanding that, we are prepared, and we have been prepared, to go along with a review of the legislation that the CFATF has proposed. We have been attending the meetings along with the Government and the AFC and have said that, as regards the outcome of the work of the Committee, we would expect that attention would be paid to decisions we took within the meeting. The decision, first of all, to allow for the stakeholders to make oral and written provisions. We have before us, which have not been considered, recommendations from the University, for example, the Director of the Institute of Development Studies as well as of the Bar Association. We have also drawn to the attention of the meeting that we want to look at sections 9(3) (a), 22 (1) and (d) which also pertains to the Principal Act. Until such time that that is done - I do not mind how much heckling comes from the other side - it will not command the support of this side of the House.

Those amendments, I mentioned, are intended to deal with issues pertaining to the question of governance and the governance of the system. There are elements such as the arrangement for governance. Although there is a system in which the heads of all institutions, I mentioned, as being important in enforcement, are all appointed by the President or by one of the President's Ministers, in essence they are appointed by the President. In the light of that, it is of concern to us, that there is a President who already appoints Chancellor of the Judiciary, Chief Justice, the judges, Commissioner of Police, Director of Public Prosecutions and he still wants to appoint the head of the FIU. This is supposed to be a body reviewing and giving instructions as regards the enforcement of money laundering legislation. There is an obsession with control and that is the problem and we are saying that it is not consistent with good governance. As far as the deadline is concerned,... [Mr. Nandlall: The Prime Minister or the President appoints.] Yes, but there are...

**Mr. Speaker:** On that note, Mr. Greenidge, you need some time to be extended to you. Could someone move the motion?

**Ms. Ally:** Yes. I move that the Hon. Member be given fifteen minutes to continue his presentation.

*Question put, and agreed to.*

*10.15 p.m.*

**Mr. Greenidge:** The other jurisdictions, we speak about, actually, I do not think anyone of them can point to a situation in which an Ombudsman has not been appointed in eight year, in which a Chief Justice and Chancellor have been acting. Equally, and for an equally long time. These are bodies, these are officials who protect our fundamental rights and we are looking at legislation that seeks to put more powers in the hands of the Government to abuse our rights. In those circumstances, we are saying that until this Government can demonstrate that it is responsible by passing legislation, by assenting to legislation, which properly goes to it from this House, by appointing the post, appointing to positions, which we have agreed, then it cannot expect us to lend any support to these items - none whatsoever.

I do not have to speak for the AFC, but the AFC was already said that in realist of conditions is the requirement that the Public Procurement Commission be established, operational and properly in place. Until such time that the Government does that we will not support this Bill. In the meantime, whilst the Government Members think about it, we are only prepared to entertain it here that it goes to a Special Select Committee for the completion of the work they started.

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

**Mr. Speaker:** Hon. Members, before Ms. Teixeira speaks, I wish to just point out that the life of the last Committee of Selection came to an end and a new Special Select Committee will have to be appointed for this Bill. If the Members wish, I am prepared to convene the selection tonight. It is if it is the desire of the House, given the time-bound feature that we heard, but we cannot go back to the last Committee. It can be understood that we can use the materials generated as a memorandum submitted from that last Committee to expedite the work of the one that we have to establish. Please bear that in mind that if we are going into the Christmas recess we need to move with some dispatch.

**Ms. Teixeira:** I have listened to Mr. Greenidge with great interest. As you know, I think the best gift that we could give to our country for Christmas and New Year is to pass this Bill.

The Hon. Member made three basic arguments. One, that he believes that there is inappropriate emphasis on legislation, which he thinks is absurd. The second issue is that the consequences and the impact are overrated and over exaggerated. The third one has to do with the PSCC and its functioning and its rushing.

With this issue, maybe, some of our friends on the other side are not listening to people; they are not listening to organisations; they are not listening to the banks and insurance companies and what is going on in this place right now. Since this Bill was defeated on the 7<sup>th</sup> of November this year there have been meetings with stakeholders, the Government, the Opposition and civil society. There have been meetings between the Government and the Opposition. If the Opposition Members do not know who their leader is meeting with, it is not my problem! The issue is that there are great concerns and the impacts so far, having missed the deadline in May, having missed the deadline in August and missed again in November...

If the Opposition does not believe us, and the Members of the Opposition do not believe us, I will suggest that they go and talk to their bankers. I assume that most of the speakers, most of the Members of Parliament, have a bank account and therefore the banks and the banker and the manager of their bank will explain to them because what... [**Ms. Kissoon:** It is petty cash.] It does not matter if it is petty cash or not, the volume is of no consequence. That is the point you are missing. The point you are missing is not to do with large amount of foreign transactions in and out of Guyana. It is ordinary people who are pensioners overseas, who have bank accounts overseas, come home every six months here and who deposit small amounts or, transfer small amounts here, and have been told by the banks overseas that their bank account will be closed where they are because they have given an address of Guyana. If you have not smelled the roses, talk to your bankers. Your bankers are talking.

The Bankers' Association of Guyana... [**Interruption**] Mr. Speaker, I noticed that you have protected Mr. Greenidge. I expect no less, Sir.

**Mr. Speaker:** Mr. Greenidge endured more than what you have endured now.

**Ms. Teixeira:** Was it just now?

**Mr. Speaker:** Yes. I will know when the point is reached I will step in.

**Ms. Teixeira:** Well Mr. Speaker, I hate to, at this hour challenge you or disagree with you because I do not like to do that to you, but everyone sat pretty quietly here for Mr. Greenidge. I suggest to the Members of the Opposition side if they do not believe us it is time to go and talk to their bankers, go and talk to the Bankers' Association about what is happening to individual,



ordinary people in this country, and overseas, and also companies and people doing foreign transactions in and out of Guyana.

I am very serious about what I said just now, I am very serious, I am not joking and I am not trying to make a mountain out of a mole hill!

**Mr. Speaker:** Hon. Members, it is after 10 o' clock there are six more speakers to go, we need to get through this debate tonight. Could we allow the Member to speak please?

**Ms. Teixeira:** The issue, the impact of what is happening, started not in November; it started after we missed the first deadline in May. The CFATF public statement, Actions taken since May, 2013 Plenary, is dated November, 2013, Free Port, Bahamas and it asked countries to report on what they had done in relation to the advisory in May, that Guyana was deficient in its actions and was posing a threat to countries. Here is a list of the countries, the actions that each country took: Angola, Bermuda, British Virgin Islands and Canada. The Canadians in particular report:

“On 1<sup>st</sup> of July, 2013 the office of the Supreme Financial Institutions issued a notice to draw attention to the CFATF call on Belize, Guyana and Dominica. Federally regulated financial institutions are expected to take in accounts they identify deficiencies when transacting business emanating from, destined to or connected to these countries.”

This is all posted on their website.

“On the 5<sup>th</sup> of July the Canadian Financial Intelligence Unit (FIU), Financial Transaction and Report Analysis (FINTRAC), issued an advisory reporting entities that the CFATF has determined that Belize and Guyana are out of compliance with the action plans to address strategic deficiencies. Jamaica put out information to their people, so did St. Kitts.

Trinidad and Tobago on the 30<sup>th</sup> May put out a statement by the Central Bank of Trinidad advising all of its licensees and registrants at a CFATF public statement via a circular on the 7<sup>th</sup> of June. The circular letter listed the jurisdictions that have been identified with strategic deficiencies and encourage all regulated entities to apply, enhance scrutiny when transacting business with entities in those territories.”

It goes on to talk on that issue.

Turks and Caicos, acting under the United Kingdom (UK) Council, put out a sanction in relation to Guyana and Belize. That was an action taken post May, 2013 when we missed that deadline.

There was a blacklist warning from business publisher. On the 3<sup>rd</sup> of December the *Global News Matters*, which produces the fortnightly “Market Dynamic Caribbean”, reported this:

“That this week’s edition of the news reports that CFATF have stated Guyana’s continuous inability to pass laws on Anti-Money Laundering and Countering the Financing of Terrorism. The task force also cited Belize.

This is why we have been following this development as closely as possible as it poses continuous risk to the commercial banking sectors of the two countries and in this interconnected economy there could be repercussion of the other parts of the region.”

Market Dynamic Caribbean also reports that the Caribbean also spends heavily...”

It also then reports that this organisation deals with 350 regional sources per week and covers more than 30 countries in the Caribbean, including Dutch, French, Spanish and English speaking Caribbean. That was on the 3<sup>rd</sup> of December. There has been other reaction since.

I think Mr. Greenidge said something which had to do with apocalyptic and to create fear among our people. The worst thing I would want to do is that. People have a right to know that as a result of this Parliament we have caused these things; that our inability in this House to pass a Bill... [Mr. Nandlall: Not ours, theirs.] Well, it is in totality, but it is obviously theirs. I stand corrected.

“CFATF Assesses Report on Guyana, October, 2013.” The early part of the assessor’s report gives a report on Guyana compliance with the number of the non-legislative recommendations.

**Mr. Speaker:** Which report is that?

**Ms. Teixeira:** This is “CFATF Assesses Report on Guyana, October, 2013.” These are reports in which it referred to recommendations made in the action plan. However, this is what it states:

“Based on the review of the recent update, the action plan submitted by Guyana compliance with the core and key recommendations still remains minimal due to the heavy reliance on reform needed to address many of the deficiencies. Although further steps have been taken to address the elements outlined in the Mutually Evaluation Report, that do not require legislative amendment, Guyana’s failure to comply with the decision taken by the plenary on November, 2012, to ensure substantial progress, and to report by May, 2013 plenary... Since that time Guyana has made efforts to address the outstanding deficiencies that do not required legislative amendment while waiting for the parliamentary process to run its course. While these efforts are commendable, a proper assessment of whether Guyana will be able to meet the Plenary’s November deadline cannot be determined in the absence of the necessary legislation been enacted and there is nowhere, at this time, to determine whether this takes place prior to the November plenary or at the latest by the 30<sup>th</sup> of November, as specified by the Guyanese authority.”

Members, this is a conclusion of CFATF.

“Members must consider therefore whether any additional counter measures should be taken against Guyana for the non compliance with the CFATF directive if the November deadline is not met.”

Then, of course, there is what Minister and Attorney General read to us, which was the CFATF public statement of the 30<sup>th</sup> November, 2013. Again it states, on Guyana:

“Guyana has made efforts to address its deficiencies however, it has not taken sufficient steps towards improving its Anti-Money Laundering and Counting the Financing of Terrorism (AMLCFT) compliance regime by failing to improve and implementing legislating reforms. Guyana must therefore pass the relevant legislation and implement all outstanding issues.”

It then goes on:

“Members are therefore called upon to consider implementing counter measures to protect the financial systems from the ongoing money laundering terrorist financing risk emanating from Guyana.”

That is the 20<sup>th</sup> of November, 2013. Members can go on the website. This is not a fiction; they can go on CFATF website... go. Since we are in a modern world they can access all of that. They do not have to believe me.

The issue is this that when I listened to the Hon. Member he seemed to be caught in a catch-22. The Prevention of Money Laundering Act...

**Mr. Speaker:** Sorry Ms. Teixeira, I am making arrangement to limit the refreshments outside, seeing that it is having an effect on the behaviour on the inside, but it is not with you.

**Ms. Teixeira:** With me!

**Mr. Speaker:** No.

**Ms. Teixeira:** I do not drink, Sir. It is just that when you said it, it sounds as if was...

**Mr. Speaker:** I just want to make a public announcement so that there is a last call.

**Ms. Teixeira:** Okay, there might be a rush.

The issue of this Bill, the Prevention of the Money Laundering Act of 1997 or 1998 - I cannot remember which one it was - was created in an era of when the world, Latin America and the Caribbean were dealing with money laundering. The 2009 Bill, which was brought here and sent to a Special Select Committee for the first time, had to add on the issue of financing terrorism because of September, 2001. The whole issue of terrorist financing was added on. I would swear that in another two years there will be something else added to do with cyber issues. By 2014, it will be dealing with all the cyber issues to do with money laundering, but there will be other ways in which that will be devised. This is a never-ending issue, in terms of the laws being amended to keep up with the times. This is not unusual in this area or in any other area. Laws are not meant to be written in granite and stay stocked in time, in a time warp.

The issue is that the Hon. Member can talk about inappropriate emphasis. This Bill, such as the one in 2007, was driven by international demands, that Guyana gets itself in line with international development and international financing, banking, commercial and insurances systems and we, did in 2007 to 2009, bring it here. We brought regulations; we brought also a

moratorium an Order by the Minister to give the banks a moratorium to allow them to get themselves into order with putting the 2009 Act into effect.

All of us, who are sitting in this room, who, I assume, have bank accounts, would have received a letter from our bank telling us to come in, in 2011, with our passport and National Identification Card and some proof of address. That is part of the Act. Under money laundering, persons would have been able to take their proof of address - Guyana Power and Light (GPL) bill, water bill, whatever a person may have - to show who they and they are living at a given address. That was part of the 2009 Anti-Money Laundering and Countering the Financing of Terrorism Act of 2009. We now have to go further and therefore we have no...

The issues of implementations on law making, I would like to say if all the laws, which were created in the world, are only judged on implementation, a lot of things would not have happened. Laws have to be put into effect and there are systems. They have to be connections.

One of the issues, the other Act, which is a partner to this... There are some other Acts that partner this, the Money Transfer Licensing Act, which was passed in 2009, the Mutual Assistance in Criminal Matters, because it requires countries to share information, to share intelligence.

Prior to that, the Member asked a question, but I remember that there was an investigation going on, and I was the Minister of Home Affairs, Mr. Felix knows - he is not even here, he is probably at the bar -... The issue is that when we were investigating an issue and we asked the bank, at that end, to share the information with us of where money was leaving and going from Guyana we were told that it is banking laws and its laws did not allow it. It is that countries must have a similar wavelength, similar system to allow for that.

I could tell, from my experience, that we were not been given information by other banks when we were doing our own tracking. That was because all the countries, in this hemisphere, were not on the same footing. Even some of the countries, such as the United States of America, which are supposed to have similar laws with our country, it is to go and ask, as the Government, or try to track certain things, and hear what the banks will tell you. One will suddenly hear about their laws, so that the offhand comment by the Hon. Member maybe that the person is not being exposed to Government, not being exposed to some of the challenges of intelligence gathering,

information gathering, particular in a country where connectivity is a problem, where the digitalisation of records, and so on.

That is not the issue. The problem, what Mr. Greenidge said, is a “chicken and egg” story because CFATF made it very clear that our country does not have some of the procedural framework in place, so it pointed out... Mr. Greenidge was listening to me, but he does not usually. That would be that we were missing, in a number of cases, the procedural requirements which had to be put into law. It needed certain provisions in the law to allow for certain things to be done which were absent in the 2009 Act. Therefore CFATF put recommendations on Guyana as it was done in other countries, all the countries which have had problems - Trinidad, Belize, Dominica, all having had trouble. There is a combination of human resources, financial resources, technical resources, challenges of communication by a tiny country communicating with big countries which have far more sophisticated systems and abilities than we do, but nevertheless if there is not the legal framework then our country cannot even move in that direction. It has got to be able to have a legal framework.

Obviously, if the Hon. Member had read the report and the Bill, which was tabled in this House, in which there were probably about 58 to 60 amendments that were made to the original Bill, put to this House on the 22<sup>nd</sup> of April, 2013, he would have seen and we put it based on Mr. Basil Williams request that we put what were the CFATF recommendations and what we complied with so people could see. This requires a whole range of things and Mr. Greenidge was there in the whole discussion, to do with the limit of how much money can be taken out of Guyana and the instruments. Did that mean only the USD \$10,000 cheque money? We discovered that for CFATF it was money, jewellery, travellers cheques, personal cheques, money orders, anything totalling USD \$10,000. We did not realise that until we were dealing with it in Committee. It was then we saw that.

It is sad that the Hon. Member, who sat in that Committee, attended a lot of the meetings, not all... As from April to October this version of the Bill was finished in Committee; at the end of July, it was shared out, the 30<sup>th</sup> or 31<sup>st</sup> of July. The Members, on the other side, adjourned it to October because they have a majority on the Committee. They are the majority, it is not us. Therefore they had August, September, October to look at the Bill. We met back in October. When we started back, they confessed in the meeting that they had not read it as yet and they

were not prepared to discuss it because they had not read it as yet. We had to come back, again, and then there was a postponement. Then, at the last meeting, which we had, we went through again the same amendments Sir, of the end of July, 2013, and decided that we have a deadline as a country to face and if we do not put our best effort to try and meet that deadline then so be it. Do not let us be found faulting because not one amendment has come from the Opposition in this whole process.

Mr. Greenidge may have his view of the Committee on what must not be rushed. I would say Sir, we did not rush at all. In fact, my guilt or my concern is, as the Chairperson,...

**Mr. Greenidge:** Mr. Greenidge's report, as I indicated to this House before, is borne out by the Minutes kept by Ms. Teixeira herself. It is not that I conjured up a view of what occurred. The meeting was clear as to how it should proceed and what Ms. Teixeira did was contrary to that. It is not a Greenidge position, it was the majority.

**Ms. Teixeira:** I am afraid I am not a minute taker in a committee. I am a Member of Parliament and I was the Chairperson of the Committee. If you have a problem with the Minutes then you come to the meeting and you correct them, but I am not a minute taker. I am not a minute taker in a parliamentary committee. I might be a minute taker at another level, but not in a parliamentary committee. Do not belittle me and put me in that position.

The three planks of the first Opposition speaker on this Bill... There were three planks that he spoke on. The inappropriate emphasis on legislation, Hon. Member Mr. Greenidge, his argument on it was flawed. It is proved by all the reports of CFATF - all available on website, Sir, not Teixeira's inventions, not Teixeira's Minutes, by the way - that the legislative instruments were what we had to do at this point. The point, which he made, that the Committee had been rushed, well, history will absolve us or history will find us guilty. I leave it to history, Sir, but in my conscience, I know that from the end of July this was ready and when it came here on the 7<sup>th</sup> of November it was rejected. We met again in October and nobody was interested in it. My conscious is clear, as the Chairperson.

I saw in the newspaper a high ranking official, in the Opposition, is claiming that the Government and the Chief Whip in particular was responsible for this Bill being defeated. Well I leave it to history to judge me. I do not answer that.

The issue of this Bill, the Hon. Member made a point which I should response to. He talked about civil rights, and so on. He may be right and he has my support on the issue of the draconian and erosion of human rights and issues of security in the United States of America and England and a number of places based under the rubric of anti-terrorism. You have my vote on that, Mr. Greenidge, but on this Bill, which is dealing...

*10.45 p.m.*

When the United Kingdom (UK) Government has secret trials, arrests people and holds them for four years without trials and have secret trials with no lawyers and no defence, when people are put under house arrest for four years and cannot work, Mr. Greenidge, you have my 101% support to fight on those issues. However, on this Bill, whilst the Bill is onerous, it is difficult, it is a “pain in the you know what”, it puts tremendous stress on a country of our size, abilities and resources. However, the greatest area of human rights issue is the privacy issue, the issue of disclosures and privacy. In the Bill, the information has to be produced and generated. It means that one’s privacy, right to privacy or private information, has basically been eroded. We are seeing that this is a big issue which has to do with the right of privacy is a big issue at the international level. When everybody “Google” and everybody can give permission to Governments to get into conversations with foreign presidents and presidents and prime ministers of other countries, and where Snowden and other people have exposed what is going on, yes, you are right on those violations of privacy and the right to privacy, but we are living in a cyber world where it seems to be the trend that everything has to come out. Our country is faced with a challenge.

This is a Caribbean Financial Action Task Force (CFATF) Bill to make us in compliance with international requirements. I am certain that there will be more amendments to this Bill and certainly in the Committee those amendments could have been tabled. They were not. If we are going back to Committee now, we are, as the Attorney General said, flexible, but I hope we are not going to go on an excursion that has no limit and no time because we do have another time limit.

The Hon. Prime Minister, in his statement to the House on 21<sup>st</sup> November, 2013, which was circulated to everybody sitting here, pointed out that the Financial Action Task Force (FATF)



can, in February, when it meets at the International Cooperation Review Group (ICRG), review Guyana. It does not have to wait for another CFATF review. It can, on its own, decide. Therefore, I am appealing to this House that in going back to select committee, we must commit to try to get this Bill back in this House before the third or fourth week in January, 2014.

I know we have been accused of exaggerating but we have been feeling the effects since May, 2013. The effects got stronger from August, 2013. We have been feeling the effects getting worse since 20<sup>th</sup> November, 2013. I am not exaggerating. I encourage Mr. Granger, Members of the Alliance For Change (AFC) and all Members of Parliament (MPs) to invite the bankers to meet with them privately. I do not care. Hear the story of what is going on and be concerned about what it is going to do to the economy, to the people of our country and to the way in which we operate as a country.

CFATF recommendations that were given to us, we have complied, as far as I know. The new Bill or a Bill similar to the one which was brought here on 7<sup>th</sup> November and was defeated has some new sections. Under the Companies Act, there is a new subsection 2, which gives further clarification as required by CFATF after the review of 18<sup>th</sup> November.

Whether it is a new committee with the same people or new people is of little consequence, but I would hope that the enormous amount of work that went into the Bill does not fall by the wayside. The new committee should use it and we should try all possibilities to return here with the Bill, hopefully with its approval amongst ourselves, before the end of January, 2014. Even if we were to pass this Bill tonight, Sir, it is extraordinarily difficult to reverse what has already taken place with the advisories out on Guyana and it is not automatic.

Therefore, as I said, we are willing to flex, we are willing to go to Committee, but we cannot come to this House and not emphasise how serious it is, and these are not, as the Hon. Member said, fancy and empty words. These are not fancy and empty words. I am being sincere. We are in serious problems as a country and our people will suffer, our economy will suffer and everyone will suffer. We have said that before but we are saying it again. We always hope that the Opposition Members, being rational people and being reasonable people, will give credence to these issues and act in good faith. That is all we are asking of them. We are not asking them to vote with us.

Mr. Speaker, I wish to thank you for allowing me to speak. Thank you very much. *[Applause]*

**Mr. Ramjattan:** Sir, it is getting very late in the night and I do not want to be too long but I must indicate to the Members present that the Alliance For Change's position on this issue of support for the Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill is very much linked and attached to the establishment of the Public Procurement Commission.

I want to draw a couple of parallels here. When we passed the Procurement Act, the debate having ended, it came as a result of something the equivalent to CFATF. Namely, there were the banks and the Inter-American Development Bank (IDB) demanding that we have a public procurement commission and we passed it and up to now we do not have a public procurement commission. Similarly, we are now being told that CFATF is on their backs and CFATF is going to do this and that. Indeed, it might happen. I am not denying it. The doomsday might very well come. What makes us so certain that when the legislation is passed, we are going to have it enforced - just like the non enforcement of the Public Procurement Commission? What is that? It is so clear a parallel. That is why we are saying: one institution having not been operationalised, although the Bill was passed ten years ago, we might very well have this Bill passed and nothing will happen. There will not be one prosecution. In 2009, when we passed this Bill, it was the most advanced stage at that time and they said we are going to catch some crooks and we are going to catch some launderers. We did not. We did not prosecute any.

They are now coming and saying, as Hon. Member Ms. Teixeira said, that now we are going to have the best law. We see people all the time with extraordinary sums of moneys putting up all kinds of fancy things. Where do they get the money? Does the Government ask? Then, there is the scaremongering. When doomsday comes, because they do not want to attach this to the operationalisation of the Public Procurement Commission, they will go Port Mourant and Anna Regina and say it is the Opposition that caused the hardship. That is what they are looking for. That is the propaganda exercise going on here.

We could have avoided at least two and a half hours of debate here if we had just sent it down but they wanted to do it so that they could go on the National Communications Network (NCN) and all the arguments of the Hon. Attorney General will be repeated. This is what is going to

happen come 14<sup>th</sup> February, 2014 if it is not passed. That is what is happening here. They are asking us to act with good faith but do you think they are acting with good faith by wanting to do it this way?

I want to reiterate that the attachment of the establishment of the Public Procurement Commission in relation to the Alliance For Change, and, I just heard it repeated by Mr. Greenidge for A Partnership for National Unity (APNU), is mandatory. Though we just passed a withdrawal motion stating that it will go six months into the future, I am saying that that Public Procurement Commission will have to be set up just alongside what we are talking about here in relation to the Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill and the select committee.

I have indicated to the President, through a letter, and it has been made public now, a certain roadmap. Whilst the Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill is going into the select committee for further refinements, whatever the refinements will be, at the same time we must also have the Public Procurement Commission members being named, a number of things being done, names being brought here and, after that, there being a provision for some finance. **[Mr. Nadir: Dream on.]** You will dream on here. You will not get the support of the Opposition in relation to the Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill. People are not going to be beguiled by your phony arguments. **[Mr. Nadir: Phony?]** Yes, your phony arguments.

Mr. Speaker, they will want to say that people's moneys are now going to be halted and we should go and talk to the bankers. We spoke to members of the Guyana Association of Bankers yesterday. We spoke to them and all those exaggerated concerns that you have did not come from them. They are concerned, indeed, because they would like to see it happen. But they, understanding the argument for the establishment of the Public Procurement Commission, want that too. You better go and ask them for that. **[Dr. Singh: What did they say to you?]** What did they say? They said specifically that they would like to see better governance in this country. They would like to see the establishment of the Public Procurement Commission. Go and ask the Private Sector Commission (PSC) because they even proposed to the President a certain model which you, today, talked against. Do not feel that we are not talking to them. They are stakeholders and a responsible party like the Alliance For Change has been speaking to them.

I want to make it very emphatic. I want to make it very clear. If, indeed, we take it wheresoever it has to go in the select committee and there is no establishment of the Procurement Commission, the Alliance For Change will maintain its hold on no support for this Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill. [*Applause*]

**Mr. Speaker:** I will be out of the Chamber for five minutes and Hon. Member Mr. Scott will be presiding.

*[Mr. Speaker left the Chair.]*

*[Mr. Scott in the Chair.]*

**Dr. Singh:** Thank you very much, Mr. Presiding Officer. Permit me to say that it is my great pleasure to be addressing the House on the occasion of your ascension to the high chair of the speakership.

I rise to make my own contribution to the debate on this Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill 2013, Bill No. 22 of 2013. Mine would not be a protracted contribution, Sir. I believe that the matter of this Bill is a very simple one. This House has had before it for the greater part of this year an Anti Money Laundering and Countering the Financing of Terrorism (Amendment) Bill. Much is known and has been said of the deliberations of the Special Select Committee that had before it the said Bill.

Suffice it to say, the verbatim transcripts of the proceedings of that Committee speak for themselves. They document and place on permanent record the fact that this Government, through its representatives on that Special Select Committee, spared no effort in endeavouring to achieve timely consideration of the Bill and speedy conclusion of the work of the Committee. From the earliest days of the Committee having been convened – that would have perhaps been the end of April or early May – under the distinguished chairmanship of the Hon. Member, Ms. Gail Teixeira, Government Members beseeched our Colleagues on the opposite side of the House that we needed to meet frequently and for extended hours in order to complete our work.

The consistency of the position taken by Government Members in this regard was matched by an equal consistency on the opposite side, except with the converse intent. Whilst we exerted every effort to meet frequently, the record will reflect that our Friends on that side of the House exerted

every effort to meet infrequently. When we sought to adjourn to tomorrow, they sought to adjourn to two weeks from tomorrow. When we sought to start to work at 2.00 p.m., they sought to start to work at 4.00 p.m. When we sought to work until 10 p.m., they sought to work until 4.00 p.m. And the pattern repeated itself meeting after meeting after meeting for all of the 17 meetings held by this Committee. Thankfully, we keep in special select committees in this House verbatim transcripts and recordings of the proceedings of those committees. The recordings of those meetings will form an important chronicle of what transpired in that Committee as we on the Government side struggled to secure what I described a few minutes ago as timely consideration and speedy conclusion.

When we sought to meet and complete our work before the August recess, the one-seat majority was brandished and an adjournment to October secured. When we returned in October, we were told they were not ready and needed to study the documents before them. The result was, as the Hon. Member, Ms. Gail Teixeira, just said, a looming deadline with grave consequences for our country. No matter how much we twist it and turn it, I will say definitively and categorically that stakeholders who are perhaps best informed on this matter – the private sector and the banks – have said unequivocally that they are already seeing the results of non enactment of this legislation. Just a few days ago, in fact, I believe it was yesterday, Wednesday, at a meeting with the Guyana Association of Bankers, the heads of a number of banks said clearly that they were already experiencing and facing the consequences of the current situation with respect to the Bill and the statement issued by CFATF.

One banker said that his bank had already been threatened with imminent termination of an important corresponding banking relationship. Another banker said that a long-standing customer who held an account with a large international bank and made regular transfers to her account in Guyana was told if she continued to make these transfers to Guyana, then her account at that large international bank will be closed. Yet another banker cited an example of a customer who had a trade and international business relationship with an international counterpart of more than 15 years standing and who had now discovered that to execute a single international transfer of funds some 17 or 18 questions had to be answered. These were real accounts described by the heads of large financial institutions operating in Guyana speaking of real customers. These are not the figment of anybody's imagination. They are not the result of some phantom

scaremongering, as Mr. Greenidge chose to describe it. Scaremongering, I believe, was the word he used.

We do not, as a responsible Government, enjoy the luxury of dismissing the inconveniences suffered by a company or individual living or operating in Guyana as insignificant or unimportant. Mr. Greenidge might enjoy that luxury. We do not.

To the extent that a Guyanese citizen or an associate of a Guyanese citizen is threatened with closure of his or her bank account because he or she does business with Guyana is a matter we must be concerned about. To the extent that a bank that is dependent on its international network of correspondent banks faces the termination of an important correspondent banking relationship is a matter we must be concerned about. To the extent that a large commercial enterprise in Guyana is unable to execute its international trade and financial transactions smoothly and efficiently is a matter we must be concerned about. We are concerned about all of these developments.

*[Mr. Scott left the Chair.]*

*[Mr. Speaker in the Chair.]*

We would not dismiss the prospect of adverse action as scaremongering. If one Guyanese business is affected, to use the old Guyanese cliché, that is one too many. If one Guyanese citizen is inconvenienced, to invoke the same old cliché, that is one too many. Unfortunately, it is not only one because if a bank lost its corresponding banking relations, hundreds, if not thousands, of customers would be affected.

I hasten to exercise that if Mr. Greenidge, the Hon. Member, wishes to dismiss those concerns as unimportant, this Government will do no such thing. We, instead, will attach the greatest importance to ensuring that we are compliant with international standards and that we bring our legislative framework in order. Does this Bill represent the be all and end all of what is required of us to ensure we have a strong architecture for fighting money laundering? Absolutely not.

In fact, if one were to examine the action plan prepared in collaboration with CFATF, one will see that that action plan comprises not only legislative actions, but also administrative actions: the establishment of a bureaucratic machinery; staffing, peopling and resourcing it appropriately;

the issuance and regulation of guidelines; the training of individuals, regulators and regulated and supervised entities; and the instituting of processes and procedures for reporting suspicious transactions and for examining those and graduating them ultimately into successful prosecutions.

There is a comprehensive action plan that includes not only legislative actions. Indeed, if one were to examine the latest CFATF report on Guyana, the report that was considered in plenary in Nassau, Bahamas at which Guyana was so ably represented by my distinguished Colleague, the Attorney General of Guyana, one will see that that latest report acknowledged Guyana's progress on all of the major elements of the action plan and said specifically that the overwhelming majority of outstanding actions and recommendations would be addressed by passage of this legislation. That was said clearly and explicitly. Were this legislation to have been passed, were this amendment Bill to have been enacted, Guyana would have found itself in the favourable position of having implemented virtually all of the recommendations emanating from the last CFATF review. Would our work have been complete? Certainly not. Having enacted the legislation, established the institutions, issued the regulations and guidelines, commenced the training and started the capacity building, we would have then had to take the next logical steps and our work would have continued.

As it stands right now, largely, as a result of absence of any urgency attached by the Opposition to the enactment of these amendments, Guyana now finds itself in a position where it is the subject of adverse advisory the world over. Are we to dismiss casually the fact that central banks and regulators around the world are saying that Guyana has not taken adequate steps to implement recommendations emerging from the FATF regime, CFATF, in particular, in our region? Are we to sit back, pat ourselves on the back and say that Guyana is an independent country and we would not be dictated to in this National Assembly and ignore the fact that regulators around the world are cautioning institutions that do business with Guyana that they must be doubly cautious and that they must apply extra measures in verifying and validating transactions with Guyana? I do not believe that responsible leaders would do that. I refuse to believe that a responsible political leader, a Government or indeed an Opposition that would like to present itself as an alternative Government...I would like to believe that neither such parties would sit back and content itself with saying, "We are an independent country and an

independent Parliament and so we thumb our noses at the rest of the world and we see no reason why we should be rushed to enact this legislation.”

*11.15 p.m.*

I alluded earlier to the verbatim transcript of the proceedings of the Select Committee. What is particularly striking is that none of the substantive clauses of the Bill before the Committee generated any disagreement. I will make bold to say that the proceedings of the Committee were extremely cordial. There were very few substantive areas of disagreement. My memory is not what it used to be when I was younger than I am now. Like I said, I might have been mistaken, and there might have been isolated exceptions, but I do not recall a single clause that generated biometric disagreement. Some strong words were uttered, but do you know what generated the disagreements, Sir? It was not the content of the clause or any specific content of the Bill. Invariably, the disagreements were generated by when we will meet next, for how long we will meet, why we cannot meet more frequently, why we must adjourn now, et cetera. Almost invariably, Sir, the substantive clauses of this Bill generated no disagreements.

There was a happy meeting of minds. There were times when the Opposition suggested changes and we said, “Oh my goodness. You are absolutely right. We did not think of that but what you are saying makes sense.” There were times when we proposed amendments and the reception was extremely favourable on the other side of the Committee. Then at the end of the deliberations of that particular Committee on that day, the cordiality dissipated and disappeared into thin air because we wanted to meet tomorrow and they wanted to meet two weeks from tomorrow. That is telling, because what it says to this nation is that there is nothing in this Bill that is contentious. I invite our colleagues from that side of the House to find a single clause in this Bill that they fundamentally disagreed with. I do not want them to articulate arguments why they disagree with all of the clauses, most of the clauses or even a majority of the clauses. I invite our Colleagues on that side of the House to find a single clause with which they have a fundamental disagreement. And I dare say, Sir, that there is none.

So here we are, standing before the people of Guyana with a piece of legislation with which none of us disagree. Here we have a piece of legislation that this Government will move and would like to move be enacted today as it should have been enacted last November. Yet we have before



us a piece of legislation that the Opposition will not find themselves willing to vote in favour of for the simple reason that it provides an opportunity for political leverage to be extracted, for no other reason but that.

So the elderly Guyanese lady who lives overseas, whose bank account now faces imminent closure because she transfers money to Guyana, faces the prospect of her bank account being closed because our Friends on that side of the House would like to extract political dividends from this Bill. The Guyanese business that now faces increased costs to transact its business will now have to incur those costs, will now have to face the prospect of delayed transactions, will now find its business in jeopardy, not because this is a bad Bill, but because there is an opportunity for political rents to be extracted from our Friends on that side of the House. This is the day at which we have arrived, Sir, and I will submit to you that it is truly a sad day. When we are unable in this House to speak with one voice and say that the integrity of our financial system is a matter that should be placed above partisan politics.

There is nothing that we disagree with in this Bill, Sir. I will go further and say that even if there are additional amendments, insertions... The Alliance For Change (AFC) has been very clear, I believe. They have said that they really have no problem with this Bill and they will vote for this Bill right now if they get the Public Procurement Commission, if I understand the AFC's position correctly. They have been unabashed in disclosing their position. The Bill is fine; we recognise the Bill is good for Guyana, good enough to get our vote, but give us what we want in exchange. They have been clear and unabashed in disclosing their position. A Partnership for National Unity (APNU), to the best of my knowledge, has not taken the same position. I believe APNU said that they have additional amendments they would like to see written into the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill. The Bill has been in the Committee from April to now and we have not seen any proposed amendments. But setting that aside for the moment, an opportunity was had tonight for us to hear what those additional amendments might have been. I do not believe we heard any of that, unless, perhaps, I missed that segment of today's proceedings when Mr. Greenidge shared with us what these additional amendments are. Forgive me, Sir, but no doubt again the record will speak for itself. I do not recall any specific suggestion or any specific identification being made.

Now Mr. Greenidge, the Hon. Member, has the nation waiting and some of the nation suffering whilst he identifies these as yet unidentified further amendments. When will they come? They did not come between April to now, Sir; they did not come tonight. Will they come next week? Will they come the week after? Will they come a month henceforth? When will they come? Who knows? What do we say to the elderly Guyanese lady who faced the prospect of her bank account being closed? [Lt. Col. (Ret'd) Harmon: A lady you made up.] Absolutely not! You would like to believe that and you would like to ignore and deny her existence. But, Mr Speaker, like I said, the Opposition enjoys the luxury of ignoring one, two or three Guyanese elderly ladies, or one, two or three Guyanese businesses. Our Colleagues on that side enjoy the luxury of ignoring them; we do not enjoy that luxury, Sir! We are a Government for all of the Guyanese people, each and every one of them! And we are a Government for every Guyanese business, each and every one of them! So we do not enjoy the luxury of saying she does not exist because her circumstances do not suit our purposes tonight. We do not enjoy the luxury of discarding and ignoring her existence because her circumstances are not politically expedient and convenient for us. Mr. Greenidge and Lt. Col. (Ret'd) Harmon, my Hon. Colleagues on that side of the House, might enjoy that luxury but we do not! We will not ignore them!

And so, Sir, I return to the question that I asked: when will we see these additional amendments that APNU would like to have included in this Bill? Will they emerge, not being emerged since April? We have had since April to now and they have not yet emerged from their cocoon. Will these amendments suddenly burst forth from their cocoon or from where ever they are into the light and expose themselves so that we can actually consider them? Or will they remain hidden from the human eye? Will they remain a mystery so that the Opposition can continue to hide behind the as yet unknown amendments they wish to propose? Will the nation be held ransom at the altar of some as yet unknown proposed amendments? This is the question, and I say tonight, Sir, to the Opposition, if you would like further amendments to this Bill, let the nation know what those amendments are tonight!

At least the AFC has been clear about its position. They have not said they want to make further changes to the Bill; they have said clearly what their position is. They are not hiding behind some nebulous amendments that cannot emerge for 10 months now. Come on, Mr. Greenidge;

tell the nation what are the amendments that you want, sir. Stop holding the nation to ransom, Mr. Greenidge. Tell the nation what the amendments that you want are.

Mr. Speaker, I will say this: this Bill, Sir, is required to bring Guyana in compliance with international standards. The world is not standing still waiting for us to resolve our petty differences here. As far as the world is concerned, until you can sort your house out, we issue an advisory on you and we move on; you are on your own. Mr. Speaker, I wish to say that the position of this Government is that this Bill should be passed tonight, as a matter of the greatest urgency. We might, Sir, as the Attorney General indicated, be prepared to refer the Bill to a Special Select Committee, but were the Bill... [*Interruption*] Like I said, Sir, every time they get agitated, I know I am on the right track. Every time they get agitated, I pat myself on the back and say, "I must be doing something right." I hear a buzz of excitement, Sir; I must be doing something right.

I will say, Mr. Speaker, that were we to concede solely for the purposes of saving this Bill from a terminal demise, were we to concede to it being referred again to a Special Select Committee, we will invite the nation to watch closely the proceedings of this meeting. Let us see who is prepared to meet frequently and for how long. Let us see who brings amendments and what these amendments are. We will invite the nation to closely watch the proceedings of this Committee, Sir.

Our position is well known: we are in support of this Bill and we are ready to vote in favour of it tonight. If Mr. Greenidge has amendments he wants to propose tonight for this Bill, we are ready to consider them tonight. There were 10 months to consider the matter so bring them tonight.

Mr. Speaker, this Bill is good for Guyana and it is needed by Guyana, and I wish to submit to you, Sir, that we in this House should do the right thing and vote resoundingly in favour when at the appropriate time tonight.

Thank you very much, Sir. [*Applause*]

**Mr. Speaker:** Mr. Basil Williams, I had you slated to speak but Lt. Col. (Ret'd) Harmon has indicated that you would no longer be...

**Mr. B. Williams:** No, Sir. I was not slated to speak.

**Mr. Speaker:** I was advised by the Chief Whips that you were.

**Mr. B. Williams:** I was not.

**Mr. Speaker:** Very well, my apologies. Lt. Col. (Ret'd) Harmon had indicated that he no longer wished to speak.

**Lt. Col. (Ret'd) Harmon:** Mr. Speaker, I wish to make some very brief comments because I believed that we were going to take this Bill to a Special Select Committee where it ought to go but it seems as if tonight we are rehashing what happened in a previous Special Select Committee when we have a new Bill that has to go to a Special Select Committee. I believe if one were to take seriously the statements made by the Hon. Minister of Finance, that we should vote on this Bill tonight, then I see no reason why we should go back to a Special Select Committee. If the Minister of Finance wants to take this to the vote tonight, let us do so. It is as simple as that. You want it, put it!

**Mr. Speaker:** Hon. Members, while you are doing that, just in case, I am working on arrangements for the Committee of Selection to be convened at midnight tonight.

Hon. Attorney General and Minister of Legal Affairs, you may reply and rebut.

**Mr. Nandlall (replying):** Thank you very much, Sir. We have heard a lot of arguments advanced. I would like to thank the Members on the Government side who would have so ably contributed to this debate. I would also like to thank the Members of the Opposition for the perspective which they have put. We heard from the Hon. Member, Mr. Ramjattan, that the position of the Alliance For Change, unfortunately, is that this Bill cannot, according to him, be looked at by itself. This Bill, according to him, must be linked to the establishment of a Public Procurement Commission – a proposition we reject because this Bill obviously has its own implications. It deals with different issues.

The Public Procurement Commission - we spoke at length about that - is important and it has its own metamorphosis that it must go through. The Government has stated its position already; pass the amendment to the Procurement Bill and we get the Procurement Commission established in two months. That is the position in relation to that. But in relation to the Anti-Money Laundering and Countering the Financing of Terrorism Bill, that is different. The Public

Procurement Commission and the Public Procurement (Amendment) Bill are connected. This Bill here is completely different so the Alliance For Change's position obviously is one that is untenable. They have disregarded, as the Minister of Finance articulated, the concerns of the citizenry, the stakeholders, the Bankers Association, et cetera.

APNU's position is that they would like some amendments to be made. We have not seen the amendments and while the Bill resided in the Special Select Committee for several months, not a singular line, not a singular sentence that purports to be the beginning or the end of an amendment, was put forward. But in the spirit of compromise and because...

Sir, I get the distinct impression that the Opposition collectively feels that if this Bill is defeated, somehow or the other, the Government or the Minister of Legal Affairs will be somehow injured. The Minister of Legal Affairs' life would be unaffected. The country would be blacklisted and, as a Government, we have a responsibility and we owe the people of this country a duty and we take that duty seriously. It is because of the importance of this Bill to the welfare of the people and the country we are taking the approach we are taking. We can jump on our own high horse and ride off into the darkness and say to hell with this Bill, as the Opposition is saying. I do not have to be here cajoling people to come to Special Select Committee and put forward amendments; that is not my job. I do not babysit big people. But all of that being said, Sir, we will commit the Bill once again. It has been there; it stood there idle; and it came out back without any input from the Opposition, not because of a lack of an opportunity, but because of a lack of initiative. We are taking it again, Sir, and this time I ask that...

**Mr. Speaker:** I am sorry. There is a Point of Order.

**Mr. Greenidge:** Did the Minister say that the Bill came without any input from the...

**Mr. Speaker:** I did not hear. I am sorry.

**Mr. Nandlall:** Mr. Greenidge is hearing things. Sir, I ask that one caveat be added. As the Hon. Member, Ms. Teixeira, indicated there is a Financial Action Task Force (FATF) meeting scheduled for mid-February and that body can, on its own volition, select Guyana for review. They do not have to wait until the Caribbean Financial Task Force (CFATF) meeting. To prevent Guyana from being exposed to that possibility, I believe whatever amendments are to be made

can be made, Sir, within one month. Also, Sir, since there seems to be, on that side at least, lack of recollection as to what transpired in the Committee, I want to ask that the Committee's hearing be held open for the public and for the press to attend so that the press can see who are making amendments and who are responsible for dilly-dallying, dilating and delaying so that no one will be in doubt or no one will have to call anyone's minute taker and try to insult people as minute takers. We will have verbatim recordings taped and whatever proposals are put will be published in the press. We will see how many proposals will come; we will see the nature of the proposals; and, hopefully, the process will be one that is timeborne.

I am asking for a couple of things. I am asking that this House considers sending the Bill to the Special Select Committee with two conditionalities: one, that it be returned to the House on or before 31<sup>st</sup> January, 2014 and, secondly, that the proceedings in the Committee be public proceedings to which the press be invited. We want a report from the Committee by 31<sup>st</sup> January, 2014 and that the proceedings in the Committee be public and open to the press. That is the proposal, Sir, from the Government. I would ask, Sir, through you, if the Opposition would want to respond or we go to the...

**Mr. Speaker:** No, we are not going to be doing bargaining and negotiating here. You replied so the Bill is on your motion. I put that the Bill be sent to the Special Select Committee.

*Question put, and agreed to.*

*Motion carried.*

On the specific aspects as to modalities, press, publicity, timing, those matters will be decided between you. I, however, have asked the Clerk to convene tonight the meeting of Committee of Selection. Members of the Committee of Selection, we will meet immediately after we take the break to name the committee so that before we go into the Christmas recess, the committee will be in place. We may need to meet on Tuesday for about 10 minutes to elect a chairperson. Due notice will be given. The Clerk will advise me because there is a two-day period.

With that said, Hon. Members, we have come to the end of our business for today, not for the year, and I would like to take the opportunity to thank everyone for their support throughout the year and to wish you a merry Christmas.

The Clerk advises that not everyone was able to handle the Christmas spirits this year so we may have to review that next year. Please try to have a joyful and peaceful Christmas all, notwithstanding the contentious issues we deal with. As I said today, remember that all of our Members, in one way or the other, have been affect this year by ill health, death and grief. As one Member reminded me today, "It does not only rain on one house." I think that is the saying. I am not too familiar with the saying, but all of us get wet. So please bear that in mind as we proceed into the Christmas season.

I wish you and your families, the staff of course, the auxiliary staff as I would like to refer to them, the police the drivers and everyone who make sure that we can meet this late and do what it is we do, a merry Christmas and a happy new year.

I am sorry. The Clerk told me that the Bill must be read a second time and then it is sent to the Special Select Committee. So Hon. Member, may you move that the Bill be read a second time.

**Mr. Nandlall:** I move, Sir, that the Bill be read a second time.

*Question put and carried.*

*Bill read a second time.*

*Bill sent to Special Select Committee.*

## **ADJOURNMENT**

**Mr. Speaker:** The Bill is now sent to the Special Select Committee and all of the material, memoranda and everything generated by committee No. 1, as I will refer to it, will be utilised for the sake of expediency in that committee. Thank you.

Hon. Prime Minister, Leader of the Opposition and anyone else wishing to make any end of year statement, I think now is an appropriate time.

**Leader of the Opposition [Brigadier (Ret'd) Granger]:** Thank you, Mr. Speaker. On behalf of A Partnership for National Unity and the Opposition in general, I would like to extend our best wishes to you, members of the staff of Parliament Office and to all of the Members of this honourable House for Christmas, bearing in mind the verse in Luke in which it declares peace

and good will to all men. We would like to wish you all the best for 2014. We hope we have again a fruitful year of discussions in this House. A happy Christmas and a prosperous new year to the staff and to everyone present, on behalf of the Opposition. [*Applause*]

**Mrs. Marcello:** Mr. Speaker, on behalf of the Alliance For Change, I wish to extend season's greetings and a happy new year to all Guyanese across the country. May the season bring joy and happiness to all and a successful 2014. [*Applause*]

**Mr. Hinds:** Mr. Speaker and Hon. Members, on behalf of the Government, I join in extending the traditional greetings of Christmas time. A merry Christmas and a happy new year to you and the staff of the Assembly, the media and all Members, and may we, on our return in January, find that we could work a little bit more harmoniously and get our growth and development running again, exceeding the 5% of this year.

On that note, Sir, I move that this House be adjourned to Thursday, 16<sup>th</sup> January, 2014.

*Motion carried.*

**Mr. Speaker:** Thank you, Prime Minister. Hon. Members, we are adjourned and we stand adjourned until Thursday, 16<sup>th</sup> January, 2014 at 2.00 p.m. Thank you very much.

*Adjourned accordingly at 11.46 p.m.*