Official Report

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

5TH Sitting	Thursday, 30TH July, 2015

Assembly convened at 2.02 p.m.

Prayers

[Mr. Speaker in the Chair]

ANNOUNCEMENTS BY THE SPEAKER

Completion of information form

Mr. Speaker: Hon. Members, there is just one announcement, more by way of housekeeping. It would prove helpful to matters if you complete the information form which has been provided to all Hon. Members. That would enable the preparation of the identification cards for all Members.

Once you have done that, I would suggest that you leave it on your desk. It would be retrieved after we leave the Chamber.

PRESENTATION OF PAPERS AND REPORTS

The following Papers and Reports were laid:

Report of the Ombudsman on a complaint by Mr. Maurice Arjoon arising out of the prosecution for a fraud at the New Building Society Ltd. *[Speaker of the National Assembly]*

The Maritime Zones (Internal Waters and River Closing Baselines) Regulations 2015 – No. 3 of 2015. *[Vice-President and Minister of Foreign Affairs]*

Audited Financial Statements of the Guyana National Newspapers Limited for the year ended 31st December, 2012.

Annual Report of Kwakwani Utilities Inc. for the year 2012.

Annual Report of the Guyana Oil Company for the year 2013.

[Minister of Finance]

Audited Financial Statements of the Demerara Harbour Bridge Corporation for the years ended 31st December, 2010, 2011 and 2012.

Audited Financial Statements of the Maritime Administration Department for the year ended 31st December, 2003.

Audited Financial Statements of the Guyana Civil Aviation Authority for the years ended 31st December, 2003 to 2008.

[Minister of Public Infrastructure]

Annual Report of the Ministry of Labour, Human Services and Social Security for the year 2012. *[Minister of Social Protection]*

Annual Report of the Central Housing and Planning Authority for the year 2013.

Audited Financial Statements of the Central Housing and Planning Authority for the year ended 31st December, 2013.

Audited Financial Statements of the Guyana Water Incorporated for the year ended 31st December, 2013.

[Minister of Communities]

STATEMENTS BY MINISTERS, INCLUDING POLICY STATEMENTS

Introduction of the Maritime Zones (Internal Waters and River Closing Baselines Regulations) 2015

Vice-President and Minister of Foreign Affairs [Mr. Greenidge]: Mr. Speaker, I wish to make a statement for purposes of clarification. You will recall that you were kind enough to permit me to present the Maritime Zones (Internal Waters and River Closing Baselines Regulations) 2015 – No. 3 of 2015. I would just like to take the opportunity, Mr. Speaker and Colleagues, to give a little background to this Order, especially because I think that in the environment in which we find ourselves today, there is a tendency to try and interpret things, and sometimes that interpretation by the public does not always convey to them, with sufficient accuracy, what it is that is before us.

The Maritime Zones Act of Guyana (MZA), which was enacted in 2010, was intended to capture the many new developments in maritime law with respect to the rights and obligations of Coastal States, which are parties under the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, with which you, Mr. Speaker, would be very familiar. It deals also with the international agreements and in customary international law

The enactment of this legislation has allowed Guyana to properly safeguard its rights and meet its international obligations under current international law on the wider aspects of the law of the sea.

Specifically, Guyana is now in a position to determine and safeguard the zones of jurisdiction she is entitled to under UNCLOS and general international law. The zones of jurisdiction, just for purposes of clarity, are the territorial sea, contiguous zone, exclusive economic zone (EEZ), and the continental shelf.

The baselines, to which the Order that we have just laid applies, constitute a fundamental aspect of the regime of zones of jurisdiction established under the United Nations Convention on the Law of the Sea. Since the breadth of the maritime zones, under national jurisdiction, has to be defined by the national authorities, it is what this

baseline seeks to do. It establishes the areas under which national jurisdiction is to be exercised.

It is useful to recall one important provision of the Convention which deals with baselines. Article 9 states thus:

> "If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between the points on the low-water line of its banks."

The baseline is also the line which establishes the outer limit of the internal waters in which the State exercises full sovereignty.

It therefore means that the proper implementation of the baseline provisions of the Convention by coastal States through, *inter alia*, their national legislation, will play an important role in the achievement of an adequate balance between the maritime interests of coastal States and those of the international community.

In this regard, UNCLOS provides in Article 16 that:

> "The baselines for measuring the breadth of the territorial sea…or the limits derived therefrom…shall be shown on charts of a scale or scales adequate for ascertaining their position. Alternatively, a list of geographical coordinates of points, specifying the geodetic datum, may be substituted.
>
> 2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

It is in this sense that the MZA 2010 of Guyana, Section 7, provides for the drawing of baselines to delimit the internal waters of Guyana.

The internal waters comprise the areas of the sea that are on the landward side of the territorial baselines and all rivers, bays, historic bays, ports, harbours and waters lying landward of the baselines.

Section 8 provides for Guyana's sovereignty to extend beyond its land territory to the

internal waters, the seabed and its subsoil and the airspace over the internal waters. Guyana has exclusive jurisdiction over its internal waters.

Such authority encompasses complete access to and control of all resources as well as full jurisdiction over all activities by both nationals and foreigners, and for all purposes, including enforcement of its national laws and protection of the environment, unless restricted by international law.

Section 9 of the Act gives me, the Minister of Foreign Affairs, the power to prescribe by regulations closing lines to delimit our internal waters. It is in this regard that the Maritime Zones (Internal Waters and River Closing Baselines Regulations) 2015 were enacted on 23rd July, 2015.

Thank you very much.

Presentation of the budget for 2015

Minister of Finance [Mr. Jordan]: I wish to announce that the presentation of the budget for 2015 will be done in this House on Monday, 10th August, 2015. [*Applause*]

2.17 p.m.

MOTIONS RELATING TO THE BUSINESS OR SITTINGS OF THE ASSEMBLY AND MOVED BY A MINISTER

SUSPENSION OF STANDING ORDER NO. 54

BE IT RESOLVED:

> That Standing Order No. 54 be suspended to enable the Assembly to proceed at its sitting today, Thursday 30th July, 2015 with the second reading and remaining stages of the Customs (Amendment) Bill 2015 - Bill No. 6 of 2015.
>
> [*First Vice President and Prime Minister*]

Mr. Speaker: Hon. Members, I have given consent in accordance with Standing Order No. 30(d), for the following motion to be proceeded with at this sitting.

First Vice President and Prime Minister [Mr. Nagamootoo]: I would like to move the following motion:

"BE IT RESOLVED:

> That Standing Order No. 54 be suspended to enable the Assembly to proceed at its sitting today, Thursday 30th July, 2015 with the second reading and remaining stages of the Customs (Amendment) Bill 2015 - Bill No. 6 of 2015. **"**

Question put, and agreed to.

Standing Order suspended.

INTRODUCTION OF BILLS

Presentation and First Reading

CUSTOMS (AMENDMENT) BILL 2015 – Bill No. 6/2015

A BILL intituled:

> "AN ACT to amend the Customs Act." [*Minister of Finance]*

PUBLIC BUSINESS

GOVERNMENT'S BUSINESS

BILLS – Second Readings

FISCAL MANAGEMENT AND ACCOUNTABILITY (AMENDMENT) BILL 2015 - Bill No. 3/2015

A BILL intituled:

> "AN ACT to amend the Fiscal Management and Accountability Act." [*Minister of Finance*]

Mr. Speaker: Hon. Members, I wish to point out that for the Fiscal Management and Accountability (Amendment) Bill, Bill No. 3 of 2015, there is an error on page 2 in clause 3

subsection (b). There, the figure and letter "80D" should be deleted. That was inserted by an oversight which is regretted. The reference to "80D" does not form part of your consideration of the Bill.

We will now proceed with the second reading of the Fiscal Management and Accountability (Amendment) Bill 2015, Bill No. 3 of 2015.

Minister of Finance [Mr. Jordan]: I rise to move that the Fiscal Management and Accountability (Amendment) Bill 2015, Bill No. 3 of 2015 published on 18th June, 2015, be now read a second time.

As it is well known, this House passed the Constitution (Amendment) Bill 2015, Bill No. 1 of 2015, last month. That Bill, which is the forerunner to this Bill, sought to amend the Third Schedule of the Constitution to add several named entities. The objective of doing so was to enhance, and I quote:

> "…the functioning of those agencies by guaranteeing and strengthening the administration and control of moneys allocated to them for carrying out their functions pursuant to the Constitution."

That Bill, which was successfully piloted by my colleague, Hon. Attorney General and Minister of Legal Affairs, Mr. Basil Williams, was previously debated and passed in this House in February, 2013, but the Bill's assent was withheld by the then sitting President. The Bill, which is being debated today, the Fiscal Management and Accountability (Amendment) Bill, Bill No. 3 of 2015, suffered a similar fate in that it was also debated and passed in this House in 2013 but never was enacted because, again, its assent was withheld by the then President. Thanks to the Guyanese people who in May of this year elected a President who has already indicated that he will never refuse to sign a Bill that has been passed by this House. Thanks to him, that this important piece of legislation, which complements the referenced Constitution (Amendment) Bill 2015, has been given a new lease of life. Today this Bill is being debated and its eventual passage into law will mark the culmination of a long tumultuous journey to free the constitutional commissions and other agencies from administrative strictures and controls of their finances.

Hon. Member Carl Greenidge, in his then capacity as shadow Minister of Finance, was tasked with piloting this Bill in 2013. As the pros and cons of this Bill have been previously ventilated in this House, I do not intend to spend time rehashing those arguments. Instead, I propose to be brief in my presentation, recalling, where appropriate, pertinent aspects of the previous debate on this Bill.

Now, the Explanatory Memorandum to the Bill before us today captures its essence succinctly. It states that:

> "This Bill seeks to amend the Fiscal Management and Accountability Act, Cap. 73:02, (i) to extend the application of the act to the responsible Minister and (ii) to establish financial independence of certain constitutional entities, including Service Commissions principally, to specifically allow for lump sum payments to be made to these Agencies and to free them from the automatic obligations of Budgetary Agencies and the discretionary powers exercised by the Minister of Finance over Budgetary Agencies, which obligations compromise their independence which they are intended to have as contemplated by the Constitution."

By definition, then, constitutional agencies exhibit three distinct features:

(i) they are constitutionally created and hence may not be abolished by statute;

(ii) they are conferred with certain powers and functions which cannot be reduced by statute;

(iii) and they are expressly described as independent.

Now, being only a layman in matters of interpretation of the law, obviously having not being schooled in the legal discipline, I interpret one and two of the above as imbuing constitutional commissions and agencies with certain statutory powers, functions and obligations which cannot be arbitrarily interfered with or taken away by anyone, not least of which is the executive. Sands the visible hand, of especially the Government, these bodies are expected to execute their mandate without fear or favour, affection or ill-will, that is to say, fairly and impartially, without regard for the overpowering and sometimes oppressive presence of 'big brother'. In spite of this installation the Government can influence the actions and functions of these bodies through

control of their funding. After all, it was our late great poet in residence, Mr. Martin Carter, who reminded us that "The mouth is muzzled by the hand that feeds it."

It stands to reason that for the bodies to function within the meaning and scope of their independence, which is the third criterion mentioned earlier, they must enjoy fiscal autonomy so that they can effectively serve the Guyanese people.

What, one may ask, is fiscal autonomy? This is invariably defined as a guarantee given by the Constitution to certain units of Government. In our case it is given expression whenever the Constitution mandates that funding be a direct charge on the Consolidated Fund. The principal of fiscal autonomy is full flexibility and autonomy on where to allocate and use resources. It is also freedom from outside control. It is intended as a guarantee of separation of powers and of independence from political agencies. In many countries the language is quite explicit and precise. In the Philippines, for example, the guarantee for the constitutional commissions states:

> "The Commission shall enjoy fiscal autonomy. Their approved annual appropriation shall automatically and regularly release."

In the case of the judiciary in that country, its provision is even more secure. The Constitution making it clear that appropriations may not be reduced by the legislature below the amount appropriated in the previous year and after approval shall be automatically and regularly released. This last phrase "automatically and regularly released" has definitional issues, especially if the executive may wish to withhold release because of reporting or other issues. This was resolved by the Supreme Court of the Philippines when it said that the constitutional commission is not required to perform any act to receive the just share accruing to it from the national coffers. No conditions to fund releases to constitutional agencies must be imposed.

It should be clear that what is being proposed would not lead to the absence of accountability by these agencies and bodies. Indeed, quite the opposite is contemplated and is indicated when one examines the new clause 3(b). Back in 2013, Hon. Member Carl Greenidge was at pains to reassure this House about the enhanced framework that was being put in place to ensure that these bodies operated in a transparent and accountable manner with due regard to fiscal probity, propriety and rectitude.

Clause 3(b) has eight subsections. Subsection 3(b)(1) gives authority to a named public official responsible for managing the affairs of the agency. That is preparing the budget estimates and submitting it to the Clerk of the National Assembly. The submission to the Clerk removes the need to submit the estimates directly to the Ministry of Finance, though at the time of submitting the estimates to the Clerk the head of the agency must also copy it to the Minister of Finance and the Speaker of the National Assembly. This new procedure allows for the agencies request for funding to be considered directly by and only by the National Assembly instead of through the subject Ministry. In the preparation of their budget submissions the constitutional agencies will be guided by the budget circular issued by the Ministry of Finance as set out in the Fiscal Management and Accountability Act. The concern that this new fiscal autonomy of the constitutional agencies might be abused and that they could demand any amount from the executive without providing supporting arguments for justification should be laid to rest. These agencies will be subjected to the same fiscal strictures as other agencies. Where, however, they attempt to seek an exemption from the general financial constraint being imposed on the rest of the budget agencies the relevant constitutional agencies must come to this House to justify it.

Subsection 3(b)(2) provides for the Minister of Finance to submit his comments and recommendations on the budget of the constitutional agency in a timely manner so as to allow consideration by the National Assembly.

These recommendations are limited to the size of the allocation and not to the line items that give rise to the total amount being requested. This is an important departure, in that it prevents the executive from micromanaging the activities of the constitutional agency.

To give but one example: If a member of the judiciary wishes to attend an important conference he or she needs to submit a Cabinet Memorandum through the subject Minister. At this initial stage, if the Chancellor approves the trip but the Minister disagrees, that would most likely be the end of the matter. It is not unknown for persons to canvas certain influential members of the executive so as to ensure the safe passage of the Cabinet Memorandum, in Cabinet.

2.32 p.m.

Once Cabinet agrees, he or she then has to report to the Ministry of Finance to obtain the funds, a process that can be time-consuming. On return from the trip, he or she has to clear the advance of

funds given or risk having their emoluments compromised while the advance remains outstanding. Now, the Chancellor will be the sole authority in this new dispensation for making the decision of whether the judicial official goes or not to go on the trip. The procedure of accounting for taxpayers' money, which finances the trip, will remain intact.

Subsection 3 (b)(4) speaks to the determination of the format of the budget submission of the constitutional agency. This has to be done in consultation with the Minister of Finance, but only to ensure consistency of submissions with other budget agencies, not to consider line items of the budget. This is reflected in subsections 3(b)(5) and 3(b)(6), in which detailed budgets and appropriation of the constitutional agencies are to be included in the Estimates of Revenue and Expenditure in the same manner as other subventions agencies.

The requirement, as explained previously by the Hon. Member Carl Greenidge, is that the annual submission is approved by the National Assembly, after review, and then it is incorporated in the national budget. The single exception is that in the case of the Auditor General's Office for which the Public Accounts Committee has specific responsibility.

Subsection 3(b)(7) is important, in that it seeks to deter any alteration of the budget of a constitutional agency without the prior approval of the National Assembly.

Here we are confronted with the issue of trying to balance the agency's legitimate need for financial autonomy and independence against the constitutional role of the Minister of Finance as controller of the public purse. Other jurisdictions have tackled this issue in novel ways. For example, in the United States of America, unless the restriction is placed in the Appropriation Act or expressly stated in statute, these agencies are not legally bound to adhere to financial restrictions imposed by Congress. Of course, the Auditor General cannot exceed the total amount of the lump sum of appropriation and its spending cannot violate other statutory restrictions. However, the rule recognises the agency's need for flexibility to meet changing or unforeseen circumstances, yet preserves Congress' control.

In the instant case, the Bill in no way seeks to inhibit, restrict or prevent the Minister of Finance from employing fiscal measures consistent with his overall responsibility for management of the economy. Indeed section 54(1) of the Fiscal Management and Accountability Act is very clear on this issue.

"The Minister may, at any time, suspend the making of any payment or any expenditure of public moneys, other than statutory expenditures, if, in the opinion of the Minister, the financial exigencies of the public interest so require."

What all of this means is that if the economy were overheating, resulting in a persistent increase in inflation, for example, or if there were a precipitate fall in revenue, the Minister may be forced to cut back on the overall expenditure of the Government in an effort to curtail aggregate demand. Under such a scenario, some or all of the constitutional agencies may be under consideration for a reduction in their budgetary estimates. As currently stated, the Principal Act, only excludes payment of statutory expenditures, such as the public debt from being suspended. While clause 2 of this Bill would exclude the allocations of constitutional agencies, in addition to statutory expenditures from suspension, subsection 3(b)(7) sets out that if it became necessary to vary downwards the budgets of constitutional agencies, the Minister of Finance would have to seek the prior consideration and approval of the National Assembly.

Subsection 3(b)(8) makes provision for the appropriation of a constitutional agency to be disbursed, (a), as a lump sum and, (b), within a month after the approval of the Appropriation Act setting out the approved estimates of all the agencies of the Government. In the previous debate on this question of the "lump sum disbursement" to these agencies, it was argued that it would put undue financial pressure on the Government finances so early in the year when revenue collection is relatively low.

Now, the constitutional agencies, which would be affected by this Bill, are identified in clause 4 as:

i. The Public Service Commission

ii. The Police Service Commission

iii. Teaching Service Commission

iv. The Public Service Appellate Tribunal

v. The Supreme Court of Judicature

vi. The Office of the Ombudsman

vii. The Parliament Office

viii. Guyana Elections Commission (GECOM)

In 2014, the current capital and capital estimates of these agencies amounted to $ 5.73 billion or 2.8 % of the total appropriation budget. Included in that figure is an amount of $ 3.3 billion for GECOM to prepare for elections, in that year. Thus, in periods when there are no elections, the estimates of expenditure of these agencies could be considerably less. Therefore, the requirements of the combined constitutional agencies are relatively small and can be managed without the financial stress implied in the earlier debate. But even if, for arguments sake, there was indeed some pressure exerted on the revenue and expenditure of the Government by the lump sum disbursement so early in the year, it would be small price to pay for the financial independence envisaged by the Constitution.

In concluding, I wish to state clearly that we are not seeking to put these agencies outside of the national budget process, nor are we trampling on, or fiddling with, well-known and tested budget principles and practices. Lump sum budgeting is a legitimate means of budgeting that is practised in several jurisdictions when dealing especially with constitutional agencies. The contents and import of this Bill suggest a well thought process to enhance the independence of the constitutional agencies of Guyana, through giving them complete control of their finances. There are built-in mechanisms and procedures to safeguard against abuse of this new found freedom, consistent with the constitutional imperative, which imposes on such bodies a duty to manage their subventions "in conformity with the financial practices and procedures approved by the National Assembly".

Thus, the constitutional agencies will be held to the same budget preparation, accounting and auditing standards as the rest of the Government. These agencies will be prevented from opening commercial bank accounts and depositing the lump sum into interest bearing accounts. They will be required to return any unspent balance to the treasury at the end of the year. They will be required to keep the same records, the same books, and use the same charts of account format. It is only that the executive will be prevented from telling them what to budget in each line item. The removal of all vestiges of interference by the executive into the affairs of the constitutional

agencies will boost the public's confidence in the operations and decisions making of these bodies.

I thank you Mr. Speaker. [*Applause*]

Mr. Greenidge: Mr. Speaker, might I start by commending my colleague, the Hon. Minister of Finance, for an exemplary presentation on this particular matter. He has been both very clear and very comprehensive. In a way, I am being very selfish by saying that because of the comprehensiveness of his coverage makes it almost unnecessary for me to say anything, except to endorse what he has said, and I would not say much more than that.

I just want to say, as the Hon. Minister indicated, whilst on the other side of the House there had been an extensive number of complaints about the adverse impact of a Bill such as this. We had both by way of motions and by way of consequential resolution and then of a Bill, as the Minister indicated, sought to assuage those concerns and to set out specifically the objectives that this Bill, and its type, sets out to solve. Maybe just for the purpose of emphasis you would indulge me for a minute, Mr. Speaker.

I am not going to repeat what I said on previous occasions but it is to say to you, first of all, that it is clear, looking at the Fiscal Management and Accountability Act, that in the crafting of the Principal Act it was ill-conceived, in the sense that it had as a Schedule a number of agencies listed as budget agencies, which listing was inconsistent with what was set out in the Constitution as regards to these agencies, and they are a variety of them. I think at the last count, out of the 39 agencies listed as budget agencies, I had identified 10 which should not have been there. They should not have been there for reasons that have been set out before, namely that their role of being a budget agency enabled the Ministry of Finance, including the Finance Secretary, to do a number of things and it gives them powers which in effect, whilst they might have been operating independent, made them other than financially independent.

For that reason, I simply want to say that it seems to me that had we taken another route rather than trying to or passing the legislation in this House, the other route would have been to ask the court to pronounce or to strike down that segment of the Principal Act which conflicted with section 7 of the Constitution which makes provision for a number of, what I call, fundamental agencies, agencies looking after our fundamental rights, ranging from the courts to the Service

Commissions, Rights Commissions, and so forth. If the Constitution were to be respected, then article 222A, in particular, which calls for allocations on a lump sum basis, would have to been respected, and it was not respected.

Therefore I think it is commendable that one of the first acts of the new Government has been to put itself and the legislation, within which it operates, within the ambit under the protection of the Constitution itself. I think that is very important and it is a very commendable step. We have struck down sections of our legislation which not only infringed the Constitution but actually sought to undermine the principles upon which the Constitution was based, namely the independence of constitutional bodies that looked after our fundamental rights.

I would also like to emphasise that the other query, which was raised, had to do with safeguards. For some reason, in those presentations, in the press and on the previous occasion, there are suggestions, somehow, that the persons who are heading many of these agencies might be somehow responsible. The obligations again, as the Minister clearly set out, is that the person's heading these agencies is no less onerous than it is for any other.

2.47 p.m.

The article under the Constitution requires that they report and be accountable for moneys delivered to them, whether it is in a lump sum or otherwise, and the Fiscal Management and Accountability (Amendment) Act, which is before you, actually reinforces and makes operational the concepts that are set out in the Constitution itself.

That is really all I would like to say. I would like to commend to the House this piece of legislation and once more support the Minister of Finance's arguments for supporting it.

Thank you. [*Applause*]

Minister within the Ministry of Finance [Mr. Sharma]: Mr. Speaker, before I get into my presentation, let me congratulate you on being elected as the eighth Speaker of this honourable House.

I rise to speak on this Bill currently before us, the Fiscal Management and Accountability Act (Amendment) Bill 2015, Bill No. 3 of 2015. I feel to some extent a sense of *déjà vu,* having

participated in the Tenth Parliament on this very similar Fiscal Management Accountability (Amendment) Bill, Bill No. 24 of 2012. If my memory serves me correctly, there was only one speaker from the People's Progressive Party/Civic (PPP/C) side, the then Government, and today there is none.

The Fiscal Management Accountability (Amendment) Bill, Bill No. 24/2012, has been the subject of a motion that was extensively debated and passed in the Tenth Parliament. However, unfortunately, as it is known, the then President withheld his assent and returned the Bill to the Speaker with his reasons for withholding his assent. The nation was told that the common reason advanced by the then President for withholding his assent, in respect to the Bill, was that it collided with article 8, the "Doctrine of a Constitutional Supremacy". Article 8 of the Constitution declares the Constitution to be supreme law of Guyana and states that any other law which is inconsistent with it, that other law shall, to the extent of its inconsistency, be void. However, it is the view of the public that the President was to assent to a Bill which will then become law and, therefore, it was technically not in conflict with article 8 of the Constitution.

What is amusing about the reason chosen by the then President for withholding the assent to the Fiscal Management and Accountability (Amendment) Bill, Bill No. 24 of 2012 was that this very Bill was premised on the Principal Act, the Fiscal Management and Accountability Act, Bill No. 20 of 2003, being inconsistent with the Constitution.

To make my point, the Hon. Carl Greenidge, the pilot of the Fiscal Management and Accountability (Amendment) Bill, Bill No. 24 of 2015, speaking to the Bill said:

> "It is quite a straightforward Bill; it simply seeks to take off the schedule those agencies that should not be there. They should not be there, not because we do not like them on there, but because the Constitution, which is the supreme law of the land, requires that they be treated as financially independent. The supreme law of the land cannot be subsidiary to the Fiscal Management Accountability Act."

Here, Mr. Speaker, you would have noticed that the nation could not have seen the reason of the then President's reason for saying that the then Bill, Bill No. 24 of 2012, being in conflict with the Constitution, when indeed it is the Principal Act was in conflict with the Constitution from the inception.

Let me move on to the various amendments that are being proposed.

Section 54(1) of the Principal Act speaks to suspension of payment. It states:

> "The Minister may at any time suspend the making of any payments or any expenditure of public moneys."

We see this as further being inconsistent with the Constitution and directly it affects the financial independence of constitutional agencies. Section 54(1) of Principal Act exempts statutory expenditure from being suspended by the Minister. Clause 2 of the Bill seeks to amend section 54(1) with the Principal Act by simply inserting the words "or allocations to constitutional agencies", as a safeguard to prevent the Minister's interference.

Section 80 of the Principal Act speaks to annual reports and audited financial statements of statutory bodies and, therefore, we saw it fit for this to apply to constitutional agencies for the enhancement of accountability and transparency, "except as otherwise provided by the law", establishing the agency. This will be accomplished by insertion immediately after section 80A, which is specific to the constitutional agency.

Section 80B seeks to outline the process that the constitutional agency is required to follow for the budget preparation, submission and presentation to the National Assembly, in addition to, the disbursement of approved appropriation and alteration of the annual budget of the constitutional agencies approved by the National Assembly. This will be accomplished by the insertion of section 80B, which is specific to the agency.

Section 80C is similar to section 80A, as both make reference to section 80 of the Principal Act which speaks to the annual report and audited financial statement of statutory bodies. However, section 80C offers greater clarity and is specific to the constitutional agency.

Section 85 of the Principal Act speaks to liability of official who falsified records, conspire to defraud or knowingly permit a breach of the Fiscal Management and Accountability (FMA) Act is guilty of an indictable offence and liable on conviction to a fine of $2 million and to imprisonment for three years. Mr. Speaker, as you are aware, a former Minister is presently before the court for similar allegations.

Section 2 of the FMA Act, which deals with interpretations, reads as follows:

> '"Official" means an individual who is in, or is a part of, a budget agency as an employee of the Government on a full-time, part-time, or contracted basis.'

Reading the various sections of the FMA Act would give one the impression that the word "Minister" is not considered in section 85 when one reads section 48, which speaks to the misuse of public funds, and section 49 which speaks to liability for the loss of public money. In both sections 48 and 49, specific mention was made to the words "Minister" and "official". Section 49 only speaks about recovery of the debt even if the person ceases to be a Minister or official. However, conveniently, no mention was made in this section of the indictable offence and liable on conviction to a fine and to imprisonment as was mentioned in section 85, which speaks to liability of official.

I am certain that the taxpayers will be happy to know that under this Government Ministers of Government who would be found guilty of an indictable offence under section 85 will be liable to conviction to a fine of $2 million and to imprisonment of three years. I do not know if it is something we should be celebrating. However, this is a promise of this administration, by the President, that we should be a clean and lean Government, as far as possible. Promises made by the President in his charge to the National Assembly, when he had mentioned:

> "Your Government will also bring forward legislation to secure strong and lasting constitutional reform and to guarantee good governance."

In so doing, Mr. President indicated that there would be some Bills to be presented and they were presented so far: Constitution (Amendment) Bill, the Former President's Benefits and Other Facility Bill and the Anti-Money Laundering And Countering the Financing of Terrorism, all of which were approved in the House. Presently we are looking at the Fiscal Management and Accountability (Amendment) Bill which will soon be approved in this House.

This brings me to the last part of the Bill in which it is indicated here, and was widely debated before, and this is in relation to the agency listed in the Fiscal Management and Accountability Schedule, 39 of them, which is widely known that it conflicts with the Constitution. In specific, it conflicts and infringes directly on the provisions article 222 and article 222A.

I think this Bill will serve this nation as it is being put here to make things more efficient. Our constitutional agencies will be truly independent, not just administratively but also financially. This Bill will accomplish what the Tenth Parliament tried to do unsuccessfully and in which the Eleventh Parliament will be successful in completing and accomplishing.

Mr. Speaker, I, therefore, thank you, and I commend this Bill for passage. [*Applause*]

Mr. Jordan (replying): I think the arguments in favour of the Bill have been properly ventilated and at this stage I wish to commend the Bill for passage.

Question put and carried.

Bill read a second time.

Assembly in Committee.

3.02 p.m.

Clauses 1 to 4 agreed to and ordered to stand part of the Bill.

Assembly resumed.

Bill reported without amendments, read the third time and passed as printed.

LOCAL GOVERNMENT (AMENDMENT) BILL 2015 – Bill No. 5/2015

A BILL intituled:

"An Act to amend the Local Government Act" *[The Minister of Communities]*

Minister of Communities [Mr. Bulkan]: If it pleases you Mr. Speaker, I rise to move that the Local Government (Amendment) Bill 2015 – Bill No. 5/2015, published 19th June, 2015, standing in my name and which had its first reading on 25th June, 2015, be now read a second time.

This Bill is similar to a Bill that came before this honourable House, that is, Bill No. 12 of 2012, which was laid and had its first reading on 30th July, 2012, exactly three years ago. It is necessary for me to give a brief history of this Bill. Whilst I have referred a moment ago to Bill No. 12 of

2012, the genesis of this Bill before us today is much earlier. This Bill was one of five pieces of legislation that was crafted out of a process that originated in the Seventh Parliament. Yes Mr. Speaker, you heard me correctly.

Following the General Elections of 15th December, 1997, and the turmoil and upheaval that accompanied those particular General Elections, it led to CARICOM'S involvement which resulted in an Accord that was signed on January, 1998, known as the Herdsmanston Accord. This was designed to deescalate the conflict which had enveloped our country. In that Accord, there was a menu of measures which outlined seven things which had to be done, one of these being Constitutional reform. Many Members who are here today would remember that period. The Constitutional reform process that I have just alluded to, as well as the consensus in the Seventh Parliament, was that the system of Local Government needed to be strengthened and overhauled. The thinking clearly was, if local democracy existed and if there were effective and meaningful local decision making, as well as administration, that over time it would help to eliminate this phenomenon whereby general elections was such a divisive and traumatic event in our national life. It was partly designed to break that cycle of crisis. In other words, if as a country we could move to having many, instead of one centre of authority, then general elections would not assume this status of a do or die event with its inherent winner takes all makeup, where we would not have these life-altering stakes.

It is not that the Constitution did not already have provisions relating to a system of Local Government - it did. Nonetheless, it was felt that it needed to be further strengthened. One of the new Constitutional provisions is Article 78(b) which has to do with a new electoral system for local government bodies below the level of the Regional Democratic Councils (RDCs) and it provides for the involvement and representation of individuals and voluntary groups in addition to political parties.

Mr. Speaker and Hon. Members, another Constitutional provision dealt with the establishment of a Local Government Commission, which would be empowered to deal with regulation and staffing of Local Government Organs.

A third provision had to deal with how Local Government Organs are funded. The eventual legislation relating to this, that is, Article 77(A) is known as the "Fiscal Transfers Act".

The other two pieces of legislation related to incidental revisions to the two Principal Acts governing Local Government. These are Chapters 28:01 - the Municipal and District Councils Acts and Chapter 28:02 - the Local Government Act. The first mentioned, that is, the one creating a new electoral system or the Local Authorities Elections (Amendment) Act No. 26 of 2009, was approved in the Ninth Parliament. The main feature of which is the creation of constituencies within each Local Democratic Organ to allow for the election of a single candidate to represent the interest of residents living, as well as property owners, within a specifically demarcated part of a municipality or Neighbourhood Democratic Council (NDC) as defined by given boundaries. Allow me please to give an example Mr. Speaker. The Parliament Building, which we are now in, falls within a constituency which is constituency No. seven of the 15 constituencies of the Municipality of Georgetown and which boundaries are to our north - North Road to the south - Hadfield Street leading into Chalmers Place and then continuing eastwards to the canal between South Road and Croal Street, the eastern boundary being Vlissengen Road and to the west – the Demerara River. To allow a candidate or a councillor to be on a council without being affiliated to a political party was designed to take politics out of the management of our communities.

The second, that is, for the creation of a Local Government Commission, was approved in this honourable House in 2013, but it required a Ministerial Order for it to be operational, an Order that never materialised up to the time of departure of the previous Minister.

The third – the Fiscal Transfers Act, is in place and it provides a framework to address the vexed issue of how a council is funded or its revenue base.

The fourth- the Municipal and District Councils Act, is similarly in place.

Today, we are here to bring the process to completion with the eventual passage of this Bill which is before us. This Bill is not revolutionary. It is an Act to amend the Local Government Act, Chapter 28:02. In its Explanatory Memorandum, on page 21 of the Bill, it lists the three main features of this Bill.

The first is stated which is to include the Neighbourhood Democratic Council in the Local Government system for all purposes. It will be recalled that the Principal Act, namely Chapter 28:02, predated the NDCs which came about via the 1980 Constitution.

The second of the three purposes of the Bill has to do with consequential amendments. The main of these being a provision that allows for an NDC, subject to subsequent Regulations, to establish a constabulary out of its own resources. This is not a novel feature as the Georgetown's City Constabulary recently celebrated its 178th Anniversary. A ceremony, I may add, Mr. Speaker, which I was honoured to attend.

3.17 p.m.

I believe that Vice-President Ramjattan, who would be speaking on this Bill, will elaborate more and expound in relation to this particular provision of the Bill having to do with the creation of a constabulary.

The third feature has to do with the increased penalties in a number of areas. As far as these increased penalties are concerned, the most significant one has to do with increased fines for anyone found guilty of impeding any drainage or irrigation for that matter network. It is here on section 146 A on pages 16 and 17 of the Bill. It is a new insertion.

It also gives the authorities the authority to remove, without delay, any such blockage or impediment, the costs for which are to be borne by the proprietor of that particular building. No doubt this will be welcome news to all of our Local Democratic Organs and of course, all of our citizens who have to suffer loses and inconvenience caused by flooding. I believe as well that it will be particularly welcome news for my Colleague, the Hon. Minister for Public Infrastructure, who has been doing such a valiant job since his accession to office, where he was greeted with a baptism of water.

The next feature of the Bill has to do with parate execution; insertion of section 84, where it increases the fees that are payable. Under the existing legislation, the fee for that process that is on the Third schedule of the Act is the grand sum of $2.50. It tells us how long ago that piece of legislation was crafted. However, my Colleague, the Minister of Legal Affairs, now has the authority to fix such fees. The Hon. Member, the Attorney General, will speak on that feature of the Bill, as well as others. I venture to say that the Hon. Member and Minister will assure this honourable House that that authority being granted to him under this Bill will not be used arbitrarily or capriciously, but rather judiciously; I believe so Mr. Speaker.

The obvious question is after the passage of this Bill, what next? The answer is that the passage of this Bill will pave the way for the rebirth and the renewal of local democracy in our country. It will enable the Administration to set about the task to repair the broken system that we have inherited. The management and maintenance of communities are not direct responsibilities of the Central Government, but rather of the Local Government. This is what our Constitution provides. In this regard Articles 12. 71(1), 74(1) and 74(3) of the Constitution is unambiguous. Those Articles are pellucid. Our communities require constant care and attention which it cannot receive from a Ministry, but rather which is the responsibility of 71 councils and of 585 directly elected constituency representatives. This is what Local Government Elections will allow for and I venture to say that no one should interfere any longer with this process.

That Local Government Elections have not been held for 17 years, since they were last due, has led to our Local Democratic Organs being damaged, their capacity degraded and they have been rendered dysfunctional. They currently do not have the capacity to execute the tasks and to discharge their responsibilities to the people within their jurisdictions, the results and the effects which are evident countrywide, from Mabaruma to Moleson Creek to Lethem and to Bartica. The recent excessive rainfall, that our country has seen, has made citizens painfully aware of the dysfunctionality of the system of local administration.

As of the 16th May of this year, it is this Administration that has the responsibility to fix this broken system as I said. We will set about doing so with a three step approach, these being, first - the democratic renewal, secondly - the institutional strengthening and capacity building and thirdly - how councils are funded, in other words, their revenue base. One follows the other.

Following discussions with Guyana Elections Commission (GECOM), I announced in this House in June, that it is the Administration's desire to hold Local Government Elections sometime in November. Earlier today, I spoke, again, with the Chief Elections Officer (CEO) and I have been advised by him and verily believe that the Commission at its next scheduled meeting on 18th August will be expected to ratify, to make a formal decision to proceed with all the activities for the holding of Local Government Elections.

I am assured, and I verily believe, by the Secretariat that once such approval is granted, GECOM will be able to hold the elections in early December or well before the Christmas. So, whilst I

earlier said that it is our desire for these elections to be held in November or before the end of the November, I was advised today, that GECOM is assured that they would be in a position to hold these elections in early December.

The other two activities which I referred to earlier are now being actively addressed, so by the time the new Councils come into being, the framework will be in place to offer the requisite support to equip and enable the system to work and to deliver in accordance with the expectations of an overburden and oftentimes frustrated citizenry. I know of no other way to approach this problem.

Mr. Speaker, I crave your indulgence to digress momentarily. Following the earlier announcement that I referred to, that was made here in this honourable House, the main Opposition political party, which is the People's Progressive Party Civic (PPP/C), issued a press release that was subsequently published in the *Mirror Newspaper*, a copy of which I have here. In this press release, which was published in the *Mirror Newspaper* of the 11th and 12th July, 2015, it says here:

> ''Mr. Bulkan is fully aware of the reality that Local Government Elections cannot be held this year''

The article goes on and proceeds to create its own reality and arrives at its own conclusion, which is:

> ''…the nation should be expecting the elections to be held in the second half of the next year''

So, it is taking us the second half of 2016. I am not aware of the realities to which that article and that press release refer. I am not a lawyer. In fact, I do not even claim to be intelligent, but my response to the PPP/C and its General Secretary is that these elections, like time or the tide, will wait on no one. It will not be delayed; it will not be deferred any longer. The citizens' rights will no longer be treated with callous disregard. The necessity for local democracy and its pace of development will not be dictated to by our absent friends.

This very Opposition, when they were in Government, promised in their 2011General Elections Manifesto, that if re-elected to office, they would hold Local Government Election within one

year. Well it did not happen in the three years when they were in office. Now we have this astonishing, astounding pronouncement that the elections must be held, not this year, not sometime early next year, but in the second half of next year.

The obvious question is why? Why this position by the Opposition party? My suspicion is that they have a fear of people being empowered to manage their own affairs. They have a fear of people being liberated and it can only be out of a desire to keep our people subjugated to exercise control.

Having said that, it is in this honourable House that our laws are made and where we, the representatives of the people, officially make known our position, not at media conferences. It is regrettable that once again we are here today and the Opposition benches are vacant and that the PPP and the Opposition Members in this honourable House do not have the opportunity to retreat from that position that was announced in that article that I just read and be able to have the opportunity to see the error of their ways and to support this Bill. I say that these elections, as I have said, have little to do with politics and everything to do with giving people their Constitutional rights to take care of their communities.

It is for this reason and these reasons that I invite the absent Opposition, even though they are not here to support the Bill, to be able to support the work of GECOM and to support the Constitutional rights of the Guyanese people to have Local Government Elections to be held sooner rather than later. I now invite the Hon. Members on this side of the House to support this Bill at the appropriate stage. Thank you. [*Applause*]

Mr. Speaker: I thank the Hon. Minister for his statement. Hon. Members, I crave your indulgence to allow me to recognise among us the presence of Mrs. Bissoondai Beni Persaud-Raymond. A Former Member of this noble House, who spent the better part of a decade as the Member of Parliament (MP) for Region 3. We say welcome to you Mrs. Raymond, we are happy that you have taken time off to come and sit with us and it leaves for us to express our appreciation at your presence here, welcome. [*Applause*]

3.32 p.m.

Mr. Carrington: Thank you Mr. Speaker. Good afternoon Hon. Members, my fellow human beings, brothers and sisters.

Mr. Speaker, I must take this opportunity to congratulate you on your appointment as the Speaker of this National Assembly. I know you will be just in your judgement. Your posture has such outline, as a gentleman who can differentiate between right and wrong, and will choose right above wrong.

We are here today to amend the Local Government Act 28:02, the Act which was established to give guidance and power to the Minister and village councils outside the boundary of the municipality and neighbourhood democratic council. I must say, I never liked the Local Government Act in the form in which it was. I love the amendment to this Act.

The Local Government (Amendment) Bill 5/2015 is intended to bring the neighbourhood democratic council under the Local Government Act by inserting the word "neighbourhood democratic council" before the word "village". This Act 28:02 was never intended to be the governing Act for the neighbourhood democratic council or municipalities.

There is a difference between a village council and neighbourhood democratic council. A village council is a single village while a neighbourhood democratic council is a collection of villages.

Today, my present opinion mirrors that of my passed opinion. I think the rightful Act, which all Local Democratic Organs - Local Government Authority - should be governed under is Chapter 28:01, the Municipal and District Council Act. This Act should be amended to include the neighbourhood democratic council, the Local Government Commission and all bits and pieces of the Local Government Act.

Nevertheless, we are now amending Chapter 28:02, which I will find favour after its amendment. The Local Government Act came into force sometime in 1972, but is now inconsistent with the 1980 Constitution of Guyana on account of Constitutional amendment in 2001. The amendment to the Constitution is intended to empower Local Democratic Organs and to prevent acts of abuse of power by the subject Minister.

The Local Government Act has been used by the Ministers in the past to violate the rights of Local Democratic Organs. I am happy that we are amending this Act. For example, section (30)

of the Chapter 28:02 is one of the sections which was used to dissolve municipalities and neighbourhood democratic councils and appoint interim management committees (IMC), even though the Minister did not have the power to dissolved municipalities and neighbourhood democratic councils because Chapter 28:02 does not apply to municipalities and neighbourhood democratic councils. After this amendment, the neighbourhood democratic councils will fall under Chapter 28:02.

We are now seeking to bring the municipalities, somewhat, and the neighbourhood democratic councils under this Act. Section 30 has not been amended or deleted from the Principal Act. Section 30, in my opinion, applies to a village council and not an municipality or neighbourhood democratic council, which is a larger community. So to amend the Local Government Act, to bring the municipality and the neighbourhood democratic council under this Act, without removing section 30, I respectively submit to be an improper Act. So we may need to do some amendments to section 30 of that Act.

I would like to thank our Hon. Minister Ronald Bulkan, for recommending me to speak on this Bill and allowing me to give my honest opinion.

Our Hon. Minister of Communities, Ronald Bulkan, is re-tabling this Bill, which was tabled by the previous Government and approved by the Tenth Parliament, but the President did not assent to it.

Let us look at some of the proposed amendments to section 2 of the Principal Act, which gives the Local Government Commission the power to make or approve by-laws.

Section 2 will read, after it is amended, "by-laws Commission" meaning Local Government Commission, established under section 3 of the Local Government Commission Act 2013, which means, any by-laws made under the authority of this Act and for the time being enforced. I do not know if the Commission will be responsible for making by-laws, but I am assuming, in my thinking, that they will be responsible for by-laws.

Article 78 A of the Constitution of the Cooperative Republic of Guyana states that:

> "Parliament shall establish a Local Government Commission, the composition and rules of which empower the commission to deal with as it deems fit, all matters related to the

> regulation and staffing of local government organs and with dispute resolution within and between local government organs."

The word "regulation" in the article 78 A does not mean that the Commission has the power to make by-laws or approve of by-laws for municipalities or neighbourhood democratic councils. It means that they can make regulations for the staffing of local democratic organs. To give the Commission such power may violate the power of a council that is elected to govern an area by the people of that area. We are duly bound as lawmakers to provide for local democratic organs to be autonomous in accordance with article 75 of our Constitution.

The Local Government Authority should be the one to hold the authority to make by-laws and repeal them and the court to hold the power to remove by-laws, if it is in violation of people's right.

The amendment to paragraph 4 of section 2 of the Principal Act also amends section 4 of the Principal Act by changing the definition for Local Authority. This amendment will restrict the independency of the municipality and neighbourhood democratic council to acquire loans without the approval of the subject Minister. It will prevent them from being able to negotiate loans for infrastructure and other developmental works in the local government jurisdiction, if the Minister does not agree. I think we need to do some amendments to section 4. Section 4 of Chapter 28:02 reads:

> "With the approval of the Minister, a local authority shall have power to borrow money for the execution of any of the purposes of this Act, and may mortgage any rate for the repayment thereof."

In my opinion, a council should hold the power to borrow up to 40% of its yearly budget. We need to vest some trust in our councils. If the Minister does not like a council because the council is not governed by his party, he could oppress that council. We saw this type of oppression many times in the past by the previous Government and we do not want, at any time, if we have to leave the Government and other party, like the PPP, takes over back the Government to oppress our people. So we have to fix things right. I will recommend that we make a little amendment to section 4.

The proposed amendment to section 2 of section 15 of the Principal Act may cause some problems because it gives the Minister the authority to force by-laws on other local authorities. In that section, if a by-law is made by a village council in a village, one could actually force that by-law on another village. In my opinion, a Minister should not have that authority to force a by-law on another village.

Mr. Speaker, I must thank you, it is my first time here, in learning, and I hope for the best. I will support all the amendments in the Amendment here. It is beautiful. I know my Minister, the Hon. Bulkan, is giving away a lot of his authority at this point in time and I think it is good. I just need to see some little amendments as we go through it page by page. Thank you very much. [*Applause*]

Mr. Speaker: I thank the Hon. Michael Carrington for his statement and offer congratulations on his maiden presentation to this House.

Vice-President and Minister of Public Security [Mr. Ramjattan]: Thank you very much Mr. Speaker. My set of remarks is going to be rather short here this afternoon. It has to do with the reasoning as to why there is need for the establishment of a Constabulary under the set of amendments we have here in this Amendment. Short reason is that this Amendment seeks to diffuse lots more power away from a central level and to also give powers, as it regards the constabulary, to the body, namely the NDC, for the simple reason that they would know more or less what it is that they have to enforce.

Remember, the NDC is a peculiar body that is going to deal with local issues and the locality of the issues will require a peculiar knowledge of the geography of that area - whether it is going to and/or largely be in rural areas - the peculiar nature of the circumstances there would require efficiencies and capabilities in dealing with those issues. For example, stray catchers, rangers in the rice fields, cane fields or where so ever, certain persons who would have to be in charge of dams and conservancies sometimes, and in areas of other aspects, more peculiar to the NDCs themselves. There is need then, since we are decentralising power away from the central authority, for all the powers that normally the central would have, to now go to the NDC. One such very big power is enforcement of the laws within that NDC. To enforce it, yes we have a

Guyana Police Force (GPF), but sometimes all the issues in relation to law enforcement, cannot be done by that police force.

3.47 p.m.

We would need more than merely the Police Force at an NDC level. One example is neighbours quarrelling about the fact that one of them has set up a pig farm, literally, in the yard and the other one not liking it. That is breaching a number of laws. If we have a constabulary at the NDC level that can enforce and, probably, do the work of policing these NDC laws, there can be, at least, at the central level, the actual policemen, under the Police Act, doing more core policing work and having a constabulary within the NDC to ensure that the other matters be dealt with at that level. That is why it is an innovative amendment to the extent of establishing another institution of law and order at the NDC level that will have the powers of enforcement.

I want to say that, like in similar terms along the lines of the Municipal and District Councils Act that set up a town constabulary, popularly known as the City Constabulary, with lots of powers to take care of matters within the city of Georgetown and a town constabulary to take care of matters within the other towns, it is instructive that, indeed, we have a constabulary with the capacity to take care of those peculiar matters at that NDC level. This will not be a conflict with the Police Force. The Police Force, under the Police Act, will always be superior. But the constabulary will be an auxiliary at the level of the NDC.

The big question will be, who will pay the auxiliary? The Act and the amendment make it quite clear that members and ranks of each NDC must be maintained through the resources of that NDC. The auxiliary will be maintained through the collection of the revenues – for example, rates and taxes, agricultural taxes for agricultural lands or whatever the levies are. If they want a constabulary of 25 members to look after the praedial larceny at the *backdams,* for example, they can appoint them and give them a stipend. This is consistent with the fact that one wants to take powers away from the central level to ensure that the NDCs get them.

There is something instructive about this amendment. What it will do at the local level is to ensure that people understand all of the difficulties that, sometimes, come along with power and the role of being in positions and offices of power - the responsibilities, the duties, the obligations that come with it. A lot of times and since being appointed Minister, a lot of people

feel that in relation to matters, enforcement is left to the task of the Government of the day. No! This is largely the responsibility of communities taking up these matters and dealing with them themselves. That is what this amendment 170B will now do.

First of all, it must be understood that if one wants better policing at the level of the NDCs in relation to peculiar matters there, the moneys must be found to get the constables. A constabulary is, merely, a body of constables. If one wants better policing in relation to praedial larceny or if a regulation is made stating that tractors must not drive on the dams during the wet season because they are breaking up the dams, who will enforce that? One will not have a police officer going there, but a constable from within the NDCs' constabulary. The constable can be told, "We will give you a couple of dollars, a uniform, a badge and you will be the policeman for that and take care of it." That is what the important point here is. The responsibilities, obligations and commitments of the ordinary folk in ensuring that they now learn the process of taking care of their security at that level is very important.

What this amendment also does is to ensure that the police play a role in, at least, the training of the members who will form the NDC constabulary. As article 170B (1)(f) states:

> "members of a constabulary shall make themselves available, and submit themselves whenever required by N.D.C., for training in their duties by the Guyana Police Force;"

They can have powers of arrest after this training. Members of the constabulary may bear arms in accordance with regulations by the Minister. They are going to be, especially, a unique kind of law enforcement agency at the behest of the NDC.

This is but a great innovation to ensure that there be an institutionalising of these bodies for law enforcement at the local levels. It is one thing to give the impression that powers will be diffused to the local authorities and then the local authorities end up having no power because every little power is taken back by some statute or the interpretation thereof. This amendment makes it quite clear that they will have the power to establish their own constabularies and, depending on the funds they have, they can make the difference there.

I fully support this amendment. It gives more power to the people on the ground; it diffuses away from the central, as I mentioned earlier, and it should be supported.

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

Attorney General and Minister of Legal Affairs [Mr. Williams]: If it pleases you, Mr. Speaker, permit me, at the outset, to congratulate my brother, the Hon. Member, Minister of Communities, for his far-reaching presentation on the state of local government in Guyana. I also endorse the other presentations made.

I will not detain this honourable House much longer but I should say that this Bill represents the last obstacle to the liberation of the Guyanese people in the communities in which they live. It is the last effort on the part of the previous Government, an effort, certainly which I have been familiar with, that has been well over 15 years. It is an odyssey that the previous Government had the Guyanese people on. At every stage, the Government erected barriers and posed obstacles, so we are here in 2015.

This, Sir, as my brother, the Hon. Minister of Communities, had said, really had its genesis in the constitutional reform provisions in Chapter VII of our Constitution, and it was recognised that they had to flesh out the constitutional provisions. In order to do that, the Leader of the Opposition at that time, Desmond Hoyte, and the then President, Mr. Jagdeo, established a Joint Task Force on local government to flesh out the law inherent in Chapter VII of our Constitution. That process was expressed to take no longer than a year and that was in the year 2001; it was to be ready by 2002.

It is now 2015. The prevarications and the dilations we place at the feet of the Opposition. What happened there? There were consultations throughout Guyana, including Amerindian or indigenous peoples' communities, throughout the length and breadth of Guyana, consultations that caused me to be reinforced in my belief that we would not give up a blade of grass because, in traversing this country, I was able to observe the beauty that we have, certainly in the hinterland. I really was able to appreciate the vastness and the depth of this country and the diversity of the people. After we finished that, we had to put together a report. I can tell you, Mr. Speaker, that you cannot imagine the behaviour of the Opposition. At every turn, the Opposition stopped the work of the Joint Task Force. There were several Ministers in this process; all of them have gone. When we were supposed to have all the Bills drafted and brought to this

honourable Assembly as a package, President Jagdeo pulled out two and brought them to the Parliament.

Mr. Speaker: I apologise for interrupting the Hon. Minister but it is merely to remind that, at this stage, the general merits and principles of the Bill are the focus.

Mr. Williams: Yes, Sir. I am showing you that this Bill came out of a process, one that was designed and intended to affect local government reform and also to have local government elections under a reformed election system. This Bill is just the remaining element from that process. What happened was that only the Local Authorities (Elections) Bill and the Local Government Commission Bill came. They did not bring this one – the Local Government (Amendment) Bill. They did not bring the Municipal and District Councils (Amendment) Bill or the Fiscal Transfers Bill. As a result, local government elections were detained year after year. Amendments were brought to this House to postpone elections year after year. So this is very important. What was even more relevant was the fact that the law provided for the elections on these councils of chairmen and vice-chairmen and, in the municipalities, mayors and deputy mayors. And the Government, at that time, refused to allow those elections to be held, still stymieing the development of the local government system and the empowerment of the people in the communities in which they lived.

4.02 p.m.

It had to take a transformative Parliament, the last Parliament, the Tenth Parliament, where there was, for the first time, a majority Opposition to advance the process of local government reform and to at least see, down the tunnel, some light that we would be able to have local government elections. So, in the last Parliament, there was the Special Select Committee which we were able to have the chairmanship of and, as a result, we were able to bring all of the Bills out of that process onto the floor of the House and we passed them. They were assented to, save and except this Bill, Mr. Speaker. That is where I am saying to you that again local government elections had to be postponed for another year.

It was always recognised that we could not have local government elections under the new system without effecting the local government reforms because what would have happened there was that new people would be brought into the system but they would still be in that old pressure

system that obtained. In other words, they would have been brought into, for example, the City Hall, where the Minister of Local Government and Regional Development still appoints other people and all of the senior officers who could ignore the wishes of the elected Mayor and City Councillors of Georgetown, for example, and in the NDCs, where they would do their own thing.

That is why it was important that we had local government reform before we held the local government elections. That was why we wanted the local government commission to take over most of the powers of the Minister of Local Government and Regional Development. So all of these things are relevant and I am showing the honourable House that the last Government kept putting obstacles in the way of the Guyanese people to prevent the process, and when we thought that we were out of the woods…because on the floor of the House of the last Parliament, we had consensus; the Bills were passed and, lo and behold, assent to this one was refused.

Therefore, in this Parliament, we are assured, whether the Opposition is here or not, of the passage of the Bill and which would eventuate with the assent of the new President of Guyana, His Excellency, the Hon. Brigadier David Granger.

When we pass this Bill today, it would mean that we would remove the only obstacle remaining to the empowerment of the people, an empowerment which is so relevant in terms of social cohesion. The whole idea of local government and empowering people in the communities in which they live, giving them greater autonomy, was to ensure greater cohesiveness at the level of local government. For example, in the NDC, one would do away with all of the racial tensions and bring the best talent available in the community or in the village to the service of the people. Therefore, there could be a retired Engineer or a retired Accountant giving service in a community or a village. That was the whole idea of enhancing local government and local government reform. It was to bring people closer together and that is one of the provisions in the Constitution – to engender social cohesiveness at the local level. And we believe that that would remove all that tension at the national level whenever elections come around every five years or so.

I am pleased that today we have come this far and I am assured that, once we pass this Bill into an Act, we would have local government under this present Government, the A Partnership For National Unity + Alliance For Change (APNU+AFC) Government of Guyana. We will have it

and so it will be a new vista for Guyana, a new beginning for the people in the communities in which they live and the removal of tensions, as we aspire, from amongst the Guyanese people.

With those few words, I would like to give my support to the passage of this Bill by this honourable House. Thank you, Mr. Speaker. *[Applause]*

Mr. Speaker: Hon. Members, I crave your indulgence again to recognise the presence, among us, of a former Member of Parliament, Ms. Lurlene Nestor. We would like to say thank you for visiting us. We do appreciate your presence with us.

Mr. Bulkan (replying): Thank you, Mr. Speaker. I would like to thank my Colleagues for speaking on this Bill and for their support. In particular, I thank the Hon. Member, Mr. Michael Carrington, for his maiden presentation; Vice-President Khemraj Ramjattan; and the Attorney General and Minister of Legal Affairs, Mr. Basil Williams, for the support that they have given to this Bill.

I would like to assure Hon. Member Carrington that the points that he has raised have been addressed and will continue to be further addressed. I note, with pleasure, that the Hon. Member, Mr. Carrington, has brought out the fact that, despite the temptation being there in bringing back this Bill to this House, there was the opportunity for the Minister to retain powers in the principal legislation but we did not succumb to that temptation. In fact, the amendments to the Bill that would shortly be approved actually reduces the power of the Minister and gives more power to where it belongs - the respective local democratic organs.

I would like to assure the Hon. Member as well that, on the questions of loans and other issues he has raised, when the last Bill was before the Special Select Committee in the previous Parliament, the Tenth Parliament, these sections in the legislation were addressed clause by clause. For example, on the question of loans, it was felt that given that it was ultimately the central Government that would have to act as the final guarantor, it was considered to be appropriate that the final authority should reside with the Minister and the question of loans should not remain only at the level of the local democratic organ. Nonetheless, I would like to assure the Hon. Member that the points that he has advanced in his presentation will be considered but not in the Bill that is before us today.

I would like to thank, as well, the Vice-President and Minister of Public Security, Mr. Ramjattan, for explaining, in great detail, that the powers that would be given to a local democratic organ to allow for the policing within the jurisdiction of that order are all part and parcel of the philosophy of empowering local government organs to take full control of the management, including the security and policing of its jurisdiction, and are consistent with the spirit of decentralisation and devolving more power to communities countrywide.

I would like to thank, as well, the Attorney General and Minister of Legal Affairs for his support and for reminding Hon. Members that with passage of this Bill and its imminent assent into law, it will remove the last obstacle to liberate the Guyanese people from central control and to have empowerment where the Constitution prescribes it to communities countrywide. And, as was said by the Hon. Prime Minister and Leader of this House in a meeting yesterday with the President of the Caribbean Development Bank and his team, one of the things that local government elections under a reformed local government reform system would do is release the social energies and would allow for rapid renewal and improvement of the conditions within our communities.

This Bill is a Bill that will promote democracy. In fact, we saw some of that when the Hon. Member, Mr. Carrington, spoke earlier, of how democratic this Administration is. Many things have been said about democracy. It was Winston Churchill who said – speaking of democracy – that it is the worst system, except all the others that have been tried. Democracy is also very expensive; it does not come cheaply and these local government elections which would be held, as we said, before the end of this year, will be costly. But again I say that there is a price we have to pay for democracy.

The same could be said about education because it has been said that if you think that education is expensive, then you should try ignorance. We have seen what the absence of local democracy has done. It has resulted in chaos and crisis countrywide. The absence of local democracy also is a deterrent to investment. Investors will not come and invest in a country where there is not vibrant local decision-making, where the public standard is poor and where rules and regulations are not adhered to as a result of the dysfunctionality that I spoke of earlier. Our economy will suffer. It would be handicapped if the system is not reformed and if the lives of these councils

are not renewed, where we can infuse fresh energy, where we can release that social energy that the Hon. Prime Minister spoke of.

Local government elections must be seen as an investment, one that will reap dividends many times its cost. We have a duty to all of the citizens of this country to improve the conditions of their communities. We will discharge that duty without delay. As I said, we will not be diverted and we will not be distracted.

In closing, I ask the Opposition to be a part of the solution and not to continue to be a part of the problem. I, therefore, urge the unanimous support for this Bill and in the process going forward. Thank you very much.

Mr. Speaker: Hon. Members, we would, with your consent, complete the second reading and then take the recess.

Hon. Members: Yes.

Mr. Speaker: I thank you.

Question put and carried.

Bill read a second time.

4.17 p.m.

Assembly in Committee.

Mr. Nagamootoo: Mr. Chairman, if you may kindly indulge me, there being no written amendment or objection before us, my request is that the Bill be taken *en bloc*. We can vote on all the clauses to expedite the process.

Mr. Chairman: I thank the Hon. Prime Minister for that suggestion. Does it find favour with all the Members?

Hon. Members: Yes.

Mr. Chairman: Thank you. We will then take the Bill *en bloc*.

Bill considered and approved.

Assembly resumed.

Bill reported without amendments, read the third time and passed as printed.

Mr. Speaker: We will now take a recess for one hour. We will resume at 5.20 p.m. Thank you.

Sitting suspended at 4.21 p.m.

Sitting resumed at 5.20 p.m.

CUSTOMS (AMENDMENT) BILL 2015 - Bill No. 6/2015

A Bill intituled:

"An Act to amend the Customs Act." [*Minister of Finance*]

Mr. Jordan: Mr. Speaker, I rise to move that the Customs (Amendment) Bill 2015 - Bill No. 6/2015 be read a second time. I rise to give support to the repealing of section 7A of the Customs Act, Chapter 82:01. As explained in the Explanatory Memorandum to Bill No. 6/2015, that section provides for the Commissioner General of the Guyana Revenue Authority to collect an environment tax on every unit of non-returnable container of imported beverage.

I know that this matter has been previously discussed and debated in this honourable House. However, there appeared to be no consensus on the way forward, even though worthy proposals emanated from the debates. Therefore, I intend to be brief as I set out the background to and developments in this issue of the removal of the tax and, perhaps, leave the heavy lifting to my other Colleague, Hon. Member and Attorney General Basil Williams, who is slated to speak today.

By way of background, let me say that Guyana has made adequate legal provisions for the protection of the environment. At the highest level, the Constitution, in various articles, provides that every citizen has a right to "an environment that is not harmful to his or her health or well-being."

That quote is taken from article 149J of the *Constitution of the Co-operative Republic of Guyana*. That same article mandates:

> "The State shall protect the environment, for the benefit of present and future generations, through reasonable legislative and other measures…"

Article 25 of the Constitution states:

> "Every citizen has a duty to participate in activities designed to improve the environment and protect the health of the nation."

Further, article 36 states:

> "The well-being of the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems."

In 1996, the then Government drafted, under the National Development Strategy, "the Environmental Policy" within which the Government outlined, in great detail, a strategic plan for the economic development of the country through the sustainable management of natural resources and the preservation and conservation of a healthy environment. The Government's strategic plan was predicated on the collective recognition of the importance of preserving and conserving the environment, as stated in articles 25 and 36 of the *Constitution of the Co-operative Republic of Guyana*.

In the Environmental Policy, the Government stated:

> "Guyana's environmental resources are abundant, but the need for an environmental policy is becoming progressively more apparent, especially in light of the contamination of water resources that originates from industries, agriculture and households; the problem of coastal erosion; the increasing danger of flooding; the deforestation of some areas close to the country's main concentrations of population; evidence of the need to regulate the wildlife trade; and the decline of some coastal marine species.
>
> At the same time, our environmental policy is founded in the belief that economic growth and environmental sustainability are compatible, that indeed the latter is

> one of the bases for ensuring that enduring prosperity can be achieved for all Guyanese. To promote economic growth in a sound environmental context requires objective efforts to identify and diagnose environmental problems, courage in identifying solutions, and a willingness on the part of all the population to participate in developing and implementing corrective measures."

So, by these policy intents and expressions, there was a clear and urgent need to protect the environment, using all of the tools available to the Government for doing so. Two measures employed in this regard were the instituting of legislation to give effect to the ideals of the Constitution and the imposition of an environment tax. Thus, in 1996, the Government enacted the Environmental Protection Act and an environmental tax was imposed on all imported, non-returnable beverage containers, pursuant to section 7A of the Customs Act as amended by the Fiscal Enactments (Amendment) Act No. 3/1995.

Section 7A of the Customs Act reads as follows:

> "(1) Notwithstanding anything in this Act or in any other written law, there shall be raised, levied and collected a tax in this section referred to as an environmental tax, at the rate of ten dollars on every unit of non-returnable metal, plastic, glass or cardboard container of any alcoholic or non-alcoholic beverage imported into Guyana and every importer of such beverage shall pay such tax to the Comptroller of Customs and Excise at the same time when any customs duties are paid.
>
> (2) A person liable under this section to pay tax, who fails to do so, shall be guilty of an offence and shall be liable to a fine of five thousand dollars and in addition, shall pay to the Comptroller of Customs and Excise twice the amount of the tax payable under subsection (1)."

The tax was implemented by the passage of the Fiscal Enactments (Amendment) Act 1995, Act No.3/1995. Section 8 of this Act amends the Customs Act, Chapter 82:02. It is imposed at the time imported beverages cross the border, in the case of the importation overland, and at the point of import, in the case of import by sea. As such, the tax is imposed at the point where duties are paid, that is, at the port of entry. On an annual basis, this tax has yielded in excess of $1 billion to the Treasury and, obviously, its removal will have a significant impact.

As everyone is aware, the manner in which the tax was imposed was challenged by an importer, Rudisa Beverages and Juices NV, which contended that it was contrary to article 87 of the Revised Treaty of Chaguaramas (hereinafter referred to as the Treaty).

Article 87 of the Treaty provides as follows:

> "1. Save as otherwise provided in this Treaty, Member States shall not impose import duties on goods of Community origin.
>
> 2. Nothing in paragraph 1 of this Article shall be construed to extend to the imposition of non-discriminatory internal charges on any products or a substitute not produced in the importing Member State.
>
> 3. This Article does not apply to fees and similar charges commensurate with the cost of services rendered.
>
> 4. Nothing in paragraph 3 of this Article shall be construed to exclude from the application of paragraph 1 of this Article any tax or surtax of customs on any product or a substitute not produced in the importing State."

5.43 p.m.

Article 1 of the Revised Treaty defines "goods" as:

> "…all kinds of property other than real property, money, securities or choses in action;"

Import duties are defined in Article 1 as:

> "…any tax or surtax of customs and any other charges of equivalent effect whether fiscal, monetary or exchange, which are levied on imports except those notified under Article 85 and other charges which fall within that Article."

The company, Rudisa Beverages and Juices NV, in its witness statements to the Caribbean Court of Justice (CCJ), stated as follows:

> "Guyana subjects the Company as importer of the Beverages to an environmental

> levy at the time and occasions and by reason of the beverages crossing the border within Guyana. Guyana imposes and collects an environmental levy from the company at a rate of 10 Guyanese Dollars per non-returnable container of beverages, thereby increasing the cost price of the imported beverages of the Company. It is my respectful belief that the imposition and collection of the environmental levy is applied and enforced by Guyana notwithstanding the community origin, and the exclusion of like domestic goods."

It is accurate that this tax is not levied on manufacturers.

The Caribbean Court of Justice, in CCJ Application No. PA 003 of 2013, ruled as follows:

> "The Court finds that Guyana has breached Article 87 (1) of the Revised Treaty of Chaguaramas by imposing an environmental tax on imported non-returnable beverage containers which qualify for community treatment. Caribbean International Distributors Inc. is entitled to the return of environmental tax paid in the sum of US$6,047,244.47 together with such further tax paid from 25th October, 2013 to the date of this judgment."

The Court ordered the State of Guyana:

> "To cease forthwith the collection of environmental tax on imported non-returnable beverage containers which qualify for Community treatment and to adopt such legislative or other measures necessary to ensure that the said tax is not collected on goods which qualify for Community treatment."

That judgement is final and must be respected and implemented since the CCJ is recognised as our highest Court. However, I want to place on record an important argument advanced by Guyana, which was acknowledged by the Caribbean Court of Justice but was, ultimately, dismissed by the honourable Justices.

In its defence, Guyana had argued that Rudisa Beverages and Juices NV ought not to be awarded damages as:

> "Such losses as pleaded by the Claimants would have already been recouped from the

> sales of their products within the Defendant State by their incorporating such charges in calculating the final selling price within the defendant State…it is submitted that the Claimants have already recovered their loss by the general commercial practice of adding on the cost incurred as a result of the environmental levy to the selling price."

Essentially, the argument was that the claimants would be unjustly enriched as the company had already passed on the tax to its customers. This is a very appealing and compelling argument. However, the Caribbean Court of Justice ruled as follows:

> "The Attorney-General submitted that no such reimbursement should be made to the Claimants because the latter must have already passed on the tax to the citizens of Guyana by a readjustment of the price of the beverages to consumers to account for the GUY$10 tax increase in unit price. This could perhaps have been an attractive submission if Guyana had been able to produce evidence to show that the tax had in fact been passed on to consumers and that to award reimbursement will unjustly enrich the Claimants.

Guyana has presented no evidence to show that the Claimants have in fact passed on the environmental tax to their customers. The mere assertion that the Claimants are motivated by profit and that the tax must have been passed on is not enough.

The Court accepts the Claimants' evidence that, in the expectation that the tax would soon be removed, they absorbed the loss occasioned in order to retain competitive edge in Guyana. This apparently was part of the business strategy of the Rudisa Group to enable it to retain its market share. It is indeed difficult to surmise that in a highly competitive market the Group could have retained such a large market share while passing on the tax to its customers when its Guyanese competitors were absolved from the obligation to pay a similar tax…quite apart from the fact that the onus on this issue would have laid on Guyana, the Court is satisfied that the Claimants' evidence is credible and the Court is satisfied that the tax has not been transferred to the consumer."

Mr. Speaker, we have arrived at the position at which we are today, that is, repealing the tax. But I ask the question: should this be the end of this matter, given all the ideals and

aspirations enshrined in the Constitution and embodied in laws such as the Environmental Protection Act to preserve, protect and conserve the environment? It should certainly not, Mr. Speaker. It is well argued in the literature and elsewhere why an environmental tax must form an integral part of the menu of measures developed to address issues pertaining to the environment. For example, the Organisation for Economic Co-operation and Development (OECD) describes an environmental tax as:

> "…a kind of economic instrument to address environmental problems. They are designed to internalize environmental costs and provide economic incentives for people and businesses to promote ecologically sustainable activities."

Similarly, the Japan Center for Sustainable Environment and Society (JACSES), a non-governmental organisation (NGO), conducting policy research, states the following:

> "By internalizing the environmental costs, (for example, activities that burden the environment will be taxed, whereas activities that contribute to the preservation of the environment will get a tax break), environmental taxes provide incentives for businesses and individuals to integrate environmental concerns into economic activities, and minimize negative environmental impacts."

Against that background, in 2014, attempts were made to amend the Customs Act in order to address the CCJ ruling. It was proposed that manufacturers as well as importers be subject to a $5 tax on non-returnable alcoholic containers. However, this initiative did not meet with the approval of the National Assembly. I believe that what is needed is a broader, more appropriate mechanism, such as an incentive-based tax mechanism, to internalise the costs borne by the society at large. These costs include the negative health impacts, loss of property in flooding and a generally unsightly environment which is associated with the disposal of non-returnable, environmentally unfriendly containers.

Thus, it is our hope that, through wide consultations with the Guyanese people, the Government will move to enact legislation that would enable the relevant public agencies to negotiate and adopt measures and instruments that enforce the polluter pays principle through various incentive and non-incentive mechanisms to ensure that Guyana's environment moves closer to an acceptable standard. Such incentives will help promote

ecologically sustainable activities and will be in consonance with a green economy.

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

Mr. Williams: Again, I would like to congratulate the Minister of Finance for his visit as an attorney at law in his presentation, as you know, Sir, to this honourable House.

He has only left me with this to say: that is, unlike the previous Administration, we will pay the judgement because the responsibilities under treaties must be obeyed. That is an overarching principle.

The matter is currently engaging the Caribbean Court of Justice and we have been in the course of settlement. I am pleased to announce that the matter is fixed for tomorrow in the Caribbean Court of Justice. It will be by video conferencing at the Court of Appeal in Kingston, and I am pleased to announce that we have arrived at a settlement in this matter.

The present Government of Guyana will pay the sum of US$6,200,000 in full and final discharge of the obligation we owe to Rudisa Beverages and Juices NV, the plaintiff in the matter. In addition to that, we have until 31st January, 2016 to make that payment. It is a term of that settlement – in fact, it was something that the CCJ had required – that we cease exacting that tax by 31st July, 2015.

With the passage of this amendment Bill repealing section 7A of the Customs Act, we will be able to satisfy the erstwhile judgement of the CCJ, which was made since 2014, that we cease collecting the tax on those non-returnable beverage containers. We, as the new Government of Guyana, will do so, Sir. We will cease exacting that tax by tomorrow, 31st July, 2015.

That is all I wish to say. I support this amendment and I urge its passage by this honourable House. [*Applause*]

Mr. Speaker: Hon. Members, I invite the Minister of Finance to the floor, if he wishes.

Mr. Greenidge: If I may, Mr. Speaker, I know that my Colleagues have done a sterling job but I believe that I had asked to address this matter.

Mr. Speaker: The Chair apologises for that oversight. He was not aware but no harm is done.

You have the floor, sir.

Mr. Greenidge: Thank you very much, Mr. Speaker. There is no need for you to apologise. I am asking for the floor in support of this Bill to address, in a sense, one specific dimension. I hope that you will bear with me and I hope that my Colleagues will do also.

This Bill and its antecedents have attracted a considerable amount of controversy. I believe that there are a couple of dimensions that, perhaps, need to be clearly exposed before we conclude the debate so that the public can be made fully aware of all the dimensions.

5.58 p.m.

As my Colleagues have indicated, the Bill in question has attracted a decision by the Caribbean Court of Justice which has cost this country a considerable amount of money. It has cost that money because, of course, as has been indicated, the tax that is associated with the Bill is inconsistent with the revised Treaty of Chaguaramas, that is the founding treaty of CARICOM. The trade policy, in the treaty, is set out in articles 78, 79, 87 and 90 and they provide for the free movement of goods and prohibitions on import duties on CARICOM goods. The Guyana legislation, under that Customs Act, violates the CARICOM treaty and, therefore, we ended up in a situation where the Caribbean Court of Justice ruled against the Government of Guyana and imposed the tax.

I think it should be borne in mind that when the Government proposed to impose the tax it was not unaware of the fact that it infringed on the treaty. It is significant also…I am saying this, Mr. Speaker, because, both in the newspapers and in the press, representatives of the former PPP/C Government have been at pains to lay the blame for the burden of the fine on the Opposition. I want to make it very clear that we accept no responsibility for what was an irresponsible tax in the first instance. We accept no responsibility because the tax infringed the treaty and it was obvious. It took the Government of Guyana from 2001 until 2012 to admit or agree, in the context of CARICOM, that it would rectify the situation. When the Bill was first laid it was made clear that it infringed article 87 or 90 of the Treaty of Chaguaramas. Although there were continuous meetings in 2001, 2002, 2012, and so forth, the Government of Guyana took its own time to agree to eliminate the impost. Having agreed to amend the impost, it then did not amend it in the manner that was most obvious.

I want to say that when the Minister of Finance brought the Bill to this House we, on the other side of the House, agreed with him that the Bill was needed in order to remedy the challenge that was imposed and deal with what was an illegality. The truth is that the Government indicated that the private sector had contracted an expert, a consultant, who would write a modified Bill which would meet both the needs of the Government and be in conformity with the treaty of Chaguaramas. I remember we had a long set of exchanges. My colleague, the Hon. Minister Khemraj Ramjattan, and I negotiated with the PPP/C, with the Minister of Finance and then without the Minister of Finance, and we agreed that the matter would be left until such time as the consultant would report. In fact, the consultant took a long time and there was no report – at least I saw no report – and the Government did not bring a Bill subsequently which reflected any modification. It needs to be noted, I think, so that we do not get confused as to what happened. I have a copy of the Bill, here, which the Clerk and his officers were kind enough to find me. The Explanatory Memorandum makes it very clear that the Bill, contrary to statements being made about this Bill, did not seek to repeal the impost; it did not seek to repeal the tax. The Bill sought to do this, as you would have heard, impose a $10 levy on the imported containers. The Explanatory Memorandum from the Ministry of Finance states:

> "This Bill seeks to amend section 7A inserted in the Customs Act of 1995 which imposed an Environmental Tax…"

I will come back to this because I would not even be as generous, as my colleague, to call it an environmental tax.

> "…only on taxable goods imported into Guyana. The amendment extends the tax to goods imported for manufacture of such items in Guyana."

In other words, there is no reference in this explanatory note to a reduction or elimination of the tax. In the first instance the discrimination could most easily be dealt with, remedied, by removing the tax, and between the two sides we had no difficulty on that. You may say that they were proposing to modify it in a way that met all needs. We said to them if you are going to extend the tax then it has properly to be an environmental tax. Minister Jordan made reference to what that would mean.

In fact, an environmental tax is one properly that would have incentives for materials that are biodegradable to some extent, either absolutely degradable, or relatively degradable, and certainly not biodegradable at all. The importance of that distinction is that we, as a country, suffer, I think, quite grievously from the use of material, containers, and so forth, that really damage the environment. Again, the Minister spoke to this. If you have a look at Princess Street canal or the Main Street trench you will see what I mean.

As regards the impact of these non-biodegradable materials in Guyana the main culprit seems to be styrofoam. Styrofoam constitutes, I gather, less than 2 % of the waste stream. It is widely used in industry. However, improper disposal of styrofoam, which is mainly used as food containers, has threatened public health, public safety and welfare, urban aesthetics and resulted in death and illnesses to many forms of marine life. That is the assessment of the Environmental Protection Agency. The cost of cleaning up the styrofoam is borne by taxpayers to the tune of millions of dollars in Guyana. This means that since styrofoam carries no penalty for its use. It is, relatively speaking, one of the cheapest and most widely available food service containers. It is so popular that businesses tend not to keep any alternative packaging material at all.

We are in a situation where the Government itself realised that legislation was needed to deal with these environmental hazards, but the tax, which it imposed, had absolutely nothing to do with the environment although it was called an environmental tax - nothing to do with it whatsoever. That is the basis of our refusal to embrace the Bill as it was crafted. We said that we would pass it if the legislation was repealed altogether. We would pass it if in calling it an environmental tax it was made a *de facto* environmental tax which reflected the fact that amongst the biggest hazards, which we face, are those non-biodegradable packaging materials.

Of course, in addition to having a tax that gives an incentive to biodegradable materials and a penalty to non-biodegradable materials, most countries usually have in place a mechanism for recycling of materials when they are not non-biodegradable. Again, the tax mechanism could reward and penalise those who fail to work within that framework. Nothing such as that has been in place in Guyana. In fact, legislation was passed, I believe, pertaining to other aspects in terms of recycling, but that legislation has never been followed up by a plan of implementation.

I am really drawing the attention of my colleagues, drawing the attention of the public, to our utter rejection of an argument that suggests that the PPP/C Government, in managing this legislation, in putting it in place in the first instance, in subsequently trying to modify it, has been quite irresponsible. Instead of dealing with those realities, having a proper environmental tax and removing the discrimination against Caribbean importers, it went to the Caribbean Court of Justice – again, I am less generous than my colleagues – and instead of arguing along the lines that the Minister argued, and bringing supporting evidence, and seeking perhaps mitigating circumstances, which are relevant, it went to the court to plead that it had been forced to restrain from or estopped, if you like, from implementing a promise it had made to CARICOM by the Opposition. The Caribbean Court of Justice, I think, was quite right in saying to them that the state is indivisible. A government, an executive, accepts the responsibility for managing the passage of legislation through parliament and for implementing the legislation with the aid of the arms of the state and if it cannot do that – it did not say this to it in so many words - it should step down. In effect, if you cannot take the heat stay out of the kitchen. That is the issue before us.

I wish, therefore, to commend the repeal of this legislation to the House and to say that we, I believe, will be seeking to deal properly with environmental legislation. I was urging my colleagues to do it at the same time as we sought to repeal this legislation, but in consultation with the private sector and those agencies with an interest in this area, we were advised and urged not to move so quickly because the business community has not wrapped its head around the challenge of properly finding appropriate alternatives, in terms of the packaging, materials and containers. Therefore we have not sought on this occasion to, as it were, kill two birds with one stone, but we shall be down the road coming properly with legislation along the lines, at least meeting the criteria that the Minister so carefully set out for us a few minutes ago.

In the light of that, I hope that the basis for our opposition to the so-called environmental tax and the basis for our accepting and moving now to repeal the tax can be understood and accepted.

I thank you very much. [*Applause*]

6.13 p.m.

Mr. Jordan (replying): First I would like to thank my colleagues Mr. Basil Williams and Mr. Carl Greenidge for adding colour and richness to the debate on environmental tax. I can see with the repeal of this tax and the passion with which they put forward their views that perhaps it may stir the polluters to stop polluting.

The environment is precious; it must be protected and preserved for our use and for generations to come. After all, if we degrade the environment, there will be nothing left for us and that future generation which I have talked about.

A properly structured and targeted environmental tax is necessary. Such a tax, must, however, avoid the pitfalls suffered by the tax now being considered for repeal. Among the consequences identified as a result of this repeal is the loss in income. As it was repeated by the Hon. Member Carl Greenidge, we were trying to kill two birds with one stone, but there obviously is going to be an interregnum between the repeal of this tax, and when we can properly come to this House with a new tax, which obviously, at an average rate of one billion per annum, that this tax ceiling, means we have to accelerate the presentation of a new tax.

Among the consequences on the income side, is that there will be a loss while we get into another tax. On the cost side, as you heard from me, we have to pay a cost in excess of US$6 million which has been told to this House, on at least two occasions that I have had the opportunity to do so. We will be hard-pressed to do so from a treasury that is burdened by both direct and indirect expenditure, but we have sealed a deal and we are committed to paying this tax, as reported by the Hon. Attorney General, Mr. Basil Williams.

Surprisingly, as noted by the Hon. Member Carl Greenidge, for a tax with the name environmental tax, it is unknown how much of the revenues derived from the tax were actually spent on activities associated with protecting, preserving and conserving the environment. Indeed, it is not unknown, the many appeals made by the Mayor and City Council for a part of the tax to be paid to it to help in cleaning the city. As we know, there was one Member of this House who was quoted as saying words to this effect that "let the city rot and then perhaps we will clean it up afterwards." Something to that effect but it was an odious, smelly and an unbecoming statement.

In the repealing of this impost, we must be conscious of the need to quickly put in place a replacement that meets the requirements set out in my earlier statement.

I, therefore, commend this Bill for passage.

Question put and carried.

Bill read a second time.

Assembly in Committee.

Bill considered and approved.

Assembly resumed.

Bill reported without amendments, read the third time and passed.

MOTION

SUSPENSION OF STANDING ORDER NO. 9

WHEREAS Standing Order 9 provides that "unless there are special reasons for so doing, no sitting of the National Assembly shall be held between the 10th August and 10th October in any year";

AND WHEREAS Standing Order 112 provides that any one or more of the Standing Orders may be suspended, after notice, or with the leave of the Speaker, on a motion by a member at any sitting;

AND WHEREAS due to the prorogation and dissolution of the 10th Parliament, the Minister of Finance was unable to lay before the National Assembly the Estimates of Revenue and Expenditure for the year 2015;

AND WHEREAS the Government of Guyana is desirous of the Estimates of Revenue and Expenditure for the year 2015 be presented and considered in the National Assembly on or before 1st September, 2015;

AND WHEREAS the suspension of Standing Order No. 9 will allow the Government to present and conclude consideration of the 2015 Estimates of Revenue and Expenditure by the time mentioned herein,

"BE IT RESOLVED:

That the National Assembly agrees to suspend Standing Order No. 9 in order to allow the 2015 Estimates of Revenue and Expenditure to be presented and considered on or before 1st September, 2015." [*Vice President and Minister of Foreign Affairs*]

Mr. Greenidge: Mr. Speaker, if it pleases you, I will like to ask that the Standing Order No. 9 be suspended.

"WHEREAS Standing Order 9 provides that "unless there are special reasons for so doing, no sitting of the National Assembly shall be held between the 10th August and 10th October in any year";

AND WHEREAS Standing Order 112 provides that any one or more of the Standing Orders may be suspended, after notice, or with the leave of the Speaker, on a motion by a member at any sitting;

AND WHEREAS due to the prorogation and dissolution of the 10th Parliament, the Minister of Finance was unable to lay before the National Assembly the Estimates of Revenue and Expenditure for the year 2015;

AND WHEREAS the Government of Guyana is desirous of the Estimates of Revenue and Expenditure for the year 2015 be presented and considered in the National Assembly on or before 1st September, 2015;

AND WHEREAS the suspension of Standing Order No. 9 will allow the Government to present and conclude consideration of the 2015 Estimates of Revenue and Expenditure by the time mentioned herein,

"BE IT RESOLVED:

That the National Assembly agrees to suspend Standing Order No. 9 in order to allow the 2015 Estimates of Revenue and Expenditure to be presented and considered on or before 1st September, 2015."

I will simply like to ask that the motion be put to the Assembly. I think that at this point we do not want to speak to it because there is agreement on this side of the House.

Question put, and agreed to.

Motion carried.

Standing Order suspended.

REPRESENTATION ON SECTORAL COMMITTEES

WHEREAS Standing Order No. 86(1) makes provision for the appointment of the four (4) Sectoral Committees, pursuant to Article 119B of the Constitution, as soon as may be after the beginning of each National Assembly;

AND WHEREAS Standing Order No. 86(2) provides that each Sectoral Committee shall consist of seven (7) members, three (3) representing the Government and four (4) the Opposition, respectively;

AND WHEREAS in this 11th Parliament, the Government is in the majority and the Opposition in the minority;

AND WHEREAS Standing Order No. 86(2) does not represent the new majority reality in this 11th Parliament,

"BE IT RESOLVED:

That Standing Order No. 86(2) be amended to read that representation on the Sectoral Committees should be calculated in accordance with the seat allocation to the Political Parties in Parliament; and

BE IT FURTHER RESOLVED:

That Standing Order No. 86(2) be amended to read that, "each Committee "shall consist of seven (7) Members, four (4) representing the Government and three (3) representing the Opposition, to be nominated by the Committee of Selection. The Government and Opposition shall be entitled to elect one alternate Member for each Sectoral Committee." [*Minister of Social Cohesion*]

Minister of Social Cohesion [Ms. Ally]: Mr. Speaker, Hon Members of this House, I rise to move the motion standing in my name, reference Standing Order 86 (2). Sir, Standing Order 86 (1) makes provision for the appointment of four Sectoral Committees, namely the Committee on Natural Resources, Committee on Economic Services, Committee on Foreign Relations and Committee on Social Services.

Standing Order 86 (2) stipulates the composition of these Sectoral Committees, which is that three persons should come from the Government and four from the Opposition. As the Guyanese electorate will have it and as this Eleventh Parliament of Guyana is conveyed, the A Partnership for National Unity/ Alliance For Change (APNU/AFC) forms the majority, while the PPP/C forms the minority.

Standing order 86 (2) does not represent the new majority which is a reality in this Eleventh Parliament, hence the Government proposed amendment to that Standing Order, Standing Order 86 (2). Therefore it is proposed that each Sectoral Committee shall consist of seven Members, four representing the Government and three representing the Opposition to be nominated by the Committee of Selection. Further, Sir, both the Government and the Opposition shall be entitled to elect one alternate Member on each Sectoral Committee.

Mr. Speaker, I so move this motion standing in my name. I thank you. [*Applause*]

Motion proposed

Minister of Governance [Mr. Trotman]: If it pleases you, Mr. Speaker, I rise in support of the motion introduced by my colleague, the Minister of Social Cohesion and Chief Whip of the Government, and to say, Sir, that indeed the motion comes at a time when the reality is that there is a Government with a clear majority which must be recognised.

6.28 p.m.

Also, the intention of the framers of the Standing Orders, as they then were established to give effect to the constitutional changes, bringing about the four Sectoral Committees, envisaged at the time that there would be seven Members on a Committee, four of those Members would comprise Members of the governing administration, or party, and three Members would comprise Members of the Opposition.

This motion commends itself and I thank the Hon. Member and Chief Whip for having the foresight to have this motion moved at this point in time. We are happy that it can be done without rancour, interruption, heckling. We support it.

That was my contribution. [*Applause*]

Question put, and agreed to.

Motion carried.

Mr. Speaker: Hon. Members, this motion will now be referred to the Standing Orders Committee to ensure that we reflect fully what was decided here.

Ms. Ally: For clarity, are you saying, Sir, that the motion, just passed, has to go to the Standing Orders Committee?

Mr. Speaker: I am advised, Hon. Minister, that the practice requires such a referral. I think we would want to be obedient to the practice in this instance.

Ms. Ally: Thank you Mr. Speaker. I just thought that at the Standing Orders Committee the motion would have been for notification and for it to give effect to it.

Mr. Trotman: If it pleases you, Mr. Speaker, on the last occasion, on the commencement of the Tenth Parliament, when similar challenges were faced, this House, using its majority, passed amendments to the Standing Orders which became the subject of legal action before the honourable Chief Justice without them being referred to the Standing Orders Committee. If I may, Mr. Speaker, I, myself, would invoke Standing Order 112, which states that any Standing Order, even the one that states "that any amendments to the Standing Orders", must be forthwith referred to the Standing Orders Committee. I would even at this stage, for the correctness, or out of an abundance of caution, say that we do have the power to suspend even that Standing Order.

But it is my recollection, and the record would show, that in the Tenth Parliament adjustments were made, they were challenged in the High Court and the court ruled that the adjustments were properly made even without them being referred to the Standing Orders Committee.

We have and are invoking Standing Order 112 which allows this House, by majority, to suspend or hold in abeyance any Standing Order. We recognise that it is the custom for amendments to be sent or referred to the Standing Order Committee, but we wish to…, or if you would permit, Mr. Speaker, I would ask that the motion for the observance of the Standing Orders asking for notice and for the matter to be referred to the Standing Order Committee be suspended, and I so move.

Mr. Speaker: I thank the Hon. Ministers for their proposals and seconding of that proposal. It seems to me that we were moving in a torturous direction to get the same result. The matter, as amended, the amendment is proposed by the Minister of Social Cohesion, remains and the proposal to send the matter to the Standing Orders Committee will - I do not want to say that it is lost - no longer be applicable here.

In circumstances there is the Standing Order 86 (2) which has now been amended, as proposed, in this House.

ADJOURNMENT

Mr. Speaker: Hon. Members, this concludes our business for today. I invite the Hon. Vice President and Minister of Foreign Affairs to move the adjournment.

Mr. Greenidge: I wish to recommend that the House is adjourned until 10th August, 2015. Before I take my seat and you give the order to rise, Mr. Speaker, I would just like to take the opportunity to remind colleagues that between now and 10th August, 2015 there will be Emancipation Day to be celebrated on 1st August, 2015. I would like to extend to colleagues, yourself and the staff of the National Assembly as well as the press and the Guyanese public, in general, best wishes for the celebration of Emancipation Day. It is a very important day on our calendar shared with most of the rest of the Caribbean – at least the event is shared, the day is not the same – and parts of North America.

Mr. Speaker, I thank you for the opportunity to extend greetings to our colleagues and the nation.

Mr. Speaker: I thank the Hon. Vice President for his statement and we accept his congratulations to all of us, including himself, and to say that this House stands adjourned until the 10th August, 2015 at 2.00 p.m.

Adjourned accordingly at 6.38 p.m.