



**SIXTH NATIONAL ASSEMBLY**

**PARLIAMENTARY**

**DEBATES**

**(HANSARD)**

**(UNREVISED)**

**FIRST SESSION**

**TUESDAY 14 MAY 2019**

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## THE CABINET

**(Formed by Hon. Pravind Kumar Jugnauth)**

Hon. Pravind Kumar Jugnauth	Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development
Hon. Ivan Leslie Collendavelloo, GCSK, SC	Deputy Prime Minister, Minister of Energy and Public Utilities
Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC	Minister Mentor, Minister of Defence, Minister for Rodrigues
Hon. Mrs Fazila Jeewa-Daureeawoo	Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare
Hon. Yogida Sawmynaden	Minister of Technology, Communication and Innovation
Hon. Nandcoomar Bodha, GCSK	Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade
Hon. Mrs Leela Devi Dookun-Luchoomun	Minister of Education and Human Resources, Tertiary Education and Scientific Research
Hon. Anil Kumarsingh Gayan, SC	Minister of Tourism
Dr. the Hon. Mohammad Anwar Husnoo	Minister of Health and Quality of Life
Hon. Prithvirajsing Roopun	Minister of Arts and Culture
Hon. Marie Joseph Noël Etienne Ghislain Sinatambou	Minister of Social Security, National Solidarity, and Environment and Sustainable Development
Hon. Mahen Kumar Seeruttun	Minister of Agro-Industry and Food Security
Hon. Ashit Kumar Gungah	Minister of Industry, Commerce and Consumer Protection
Hon. Maneesh Gobin	Attorney General, Minister of Justice, Human Rights and Institutional Reforms
Hon. Jean Christophe Stephan Toussaint	Minister of Youth and Sports

Hon. Soomilduth Bholah	Minister of Business, Enterprise and Cooperatives
Hon. Marie Roland Alain Wong Yen Cheong, MSK	Minister of Social Integration and Economic Empowerment
Hon. Premdut Koonjoo	Minister of Ocean Economy, Marine Resources, Fisheries and Shipping
Hon. Soodesh Satkam Callichurn	Minister of Labour, Industrial Relations, Employment and Training
Hon. Purmanund Jhugroo	Minister of Housing and Lands
Hon. Marie Cyril Eddy Boissézon	Minister of Civil Service and Administrative Reforms
Hon. Dharmendar Sesungkur	Minister of Financial Services and Good Governance

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**MAURITIUS**

**Sixth National Assembly**

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**FIRST SESSION**

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**Debate No. 07 of 2019**

**Sitting of 14 May 2019**

The Assembly met in the Assembly House, Port Louis at 11.30 a.m.

**The National Anthem was played**

*(Madam Speaker in the Chair)*

**PAPERS LAID**

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

**A. Prime Minister's Office**

- (a) Certificate of Urgency in respect of the following Bills. (In Original)
  - (i) The United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Bill (No. VII of 2019).
  - (ii) The Anti-Money Laundering and Combatting the Financing of Terrorism and Proliferation (Miscellaneous Provisions) Bill (No VIII of 2019).
- (b) The Annual Report of the Mauritius Revenue Authority for the period 2017-2018.
- (c) The Public Procurement (Amendment) Regulations 2019. (Government Notice No. 85 of 2019)
- (d) The Income Tax (Country-by-Country Reporting) (Amendment) Regulations 2019. (Government Notice No. 86 of 2019)
- (e) The Income Tax (Common Reporting Standard) (Amendment) Regulations 2019. (Government Notice No. 87 of 2019)

**B. Ministry of Energy and Public Utilities**

- (a) The Energy Efficiency (Registration of Energy Auditors) (Amendment) Regulations 2019. (Government Notice No. 82 of 2019)
- (b) The Central Water Authority (Water Supply for Domestic Purposes) (Amendment) Regulations 2019. (Government Notice No. 88 of 2019)

**C. Ministry of Public Infrastructure and Land Transport,  
Ministry of Foreign Affairs, Regional Integration and International Trade**

The Annual Report of the Bus Employees Welfare Fund for the year ended 30 June 2018.

**D. Ministry of Health and Quality of Life**

- (a) The Dental Council (Medical Institutions) (Amendment No. 2) Regulations 2019. (Government Notice No. 83 of 2019)
- (b) The Dental Council (Medical Institutions) (Amendment No. 3) Regulations 2019. (Government Notice No. 84 of 2019)

**E. Ministry of Industry, Commerce and Consumer Protection**

The Annual Report of the Mauritius Standards Bureau for the period 01 July 2017 to 30 June 2018.

**ORAL ANSWERS TO QUESTIONS**

**FILM REBATE SCHEME - COMPANIES - REFUND**

**The Leader of the Opposition (Mr X. L. Duval)** (*by Private Notice*) asked the hon. Prime Minister, Minister of Home Affairs, External Communication and National Development Unit, Minister of Finance and Economic Development whether, in regard to the Film Rebate Scheme, he will, for the benefit of the House, obtain from the Economic Development Board, information as to the total amount refunded to film production companies in 2017, 2018 and since 01 January 2019 to date and –

- (a) table the list of the said companies, indicating the film titles and amount refunded for each category of Qualifying Production Expenditure, and
- (b) state the films titles having obtained a refund exceeding Rs50 m. and/or greater than 30 % of Qualifying Production Expenditure.

**The Prime Minister:** Madam Speaker, in the Government Programme 2015-2019, at paragraph 78, it is stated that, I quote -

‘The promotion of arts and culture will constitute an important ingredient in nurturing national unity and promoting our tourism industry. Measures will be put in place to promote cultural tourism, religious pilgrimage and film production.’



The Film Rebate Scheme is governed by the Economic Development Board (Film Rebate Scheme) Regulations 2018. The objects of the scheme are to -

- (a) attract reputed international film producers for the shooting or pre-production, production or post-production of a film in Mauritius;
- (b) open the scope for local film producers and artists;
- (c) unleash talents, and
- (d) increase the international visibility of Mauritius.

The scheme provides for a film production company to be reimbursed -

- (a) a sum representing 30% of its qualifying production expenditure; or
- (b) where the production brings or is likely to bring significant economic benefits, a sum representing not less than 30% nor more than 40% of the qualifying production expenditure in respect of a feature film or an episode of drama television programme, in accordance with the percentage recommended by the film rebate committee provided that the film production company meets such relevant requirements as the committee may determine, including -
  - a. in the case of a feature film, a qualifying production expenditure of not less than USD 1 million or
  - b. in the case of an episode of drama television programme, a qualifying production expenditure of not less than USD 150,000 per episode, and
  - c. an undertaking to promote Mauritius at the time of the film promotion.

Madam Speaker, I am further informed that since the introduction of the scheme in 2013, a total of 156 film projects have been approved under the Film Rebate Scheme, out of which 95 projects have been completed. The total Qualifying Production Expenditure, that is, expenditure incurred by film producers in Mauritius in respect of these 95 projects, amounts to MUR 3.53 billion.

Madam Speaker, regarding part (a) of the question, I am tabling the list of companies for each category of Qualifying Production Expenditure, which have been refunded as from 2017 to date.

As regards part (b) of the question, I am informed that one film, namely Serenity has obtained a refund exceeding MUR 50 million. Two films, namely Serenity and Singleholic

have benefitted from a refund exceeding 30% of the Qualifying Production Expenditure, respectively at 39% and 34%.

The development of the film industry has both a multiplier and synergy effect on the economy. Moreover, Government has collected around MUR 900 million in terms of both direct and indirect taxes. In addition, the Film Rebate Scheme has created employment opportunities for more than 2,000 local people in both technical and creative fields. These include local crews and technicians; supporting cast; art and decoration; camera lighting and photography; make up; script writing, assistant direction, production and project; post production and visual effects; and dubbing.

Madam Speaker, I wish to highlight that there are some 30 countries around the world that provide fiscal incentives to attract foreign filmmakers. The competition is, therefore, tough.

Despite such competition, Mauritius is progressing well. In its 2018 annual report, KPMG (India) has given recognition to the competitive advantage offered by the Film Rebate Scheme in Mauritius. Earlier in December 2017, Mauritius won the best film shooting location as part of an award offered by Indywood Film Festival in Hyderabad.

Madam Speaker, there is no doubt that, apart from the economic benefits being derived, the image of Mauritius, both as a tourism and investment destination, is being enhanced through the showcasing of the various films in different parts of the world.

**Mr X. L. Duval:** Madam Speaker, referring to the first part of the question, may I ask the hon. Prime Minister the total amount refunded to production film companies? He has not given that figure.

**The Prime Minister:** Total?

**Mr X. L. Duval:** First part of the question, total amount refunded.

**The Prime Minister:** I have a copy here. It is good that I can give figures. From 2015 to 2018, the total qualifying production expenditure was Rs2,555.9 m. Here, I am given a figure of Rs364.1 m. that has been refunded.

**Mr X. L. Duval:** Madam Speaker, the figures the hon. Prime Minister has given are not accurate. If you look at the accounts of Mauritius, you will see that for 2017/18, more than Rs800 m. have been spent under the Film Rebate Scheme, and this is the point of the question.

**The Prime Minister:** For 2017/18, the hon. Leader of the Opposition is wrong. The figure that I have for total qualifying production expenditure for 2017 is Rs773 m. I need to get confirmation.

*(Interruptions)*

I better quote from this Table. For 2017, the total qualifying production expenditure is Rs773 m. and the total rebate that has been paid is Rs289.2 m. For 2018, the total qualifying production expenditure is Rs1.589 billion and the total rebate paid is Rs484.8 m. So, we can add and see the total amount.

**Mr X. L. Duval:** If you add all these, they do not come to Rs300 m.; they come to more than the Rs300 m. that the hon. Prime Minister stated. Anyway, Madam Speaker, the accounts of Mauritius show that Rs814,408.314 have been spent under the Film Rebate Scheme for that year alone. For 2017/18, it is here. Madam Speaker, I would like to ask the hon. Prime Minister a question with regard to this Rs900 m. of direct and indirect taxes that these people have supposedly paid because, as you are aware, we refund VAT. VAT is refunded to these people. So, how does he come to the Rs900 m. taxes? Does he have a figure, the breakdown of the Rs900 m. that he has stated?

**The Prime Minister:** Yes, of course, I can provide the hon. Leader of the Opposition with the breakdown of the figure. I do not have the breakdown right now, but, obviously, I undertake to provide this House with the breakdown.

**Mr X. L. Duval:** That figure is impossible, Madam Speaker. Impossible that they have paid this much! Madam Speaker, Rs800 m. have been spent in the last financial year under the Film Rebate Scheme. Is this still governed by a Film Rebate Committee and can the hon. Prime Minister tell us who are the members of this famous Film Rebate Committee?

**The Prime Minister:** I would like to tell the hon. Leader of the Opposition, first of all, that what is not possible for him is possible with this Government. But there is a Film Rebate Committee which entertains all the applications that are made for refund. The Committee is comprised of a representative of the Prime Minister's Office; a representative of the Ministry of Finance and Economic Development; of the Ministry of Arts and Culture; of the Mauritius Film Development Corporation; of the Mauritius Tourism Promotion Authority, and of the Economic Development Board.

**Mr X. L. Duval:** So, this Film Rebate Committee comprises of six officials from Government. Madam Speaker, given that they have spent Rs814 m. of taxpayers' money in

the last financial year, I would like to ask the hon. Prime Minister whether, in deciding which films to give subsidy to, including the fiasco ‘Serenity’, they have recourse to international experts, professionals in the field or whether these six people decide by themselves to dish out hundreds of millions of rupees of taxpayers’ money.

**The Prime Minister:** Madam Speaker, there is a number of criteria which they look at in order to decide whether to grant the refund and how much refunds to be granted. They will assess each project in terms of its economic benefits, and after looking at all the benefits that pertain to the country, they will then make the recommendations and, if need be, of course, they will consult whomever they feel needs to be consulted.

**Mr X. L. Duval:** Madam Speaker, I would like to ask the hon. Prime Minister a very serious question. In the light of the fiasco of ‘Serenity’, which has even ceased distribution worldwide, has almost nothing in terms of revenue and given no publicity to Mauritius, I would like to ask the hon. Prime Minister whether he has made any changes to the procedures, to the Film Rebate Committee to avoid similar fiascos with taxpayers’ money in the near future.

**The Prime Minister:** Madam Speaker, I think the fiasco is in the head of the hon. Leader of the Opposition. He is the one who decides and who judges on the fiasco of the film! I am looking at the reviews, although it is not the job of the Committee or of the Government to look at what is going to happen. Do we judge what is going to happen? How do we know? As if we would already know what is going to be the end result and the success of the film. This is the information that I have. The Worldwide Box Office performance of the film ‘Serenity’ amounts to USD15 m.

*(Interruptions)*

**Madam Speaker:** Please!

**The Prime Minister:** Do not say rubbish!

**Madam Speaker:** Do not disturb, for the decorum of the House, hon. Leader of the Opposition! Please proceed, hon. Prime Minister!

**The Prime Minister:** I am giving facts, Madam Speaker. The performance includes USD8.5 m. that have been achieved in the United States only and it has been projected in 2,561 theatres so far and, today, the movie has only been released in the US, in the UK, Russia, Bulgaria, Netherlands, Portugal and the Czech Republic. The movie will be released,

I am informed, in other parts of Europe in April 2019 and the video release of the movie in the US is planned for 30 April 2019.

Probably the hon. Leader of the Opposition must have looked at a number of reviews. There have been reviews for and there have been reviews against. For example, the *Chicago Independent* has considered it as a flop, whereas the *Daily Independent* judged it as a good movie for mature cinephiles. Now, it is a question of appreciation; it is a question of judgement. Let me repeat again. How would we know if a film is going to be successful or not? What is important to us is that we do everything to develop a cinematographic industry in Mauritius, that we get the benefits not only in terms of financing but also in terms of job creation and also in terms of promotion of the image of the country. These are the main criteria, the priority. Of course, if a film is doing well, we shall be very happy, we shall be very pleased! But how would one know beforehand whether a film is going to be successful or not?

**Mr X. L. Duval:** Madam Speaker, I am very worried about what the hon. Prime Minister has said, because the whole point of paying hundreds of millions of rupees as subsidy to these films is that they should give us publicity for our country. That is the whole point. And this is, Madam Speaker, why I am very worried about this. This film has not even received half of its cost of production. I am going to ask the hon. Prime Minister, there are apparently a number of huge budget movies coming. One is called 'Maya Lord'. You may know about it, Madam Speaker. The budget is Rs2 billion. The taxpayers will have to pay, I presume, Rs800 m. There are other Indian films in the pipeline where the taxpayers would pay another Rs400 m. Is the hon. Prime Minister telling the House that it is not the responsibility of the Film Rebate Scheme to ensure that these films are going to be successful, that these films will provide positive publicity to Mauritius and, therefore, that they should get proper advice...

*(Interruptions)*

**Madam Speaker:** Order!

**Mr X. L. Duval:** ...and avoid huge wastage of public funds?

**The Prime Minister:** Madam Speaker, whenever anyone will shoot a film in Mauritius and will apply for a refund, it will be considered by the Committee. If the film in question is going to be shot here, that person will have to apply to the Committee. The Committee will have a look, according to the criteria that have been laid down, and they will

decide. Obviously, they will recommend how much rebate would be given. The hon. Leader of the Opposition is talking a lot about 'Serenity'. Let me tell him, and he can confirm whether hon. Baboo was not at that time Minister for Arts and Culture. He attended the Berlinale Film Festival in Berlin in 2016. He met Mr Andi Niessner, the Director of 'Stranded in Paradise' that was shot in Mauritius in 2014 and released in 2015. During the conversation, he learnt that the Director Andi Niessner was a very good friend of Mr Steven Knight, who is the Writer and Director of 'Serenity'. Do you know what he was saying, and rightly so? First of all, he was praising the hon. Leader of the Opposition with Mr Knight, saying that he is the one who was Minister of Finance and had introduced the Film Rebate Scheme and to, therefore, please talk to Mr Knight, and try to influence him to shoot 'Serenity' in Mauritius. I will ask the hon. Leader of the Opposition to be careful because if he denies that, I can prove it.

*(Interruptions)*

**Madam Speaker:** Order!

**Mr X. L. Duval:** Madam Speaker, I can prove so many things, you would not even believe it, but let us leave that aside for the moment. I am happy that hon. Dan Baboo did his work as promoting. But my point is that there is a difference between promoting and checking, and giving the checks and balances that the taxpayer ought to be protected in these cases, Madam Speaker.

Let me ask another question. Everything was going fine as 30%. What convinced the Government to increase the percentage to 40%? Did the Government seek some international report, some consultants before committing 40% instead of 30% of taxpayers' money on the film? And the only film, I think, that has benefitted is the famous fiasco 'Serenity'.

**The Prime Minister:** Madam Speaker, the hon. Leader of the Opposition is puzzled on why we have increased the rebate to 40%. Let me ask him. He was Minister of Finance and in the Budget Speech of 2012, he announced that Government would contribute 25% of agreed expenses incurred in Mauritius by the film producers - 25%. When he made the regulation, do you know how much it came? 30%. How did it increase? Why did it increase? Why do we increase it to 40%? Do you know why? Because as I say, there is serious competition. Our next-door neighbour, South Africa. Do you know how many films are partly or wholly being shot in South Africa, and do you know what kind of incentive they give in South Africa? I am only mentioning one country. Canada, New Zealand, there are so

many countries offering so many incentives and advantages to attract those filmmakers. That is why we need to be an attractive country.

Now, we obviously have all, I would call, the natural advantages, which I do not want to go into detail. But then, one of the main criteria that will also motivate those film producers to come here is about the rebate, and that is why we have increased that rebate to a maximum of 40% - It is not applicable to everybody.

**Mr X. L. Duval:** Madam Speaker, the increase was based - unlike him, it seems - by a report from international consultants that the then Government had. And if we check, it was not like that, out of the air, out of a whim, which does not seem to be the case for the increase to 40%. There have been wide reports of malpractices, not only in Mauritius, I must say, overseas as well. People fraudulently inflating their invoices so that they get a maximum of refund, in fact, pay most of their expenses from the taxpayers' money. I would like to ask the hon. Prime Minister whether he is satisfied with the current system. Anyone of the 300 auditors who exist in Mauritius can verify the figures that were submitted to EDB. Is he aware that the regulator of the auditors, FRC (Financial Reporting Council) has no CEO since the last four years?

**The Prime Minister:** First of all, Madam Speaker, the hon. Leader of the Opposition is trying to justify that it was increased during his tenure of office because he had supposedly received a report from an international consultant. Therefore, when he announced it in the Budget, he did not have a report from the international consultant! *Mettre la charrue avant les bœufs à ce moment-là !* It is only afterwards that he received the report. So, to me, this is not tenable. But with regard to what he is now saying, that there is fraud and so on, he should not generally say that there is fraud. If the hon. Leader of the Opposition has a specific case, if he knows of a specific case, he should tell this House; tell us. He should not come and make a general statement that there is fraud. I can assure this House, Madam Speaker, that we have a committee composed of people who assume their responsibility; they are serious people. And then, obviously, it is not just a question like as if you want to make people believe that you just furnish figures and you say I want a refund, and that is accepted. Every figure is scrutinised; all the details are scrutinised. First of all, it must be an audited claim. But then, they do their work. They will scrutinise everything, and whatever is justifiable and in the light of how much rebate can be given, of course, we leave it to their judgement to give that kind of rebate.

**Mr X. L. Duval:** My question to the hon. Prime Minister was serious. It is that the system is flawed and too loose to allow for proper checks. That is the question. I would like to ask the hon. Prime Minister, since so many hundreds of billions have been spent, has any case of inflated claim been made to the EDB? Has it ever reported any case to the Police for the past four years?

**The Prime Minister:** I cannot understand that question, Madam Speaker - has a case been made? A case will not be made by the EDB, because there is a committee. They scrutinise the figures and then they will recommend the amount that has to be refunded.

So far, I have not come across any case which has been made against the Rebate Scheme, whether there has been a fraudulent act with regard to one application or not. But it is good that we give figures because we must know what we are talking about. The hon. Leader of the Opposition is making as if it is something which is happening now and which is really not warranted.

Let me give the figures for 2013-2014. The total rebate that was paid is nearly Rs102 m., and the estimated total revenue for Government was Rs83.8 m. I am not criticising, I am not saying that that was not a good performance compared to what we have done. From 2015 to 2018, the total rebate is Rs832.1 m. and the estimated total revenue for Government Rs791.2 m.

Now, we are only comparing figures, but as I say, there are other benefits that accrue to the country in terms of employment creation, in terms of visibility for the country and advertising. We want to make Mauritius a better tourism destination, a better investment destination, but this is also a way of promoting Mauritius.

**Mr X. L. Duval:** Madam Speaker, I do not know where the hon. Prime Minister gets his figures. They are completely out of line with what the Auditor says - I think we have to file this one - because the Government Auditor gives completely different figures: only Rs43 m. in 2013 and 2014. I do not know where he gets these figures from.

Madam Speaker, I would like to ask the hon. Prime Minister the following. Given that my statement is that the system is flawed and allows for fraud - this is serious, nothing to do with politics, this and that. This is taxpayers' money and he has a responsibility to watch over it - would not it be better now, given that hundreds of millions of rupees have been spent and even billions would be spent in the future, that this whole system be reviewed, transferred probably to the MRA, which is better equipped at checking this sort of thing



rather than the EDB, and also require for the Director of Audit herself to audit claims that are being submitted? That would be, in my view, a better system for all.

**The Prime Minister:** The hon. Leader of Opposition is saying that hundreds of millions of rupees are being spent. Yes, hundreds of millions are being refunded. But hundreds of millions of rupees are also coming to the coffers of the Government. I mentioned the amount of money and how much money is being spent here while a film is being shot.

The hon. Leader of the Opposition has made a point whether we can improve the system. The system can always be improved, Madam Speaker. We, obviously, need to see how we can improve the system. But I must say that so far, there has not been any allegation, and I have not come across any case of fraud. But *prévenir c'est mieux que guérir, je suis d'accord*. So, we shall, obviously, have a look at the system, and whatever action needs to be taken in order to improve the system, we shall take it. But, let me say, so far - I say so far - I have not come across any case of fraud which the hon. Leader of the Opposition is saying, generally, there can be cases of fraud.

**Madam Speaker:** Hon. Leader of the Opposition, you have two minutes.

**Mr X. L. Duval:** There is widespread talk of fraud and the system is not adequate to check it. That is the whole point that I am trying to make, Madam Speaker.

**Madam Speaker:** That should be your last question.

**Mr X. L. Duval:** Yes. I am just saying this. In many countries, film companies do not get any refund until they submit full income tax returns. The hon. Prime Minister is saying so many taxes have been paid. I do not believe it. Now, they are supposed to submit income tax returns to the MRA - the equivalent of the MRA overseas - before they get a refund, this case, from the EDB. Would not that be a better system? Because my information is that many of this film production companies - and the hon. Prime Minister can check, it is in his department - do not even submit full income tax returns upon leaving the country or accounts at the Registrar of Companies. So, there is total opacity as to what happens.

**The Prime Minister:** No, this is not correct, Madam Speaker. I shall check but, so far, I have not come across any case where a company has left Mauritius without honouring its obligations. I have not come across anyone, but I shall check if there is any. But, in preparing a reply to this PNQ, my officers, I believe, would have drawn my attention. Anyway, let me not be so sure about it; I will check.

But let me say again that it is after their submission of the return to the MRA, where the committee ascertains that they have paid all their taxes, that their application is being processed. So, they cannot have any refund and not honour their obligation in terms of taxes. But with regard to other taxes, well, those are the taxes they have to pay at the outset.

**Madam Speaker:** Time is over! Hon. Members, the Table has been advised that PQ B/326 in regard to the Huawei Technologies Company Ltd will be replied by the hon. Minister of Technology, Communication and Innovation.

PQ B/329, in regard to the terms and conditions of the appointment of Mr D. B., Senior Adviser, will be replied by the Rt. hon. Minister Mentor, Minister of Defence, Minister for Rodrigues.

PQ B/367, in regard to the number of reported loss of Mauritian passport, and PQ B/368 in regard to the number of convicts who have been granted a Pardon by the President of the Republic will be replied by the hon. Prime Minister, time permitting. Hon. Uteem!

**Mr Bhagwan:** Can I make a point of order?

**Madam Speaker:** Yes.

**Mr Bhagwan:** I have just listened to what you have stated. I am aware that, according to Standing Orders, decision to transfer questions rests with the Executive.

**Madam Speaker:** With the Executive, yes.

**Mr Bhagwan:** I am just stating and if you can listen to my point. I take strong objection, Madam Speaker, that my question B/329, from I have heard, has been transferred to the Rt. hon. Minister Mentor. According to me, appointment of advisers are made by the hon. Prime Minister. Over the weeks, we have seen that we do not even have time and also we do not receive the replies to questions which are transferred to other Ministers. So, I leave it to the population to see how transparent this Government is.

**Madam Speaker:** Yes, but hon. Member, let me draw your attention to the fact that a point of order is usually related to a breach of the Standing Orders. If you address yourself to me, I would say that the transfer of questions rests with the Executive and that the Chair has no control whatsoever on the transfer of questions.

Yes, hon. Uteem!

## INSOLVENCY ACT - COMPANIES - LIQUIDATION

**(No. B/327) Mr R. Uteem (First Member for Port Louis South & Port Louis Central)** asked the Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development whether, in regard to the companies, he will –

- (a) for the benefit of the House, obtain from the Registrar of Companies, information as to the number thereof having resorted to the liquidation process since 2014 to date on a yearly basis, and
- (b) state if consideration will be given for proposed amendments to the Insolvency Act to be introduced in the Assembly in relation to –
  - (i) disqualification of the directors thereof, and
  - (ii) priority ranking of the creditors thereof.

**The Prime Minister:** Madam Speaker, with regard to part (a) of the question, I am informed by the Registrar of Companies that, as at April 2019, the number of companies having resorted to the liquidation process since 2014 on a yearly basis is as follows -

For the year 2014, out of 308 companies, 170 are Global Business Companies (GBCs) and 138 are domestic companies;

For the year 2015, out of 275 companies, 193 are GBCs and 82 are domestic;

For the year 2016, out of 292 companies, 230 are GBCs and 62 are domestic;

For the year 2017, out of 313 companies, 194 are GBCs and 119 are domestic;

For the year 2018, out of 359 companies, 253 are GBCs and 106 are domestic; and

For the period January to April 2019, out of 69 companies, 44 are GBCs and 25 are domestic.

Madam Speaker, in regard to part (b) (i) of the question, I am advised that section 338 of the Companies Act already provides for the disqualification of directors.

Regarding part (b) (ii) of the question, the Fourth Schedule of the Insolvency Act provides for a priority ranking in case of winding up of a company. Prior to the coming into operation of the Insolvency Act in 2009, there was no such ranking. While reviewing the law governing insolvency, there were extensive consultations held with all stakeholders and consensus was reached on the priority of ranking as laid down in the Fourth Schedule.

It is, therefore, not proposed to bring any amendment to the present legislation.

**Mr Uteem:** Madam Speaker, the hon. Prime Minister mentioned disqualification of directors under section 368. Does the hon. Prime Minister find it normal that a director, through mismanagement or misappropriation of funds, causes his company to go into liquidation and this person is not disqualified from becoming a director again, doing the same thing again and again with other companies? Does he find it normal or does he not think that we should amend the law to prevent directors of bankrupt companies to act as directors for new companies?

**The Prime Minister:** Madam Speaker, unless a director is being investigated and is being prosecuted for an offence and found guilty. Otherwise, how are we going to judge? We can, maybe, presume. But I can assure the hon. Member that, of course, Government will see to it that in cases where there has been mismanagement or siphoning of funds, we will take necessary action to ascertain whether this has been done.

**Mr Uteem:** Madam Speaker, we were all surprised that a director of a company received money, under the previous Government, for RS Denim. RS Denim went into liquidation. The same person became director for another company, Future Textiles, which again went into liquidation, causing distress to creditors and employees. Does not the hon. Prime Minister think that it is fit and proper to reconsider disqualification of directors to prevent such persons from acting as directors and going on and on and making people lose money?

**The Prime Minister:** If I can remember, I believe that we have acted. In one case, the Registrar of Companies has acted in order to nominate an accountant to investigate and make that company a declared company. I do not want to say something which might not be accurate, but if I can get the information. The company is Future Textiles. It has been a declared company and, therefore, there is already an inquiry which is underway. But, as I say, we cannot act against somebody who has been acting in the capacity of directorship if that person has not been found to be guilty of an offence.

**Mr Uteem:** Under section (b) (ii) of my question, the hon. Prime Minister mentioned that, before the Insolvency Act, there was no ranking of creditors. I think he has been misinformed because under Article 2148 of the Civil Code, claims by employees ranked ahead of other directors. Now, following the Insolvency Act, claims of employees up to Rs30,000 only rank ahead of the other creditors and also after the costs of insolvency. So,

does not the hon. Prime Minister find it fit to propose an amendment to the Insolvency Act so that the ranking of wages due to employees are given the priority that they used to have before the Insolvency Act was enacted?

**The Prime Minister:** Madam Speaker, I believe it is logical. Of course, we would wish that employees be ranked in a priority way so that they get back their wages. But if we would go along with what the hon. Member is saying, then probably no one will act as liquidator. Because if the cost that pertains to the liquidation is not guaranteed as a first rank, I do not think that liquidators will be willing to take the risk of acting as liquidator and not be able to get paid.

*(Interruptions)*

The banks? No! What banks? According of the Fourth Schedule, the first priority is the cost of liquidator, and the workers rank third because the second priority is to Government and its agencies. Wages and salaries to employees come third. Now, are we going to increase it and put it as first? That has been discussed, Madam Speaker. I must say there has been a lot of brainstorming about this but, unfortunately, I do not think it would be now proper to change that ranking.

**Madam Speaker:** Hon. Rutnah!

**Mr Rutnah:** Would the hon. Prime Minister consider setting up a committee comprising of lawyers and other professionals in order to look at the Insolvency Act and the *Code Civil Mauricien*, in order to harmonise the law and also to ensure that the situation is improved in the foreseeable future?

**The Prime Minister:** Of course, I am willing to consider any proposals with regard to improving whatever the law says. If need be, we can have the views of lawyers, accountants, liquidators, and so on.

**Mr X. L. Duval:** Madam Speaker, the question is not whether employees should, maybe, come before liquidation costs, but that they should come before Government and its agencies. Surely, the CEB, CWA, etc., have a lesser claim to be paid their dues than the employees who are counting on their salaries to feed their families. So, the question is that we should raise the ranking, maybe not first but, at least, second, before CEB, CWA and all the other Government agencies. We should not have the same type of claim than employees.

**The Prime Minister:** Well, this is a proposal and we can look at it.

**Madam Speaker:** Can you be very brief and concise?

**Mr Uteem:** Yes. The question is not just CEB. The problem is that, today, the employees get only Rs30,000 and, after that, they rank *pari passu* with the banks. And this is why, in the case of Palmar, the Government...

**Madam Speaker:** No! Ask your question! Hon. Uteem, I allowed you to ask a question.

**Mr Uteem:** My question is the following. Will the hon. Prime Minister consider amending the Insolvency Act so that the workers get their compensation paid before the banks get any money?

**The Prime Minister:** The hon. Member will, of course, realise that Government is not *insensible à la cause des travailleurs*. In fact, in the case of Palmar, which he mentioned, I must salute my colleague, the hon. Minister of Labour. Together with the Ministry of Finance, we have been working together in order to come not to a solution, but, at least, to give due consideration to the wages and salaries of workers. Of course, we will look at each on a case to case basis because we cannot apply the same rule for everyone. If this law has to be improved, I am open. Let us see how it can be improved.

**Madam Speaker:** Hon. Bhagwan!

**GAMBLING REGULATORY AUTHORITY - PERMITS/LICENCES MAY 2018-  
MAY 2019**

(No. B/328) **Mr R. Bhagwan (First Member for Beau Bassin & Petite Rivière)** asked the Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development whether, in regard to betting, he will, for the benefit of the House, obtain from the Gambling Regulatory Authority, information as to the number and types of permits/licences therefor issued since May 2018 to date, indicating in each case the –

- (a) name of the operator, and
- (b) date of –
  - (i) application therefor;
  - (ii) issue thereof, and
  - (iii) number of outlets operated and respective place of operation.

**The Prime Minister:** Madam Speaker, the information sought by the hon. Member is being compiled and will subsequently be placed in the Library.

**Mr Bhagwan:** I have two supplementary questions, Madam Speaker. Just after the elections, in the first Government Programme or the first Budget, the present Government clearly gave an indication that they were going to deal with this issue of '*nation zougadere*'. Can the hon. Prime Minister inform the House whether he has asked the GRA or the local authorities to look at the problems occurring with regard to the proliferation of these bookmakers, the betting outlets within not only the urban areas but also in the rural areas, in villages?

**The Prime Minister:** This is the point the GRA will try to see to it that there is no proliferation of betting throughout the island. In fact, one example that shows the way that the GRA is trying to control those betting outlets is with regard to the off-course - there is a question on this - betting or fixed odds for horseracing. But while the GRA was trying to bring them on-course, unfortunately, they did not succeed because there was a case before the Court. Of course, the GRA has to see to it that there is no proliferation of gambling in the country.

**Mr Bhagwan:** Madam Speaker, can I table a letter of representation made to the GRA concerning one case in Rose Hill? The problems concern the residents near the Rose Hill market, behind which there is a *quartier résidentiel*. There have been objections made by the house owners and the people around, not only to the Prime Minister's Office, but also to the Commissioner of Police and the Municipality. That outlet is causing a lot of problems. From what they have told me, from their inquiry, the permit was issued - I hope the hon. Prime Minister would inquire - because a member of the GRA is a close relative to the applicant. This is what I have gathered from the people who came to see me. Can I table this document and ask the hon. Prime Minister to inquire whether this is the case and, if not, to see, within the GRA, how these permits are being given, which is causing a lot of problems to the inhabitants of the residential area behind the Rose Hill market?

**The Prime Minister:** Madam Speaker, I will certainly look at the information that is being provided by the hon. Member and query the Authority on that.

**Madam Speaker:** Next question, hon. Ms Sewocksingh!

**ACCOUNT-BASED BETTING - PLAYER CARD SYSTEM**

(No. B/330) Ms M. Sewocksingh (Third Member for Curepipe & Midlands) asked the Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development whether, in regard to the proposed introduction of an account based betting together with a player card programme/system, as announced at paragraph 313 of the Budget Speech 2017-2018, he will state where matters stand.

**The Prime Minister:** Madam Speaker, following my announcement on the introduction of account based betting together with a player card system in the Budget Speech 2017-2018, necessary amendments have been brought to the Gambling Regulatory Authority Act through the Finance (Miscellaneous Provisions) Act of 2017.

I must, however, point out that the introduction of the account-based betting /player account system requires the elaboration of a proper and robust operational and legislative framework so that the system, once implemented, achieves the intended objectives, which are to increase audit trail on betting activities and to facilitate the tracking of offences related to money laundering through gambling activities.

To that end, Madam Speaker, expert advice had to be sought. Accordingly, the Gambling Regulatory Authority invited expressions of interest with respect to the consultancy services on 10 August 2018, but the exercise was unsuccessful. Following invitation for a second expression of interest on 19 September 2018, the Gambling Regulatory Authority succeeded in hiring the services of a Consultant to work on the required framework, which includes the design and modalities of the system. The Consultant started her assignment in February 2019. She had working sessions with different stakeholders, including the Bank of Mauritius, the Financial Services Commission, the Financial Intelligence Unit, the Mauritius Revenue Authority, the Mauritius Turf Club and some of the bookmakers.

A proof on concept has been proposed and the Consultant has recommended a trial on a pilot basis before finalisation of the report. The proof on concept is expected to be put to test in June 2019.

Subsequently, Madam Speaker, based on the results of the proof on concept and taking into account the recommendations from the Consultant in her final report, relevant



regulations would be made after necessary consultations so that account-based betting together with a player card system will serve its purposes effectively.

**Ms Sewocksingh:** Madam Speaker, the Government is supposed to take strong commitments to fight money laundering, and this might be a way also to fight against corruption. Is it not high time to implement this measure or was it just an *effet d'annonce*?

**The Prime Minister:** Madam Speaker, I think the hon. Member has either not listened to my answer or if she has listened, she has not understood. It is one or the other. I have explained that we have retained the services of a Consultant. She has done the work. There is a proof on concept that is going to be tested. Oh, my God, what can I say!

**Ms Sewocksingh:** Madam Speaker, this measure was announced in the 2017/2018 Budget and we are now in 2019. What the hon. Prime Minister just said is just history. But when are they going to commit themselves to put this measure into action? This is what we want to know. He was supposed to fight corruption. So, he should tell us when he is going to put this measure into action.

*(Interruptions)*

**Madam Speaker:** Order!

**The Prime Minister:** That is why, Madam Speaker, I am very optimistic, because the cinematography industry has a very good future...

*(Interruptions)*

... a very good, promising future in Mauritius.

**Madam Speaker:** Order!

*(Interruptions)*

Order, please!

**The Prime Minister:** So as not to ...

*(Interruptions)*

**Madam Speaker:** Order, please!

**The Prime Minister:** So as not to waste the time of the House, I will not repeat the answer again.

*(Interruptions)*

**Madam Speaker:** Hon. Rutnah!

**Ms Sewocksingh:** Madam Speaker, there are so many actors there! I will not mention about it. Let the public see it.

*(Interruptions)*

*Avoye to madam là-bas fer actrice, pas moi !*

*(Interruptions)*

**Madam Speaker:** Order!

**Ms Sewocksingh:** Madam Speaker, in his reply, the hon. Prime Minister mentioned that there were consultations with stakeholders. May I know what was the outcome of the meetings and when they were chaired?

**The Prime Minister:** I have said there have been consultations. The Consultant has done her work and she has been in discussions with different ...

*(Interruptions)*

**Madam Speaker:** Hon. Baloomoody!

**The Prime Minister:** ... stakeholders, the Bank of Mauritius, the Financial Services Commission, the Financial Intelligence Unit, the Mauritius Revenue Authority, the Mauritius Turf Club. The hon. Member is asking me what were those consultations. I will not be able to get all the substance about the consultations, but it is with regard to the implementation of the account-based betting/player account system that is going to be put in place.

I can assure the hon. Member that this will soon materialise because it is now going to be tested in June 2019. Now, maybe, it can be a few weeks later on, but it will have to be implemented. I am pretty optimistic that it will have to be implemented this year itself. So, okay, we have taken some time, yes, but do not make a big issue out of it, that we have taken some time! Let us say, if we were not doing anything, if we had not reached the stage where this was going to be tested, then the hon. Member can take us to task and say, 'Look, it is *effet d'annonce*', we have just announced and we are not doing. I have explained; we are working towards that and, hopefully, the Consultant will then complete her work.

**Madam Speaker:** Hon. Baloomoody, next question!

**CARGO HANDLING CORPORATION LTD - MANAGING DIRECTOR**

(No. B/331) Mr V. Baloomoody (Third Member for GRNW & Port Louis West) asked the Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development whether, in regard to the post of General Manager, he will, for the benefit of the House, obtain from the Cargo Handling Corporation Ltd., information as to the name of the incumbent thereof, if any, and, if so, indicate the –

- (a) terms and conditions of appointment thereof, and
- (b) date of advertisement of the said vacancy, indicating if the incumbent applied therefor.

**The Prime Minister:** Madam Speaker, I wish to inform the House that there is no post of General Manager at Cargo Handling Corporation Ltd. The Company is headed by a Managing Director.

I am informed by the Cargo Handling Corporation Ltd that the Board of Directors has appointed Mr R. P. Nowbuth, Managing Director, on contract for a period of one year, effective as from 02 May 2019. In regard to part (a) of the question, the Managing Director is entitled to a monthly salary of Rs185,000.

The other terms and conditions of his appointment are –

- (i) the use of an official car not exceeding 2000 cc and refuelled by Cargo Handling Corporation Ltd up to Rs20,000 a month;
- (ii) 15 working days' sick leave for every year of contract;
- (iii) 20 days annual/casual/vacation leave for every year of contract, and
- (iv) an end of contract gratuity payable at the rate of two months' salary on completion of 12 months' satisfactory service.

In regard to part (b) of the question, the post of Managing Director was advertised locally and internationally on 05 October 2018 and the closing date for submission of the application was 16 November 2018. Fifteen applications were received. None of the candidates met all the laid down requirements for the post. The Board of Directors, therefore, decided not to make any appointment as provided in the advertisement and to cancel the exercise.

As the House is aware, with the upgrading of the Port infrastructure and acquisition of new cranes, the Port is now servicing supersized vessels and has reached another next level of

development. We are, therefore, committed to improve Port productivity coupled with better customer service to enhance Port visibility and transform Port Louis into a major transshipment hub. In view of these challenges, the Board felt that it was imperative to provide for a stronger managerial leadership. Another selection exercise would have taken at least six months.

Madam Speaker, the Board, taking into consideration that Mr R. P. Nowbuth has wide experience in Public Administration after having served at the highest levels of hierarchy in the Public Sector, namely as Senior Chief Executive and head of several Ministries, including the Ministry of Labour, Industrial Relations, Employment and Training and also as Chairperson of public enterprises in the financial, health, agriculture and industrial sectors, amongst others, decided to appoint him as Managing Director. The same procedure was also followed for the appointment of the previous Managing Director.

**Mr Baloomoody:** Can I ask the hon. Prime Minister whether that gentleman showed any interest when the post was advertised?

**The Prime Minister:** He did not apply because I believe, at that time, he was still holding an official post in Government.

**Mr Baloomoody:** Will the hon. Prime Minister confirm that this gentleman does not have any experience whatsoever with regard to Cargo Handling Corporation?

**The Prime Minister:** What I can say is that he satisfies the requirements of the job and as per the advertisement that was published.

**Mr Baloomoody:** Is the hon. Prime Minister aware that his appointment is causing an uproar at the Cargo Handling Corporation, especially among senior staff?

**The Prime Minister:** Well, I do not know about the uproar.

**Madam Speaker:** Hon. Osman Mahomed!

**Mr Osman Mahomed:** Thank you, Madam Speaker. The hon. Prime Minister has just stated that it is a very specialised domain, with supersized vessels and all. Can I ask the hon. Prime Minister how does he reconcile the fact that an international request for candidature with 15 candidates failed, but someone who did not even show interest and has never worked in that domain satisfies the criteria and got the job?

**The Prime Minister:** As I said, there was a process, there was advertisement of the job, a number of applications was scrutinised and no one came to that level. Therefore, what do

we do? In other words, the hon. Member is saying why we chose somebody. But how was it done previously, when the Labour Government was in power? How was it done? They earmarked somebody and then he was nominated as Managing Director.

**Madam Speaker:** Next question, hon. Dr. Boolell!

### **GAMBLING REGULATORY AUTHORITY - OFF-COURSE OPERATORS**

**(No. B/332) Dr. A. Boolell (Second Member for Belle Rose & Quatre Bornes)** asked the Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development whether, in regard to betting, he will, for the benefit of the House, obtain from the Gambling Regulatory Authority, information as to the number of off-course operators thereof currently operating, indicating the number and type of licence thereof granted since 2015 to date.

**The Prime Minister:** Madam Speaker, since 2015, no new licence was granted to off-course operators.

Currently, there are eight off-course licensees conducting fixed odds betting on local races outside the racecourse and three licensees conducting fixed odds betting on local races through remote communication. These are existing licensees.

**Dr. Boolell:** Can I ask the hon. Prime Minister whether one specific operator has been given special treatment with respect to outlets and allocation of kiosks for PMU and SMS Pariaz?

**The Prime Minister:** No specific or favourable treatment has been given to anyone.

**Dr. Boolell:** Will the hon. Prime Minister state whether it is a fact that they have gone off-course and gambling is now a den for gamblers all over this country, despite the fact of what was spelt out in their electoral manifesto? And I will insist that special treatment has been given to one specific operator.

**Madam Speaker:** You are asking, hon. Dr. Boolell!

**The Prime Minister:** That is why GRA has tried to bring those operating off-course to come on-course, but, unfortunately, this has not been able to take place because there was a case in Court and, therefore, we have to see to it how we can put some order because it is creating a lot of problems for those off-course operators.

**Madam Speaker:** Hon. Dr. Boolell!

**Dr. Boolell:** Madam Speaker, is this the reason why order is being put in place, knowing perfectly well that the officer from the State Law Office withdrew from the case precisely because GRA was acting in favour of one specific operator? Find out why the officer from the State Law Office pulled out from the case.

**The Prime Minister:** This is not correct at all, and I do not think it is proper for the hon. Member to say - In fact, what he is saying is very serious - that the officer from the SLO has withdrawn from the case because of favours that were being given. The hon. Member should be careful about what he has said because it is a serious allegation that is being made, and that is not correct! I can assure the hon. Member that is not correct. There was a divergence in terms of the views with regard to how these off-course operators had to be brought on-course. I know that GRA was trying to see, and since it was one of the conditions of their licence, the GRA wanted to apply that condition to stop them from operating off-course and to give them a licence to operate on-course. That was the issue. But there was, I would say, a problem with regard to how you interpret the law. I do not want to go into that, but I know what I am talking about. There was an issue with the interpretation of that law, and that is why I will ask the hon. Member, maybe, to consult - he has so many very able lawyers whom he knows to look at the judgement. The judgement, in fact, states that there are two licences that are different from each other. You cannot mix those two licences. Either you can grant an off-course licence or you can grant an on-course licence. You cannot, through condition of the licence, just change that licence. That was the issue, and that was the issue that was sorted out; it was said by the Court that you cannot do that. The GRA will have to think about how to go about if they really want to bring on-course those who are operating off-course.

**Madam Speaker:** You have a last question.

**Dr. Boolell:** In fact, the SLO officer deserves to be congratulated. Otherwise, Government would not have brought in Mr Yerrigadoo into that particular case.

**Madam Speaker:** The hon. Member must ask his question.

**Dr. Boolell:** Can I ask the hon. Prime Minister whether they are going on-course or off-course? The policy is to favour one specific operator, and we know who the operator is.

**The Prime Minister:** Let me ask the question then! How is it that if what is being alleged is to favour one operator, the GRA is trying to bring on-course those operating off-course? How? I do not understand. In what way?

**Dr. Boolell:** I know what I am saying.

**The Prime Minister:** But the hon. Member should tell us!

*(Interruptions)*

**Madam Speaker:** Hon. Dr. Boolell, please! I have allowed you four supplementary questions, and I think that is enough.

So, time is over! Hon. Members, the Table has been advised that PQ B/338 has been withdrawn.

Hon. Rughoobur!

### **MAJOR PUBLIC INFRASTRUCTURE PROJECTS – SUPERVISION**

**(No. B/333) Mr S. Rughoobur (Second Member for Grand’Baie & Poudre d’Or)** asked the Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade whether, in regard to the supervision of major public infrastructure projects exceeding Rs100 m. over the past three years, he will state the number of –

- (a) Government architects involved therein, and
- (b) private architects and engineers appointed and involved therein.

**Mr Bodha:** Madam Speaker, with regard to part (a) of the question, I am informed that the Technical Sections of my Ministry have been involved in the supervision of only one building project exceeding Rs100 m. for the last three years, namely the Phase IV of the renovation of the Mahatma Gandhi Secondary School at Moka, at a contract value of Rs149.4 m. The project started in October 2012 and was completed in August 2017.

As regards to part (b) of the question, I wish to inform the House, Madam Speaker, that there are several public infrastructural projects which are not under the purview of my Ministry, for example, projects undertaken by the CWA, WWMA, CEB or projects undertaken under Government-to-Government agreements.

However, with regard to building infrastructure projects, the Technical Sections of my Ministry have been acting as Coordinator for one project namely the construction of a recreational centre for the elderly at Riambel. The project of a contract value of Rs160 m. is, in fact, being implemented on a Design and Build basis under the supervision of a private consultancy firm.

Madam Speaker, on the other hand, I am informed that the following projects have been entrusted to private consultants –

- (i) construction of a Chancery and Staff Residence in Addis Ababa in Ethiopia;
- (ii) setting up of a national wholesale market at Five Ways, in Wooton;
- (iii) construction of a new access road to Sir Seewoosagur Ramgoolam Airport;
- (iv) repair of the embankment failure on the Terre Rouge Verdun Link Road;
- (v) reinforced concrete piles and ancillary works at Terre Rouge Verdun;
- (vi) reconstruction of the Jumbo-Phoenix Roundabout and A1-M1 bridge, and finally
- (vii) the construction of a grade separated junction on M1 at Decaen Street Port Louis.

**Mr Rughoobur:** Yes, Madam Speaker. I would like to thank the hon. Minister for the answer. In terms of supervision of infrastructure projects by the Architect Division of his Ministry, may I know from the hon. Minister I have noted that during 2015, the value of works being supervised is Rs700 m. which have fallen a bit to Rs226 m. last year. May I know what explains this fall, where there is a fall in productivity or why is it that there has been this drastic fall in supervision of works?

**Mr Bodha:** Well, Madam Speaker, this is a specific question, but many projects are implemented by the Ministries separately. Often what the Ministry of Public Infrastructure does, they do the design and they approve the design but then the project later is implemented by the Ministry themselves.

**Mr Rughoobur:** Since we are talking of private architects and Government as well, may I know from the hon. Minister, you have got, for example, in Port Louis itself, the Supreme Court Building which is currently being implemented by private architects. May I know from the hon. Minister whether there has been an evaluation or once these huge projects - hospital and all these projects are completed? How does the Ministry intend in terms of maintenance of these buildings? How does it intend to go into?

**Mr Bodha:** There are two issues, Madam Speaker. For the design and build, it is done under the G-to-G agreement with India. So, basically, the design was done by Indian Consultants, and the building as well by Indian Companies, because it's G-to-G line of credit.



As regards to the maintenance, I will have to see because this is a very interesting question, in fact, because once the building has been done we have to take care of the maintenance of the buildings.

**Mr Rughoobur:** One last supplementary, Madam Speaker. In terms of this design competition private/public architects, I wanted to know from the hon. Minister, since design competition is an excellent means to promote sustainable construction. We are talking of private and public architects, may I know from the hon. Minister if he intends, because we have not seen much design competition among architects in Mauritius during the recent years. If there is any intention on the part of the Ministry to consider these types of competitions in the coming months, coming years.

**Mr Bodha:** The problem, Madam Speaker, is that often you have a tender for design, built or operate, but often it is design and built. So, there is no competition only for the design. The competition, in fact, will be between the different proposals for the design and build and the budget. Now, we have not many competitions as regards to architectural design in Mauritius, but maybe we can have some iconic projects which could then be the subject matter of architectural design from the private and public sectors.

**Madam Speaker:** Yes, hon. Jahangeer, you had a question?

**Mr Jahangeer:** Thank you, Madam Speaker. Can the hon. Minister confirm, because the site engineers are supposed to be on site for any Government project, they are supposed to be allocated a site office and they are supposed to be full time on site. Can he confirm if the engineers are really eight hours on site? Thank you.

**Mr Bodha:** Madam Speaker, if we were to have one dedicated engineer for each site, it would be practically impossible, that's why we have engineers who are overseeing the implementation of many projects at the same time.

**Madam Speaker:** Hon. Rughoobur, next question!

#### **NATIONAL TRANSPORT CORPORATION – TOTAL DEBTS**

**(No. B/334) Mr S. Rughoobur (Second Member for Grand'Baie & Poudre d'Or)** asked the Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade whether, in regard to the National Transport Corporation, he will, for the benefit of the House, obtain therefrom, information as to the total debts thereof accrued as at to date and table copy of the latest annual reports thereof.

**Mr Bodha:** Madam Speaker, I have been informed by the National Transport Corporation that the total debt at the date of 30 April 2019 amounted to a total of Rs519 m. representing loans taken from the Government of Mauritius and the State Bank of Mauritius Ltd.

Madam Speaker, out of the debt of Rs519 m., debt to Government amounts to Rs466 m., that is, Rs154 m. being capital due and Rs312 m. being interest due. I would like to inform the House, Madam Speaker, that these Government loans were contracted between January 1988 and December 1992.

Madam Speaker, I am informed that as at date, the outstanding debt to SBM Ltd. amounted to Rs53 m. out of which capital due is Rs35 m. and interest due is Rs18 m.

In addition, I am informed by the CNT that a loan of Rs186.4 m. has been contracted on the 31 May 2015 for the acquisition of 71 fully built buses from ABC Motors. The repayment has been worked out over seven years. I am also informed that the CNT has been reimbursing the SBM loan as per plan scheduled.

Madam Speaker, I am further informed that the CNT effects a monthly token payment of Rs10,000 to repay the Government loans which were contracted between 1988 and 1992.

Madam Speaker, with regard to the second part of the question, I am informed by the CNT that its financial statement for the year ended 31 December 2013 has already been audited by the National Audit Office. The total comprehensive profit loss for the year 31 December 2013 amounts to Rs89 m. and Rs54 m. for the years 2014. I am laying a copy of the audited Financial Report.

**Mr Rughoobur:** Yes. Thank you, Madam Speaker. I have noted from the reply of the hon. Minister that actually, yes I have found that the last report was laid in 2013. May I know from the hon. Minister why is it that 2013 until 2018 the reports are not ready yet.

**Mr Bodha:** I have been informed, Madam Speaker, that the Financial Statement for the year 2014/15 is ready and has been submitted to the National Audit Office. As for the financial data for the period January 2015 to June 2016, input of data in the system has been completed whilst for the period July 2016 and June 2017 and July 2017 to June 2018, the input of data is still in process.

In fact, what has happened is that the CNT in 2014 contracted a system, they installed the Oracle system for the preparation of accounts and that was not working so the solution

was either to scrap it or to try to adapt it. We have been able from what I have been told by the CNT that this has been done. The technical problem has not been resolved and all the input of the data has been completed.

**Mr Rughoobur:** Madam Speaker, this issue of Oracle, as the hon. Minister is aware, the CNT has been reporting this since long, but may I know from the hon. Minister why it is that important positions like Financial Controller, Accountant and Auditor – finance people, these vacancies have not filled and now they have been advertised, is it not the reason why you have got so much of problem in the level of these audited reports and so on.

**Mr Bodha:** We definitely had a problem with the system, Madam Speaker, because I personally looked into the matter and it took some time for them to understand, evaluate and be able to use the system. As regards the positions, we are now recruiting a Finance Manager and I think the interviews are going to be done recently.

**Madam Speaker:** Next question, hon. Osman Mahomed!

#### **TERRE ROUGE/VERDUN ROAD - CRACKS**

**(No. B/335) Mr Osman Mahomed (Third Member for Port Louis South & Port Louis Central)** asked the Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade whether, in regard to the embankment failure of the Terre Rouge/Verdun Link Road, he will, for the benefit of the House, obtain from the Road Development Authority, information as to where matters stand as to the claim for damages entered against the –

- (a) company for the geotechnical and other civil engineering tests carried out, and
- (b) contractor on the basis of the *garantie décennale*.

**Mr Bodha:** Madam Speaker, following the occurrence of cracks on the Terre Rouge/Verdun Road near Valton roundabout on 19 January, the Board of the Road Development Authority set up an Investigative Committee under the Chairpersonship of Me. Sunassee. It was to investigate into various major road infrastructural projects contracted by the RDA from January 2010 to December 2014, including the Terre Rouge/Verdun Road. I am informed by the RDA that the investigative Committee has submitted its report and the Board of the RDA has taken note of the contents and the actions recommended therein.

Madam Speaker, furthermore, the RDA's Board has requested the advice of the State Law Office as regards potential legal actions that may be contemplated against the consultant and the contractor.

**Mr Osman Mahomed:** In his reply to my Parliamentary Question B/254 of 24 April 2018, the hon. Minister stated that a *mise en demeure* was served on the consultant Aegis BCOM on 30 November 2015, three and a half years ago, because now we have spent more than Rs500 m. over this repair. Can I ask the hon. Minister whether following that *mise en demeure*, Court proceedings were initiated against Aegis BCOM or not?

**Mr Bodha:** I explained last time, Madam Speaker, that we were waiting for the advice of the SLO. That is the first thing, and second, we needed to know what was the exact amount to be paid for the repairs to be able to –

- (i) have damages for repairs, and
- (ii) damages for loss of the use of the road for the number of years that we have not been able to use it.

**Mr Osman Mahomed:** In that same question, about more than a year ago, the SLO advice was mentioned for comprehensive advice one and a half years down the road. Can I ask the hon. Minister what advice has SLO tendered so far and what action has Ministry taken with regard to the...

*(Interruptions)*

**Mr Bodha:** We are still waiting for the advice. In fact, we have sent a reminder too there. So, it is a very complex matter. In fact, it is a huge file and it is very technical. I understand that the SLO is on the point of giving us the advice as to how we can proceed. I think that Me. Sunasseer has also given us a list of expert lawyers in this matter to be able to put up a case in damages.

**Mr Osman Mahomed:** Madam Speaker, in regard to these kinds of claims, time is of the essence. Is the hon. Minister not worried that with such passing time, long delay if I may call it this way, the Government of Mauritius might lose its case on this one?

**Mr Bodha:** Madam Speaker, the cost of the final claim will be known in a month and we will be able to put up the case. Madam Speaker, I would like to take this opportunity to say that this road has cost Rs6 billion from the start. And second, that this first leg between Terre Rouge and Verdun, in fact, has cost Rs3.5 billion while the estimate was Rs2.1 billion. We have spent for the repairs Rs326 m. only - because each and every time figures are put -

and then, we are also repairing two landslides near Ripailles. That is another Rs300 m. That is why, the road at the end of the day, will end up costing Rs6 billion, Madam Speaker.

*(Interruptions)*

**Madam Speaker:** Order!

**Mr Osman Mahomed:** Madam Speaker, I think the hon. Minister is misleading the House.

*(Interruptions)*

**Madam Speaker:** Last time, I do not know whether it was you or another hon. Member...

*(Interruptions)*

Please, resume your seat! I said that you cannot accuse the Minister; you cannot say that the Minister has misled the House. If you find that really the Minister has misled the House, then you should come with a Motion to this House and the Motion will be debated as to whether the Minister has misled the House or not. So, I will ask you either to withdraw or correct what you said.

**Mr Osman Mahomed:** Maybe the hon. Minister does not have his notes in front of him. I am referring to figures he gave himself in Parliament, PQ B/234, two weeks ago.

**Madam Speaker:** Excuse me, hon. Member, do you still stand on what you said?

**Mr Osman Mahomed:** I am going to rephrase my question. So, he said in his reply –  
“(...) the whole road would have cost about Rs4.5 billion after which we have spent Rs500 m. (...)”

So, where does the Rs6 billion come from?

**Mr Bodha:** There are two segments. One is Terre Rouge to Verdun, then is Verdun to Phoenix. Verdun to Phoenix is Rs1.9 billion. That is why when you add it, you reach the Rs6 billion.

**Mr Osman Mahomed:** Madam Speaker, I have the figures here. It is clear what he has stated in his reply. The first leg is Rs2 billion, the second leg is Rs2.5 billion and then, you get the Rs4.5 billion.

**Mr Bodha:** The first leg, the estimated was Rs2.1 billion. Madam Speaker, I am going to table the exact figures a bit later.

**Madam Speaker:** Okay! Next question!

**DR A. G. JEETOO HOSPITAL - STAFF - OVERTIME**

**(No. B/336) Mr Osman Mahomed (Third Member for Port Louis South & Port Louis Central)** asked the Minister of Health and Quality of Life whether, in regard to the Dr A. G. Jeetoo Hospital, he will state if the issue of delay in the payment of overtime for the staff members thereof has been solved and, if not, indicate the –

- (a) number of staff members concerned therewith by grade;
- (b) quantum owed thereto, and
- (c) reasons therefor.

**Dr. Husnoo:** Madam Speaker, I wish to inform the House that like all hospitals in Mauritius, Dr. A.G. Jeetoo Hospital also provides a 24/7 hours round the clock service and this is only possible with adequate human resources.

Thus, the hospital has recourse to overtime to palliate shortage and to cover absences in units and departments and overtime has to be paid to staff according to established rules and regulations of the Personnel Management Manual and the Financial Management Manual.

To process the claims as per established procedures by the Ministry, it becomes cumbersome and thus the backlog becomes a recurrent feature.

Madam Speaker, for part (a) of the question, I am informed that action has already been taken to deal with the delay in the payment of overtime to some 250 staff in the grade of Senior Attendant Hospital Services and Attendant Hospital Services as well as Attendant Hospital Services (casual).

Madam Speaker, the Finance Section of my Ministry has already started processing the outstanding payment and I am informed that for Senior Attendant Hospital Services, Attendant Hospital Services and Attendant Hospital Services (casual), all outstanding payments up to 18 June 2018, will be effected by June and July 2018. Additionally, necessary arrangement is being made to clear all backlogs in the coming months after seeking appropriate financial clearances.

As regards part (b) of the question, I have to inform the House that the quantum involved for Senior Attendant Hospital Services and Attendant Hospital Services up to June 2018 are Rs3.6 m. and Rs2.7 m. respectively. At the same time, the forecast for up to April 2019 for Senior Attendant Hospital Services is Rs2.77 m. and for Attendant Hospital Services, it is Rs1.5 m.

As for part (c), I have to inform the House that all the overtime payment is currently processed manually, which takes a lot of time as it involves verifying and counter verifying each claim with official records. In many cases, late submissions or wrong submissions are made, which delays the whole process of payment.

Finally, I have to inform the House that for the Senior Attendant Hospital Services and for Attendant Hospital Services, we have yet to receive claims for the period July 2018 to now and from November 2018 to now respectively.

**Mr Osman Mahomed:** Can I ask the hon. Minister how does he reconcile the fact that for Brown Sequad Hospital and the Moka Eye Hospital, which falls under the management of Jeetoo Hospital itself, there they get their overtime in time, whereas for Jeetoo Hospital they get their overtime with a backlog of a delay of sometime one year or two years, sometime requiring payment of overtime to clear overtime of staff. This is a systemic problem. Can I ask the hon. Minister what is he doing about this?

**Dr. Husnoo:** I am aware of it. The hon. Member is completely right, I am aware of it, but the problem arises from the fact that in some hospitals there is electronic attendance, which makes it easier to calculate the overtime, whereas at Jeetoo Hospital some people do not want to use the electronic attendance, they use manual, thus making it much more time consuming.

**Mr Osman Mahomed:** Can I request the hon. Minister to look into this problem? Because not everybody is reluctant to sign the electronic system, but when they do not get their overtime in time, they face a lot of difficulties and this is not fair to some people working at the hospital.

**Dr. Husnoo:** As I have explained, we have cleared a lot of the backlog and we are looking for financial clearance. So, once we get that, we are going to clear the rest as well.

**Madam Speaker:** I suspend the sitting for one and a half hours.

*At 1.03 p.m., the sitting was suspended*

*On resuming at 2.38 p.m. with Madam Speaker in the Chair.*

**Madam Speaker:** Hon. Osman Mahomed!

**MAURITIUS CANE INDUSTRY AUTHORITY - CROP YEAR 2018**

**(No. B/337) Mr Osman Mahomed (Third Member for Port Louis South & Port Louis Central)** asked the Minister of Agro-Industry and Food Security whether, in regard to sugar cane, he will, for the benefit of the House, obtain from the Mauritius Cane Industry Authority, information as to the total estimated tonnage thereof not harvested in 2018, indicating the –

- (a) percentage thereof of Crop Year 2018, and
- (b) reasons therefor.

**Mr Seeruttun:** Madam Speaker, I am informed by the Mauritius Cane Industry Authority that the total cane harvested for crop 2018 is 3,154,516 tons out of an initial total cane weight harvestable estimated at 3,194,116 tons. The extent of sugar cane not harvested for crop 2018 is 578 ha and accordingly the estimated tonnage of cane not harvested is 39,600 tons representing 1.24% of the total cane weight harvestable.

As regards part (b) of the question, the main reasons which have led to the non-harvest of cane are as follows –

- (i) virgin canes;
- (ii) ratoon canes, and
- (iii) burnt canes.

**Mr Osman Mahomed:** Can I ask the hon. Minister whether the yield is also a factor? Because the yield has fallen to 66 tonnes per hectare as opposed to 80 tonnes in the heydays of the sugar cane industry. Is that a factor leading to the planters saying that they want to leave, *laisse cane la diboute*? Is it one of the factors?

**Mr Seeruttun:** I mean one of the factors that could have led to the cane not being harvested is the fact that in certain fields there are old ratoons, which means that the yield goes down when they are not re-planted within the seven or eight-year cycle. So, one of the reasons could have been the fact that the yield would go down and also, as we all know, the price of sugar has been going down for the last six/seven years, which means also that in terms of revenue that they would derive from those sugar cane fields is going to be much lower with regard to the cost that they are going to incur.



**Mr Osman Mahomed:** Mostly affected are the small planters. Can I ask the hon. Minister whether he has had the chance to look at the 12 resolutions submitted by the *mouvement Ti-Planteur Kann* compiled at Octave Wiéché Auditorium last year, submitted to the hon. Prime Minister and submitted to him as well in copy, whether he has had the chance to look at this? Because in there, there are several very good propositions to remedy the *malaise* facing the industry at the moment.

**Mr Seeruttun:** Well, I have seen the resolutions and I must say some of the measures have already been implemented with regard to support that we have been providing to the small growers especially, and also, with regard to how to address the problem that they are facing, be it with regard to shortage of labour, be it with regard to how to tackle the problem of transport and all that.

**Madam Speaker:** Hon. Dr. Boolell!

**Dr. Boolell:** Thank you very much, Madam Speaker. The Minister is right to point out that the reasons are multifactorial. Can I impress upon the Minister to see to it that as far as possible there is no encroachment upon the prime agricultural land?

**Mr Seeruttun:** One of the objectives of my Ministry is to ensure that prime land that are for this particular sector be kept for that particular activity so that we don't allow it to be moved out to some other activities, if we want to keep this sector viable and in the foreseeable future still existing.

**Madam Speaker:** Next question, hon. Jahangeer!

#### **PRIMARY & SECONDARY SCHOOLS – BOOKS**

**(No. B/338) Mr B. Jahangeer (Third Member for Rivière des Anguilles & Souillac)** asked the Minister of Education and Human Resources, Tertiary Education and Scientific Research whether, in regard to primary and secondary education, she will state the frequency at which books therefor are revisited and new editions thereof published.

*(Withdrawn)*

#### **CWA - CONTAINERISED PRESSURE FILTRATION PLANTS**

**(No. B/339) Mr B. Jahangeer (Third Member for Rivière des Anguilles & Souillac)** asked the Deputy Prime Minister, Minister of Energy and Public Utilities whether, in regard to Tender ONB/CWA/C2018/125 for the Supply, Installation and Commissioning of 6

Containerised Pressure Filtration Plants, he will, for the benefit of the House, obtain from the Central Water Authority, information as to where matters stand.

**The Deputy Prime Minister:** Madam Speaker, I am informed by the CWA that it launched bids through the E-procurement system for the Supply, Installation and Commissioning of six Containerised Pressure Filtration Plants on 11 December 2018. On the closing date on 16 January 2019, it received five bids.

I am further informed by the CWA that the Bid Evaluation exercise has been completed and it is seeking necessary approvals for the notification of the award.

**Mr Jahangeer:** May we know from the hon. Deputy Prime Minister, during the evaluation criteria based on ITB 12.1, how this criteria evidence of having handled one similar project in the last ten years been considered?

**The Deputy Prime Minister:** I do not think it is for the last ten years. I need to check how many years, but, in any event, the procurement process is still under process and it would not be proper to disclose any matter regarding to what happened before the Bid Evaluation Committee; that will be done in due course. I believe it was five years, but I am not too sure.

### **CAP MALHEUREUX BYPASS PROJECT**

**(No. B/340) Mr B. Jahangeer (Third Member for Rivière des Anguilles & Souillac)** asked the Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade whether, in regard to the Cap Malheureux-Grand Gaube Link Road Project, he will, for the benefit of the House, obtain from the Road Development Authority, information as to the –

- (a) name of the contractor, and
- (b) contract value thereof.

**Mr Bodha:** Madam Speaker, I am informed by the Road Development Authority that the Cap Malheureux bypass project is one of three components of the revised northern coastal distributor road which forms part of the Pamplemousses-Rivière du Rempart outline planning scheme in 1995.

The coastal distributor road also consists of upgrading Chemin Vingt Pieds from Sottise roundabout to Pavillon and the construction of a new link road from the roundabout of the Sottise to the roundabout of Motorway M2, that is, the coastal road to Choisy. The Cap

Malheureux bypass aims at providing a direct access from Vingt Pieds Road at Cap Malheureux to Anse La Raie beach and its vicinity, which will relieve the Mont Choisy-Cap Malheureux Road from existing through traffic. Moreover, the coastal road has a very poor geometry with eight dangerous bends, out of which four bends are at 90 degrees and owing to its narrowness, today the road is only 5.8 metre on average. Thus, the B13 Road at Anse La Raie will be upgraded and realigned to international norms over a length of 1.2 km for the safety of road users.

In regard to parts (a) and (b) of the question, I am informed that the project has been awarded to Transinvest Construction Ltd, for a contract value of Rs207 m., inclusive of VAT. I would like also to stress that the coastal road will continue to be in use.

**Mr Jahangeer:** Madam Speaker, my understanding is that the original routing of a link road has changed a little after the award of a contract to Transinvest. Therefore, my question to the hon. Minister is, why did he not consider retendering according to the Central Tender Board Act?

**Mr Bodha:** We have the tender exercise. The variation is minimal after the request from my hon. friend, hon. Rughoobur. It was about to spare a few trees, which we have done.

#### **SAINT AUBIN FIRE STATION - VEHICLES**

**(No. B/341) Mr B. Jahangeer (Third Member for Rivière des Anguilles & Souillac)** asked the Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the Fire Station in Saint Aubin, she will, for the benefit of the House, obtain from the Mauritius Fire and Rescue Service, information as to the –

- (a) number of fire vehicles available thereat and
- (b) name and qualifications of the Officer-in-Charge of the Training Department thereof.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Madam Speaker, I am informed by the Mauritius Fire and Rescue Service that, as at date, Saint Aubin Fire Station has two fire trucks and two double cabs.

As regards part (b) of the question, I wish to inform the House that training of firefighters is centralised at the Training Division located in the compound of the Coromandel Fire Station. The Training Division is under the responsibility of an Assistant Chief Fire Officer, Mr L. G. Regnaud. He holds a Cambridge School Certificate 1973 and he is a Graduate member of the Institute of Fire Engineer 1995, UK. Mr Regnaud is currently on vacation leave from 03 April to 04 June 2019. He is being replaced temporarily by Mr Heerah, Divisional Officer until Friday 17 May 2019.

As from Monday 20 May 2019, Mr Ayacouty, Assistant Chief Fire Officer will supervise the Training Division.

**Mr Jahangeer:** Madam Speaker, in view of an extensive zone covered by Saint Aubin Fire Station, will the hon. Vice-Prime Minister consider adding one additional fire engine there to cater for the various interventions during flood, heavy rainfall and fire in the sugarcane field?

**Mrs Jeewa-Daureeawoo:** Madam Speaker, the need is to have two fire trucks and two double cabs in each Fire Station, but it happens that some Fire Stations have more than two. In case of any emergency, arrangement has been made and there is backup from the nearest Fire Station; for example, when we are talking about Saint Aubin, there is backup from Curepipe Fire Station and also Mahebourg.

We are, of course, in the process of buying more vehicles. When they are made available, we will do the needful.

#### **LA COLOMBE - MODEL SHELTER**

**(No. B/342) Mrs A. Perraud (First Member for Port Louis North & Montagne Longue)** asked the Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the proposed development of the Model Shelter on the plot of land annexed to La Colombe Shelter, she will state where matters stand.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** The project of Model Shelter La Colombe was announced in the Budget 2018-2019. The project value is Rs60 m. and funds to the tune of Rs6 m. have been provided for in the Budget 2018-2019.

The newly setup Alternative Care Unit submitted child friendly requirements for the consideration of the MPI for the Model Shelter in August 2018. Meetings were held at the level of the MPI and my Ministry in October 2018 and November 2018 to review and discuss the user requirements. This was followed by a site visit in November 2018. Subsequently, in January 2019, the revised requirements were transmitted by my Ministry to the MPI.

I am informed that the preliminary design for the construction of the Model Shelter at La Colombe was submitted to my Ministry on 22 March 2019 by the MPI. A meeting with the officers of my Ministry and the architects of the MPI working on the project was held at the level of my Ministry on 03 April 2019 to discuss the proposed preliminary design of the Model Shelter.

Thereafter, technical meetings were held on 10 April 2019 and 15 April 2019 respectively with relevant units of my Ministry to examine the proposals made. A correspondence was thereafter sent to the MPI on 16 April 2019 for necessary amendments to be made to the preliminary design. MPI has informed my Ministry of 09 May 2019 that they are working on the revised preliminary design and relative drawings will be submitted to my Ministry by the end of May 2019.

**Mrs Perraud:** Est-ce que la *Vice-Prime Minister* pourrait nous donner plus de détails concernant ce concept de *Model Shelter*? Vous nous avez donnés beaucoup de détails par rapport à l'architecture, par rapport au bâtiment mais ce qui nous intéresse vraiment c'est qu'est-ce qui va se passer à l'intérieur de ce bâtiment? Quel est ce concept de *Model Shelter*?

**Mrs Jeewa-Daureeawoo:** Madam Speaker, with regard to this new project, this is the first time that we are coming with a Model Shelter. First of all, it will cater for 30 children. There will be the ground floor and first floor. We are trying also to have amenities, sport facilities like basketball, volleyball, football ground, synthetic tracks, amongst others, because we want very much to look also at the proper development of a child who will be in this particular shelter.

**Mrs Perraud:** Si je comprends bien, la ministre nous propose un *shelter* qui n'est pas différent du concept de *shelter* qui existe déjà, alors que nous savons tous qu'à travers le monde, nous bougeons plus vers des petites unités, des *family type* au lieu des institutions, des dortoirs avec 30 enfants.

**Mrs Jeewa-Daureeawoo:** Madam Speaker, this is a policy decision. As I have said, you will have to understand that setting up a Model Shelter to care for children is a very

serious issue. So, we have had, I must say, extensive brainstorming and also thorough deliberations with all the officers who are concerned and also with the architects of the MPI. So, this is a model that has been proposed to the satisfaction of all the stakeholders concerned.

**Mrs Perraud:** Nous voyons que tellement ce modèle est un échec, ce modèle ne marche pas. Je ne sais pas si vous lisez les journaux, vous savez qu'actuellement, par exemple, le *shelter* de La Colombe est au centre de l'actualité. Donc, il nous faut bouger vers un autre type de *shelter* et non pas le même *shelter* que vous êtes en train de proposer.

**Mrs Jeewa-Daureeawoo:** Madam Speaker, the hon. Member was a Minister for two years, 2015 and 2016. She has had ample time to come up with this new project, but she has done nothing.

*(Interruptions)*

Let me finish! You have done nothing. Now that we are coming with a new Model Shelter, you are saying that...

*(Interruptions)*

Well, when you will be on this side of the House, then you will decide what type of model you want to bring. This is what has been decided and we will go by it.

**Madam Speaker:** Hon. Baloomoody!

**Mr Baloomoody:** Thank you, Madam Speaker. The hon. Minister has spoken about that model. She has given a description of the building, how it will be, but I am sure that the hon. Minister will agree that to have a proper shelter, we need to have good and efficient caregivers. So, can I know from the hon. Minister what action is being taken to ensure that the caregivers who are selected to run this Model Shelter are professional caregivers who are trained to do that job?

**Mrs Jeewa-Daureeawoo:** This is a very interesting question, because I also I have been pondering on the services offered by the caregivers, and I have given instructions that all the caregivers who will be selected, should be trained professionals. We are trying also, at the level of the Ministry, to have regular training of all the caregivers and we are coming also with regulations for the proper administration of all shelters, not only Government-owned, but also shelters run by NGOs.

**Madam Speaker:** Last question!

**Mrs Perraud:** Je trouve lamentable, pitoyable et pathétique la réponse de Madame la ministre parce que pendant deux ans, tout ce que j'ai fait, justement c'est moi qui fait les démarches pour avoir ce terrain, et vous, vous avez pris deux ans pour revenir à la case de départ pour offrir quelque chose que nous nous voulons nous défaire de. Donc, je demanderai à Madame la ministre quelles sont les solutions qu'elle propose justement pour que année après année on ne revient pas au même problème que nous constatons au *shelter* La Colombe, parce qu'avec ce modèle que vous nous proposez, c'est *back to square one*.

**Mrs Jeewa-Daureeawoo:** Madam Speaker, I will not argue with the hon. Member. I have just said that we are still working on a model which will cater for the needs of all the children. As I have said earlier, we have had lengthy brainstorming and discussions at the level of my Ministry with all stakeholders. So, we are doing what is best for our children.

**Madam Speaker:** Next question, hon. Mrs Perraud!

#### **REINFORCEMENT OF FRAMEWORK FOR PROTECTION AGAINST DOMESTIC VIOLENCE - ADVISORY COMMITTEE - RECOMMENDATIONS**

**(No. B/343) Mrs A. Perraud (First Member for Port Louis North & Montagne Longue)** asked the Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare whether, in regard to the Report of the Advisory Committee on Reinforcement of Framework for Protection against Domestic Violence presented by Mr Pierre Rosario Domingue, she will state where matters stand as to the implementation of the remaining recommendations contained therein.

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** I wish to refer the hon. Member to my reply to the PNQ of 07 November 2017 where I informed the House of measures taken by my Ministry in respect of the recommendations of the Advisory Committee on Reinforcement of Framework for Protection against Domestic Violence, amongst others.

In addition, my Ministry has, as at date, implemented the following measures –

- Setting up of the Integrated Support Centre at Phoenix to improve the facilities and services offered to victims of domestic violence. Since March 2019 the Integrated Support Centre is operational. The Centre operates through hotline

139 and provides immediate advice, counselling and interventions in cases of domestic violence through innovative technology.

- Information, education and communication campaign as part of its on-going public awareness campaign aiming at the promotion of family welfare and sensitisation on gender-based violence including domestic violence in Mauritius. My Ministry regularly organises information, education and communication campaigns.
- Rehabilitation of Perpetrators Programme. In November 2018, the services of a consultant from Australia were made available by the UNDP for the elaboration of a Domestic Violence Perpetrators Rehabilitation Programme. The training of facilitators who will dispense the programme in Mauritius and Rodrigues was held in March 2019.
- Collaboration with the Police Department. My Ministry has already started discussions with the Police Department with a view to enlisting their collaboration for the setting up of a specialised unit which will provide holistic services to victims of domestic violence in each FSB and PFPU effectively.
- Domestic Violence Review Committee. In March 2019, a consultative workshop was organised with key partners for the setting up of a Domestic Violence Review Committee. The objectives of this Committee will be mainly to coordinate a confidential multidisciplinary review of domestic violence cases including death, to help identify trends, risk factors and patterns from the cases reviewed and make recommendations for effective interventions and preventive strategies, as far as providing adequate redress, reparation for victims is concerned. Given its complexities and far-reaching implications, discussions are still pursued with the key stakeholders.

**Madam Speaker:** Hon. Mrs Perraud!

**Mrs Perraud:** A la page 41 du rapport, le rapport fait mention de la mise sur pied d'un *One Stop Integrated Service Centre*, ce qui est totalement différent de ce que nous avons déjà, c'est-à-dire le *Family Support Bureau* qui existait déjà avant le rapport Domingue. Donc, qu'en est-il de ce *one stop shop*?

**Mrs Jeewa-Daureeawoo:** Madam Speaker, I have just said that in March, we have launched the Integrated Support Centre. So, we are still working on the model of other centres that will be implemented in the future, but our main concern for the last past months



has been the setting up of this Integrated Support Centre, which, I think, is a very important centre when we are talking of all support to be given to victims of domestic violence.

**Mrs Perraud:** Le rapport fait aussi mention de l'aide financière aux victimes de violence domestique, des facilités offertes aux victimes pour avoir accès au logement et d'un *shelter* pour chaque 10,000 habitants. Est-ce que la ministre pourrait nous éclairer dessus?

**Mrs Jeewa-Daureeawoo:** Well, with regard to alternative accommodation, whenever there is domestic violence, our Ministry does provide support and collaboration to the victims. So, needful is being done to look for a place in any shelter available in Mauritius. So, we don't think there is a need to have other shelters.

**Mrs Perraud:** Est-ce que la ministre pourrait nous confirmer s'il y a suffisamment de *shelters* pour toutes les victimes à Maurice ?

**Mrs Jeewa-Daureeawoo:** Well, it depends on the demand. For the time being, the shelters we have are catering for the needs of victims of domestic violence. So, that's it.

**Mrs Perraud:** Je crois que la ministre a mal compris ma question. Quand je parlais d'accès au logement, je ne parlais pas d'avoir recours à un *shelter*, c'est-à-dire qu'une victime - dans le rapport il fait mention que d'aider la victime à trouver un logement, pas un *shelter*.

**Mrs Jeewa-Daureeawoo:** Well, this is a policy decision, Madam Speaker. It is easy to come and say that we have to do this. So, this is a policy decision; this is a serious matter. I must say that domestic violence is unacceptable; this is serious concern, so the Government, we have been very active in addressing proper measures to bring down the number of domestic violence. This is not an easy job. We are doing our level best to help those in need, but what the hon. Member has just mentioned is policy decision. We will have to ponder on it.

**Madam Speaker:** Hon. Baboo, next question!

#### **METRO EXPRESS LIMITED - RECRUITMENT**

(No. B/344) **Mr S. Baboo (Second Member for Vacoas & Floreal)** asked the Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade whether, in regard to the Metro Express Limited, he will, for the benefit of the House, obtain therefrom, information as to the procedures set down for

the recruitment of the staff members thereof, indicating if same have been followed in respect of all the staff members recruited thereat as at to date.

**Mr Bodha:** Madam Speaker, as pointed out during the reply to question B/169, the recruitment exercise is ongoing at Metro Express Limited. To date, 32 persons are currently employed by Metro Express Limited to oversee the project delivery for phase one construction and five persons for operations and maintenance so far.

Moreover, to be ready for operation and maintenance in 2019, Metro Express, with the help of Singapore Mass Rapid Transit (SMRT) is on the process of recruiting up to 200 persons. They will include Chief Operations, Chief Service Support, Chief Maintenance, Managers, Trainers, Executives, Engineers, Technicians, Supervisors, Train Captains, Customer Service Stewards, Safety Managers, Ticket Inspectors and Controllers.

It is to be noted that Metro Express receives 65 applications for the post of Train Captains and 15 applications coming from the bus industry. An information pack was distributed to the bus impacted companies prior to the job advertisement.

Madam Speaker, given that the Train Captain's position is a critical position, vacancies for Train Captains and Controller Operations Control Centre are still open on the Metro Express website for those who are interested to apply.

I am also informed that around 2,500 applications have been received at the end of April 2019 for the various positions advertised and Metro Express is currently going through the short listing exercises and the interviews are also progressing.

Madam Speaker, I would like to stress that the operation of the light rail is complex, involving the intercalation of multiple systems requiring multi-disciplinary expertise. Moreover, the safety and security of commuters taking the Metro Express network cannot be compromised in anyway. This is why a rigorous recruitment process has been set up at the level of Metro Express.

First, the 200 positions for the Operation and Maintenance Department were identified with the help of Metro Express Operation Readiness Expert, the SMRT, which carried out the market comparison of benchmarking with other similar light rail systems around the world, like in Singapore, Australia and the UK.

Madam Speaker, the job requirements and list of duties are having then discussed and finalised by Metro Express with the help SMRT. Advertisements have been placed on the

website of the Metro Express, published in newspapers and to social media. Upon closing date, all applications are screened by the Human Resource Department to ascertain whether the candidates meet the eligibility requirements. Thereafter, a selection panel comprising of members from top management, HR Department and technical department was set up and approved by the Metro Express Board to carry out the interviews. The panel membership is determined depending on the nature of the position being interviewed for selection and the selection is point based and done on merit. Candidates are assessed based on their qualifications, relevant experience, knowledge of the subject and transferrable skills. Once the interview exercise is completed, a selection report summarising the interview process, outcome and the panel recommendation is submitted to the senior management and to Metro Express Board for approval.

Madam Speaker, as you can see, the Metro Express project has been a national project of particular importance and the recruitment exercise has been done according to international criteria.

**Mr Baboo:** Thank you Madam Speaker. The Minister has mentioned some figures, but can he inform the House how many posts have been filled so far? Also, how many have applied for each post and whether the best candidate has been retained?

**Mr Bodha:** I have been informed, Madam Speaker, that 32 persons are currently employed and we have presently 2,500 applications. I have the details for the post of Train Captains but I do not have the details for the other posts, but, of course, I can hand over these details a bit later.

**Mr Baboo:** Can the hon. Minister inform the House as to who was the Chairperson of the interview panel as there is a perception that only those who have close connections to the Minister or the Senior Advisor at the PMO have been retained or recruited so far?

**Mr Bodha:** I would like to say, Madam Speaker, that I have no close connection to any of the people who are working at the Metro Express. This is a very critical and highly sophisticated project, and we have to have the best people. In fact, we are being guided by the Operation Readiness Expert, the SMRT from Singapore.

**Mr Baboo:** Can the hon. Minister inform the House how many foreigners and Mauritians have been recruited together with their qualifications and residential address?

**Mr Bodha:** I do not have the information. I will supply the information later. I think Metro Express has all the details. We have some foreigners who have come from the UK,

some others have come from Singapore. What is the idea? It is to build up a team which will be able to deliver in September 2019.

**Madam Speaker:** Hon. Baloomoody, last question!

**Mr Baloomoody:** The hon. Minister has said that priorities will be given to those working in the bus industry, especially where the bus will be affected. Can I know from the hon. Minister, during the period of training of these workers who are moving from the bus industry to the Metro Express, whether they will receive any salary? And, if so, who will pay that salary? Will the terms of service, the years of service at the company will be taken over by Metro Express?

**Mr Bodha:** I think, as regard to the salary, they should be offered at least what they have. As regard to the terms of service, I will leave to the Metro Express Board. But, as regards the training, for example, of the Train Captains, it would start at the end of May because the simulator is coming at the third week of May. The training period, of course, will be included in the term of employment.

**Madam Speaker:** Next question, hon. Baboo!

#### **KIDNEY DISEASES - STUDY**

(No. B/345) **Mr S. Baboo (Second Member for Vacoas & Floreal)** asked the Minister of Health and Quality of Life whether, in regard to kidney failure, he will state if any study has been carried out as to the reasons for an increase in the number of patients suffering therefrom in Mauritius and, if not, why not and, if so, table copy of the report in relation thereto.

**Dr. Husnoo:** Madam Speaker, I wish to inform the House that, as at date, there has been no study carried out regarding kidney failure or kidney disease in Mauritius. Based on studies done worldwide, it is known that 30-40% of patients with diabetes will develop kidney diseases, which usually come after 15-20 years post diagnosis of diabetes. Hence, the need to conduct another study in Mauritius is not warranted.

As regards the reason for the increase in the number of patients suffering from kidney diseases, it is a known fact that the high prevalence of diabetes, hypertension and obesity that we have in Mauritius are the main risk factors for developing kidney diseases. My Ministry may consider carrying out a study in respect of kidney diseases in collaboration with appropriate research institutions if the need arise in the future.

**Madam Speaker:** Hon. Baboo!

**Mr Baboo:** The hon. Minister, in his reply to the PNQ of 13 November 2018, informed the House that arrangements were being done with Marseille University to get the doctors trained so as to increase the number of neurologists. May I know where the matter please?

**Dr. Husnoo:** I know Marseille had been contacted and it has been agreed but I cannot remember exactly, to tell the hon. Member frankly, whether the doctor has gone overseas yet. I mean we have been working on it, it has been agreed with Marseille and I do not know whether the doctor has left for Marseille yet.

**Mr Baboo:** The hon. Minister, as he just answered in his reply, will agree me that 77% of the renal failure are caused by diabetes. May I know why the doctors who have requested the Ministry of health to buy canagliflozin medicine to control the progression of diabetes has not been entertained so far because this medicine reduces the progression of renal failure by 34%?

**Dr. Husnoo:** These are new drugs from treatment of diabetes. There are lots of new drugs coming, but we go according to what our expert advises us. You know what I mean. There are lots of new drugs on the market but we go according to what our expert advises us.

**Madam Speaker:** Hon. Bhagwan!

**Mr Bhagwan:** Madam Speaker, the problem of kidney is *très fréquent ces jours-ci*. Can the hon. Minister inform the House whether we have a specialised unit at the various regional hospitals for kidney treatment, whether he is satisfied and does not he consider that it is time to have a full audit of the Units performing dialysis? Also in terms of equipment and man power, is it not time to have a full audit and invest further?

**Dr. Husnoo:** I can reassure the hon. Member that in each regional hospital we have a dedicated nephrologist working. That is number one. As far as dialysis equipment is concerned, - just to mention it - we have about 180 dialysis machines already and we are in the process of buying 75 now because, as the hon. Member knows, we have opened a new dialysis centre in Dr. A.G. Jeetoo Hospital, we are opening a new dialysis centre at Montagne Longue and we are going to buy 75 new dialysis machines soon. 20 of them would be used for the Montagne Longue Unit and the 50 odd which is remaining would be used to replace the old units that we have.

**Madam Speaker:** Hon. Baboo!

**Mr Baboo:** Can the hon. Minister inform the House how many transplant surgeons we have in our hospital?

**Dr. Husnoo:** We do not have any transplant surgeon in our hospital but if any patient does need transplants, we send them overseas to do it. Now, hopefully, maybe in June or July we are going to get a team from UK who is coming to Mauritius to operate, for transplantation on our patients here in Mauritius.

**Madam Speaker:** Hon. Mrs Selvon!

**Mrs Selvon:** Madame la présidente, l'honorable Ministre dira-t-il si son ministère compte entreprendre une campagne nationale de prévention et contrôle de la maladie rénale chronique ?

**Dr. Husnoo:** To start with, we have to understand what are the causes. As I have mentioned earlier, renal diseases are caused by firstly diabetes, hypertension and obesity. So, these are the diseases we have to control first, to prevent them from getting these diseases. Just to give you an idea, about 22% of the adult population are diabetic, 19% pre-diabetic. That makes 40% of our adult population are at risk of getting renal complication. That is diabetes. 28% of the population are hypertensive and that can cause renal problem. About 50% of our population are either obese or overweight. Imagine yourself what kind of population we are dealing with! So, if we want to prevent renal problem we have to look in the treatment of diabetes, hypertension and obesity and these campaigns are being done. Lots of campaigns are being done to sensitize the population on these diseases.

**Madam Speaker:** Hon. Uteem, next question!

#### **SME COMMUNICATION AND VISIBILITY - ONLINE PRESENCE SCHEME**

**(No. B/346) Mr R. Uteem (First Member for Port Louis South & Port Louis Central)** asked the Minister of Business, Enterprise and Co-operatives whether, in regard to the SME Communication and Visibility - Online Presence Scheme, he will, for the benefit of the House, obtain from the SME Mauritius Ltd., information as to the number of applications received and approved thereunder, indicating the –

- (a) names of the –
  - (i) beneficiaries, and

- (ii) service providers thereof, and
- (b) amount of funds disbursed thereunder as at to date.

**Mr Bholah:** Madam Speaker, the SME Communication and Visibility - Online Presence Scheme was launched by SME Mauritius on 15 February 2018 with the aim to assist Small and Medium Enterprises (SMEs) in developing and implementing the various tools and means for online presence and marketing.

The scheme provides for a grant representing 80% of the cost of the project up to a maximum amount of Rs40,000 payable to the service provider while the SME contributes the remaining 20%. The 80% is disbursed on completion of the project and after the SME has effected its contribution of 20% to the service provider.

I am informed that the SME Mauritius has received a total of 82 applications all of which were approved by a Technical Committee at the level of SME Mauritius. Thereafter, out of the 82 approved applications, one SME was removed from the list due to failure to proceed with the signature of the contract agreement while four other SMEs withdrew their applications.

I am also informed that a total of 33 service providers identified by the SMEs themselves undertook the task of setting up integrated websites for those beneficiaries. The process and control mechanism established for the management of the scheme is as follows –

- all applications are submitted to SME Mauritius with supporting documents;
- examination of application is made by a Technical Committee at SME Mauritius;
- approved applicants are requested to submit quotations from supplier of their choice;
- a three party contract is entered into;
- evaluation of the project on its completion is carried out by the Evaluation Committee at SME Mauritius, and
- disbursement to the service provider is made after contribution made by the SME.

Madam Speaker, as regards part (a) of the question, I am tabling the requested information.

As regards part (b) of the question, I am informed by SME Mauritius that an amount of Rs699,200 for a total of 18 completed and evaluated projects has been disbursed so far by the latter.

Furthermore, 43 projects have been completed out of which 34 have been evaluated and disbursement to the service providers amounting to some Rs1, 360,000 will be effected as soon as evidence is obtained that it concerns SMEs who have paid their contribution.

The remaining nine projects amounting to some Rs360,000 will be assessed by the Evaluation Committee shortly to ascertain whether the projects have been done according to the criteria stated in their contract. Moreover, 16 projects amounting to some Rs640,000 are still under consideration.

**Madam Speaker:** Hon. Uteem!

**Mr Uteem:** Prior to the Online Presence Scheme, there was a similar Website Development Scheme funded through the Mauritius Business Growth Scheme. May I know from the hon. Minister whether a company who had already received funding for website development under the MBGS programme was eligible to receive the grant under the Online Presence Scheme?

**Mr Bholah:** Well, I am not aware if any SME who has benefited from the previous MBGS Scheme has benefited under this scheme as well. But I will have to check.

**Mr Uteem:** I will ask the hon. Minister to confirm with SME Mauritius in the light of comments made by the Director of the National Audit in its report of 2016 where it was clearly specified that those who have benefited from MBGS Scheme and has not refunded their loan should not get more benefits. So, can I ask the hon. Minister to take that matter up with SME Mauritius?

**Mr Bholah:** Of course, I will.

**Mr Uteem:** With regard to the service provider, has the attention of the hon. Minister been drawn to the fact that there appears to be two service providers who are unduly privileged compared to other service providers. There is one N.D. - I will give the name to the hon. Minister - who went to the extent of calling SMEs to tell them to use that service provider in preference to other service providers.



**Mr Bholah:** Well, according to the information I have, out of the 82 applications, there are exactly 33 service providers. So, from this information, we can gauge that no service provider is favoured.

**Mr Uteem:** From the list that the hon. Minister has just tabled, it is clear that there are – I am not going to cite the name, I am going to tell the hon. Minister outside - at least two service providers whose name appear in all pages as being the service providers and I know, as a matter of fact, that SMEs do not even know these service providers. They were called by SME Mauritius and asked to use the service providers. So, may I ask the hon. Minister to look into the matter with SME Mauritius to ensure that there are no service providers who are unduly being given preferences?

**Mr Bholah:** Madam Speaker, let me repeat. It is the SME who goes and chooses who will be the service provider. It is not for SME Mauritius to impose upon the SME who will be the service provider.

**Madam Speaker:** Next question, hon. Uteem!

#### **EX-SMEDA EMPLOYEES - REDEPLOYMENT**

**(No. B/347) Mr R. Uteem (First Member for Port Louis South & Port Louis Central)** asked the Minister of Business, Enterprise and Co-operatives whether, in regard to the former employees of the Small Medium Enterprise Development Authority redeployed in Ministries and parastatal bodies, he will state the –

- (a) criteria used to determine where the employees would be redeployed, and
- (b) terms and conditions of their redeployment.

**Mr Bholah:** Madam Speaker, in respect of part (a) of the question, following the ceasing of operation of this former Small Medium Enterprise Development Authority (SMEDA) on 18 January 2018, in accordance with section 16(3) of the SME Act, all employees of ex-SMEDA who were on permanent and pensionable employment, were given the option of either to be transferred to SME Mauritius Ltd or to be redeployed to the public sector or to retire on ground of abolition of office.

The authority responsible for the redeployment exercise was the Ministry of Civil Service and Administrative Reforms. I am informed by the Ministry of Civil Service and Administrative Reforms that for the purpose of the redeployment exercise, a matching exercise was carried out, using a fair structure and methodological approach, based on set

criteria and taking into account existing employment opportunities in Ministries, departments, parastatal bodies so that employees are redeployed as far as possible to similar comparable grades or in best fit positions.

The Ministry of Civil Service and Administrative Reforms has further informed that the following criteria have been used for the redeployment exercise –

- (i) grades of redundant employees;
- (ii) qualifications profile of the employees;
- (iii) salary drawn and salary scales;
- (iv) residential address;
- (v) funded vacancies in receiving organisations, and
- (vi) nature of duties and the relevant scheme of service.

Madam Speaker, with regard to part (b) of the question, I am informed that employees have been redeployed in the Civil Service or parastatal bodies on terms and conditions which are not less favourable than those before their redeployment while retaining the salary of their posts held at ex-SMEDA on a personal basis. Their period of service has been considered to be unbroken and the length of service reckoned by them have been counted for pension purposes, but not considered for the purpose of seniority. Their balance of casual leave, vacation leave and accumulated sick leave have been carried forward to their respective receiving organisations. They have been paid their balance of accumulated passage benefits by SME Mauritius prior to redeployment. Their accrued pension rights and benefits have been transferred to their respective receiving organisations. Those who have contributed to the family protection scheme have required or required to continue their contribution to their new organisation. They are governed by the rules and regulations in force in the public service or to those applicable in the receiving parastatal bodies as appropriate, including those laid down in the Pay Research Bureau reports.

Madam Speaker, on 16 April 2018, four employees of ex-SMEDA applied for leave for Judicial Review before the Supreme Court, in relation to the options letter plus terms and conditions of employment following the ceasing of operation of SMEDA. Before employees, in fact, lodged a case against the SME Mauritius with my Ministry as co-respondents, contesting the whole option exercise, including the terms and conditions of employment at SME Mauritius and/or redeployment in Ministries, parastatal bodies. The case was heard for

arguments on 20 February 2019 and the applicants withdrew their case. The case was accordingly set aside on 20 February 2019 with costs.

**Mr Uteem:** The hon. Minister mentioned the Judicial Review case. Is he aware that, at least, some of the former employees of SMEDA have lodged a case before the Equal Opportunities Commission on the ground of discrimination because they were not given a position in the Ministry? Is he aware of this?

**Mr Bholah:** Madam Speaker, I am aware that, in fact, four employees have lodged a case, of whom one has withdrawn her case. The three employees, one has lodged a case on account of mismatch of duties and has requested to be redeployed, same with the second one, whereas the third one is complaining that there is no career path where he is now.

**Mr Uteem:** According to section 16 subsection 3 of the SME Act, the employees were to have no less favourable terms than what they had under the SMEDA. So, how is it then that the hon. Minister has confirmed that these employees' terms of service are not counted towards seniority? How can it be in the same terms and conditions if now the terms of service is not counted towards their seniority?

**Mr Bholah:** No, this is according to where they have been posted, over there, because they have more senior officers in that particular department, Ministries or parastatal bodies.

**Mr Uteem:** Is the hon. Minister aware that some of these employees, who have been redeployed in parastatal bodies, don't have a career path? Because they don't have any position matching what they used to do in SMEDA, so they won't have any more increment, they don't have any possibility of promotion, they are at a dead end.

**Mr Bholah:** Well, this is the best that the Ministry of Employment could have done in that case.

**Madam Speaker:** Next question, hon. Uteem!

#### **PRIVATE PENSION SCHEMES - BENEFICIARIES**

**(No. B/348) Mr R. Uteem (First Member for Port Louis South & Port Louis Central)** asked the Minister of Financial Services and Good Governance whether, in regard to the private pension funds, he will, for the benefit of the House, obtain from the Financial Services Commission, information as to the number thereof in operation, indicating the number of –

- (a) employees covered thereunder, and

- (b) complaints received in relation thereto, indicating in each case the
  - (i) nature thereof, and
  - (ii) actions taken, if any.

**Mr Sesunkur:** Madam Speaker, I am informed by the Financial Services Commission (FSC) that following the proclamation of the Private Pension Schemes Act 2012 on 01 November 2012, all Private Pension Schemes are being regulated by the Commission. The role of the FSC with regard to any trend or change impacting the private pension schemes is to ensure that the interest of members and beneficiaries are protected whilst simultaneously ensuring that the private pensions industry in Mauritius operates in line with the international principles, recommendations and guidelines of the International Organisation of Pension Supervisors (IOPS) and the Organisation for Economic Cooperation and Development (OECD).

Madam Speaker, currently in Mauritius, employees who retire receive either defined benefit (DB) pension or defined contribution (DC) pension. Over the last two decades, it has been noted, at the international level, that the trend is for Private Pension Schemes to shift from DB to DC and the same phenomenon has been noted here in Mauritius.

This shift is due to the fact it is becoming extremely challenging for employers to sustain their DB schemes in the long term. This is due to general increase in remunerations and low returns on investment.

The impact of this trend is that under a defined contribution scheme there is no guarantee in the quantum of pension for future pensioners.

Madam Speaker, as per section 29 of the Private Pension Schemes Act, the FSC has to approve any change from DB to DC. Over the past three years, the FSC has been receiving a number of requests for shifting from DB to DC. In view of the issues identified in the recent years pertaining to the private pensions, the FSC has appointed an International Pension Expert in September 2018 to study the private pension issues in Mauritius and thereby recommend, from a regulatory and supervisory perspective, a comprehensive framework in line with international best practices and standards to address those issues.

I am informed that the FSC has already received a preliminary report from the Consultant which is presently under consideration. In line with the final recommendations of the report, the FSC will issue relevant guidelines to further consolidate the sector. It is

expected that these guidelines will address, *inter alia*, issues such as actuarial valuation assumptions, investment policies and fitness and propriety of members of governing bodies.

Madam Speaker, regarding part (a) of the question, I am informed that, as at January 2019, there were seventy one thousand, eight hundred and forty-nine (71,849) employees covered under seventy-four (74) private pension schemes that are licensed by the Commission. Out of these seventy-four (74) schemes, forty (40) are defined benefit schemes and thirty-four (34) are defined contribution schemes.

As regards part (b) of the question, I am informed that the Commission has received one hundred and three (103) complaints from beneficiaries since November 2012 to date in relation to Private Pensions.

As regards part b (i) of the question, that is, the nature of the complaints, I am informed by the FSC that details for each case cannot be provided in view of the confidentiality clause under section 83 of the Financial Services Act 2007.

With regard to part (b) (ii) of the question, I am informed by the FSC that actions are taken according to the provisions of the relevant enabling laws and procedures established by the Commission.

Moreover, I am informed that out of the one hundred and three (103) complaints received, ninety-eight (98) cases have already been resolved by the Commission. Four cases are subject to Court proceedings and the remaining one is being compiled for referral to the Ombudsperson for Financial Services.

**Mr Uteem:** Can I know from the hon. Minister, out of the sanction taken by the FSC, have they referred any pension scheme to the DPP for investigation under Section 53 of the Private Pension Scheme Act, which makes it an offence for any private scheme not to comply with FSC rules?

**Mr Sesungkur:** Unfortunately, Madam Speaker, I do not have this information. If the hon. Member comes with a specific question, I can probably dig in more.

**Mr Uteem:** In this House, - forget about the confidentiality - the hon. Deputy Prime Minister, at least, revealed one case where there has been an abuse of private pension funds scheme, and that is in the case of the CEB. So, may I know from the hon. Minister, at least, for this CEB case, which is of public domain now, has the FSC acted, what sanction has been taken against the trustees of the scheme, against the operators of the scheme?

**Mr Sesungkur:** Madam Speaker, I think the hon. Member should know that the FSC, as a regulator, has certain powers, but the FSC cannot direct each and every pension scheme, pension funds, how they should administer their funds. The FSC can provide general guidelines; the case of the CEB, we cannot look at it in isolation. This is precisely why the FSC has appointed a consultant to look at all the cases of similar nature, how they can deal with it in a holistic manner. We cannot look at every case in isolation and as FSC we direct the trustees or we take action against the trustees. A pension fund is a private entity, a private organisation; they have to know how they are going to manage those funds. The hon. Member will surely concur with me, the pensions funds in the old days were small funds, today we have got pensions funds which manages billions of rupees and all these have to be addressed in a holistic manner. This is precisely why the report has been conducted and the FSC will come up with relevant solutions.

**Mr Uteem:** I am afraid, Madam Speaker, there is no holistic approach. The law is very clear; every case has to be sanctioned. And under Section 21 of the Act, the FSC has the right to direct pension funds. They have the right to sanction pension funds and they have the right to revoke the licence of pension funds. So, I will ask a specific question to the hon. Minister: why is it that, up to now, despite hundreds of complaints, the FSC has not revoked any licence of managers who are mismanaging and misappropriating funds of poor employees?

**Mr Sesungkur:** Madam Speaker, during my discussion with the FSC, they have indicated to me that they have instructed the managers, but they can go to only some extent, they cannot actually step into the shoes of the managers themselves and start taking decisions. So, the hon. Member will agree with me that the regulator can only take a global approach, not to go on individual cases and act.

**Madam Speaker:** Next question, hon. Abbas Mamode!

### **MEDICAL EQUIPMENT - MAINTENANCE**

**(No. B/349) Mr S. Abbas Mamode (Fourth Member for Port Louis Maritime & Port Louis East)** asked the Minister of Health and Quality of Life whether, in regard to medical apparatus, he will state the number thereof which are out of order since 2017 to date, indicating if consideration will be given for the repair or replacement thereof.

**Dr. Husnoo:** Madam Speaker, I wish to inform the House that there is no medical apparatus which has been out of order at my Ministry since 2017. However, whenever

technical device or small equipment are out of order, action is initiated for the replacement either at the level of the hospital or my Ministry.

As regards large and sophisticated medical equipment, there is an established policy at my Ministry for repairs to be effected promptly as follows –

- If the equipment is under warranty or post warranty, maintenance agreement for labour and spare part, the supplier would effect the repair promptly.
- In the event the maintenance agreement is for labour only, the cost of spare part is made by my Ministry. However, procurement of spare part is effected at the level of the hospital if the cost is below Rs1 m., otherwise the Ministry proceeds with the procurement exercise.
- If there is no maintenance agreement, procurement of spare parts is effected at the level of the hospital. Again, if the cost is below Rs1 m. as well as for labour as appropriate, otherwise the Ministry proceeds with the procurement of same based on the supplier's intervention report.
- If the equipment has reached the operational lifespan, my Ministry initiates procurement procedures for replacement of the equipment.

I wish to inform the House that it is an undeniable fact that machine and other medical equipment at hospitals, like in any other organisations, tend to break down or simply stop working as a result of wear and tear due to the daily utilisation, obsolescence, or depletion through effect of time.

**Mr Abbas Mamode:** Can the hon. Minister confirm to the House that the echography, the CT-scan and the mammography at the Candos Hospital are in good working condition?

**Dr. Husnoo:** The CT-scan at Candos Hospital is functioning; the MRI and echography is functioning. As for the mammography, it is not functional for the time being, but it is going to be repaired by mid-July 2019.

**Mr Abbas Mamode:** According to my information, the echography and the mammography are not functioning right now. Can we know from the hon. Minister if the one who supplies these two apparatus has been taken to task?

**Dr. Husnoo:** No. As I told the hon. Member, it is not working now, but it is going to be repaired by mid-July.

**Madam Speaker:** Hon. Armance!

**Mr Armance:** Thank you, Madam Speaker. I understand from the hon. Minister that everything is perfect in the hospital. Last week, at Jeetoo Hospital, the machine for mammography was not working and I will tell you why. One of my relative went there and we have been asked to go at Chisty Shifa Clinic to do the test and to pay for it while the machine at the hospital was not working. How can the hon. Minister say now that everything is working in the hospital?

**Dr. Husnoo:** Madam Speaker, I have never said that everything is perfect. I have said...

*(Interruptions)*

No, I have to answer. He is just saying that I have said everything is perfect. I have not said so. I do not like people to talk like that to me. The machine can get broken. So, when it breaks down, we do try to repair the machine.

**Madam Speaker:** Hon. Dr. Boolell!

**Dr. Boolell:** Is the hon. Minister aware that there has been regular breakdown of radiotherapy equipment and this has an impact upon cancer patients undergoing treatment?

**Dr. Husnoo:** Yes, I am aware of the linear getting regularly broken. But, again, I have answered that question in this House before. The linear is 23 years old, it should have been replaced 12 years ago, which was not done, that's why. Now, the apparatus is 23 years old. Its lifespan is 12 years. I know the problem. It is going to get broken. We are trying to get two new linear in the new cancer hospital where it is going to be operational. In the meantime, we are sending the patients overseas for radiotherapy.

**Madam Speaker:** Last question, hon. Abbas Mamode!

**Mr Abbas Mamode:** Est-ce la pratique normale quand il y a un *breakdown* d'un *equipment*, que si on envoie quelqu'un, par exemple, à une clinique en particulier, c'est le patient qui doit *foot the bill* ? Est-ce que c'est la pratique normale - le paiement?

**Dr. Husnoo:** Normally, if an equipment is broken in one hospital, we try to refer the patient to a different hospital to have it done.

**Madam Speaker:** Next question, hon. Ms Sewocksingh!



**REFORM INSTITUTION ACT - SECTION 51A - AMENDMENT**

(No. B/350) Ms M. Sewocksingh (Third Member for Curepipe & Midlands) asked the Rt. hon. Minister Mentor, Minister of Defence, Minister for Rodrigues whether, in regard to Remission/Release on Parole, he will state if consideration will be given for the introduction in the Assembly of proposed amendments to section 51A of the Reforms Institution Act with a view to adding murder with aggravating circumstances following domestic violence against women on the list of offences not eligible therefor.

**Madam Speaker:** B/350, Rt. hon. Minister Mentor!

*(Interruptions)*

No exchange between Members!

*(Interruptions)*

**Sir Anerood Jugnauth:** Madam Speaker, under Section 51A of the Reform Institutions Act, a person who has been convicted of either an offence under any of the provisions of the Dangerous Drugs Act, except for drug consumers, or a sexual offence on a child or a handicapped person, is not entitled to draw statutory remission of sentence or to be released on parole.

I am informed by the Commissioner of Prisons that, in general, persons convicted of murder/manslaughter serve long terms of imprisonment up to a maximum of 60 years and, presently, as the law stands, they are eligible to earn one third statutory remission and be released on parole after having served half of their sentence or at least 16 months, whichever expires the later.

Madam Speaker, as at date, 138 persons are serving sentence for having committed offences causing deaths. 124 other detainees are on remand for homicide cases.

I strongly condemn such acts and with a view to sending a strong signal to the society at large, consideration is being given to amend Section 51A of the Reform Institutions Act to add a third category comprising murder cases.

**Ms Sewocksingh:** I would like to thank the Rt. hon. Minister Mentor for the reply. We all remember the case of Bapoo, Madam Speaker, who murdered his wife and has been granted 15 years of remission. So, I suggest the Rt. hon. Minister Mentor to make sure that the law is hardened so that we do not have these cases.

**Sir Anerood Jugnauth:** I have already answered that we are considering.

**Mr A. Duval:** Can I ask the Rt. hon. Minister Mentor with regard to the second part, release on parole, those who serve 50% of the sentence and are released on bail, whether he will review for domestic violence, serious assaults on especially women, sometimes causing disabilities, if he can also add that as the fourth category in the proposed amendment being brought to Section 51A?

**Sir Anerood Jugnauth:** We may consider.

**Madam Speaker:** Next question, hon. Bhagwan!

#### **MAURITIUS SHIPPING CORPORATION LTD – VESSEL – ACQUISITION**

**(No. B/351) Mr R. Bhagwan (First Member for Beau Bassin & Petite Rivière)** asked the Minister of Ocean Economy, Marine Resources, Fisheries and Shipping whether, in regard to the proposed acquisition of a new vessel from China, he will, for the benefit of the House, obtain from the Mauritius Shipping Corporation, information as to the –

- (a) estimated cost thereof;
- (b) procurement procedure followed and outcome thereof;
- (c) number of visits effected by officers of the Corporation to China in relation thereto, indicating the cost incurred, and
- (d) expected delivery date thereof.

**Mr Koonjoo:** Madam Speaker, at the very outset, I wish to inform the House that Mauritius Shipping Corporation Ltd (MSCL) is a private company governed by the Companies Act of Mauritius and managed by a Board of Directors.

I also wish to invite the attention of the House to the provisions at Section 3(1) (g) of the Public Procurement Act 2006 which reads as follows, and I quote –

“This Act shall not apply to procurement undertaken by any public body in respect of vessels, including maintenance, repairs and periodic overhauls in a dry dock.”

However, for the purpose of transparency and upon the request of the Mauritius Shipping Corporation Ltd, the Public Procurement Office has, in the Circular No. 6 of 2017, issued Guidelines on Procurement of Vessels and I am tabling the copy on the Circular.

Madam Speaker, I am informed that the cost of a vessel depends on, *inter alia*, the country where the constructing shipyard is based, the size and design of the vessel, the cost of supervising the construction, and the origins of the main parts such as engines and cranes.

*(Interruptions)*

I said sorry!

**Madam Speaker:** It is okay. Please proceed, hon. Minister!

**Mr Koonjoo:** I have further been informed that...

*(Interruptions)*

...the cost estimate approved by the MSCL Board for the acquisition of a new vessel is Rs800 m. It is to be noted that the cost will be borne exclusively by the MSCL, that is, without any funding from the Government.

Regarding part (b) of the question, I wish to inform the House that MSCL has scrupulously followed the procedures laid down in the Procurement Guidelines. The procurement process started with an invitation of expressions of interest from shipbuilding companies through an open international bidding on 29 November 2018. Tenders were, thereafter, launched on 18 February 2019 to three pre-selected shipyards.

As at the deadline of 03 April 2019 for submission of bids, only two bids were received. Same are being processed as per procurement procedures. The technical as well as the financial evaluation of the bids have been carried out and a Negotiating Panel, comprising senior civil servants of the Attorney General's Office, the Ministry of Finance and Economic Development, the Ministry of Public Infrastructure and Land Transport and my Ministry is being constituted to deal with the price and non-price factors with the bidders in order of their ranking as per the Guidelines on Procurement of the Vessels.

Madam Speaker, with respect to part (c) of the question, I am informed that on 25 October 2017, the MSCL Board had decided that a delegation accompanied by MSCL Shipbroker visit at least 6 shipyards in China in respect of the procurement of the new vessel. Accordingly, a delegation comprising the Acting Managing Director of the MSCL and the Technical Consultant accompanied by the MSCL Shipbroker visited seven shipyards in China from 27 November 2017 to 01 December 2017. That was the only visit effected by MSCL in respect of the proposed acquisition of the vessel from China.

As per information gathered by my Ministry, the total cost incurred for the visit of the delegation is Rs510,640. This cost includes the economy class airline and approved rates of *per diem* for the Ag Managing Director and one economy class airline and consultancy charges of the technical consultant as per the contract.

Regarding part (d) of the question, I am informed that the expected delivery date of the vessel is 24 months as from the date of award of contract. Thank you.

**Mr Bhagwan:** Is the Minister aware that actually the Independent Commission Against Corruption has been apprised of some shortcomings and it is conducting an enquiry into the whole process of this purchase of vessel.

**Mr Koonjoo:** Madam Speaker, yes, I am aware. In fact, I got a letter from ICAC itself and I told them that I don't have any problem, to go ahead with the enquiry.

**Mr Bhagwan:** Is the Minister aware that there have been lots of shortcomings concerning the setting up of the Evaluation Committee and also the Bid Evaluation Committee?

**Mr Koonjoo:** No, Madam Speaker, I am not aware. If the hon. Member can give me the details, I will look into that.

**Mr Bhagwan:** Can the Minister check and see whether one, Mr Christophe de Bryne something like this residing in Hong Kong was appointed as Chairperson of the Evaluation Committee?

**Mr Koonjoo:** Sorry, Madam Speaker, I don't have this information.

**Mr Bhagwan:** Can the Minister check and then report to the House later on whether this gentleman from Hong Kong was appointed by the Mauritius Shipping Corporation to chair the Evaluation Committee?

**Mr Koonjoo:** When the hon. Member give me the information, I will look into that definitely.

**Mr Bhagwan:** Can the Minister, at least, inform the House whether he intends to bring to the attention of the Prime Minister and Minister of Finance the whole process of purchasing that vessel and the different shortcomings found and the case which has been referred to ICAC.

**Mr Koonjoo:** I will definitely do it, Madam Speaker, if I get all the information from the hon. Member, thank you.

**Madam Speaker:** Next question, hon. Bhagwan!

### **COMBINED CYCLE GAS TURBINES PROJECT - FINANCING**

**(No. B/352) Mr R. Bhagwan (First Member for Beau Bassin & Petite Rivière)** asked the Deputy Prime Minister, Minister of Energy and Public Utilities whether, in regard to the Combined Cycle Gas Turbines Project, he will state –

- (a) the financing mode thereof;
- (b) if consideration will be given for the upgrading of the Open Cycle Gas Turbines at Nicolay Power Station in view of the present unavailability of LNG locally, indicating when same will be available, and
- (c) if the financial costs of the stranded assets of the CCGT Project has been evaluated in case of unavailability of LNG in the medium term.

**The Deputy Prime Minister:** Madam Speaker, with regard to part (a) of the question, I am informed by the CEB that it is envisaging the financing of Phase I of the project, which consists of the installation of two open cycle gas turbines estimated at Rs3.7 billion, from its own finance.

I am further informed by the CEB that, as regards Phase II, which consists in the installation of the steam turbine to convert the plant into a CCGT power plant, it is considering a mixed financing of its own funds and borrowings.

With regard to part (b) of the question, I am informed by the CEB that one unit at the Nicolay Power Station was commissioned in 1988, a second one in 1992 and a third one in 1995. They are therefore aged 30, 27, and 24 years respectively and have approached the end of the useful operating lives.

According to the CEB, the option to upgrade these turbines and prolong their life span would entail heavy investment. In addition, it is not, according to the CEB, technically advisable to do so.

With regard to part (c), I am informed that necessary safeguards have been included in the bid document for the CCGT project. One of the bid conditions is that the selected bidder would be contractually bound for a period of five years to proceed with Phase II, namely the conversion of the open cycle gas turbine plant into a combined cycle gas turbine

plant, only upon the availability of LNG in Mauritius. The question of stranded assets does not therefore arise.

**Mr Bhagwan:** Supplementary, Madam Speaker. Can I just check with the Minister whether the award by CEB will be for the whole project or only for the open cycle part and what has been the comment of the Central Procurement Board?

**The Deputy Prime Minister:** The Central Procurement Board is still looking into the issue but the tender is for the two phases, one contractor will be contractually bound to provide the open cycle as well as the combine cycle. However, for a period of five years, the contractor would have to wait after five years he would be freed from this condition if LNG is not available.

**Mr Bhagwan:** Madam Speaker, since the open cycle gas turbine would be, if I understand, used for only peak management, can the Minister, at least, confirm whether we can afford to spend about around Rs4 billion on a system that, in 2015, clock only a total of 126 hours; generating only 2 GW of electricity representing 0.7% of a total electricity generated.

**The Deputy Prime Minister:** I have to draw the attention of House that the question of implementing the Open Cycle Gas Turbine Project is not a recent development. This has been in the strategic plan of the CEB since 2003. It was devised for positive necessary. Now I understand that when we talk of peaking units we are also talking of the necessity of this plant because of the growing importance of renewable energy, because there would be fluctuations. So, all this has got to be looked and I am advised that this is a financially viable project. We need these gas turbines - may have been debates but the debates have been closed in this matter and not only in 2003; in 2013 the National Energy Commission - the Manraj Commission - also advised the setting up of this gas turbine.

**Mr Bhagwan:** We have been discussing for some time here in Parliament concerning this combined cycle project and I have asked questions myself about this Poten report. I understand that, initially, the Minister stated to the House that the CEB and himself were studying this report. Can the Minister inform the House - we have spent so many millions - if, by now, this Poten report cannot be circulated to the Members of the House?

**The Deputy Prime Minister:** First of all, I believe we have to distinguish between CCGT and LNG, the Poten report is on energy. The matter has been discussed in Cabinet. For the moment, it has been considered not advisable to release the Poten report. However, this being said, I took up the suggestion of the Leader of the Opposition and we have been working on an executive summary of the report for release to the public.

The issue is that the report contains various information which cannot be released because of the impending bidding process if at all there is going to be a bidding procedure. However, I understand and we all understand the necessity of this being discussed. This is why a summary has already been prepared but is still being discussed. Eventually, I am sure we will consider the advisability of releasing that summary.

**Madam Speaker:** Hon. Osman Mahomed!

**Mr Osman Mahomed:** Yes. Can I ask the hon. Deputy Prime Minister whether CEB is in the presence of an unsolicited proposal for combined cycle gas turbine installation submitted to the Ministry of Finance and Economic Development.

**The Deputy Prime Minister:** There have been many people who have wanted to step in outside the tender procedure, outside the bidding process. We have got to consider all options but, of course, the priority of consideration is to strictly stick to the legality of all procurement processes.

**Madam Speaker:** Next question, hon. Armance!

#### **DISABILITY BILL - INTRODUCTION**

**(No. B/353) Mr P. Armance (First Member for GRNW & Port Louis West)** asked the Minister of Social Security, National Solidarity, and Environment and Sustainable Development whether, in regard to the Disability Bill, he will state the expected date of introduction thereof in the Assembly.

**Mr Sinatambou:** Madam Speaker, as stated by the then Minister of Social Security, National Solidarity and Reform Institutions, the now hon. Vice-Prime Minister in reply to a Private Notice Question by the then Leader of the Opposition on 12 July 2016, my Ministry has been working on the draft Disability Bill which aims at better promoting and better protecting the rights of persons with disabilities, eliminating discrimination against the disabled and incorporating the provisions of the United Nations Conventions on the rights of persons with disabilities in our national law.

The Attorney General's office gave its first unfinalised preliminary draft in respect of the draft Disability Bill in April 2016 for official consultations with Ministries and Departments concerned. Thereafter, the views obtained were submitted to the Attorney General's Office in December 2016 for consideration. The draft zero of the Bill was subsequently sent to my Ministry by the Attorney General's Office.

In reply to Parliamentary Question B/787 dated 14 November 2017, I stated that the draft of the Disability Bill was being reviewed at the level of my Ministry as a number of issues still had to be addressed. Accordingly, I informed the House that it was expected that the draft Disability Bill would be introduced in the National Assembly around the end of 2018 after being circulated among all relevant stakeholders, including civil society, prior to its introduction into the National Assembly.

Furthermore, as stated in my reply to Parliamentary Question B/58 dated 04 December 2018, I explained to the House that a number of issues still remained to be addressed. I also stated that once these issues were addressed, I would submit the draft Bill for the agreement and principle of Cabinet before the document would be shared with a broader spectrum of stakeholders involving NGOs, disabled people's organisations, disability activists and civil society at large. After this process, the draft Bill would be finalised with the Attorney General's Office before its introduction in the National Assembly.

Following my Parliamentary reply of 04 December 2018, several consultations had subsequently been held, namely on 28 January 2019, 31 January 2019, 11 February 2019, 14 March 2019, 06 and 09 May 2019 with the State Law Office and issues which had been raised have been addressed or still need to be addressed. One among them is that the State should make appropriate provisions so that Government is not liable in case a person suffers from any injury where no proper arrangements have been made in public buildings and public places to accommodate a disabled person or where facilities provided by the State are not accessible to the disabled. Once these issues are addressed, as I have stated in an earlier reply before this House, I shall submit the draft Bill for the agreement in principle of Cabinet before the document is shared with a broader spectrum of stakeholders involving NGOs, disabled people's organisations, disability activists and civil society at large. After this process, the draft Disability Bill would be finalised with the Attorney General's Office before its introduction in the National Assembly.

It is to be noted that notwithstanding the fact that the Disability Bill has not yet been introduced, the Equal Opportunities Act, the Training and Employment of Disabled Persons Act and the Building Control Act deal, to some extent, with the issue of discrimination against persons with impairment, employment of persons with disabilities and construction of buildings to ensure that they are accessible to persons with disabilities respectively.



As matters now stand, I expect that the draft Disability Bill will be introduced into the National Assembly before the end of this year.

**Mr Armance:** Given, Madam Speaker, that there is no legislation to handle discrimination against the PWDS, given that there is no inclusive policy for accessibility, - the hon. Minister just mentioned it – given that even the Government portal is not accessible for visual impairment, I do not understand why the hon. Minister, up to now, after five years, has not yet even started to consult the stakeholders and all the NGOs that work with the disability. So, can I ask him whether he is going to circulate the draft Bill now because he had meetings with the State Law Office, he had meetings with each and every Ministry, but he never had any meeting with the NGOs? Can I ask him whether he will now circulate the draft Bill to these stakeholders so that they can have a look at it and then give their recommendation thereof?

**Mr Sinatambou:** I must, first, say that it is incorrect to say that there is no legislation to protect people with disabilities. Secondly, it is also incorrect to say that there is no legislation concerning the accessibility of buildings to disabled people. That is why I referred earlier to, first of all, the Equal Opportunities Bill, the Training and Employment of Disabled Persons Act and the Building Control Act. These are already three legislations which actually protect disabled people from discrimination. We also passed a fourth law earlier this year which was the Special Education Needs Authority Act which also protects the disabled from discrimination. So, I do not think it is correct to say that.

But in any event, if one has listened to my reply, one will know that, in fact, we will be coming with the Disability Bill.

**Mr Armance:** I mentioned discrimination, I mentioned inclusive policy and I did not mention what the hon. Minister just said it is not correct. So, my next question is regarding the convention that was signed and ratified by Mauritius. There was an Action Plan in 2007 and the convention in 2010 where Mauritius said that we are going to introduce three recommendations. So, has the hon. Minister taken into consideration that the Disability Bill forms part of these recommendations?

**Mr Sinatambou:** In fact, Madam Speaker, in my reply earlier, I stated that the objects of the Disability Bill will be to better promote and better protect the rights of person with disabilities, eliminating discrimination against the disabled and especially incorporating the

provisions of the United Nations Convention on the rights of persons with disabilities. So, this matter is clearly being attended to.

**Mr Armance:** I also understand that the hon. Minister had one meeting with the stakeholders and the NGOs. Is he willing to have other meetings now with them? The hon. Minister said he has to go and consult the State Law Office and everyone, but I am just maintaining that we need consultations with the people working with disabled persons, not the State Law Office. So, is the hon. Minister willing now to have another meeting with them?

**Mr Sinatambou:** We have several meetings with them and, in fact, I have been stating that again, once all the implications are worked out, there will be sharing with a broad spectrum including, I quote, as I said earlier –

“(...) a broader spectrum of stakeholders including NGOs, disabled people’s organisations, disability activists and civil society at large.”

So, it will involve a broad spectrum of stakeholders.

**Madam Speaker:** Yes, hon. Adrien Duval!

**Mr A. Duval:** Will the Disability Bill propose to review the discrimination in scholarships given to disabled people? As the hon. Minister might know, disabled people are not given scholarships to go abroad and if so, what does he propose to do now pending the ever coming Disability Bill?

**Mr Sinatambou:** I am not sure that it is correct to say that there is a discrimination against disabled people from obtaining scholarships. Scholarships are allocated ...

*(Interruptions)*

Even abroad! Scholarships abroad are allocated on the basis of performance whether you are deaf, blind, if you have got the better results, you get the scholarship.

**Madam Speaker:** Next question, hon. Armance!

#### **TRAINING & EMPLOYMENT OF DISABLED PERSONS BOARD - DISABLED PERSONS - TRAINING/EMPLOYMENT**

**(No. B/354) Mr P. Armance (First Member for GRNW & Port Louis West)** asked the Minister of Social Security, National Solidarity, and Environment and Sustainable Development whether, in regard to the Training and Employment of Disabled Persons Board,

he will, for the benefit of the House, obtain therefrom, information as to, in 2017 and 2018 respectively, the –

- (a) number of –
  - (i) disabled persons trained, indicating the outcome thereof, including the number of employments in parastatal body and private sector recommended by the Board;
  - (ii) activities carried out thereat;
  - (iii) training centres presently attached thereto, and
- (b) Action Plan thereof.

**Mr Sinatambou:** Madam Speaker, the Training and Employment of Disabled Persons Board is regulated by the Training and Employment of Disabled Persons Act of 1996 as amended by the Training and Employment of Disabled Persons (Amendment) Act of 2012.

With regard to part (a) (i) of the question, I am informed that in year 2017, 42 persons with disabilities have been trained by the Training and Employment of Disabled Persons Board. Out of these 42 trainees, 37 followed the basic housekeeping course at Ecole Hôtelière Sir Gaëtan Duval, 22 have found employment in the Hospitality Industry, while 13 were not selected and two refused their job offer. The remaining five trainees attended the basic IT course run by Accenture, but none of them is employed up to now. All the training provided were MQA approved.

The Training and Employment of Disabled Persons Board has in 2017 placed 59 persons with disabilities in paid employment out of whom 42 persons who have been trained by the Training and Employment of Disabled Persons Board and eight have been employed in parastatal bodies and companies where Government is the majority shareholder, namely the Central Water Authority, MauBank and the Mauritius Duty Free Paradise. The 22 persons I referred to earlier, who were employed in the Hospitality Industry, have been employed in four to five-star hotels.

In year 2018, 15 persons were trained in the basic IT course run by Accenture, but they are still unemployed, 19 persons were placed in paid employment, including two in a parastatal organisation, namely the Central Water Authority, three in SICOM Limited and two in Mauritius Network Services Limited, two companies where Government is the majority shareholder.

I have to say here that the disabled persons employed by the parastatal bodies and companies where Government is the majority shareholder have the qualifications required for the post.

I am informed that the total number of disabled persons registered with the Training and Employment of Disabled Persons Board as at 2017 was 1,003 out of whom 438 are in employment.

As regards part (a) (ii) of the question, the activities which are carried out thereat are, among others, the prevention against discrimination towards disabled persons resulting from or arising out of their disability, encouraging establishment of appropriate vocational centres and other institutions for the training of disabled persons and operating and encouraging schemes and projects for the training and employment of disabled persons.

As regards part (a) (iii) of the question, when this Government came into office, there were two training centres providing inbound courses in operation, the first one in Calebasses and the second one at Rose Belle.

I am informed with respect to the training centre in Calebasses that the Board of the Training and Employment of Disabled Persons took note on 15 November 2017, that severe cracks had been observed in the building. Subsequently, a request was made to the Ministry of Public Infrastructure and Land Transport for a safety assessment of the centre to be carried out. In its report dated 03 January 2018, the Ministry of Public Infrastructure and Land Transport recommended that the administrative and classroom blocks be closed until urgent repair works are carried out.

With respect to the training centre in Rose Belle, I am informed that the Board of Training and Employment of Disabled Persons requested the assistance of my Ministry for a safety audit to be carried out there further to its Board Meeting dated 07 June 2017, given the state of the building. The Ministry of Public Infrastructure carried out an audit on 24 July 2017 and the building had to be officially vacated upon recommendation of the Ministry of Public Infrastructure and Land Transport. My Ministry has subsequently made a proposal to decentralise the training centres, to increase accessibility and to review and develop a new training model which will make the trainees more employable. This proposal to open training centres in six regions over the island has been conveyed to the Board for consideration and the unanimous approval of the Board has been obtained on 28 December 2018. Tender procedures are currently underway to actually get the six training centres.

**Madam Speaker:** Hon. Armance!

**Mr Armance:** One of the functions of the Board, Madam Speaker, is to handle a register for disabled persons and also register for the employer. Can we know from the hon. Minister whether this register is available for the disabled person and the employer as well?

**Mr Sinatambou:** I am sure it should be. If it is one of its statutory functions, I am sure it would be. What I know, however, is that I have been given the information that as at 2017, there were 1,003 registered disabled persons out of whom 438 are in employment, but I am sure that if it is the statutory duty, they should actually have the registers.

**Mr Armance:** I have noted as well that there has been an increase in the budget for the assistance of training and disabled persons from Rs20 m. to Rs30 m., and yet I understand that very few of them have been trained in 2017 and 2018. Can we know from the hon. Minister what concretely is he doing? He missed one paragraph on the functions of Board - to improve generally the social and economic status and conditions of disabled persons with the Rs30 m. allocated to you.

**Mr Sinatambou:** Well, as I explained, when this Government came into Office, there were only two training centres, and unfortunately - and this is what accounts for the little numbers in training - both training centres have had to close to down, because they were actually not secure for the trainees. As a result, we have now launched an exercise to have not two training centres, but six training centres. As a matter of fact, the tenders have been launched and we have actually received tenders for four out of the six regions and we will have to re-launch tenders for the two regions where there has been no response.

**Madam Speaker:** Hon. Abbas Mamode!

**Mr Abbas Mamode:** I am given to understand by the reply of the Minister that when this Government came into power, there were two training centres, and just right now, there is no training centre. Can the hon. Minister inform the House when will the Calebasses and Flacq Training Centres be operational?

**Mr Sinatambou:** As they are. We have had to launch tenders for six new training centres. They have been condemned by the Ministry of Public Infrastructure because of their actual state. In fact, regarding the Training Centre at Rose Belle, a safety audit was carried out on 24 July 2017 and in a memorandum sent one week later, the Ministry of Public Infrastructure and Land Transport recommended that the building be vacated to prevent any

mishap or injury. So, they have been condemned, which is why we have launched tenders for six training centres.

**Madam Speaker:** Hon. Armance!

**Mr Armance:** Coming back to the training centres, now that we all understand that the one at Calebasses is closed, the one at Rose Belle is closed and the Minister is very busy, for two years, he is now launching tenders. What is happening to these people now? What are you doing to cater for the needs of the disabled right now? You have got only one office in Rose Hill where all the people from Calebasses are sitting at Rose Hill. What are you doing now for these people? Are you giving consideration through them?

**Madam Speaker:** I have told you, hon. Armance, do not say 'you'. You address the Minister! Address the Chair!

**Mr Sinatambou:** It is so unfair to say the Minister is busy and he is not attending. Let me give the sequence of events, Madam Speaker.

Let me start with Calebasses. The building in Calebasses...

*(Interruptions)*

Why should I stop here?

**Madam Speaker:** You don't want to hear? You don't want to listen to the reply of the Minister?

*(Interruptions)*

Because you are making remarks. Allow the Minister to reply!

**Mr Sinatambou:** The...

*(Interruptions)*

**Madam Speaker:** Please proceed!

*(Interruptions)*

Please, I have said, no exchange between hon. Members. Proceed with your reply, hon. Minister.

**Mr Sinatambou:** In a report dated 03 January 2018, the Ministry of Public Infrastructure recommended that the administrative and classroom blocks should be closed in Calebasses. That was on 03 January. The training centre was closed one week later on 10

January. The staff was redeployed to the Headquarters in Rose Hill whereas the trainees have been informed that training sessions will resume once a suitable venue is identified. The first bid for the renting of the building to house the training centre was floated on 08 February 2018. The closing date was 28 February 2018. Out of three bids - they wanted to know what has happened. Let us tell them.

*(Interruptions)*

**Madam Speaker:** I have given additional for his reply!

*(Interruptions)*

Order!

**Mr Sinatambou:** Out of three bids received, only two were retained for evaluation. Following evaluation and site visit effected, none was found to be compliant by the officers. Subsequently, on the advice of the Tender Committee, the Board cancelled the exercise on 06 June 2018.

As regard to Rose Belle, a safety audit was carried out on 07 June...

**Mr Armance:** On a point of order, Madam Speaker. My question is: what is the hon. Minister doing for the training since the centres are closed? I don't know what he doing, he is telling what has happened...

**Madam Speaker:** Hon. Member, let me draw your attention to the fact that when you ask your questions, you made certain remarks. In spite of the fact that the hon. Minister has said that the two buildings were condemned by the Ministry of Public Infrastructure, you did not want to take this into consideration, but yet, asked your question. In spite of the fact that time is over for Question Time, I have given additional time for the Minister to explain.

**Mr Sinatambou:** Well, if the buildings are closed, if the training centres are closed, what can Government do than get other training centres to train the people? It is clearly bad faith for those who are raising this type of questions.

**Madam Speaker:** Time is over!

*(Interruptions)*

Order!

**MOTION****SUSPENSION OF S.O. 10(2)**

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

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister for Gender Equality, Child Development & Family Welfare (Mrs F. Jeewa-Daureeawoo) rose and seconded.**

*Question put and agreed to.*

(4.23 p.m.)

**STATEMENTS BY MINISTERS****LA COLOMBE SHELTER - INCIDENT - 09 MAY 2019**

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Madam Speaker, with your permission, I propose to make a statement on an incident which occurred on Thursday 09 May 2019 at Shelter La Colombe which is managed by the National Children's Council.

The Shelter Manager is Ms Noor-E-Muhtasheem Soodhun. I wish to inform the House that on Friday 10 May 2019, one of the residents of Shelter La Colombe, minor D.C, aged 10, reported to an officer of the Alternative Care Unit that on Thursday 09 May 2019, at around noon, he had been physically ill-treated by the Shelter Manager and that he wanted to be placed into another shelter.

I was also informed that the Shelter Manager lodged a precautionary measure at La Tour Koeing Police Station on the same day and withdrew same later in the afternoon. She had also enlisted the services of *Brigade pour la protection des mineurs* to intervene into the matter. Upon instructions of the Shelter Manager, the minor was brought to Brown Sequared Mental Health Care Hospital on the same day and he was admitted thereat. It is to be noted that the minor is an outpatient of the said hospital.

Following minor's revelation, a statement was lodged on his behalf at La Tour Koeing Police Station by two officers of the Alternative Care Unit of my Ministry.



I further wish to inform the House that the Office of Ombudsperson for Children is carrying out an investigation into the matter. Following the incident, the National Children's Council too is also investigating into the matter. Pending the outcome of investigation and the Police inquiry, Ms Soodhun has been transferred to the National Children's Council and another Assistant Child Programme Officer is acting as Officer-in-Charge of Shelter La Colombe until further notice.

I wish to inform the House that the minor is visited daily by a multi-disciplinary team comprising a Family Welfare and Protection Officer, a Psychologist and Psychiatric Nurse of the Ministry. My Ministry is doing the needful to place the minor in another shelter on his discharge.

Thank you.

(4.26 p.m.)

### **GOVERNMENT & AIDED PRIMARY SCHOOLS - INNOVATIVE PEDAGOGICAL PROGRAMMES**

**The Minister of Education and Human Resources, Tertiary Education and Scientific Research (Mrs L. D. Dookun-Luchoomun):** Madam Speaker, with your permission, I propose to make a statement on the implementation status of the Innovative Pedagogical Programmes initiated since 2017 in all Government and aided primary schools of the Republic.

The Nine-year Continuous Basic Education Programme is grounded in a philosophy that upholds a holistic development of learners. It thus aims at establishing a solid foundation on which they can build their future learning while also providing opportunities for all pupils to unlock their true potential.

Madam Speaker, I will address the following issues, namely –

- the Developmental Learner Profile at the Pre-primary;
- the Primary School Readiness Programme;
- the Early Support Programme, and
- the Diagnostic Assessment.

Through these programmes we have ensured that not only teaching strategies shift from directive to learner centred ones, but also that learning gaps are detected as early as

possible so that remedial measures can be taken to circumvent the accumulation of learning deficits.

Madam Speaker, the Developmental Learner Profile is devised to record every child's progress and development during the two-year pre-primary education. The learner profile subdivided into two documents serves three purposes. One document enables pre-primary teachers to closely monitor the developmental progress of each child at regular intervals during the school year and thus identify developmental gaps, if any, and plan for remediation action. The second acts as an exit document that summarises the child's progress at the end of pre-school education. Finally, it acts as a transit document that parents can carry forward to Grade 1 teachers for the latter to have a better understanding of the learner's competence in the various domains, namely cognitive, psychosocial, emotion and so forth.

Once a child enters Grade 1, the DLP (Developmental Learner Profile) is complemented by another mechanism, the Primary School Readiness (PSR). This latter gauges the level of competencies acquired by the pupils and, hence, the level of preparedness to make the transition from the pre-school to primary school. This PSR tool provides teachers with the means to profile their pupils and identify those who are lagging behind or who are suspected of developmental delays for in time interventions.

Educators are trained for the effective conduct of the PSR and today the PSR is carried out in all Government and aided primary schools of the Republic and it is impacting positively on teaching and learning. Learning gaps, once identified through the Primary School Readiness Programme are then addressed through the Early Support Programme (ESP) designed to accompany the learners. The Early Support Programme thus aims at providing support for in time remediation.

The ESP covers children in Grades 1 and 2 who need support in the core subjects. They are coached in small groups and individualised attention as appropriate is tendered by the support teacher who, with the class teacher, puts in place a differentiated instruction. The idea is to catch them early and bring them back on track, allowing them to reintegrate their regular class. This avoids the accumulation of learning...

**Madam Speaker:** With respect to the Minister, can we have some silence in the House, please!

**Mrs Dookun-Luchoomun:** This avoids the accumulation of learning deficits which is one of the root causes of pupil disengagement. In 2018, a total of 1,830 pupils of Grade I

and 1,801 of Grade II were identified as having learning deficits and were provided with support through a tailor-made approach. This figure represents around 10% of the cohort. If allowed to go and check, the figure would tend to grow on increasing the risk of pupils not attaining the required level of competency than the end of the primary cycle. Feedback received from both teaching staff and primary school inspectors demonstrate a keen and enhanced interest of those learners benefiting to the ESP.

Madam Speaker, to guarantee success of the early support programme, 290 support teachers have been recruited and trained by the Mauritius Institute of Education. Today, around 255 support teachers are posted full time in Government and Aided Schools in both mainland Mauritius and Rodrigues. The remaining 35 are currently completing their training prior to be posted in a full time capacity in schools.

My Ministry will be proceeding with the recruitment of additional support teachers to provide for the extension of the remediation process to pupils of Grade III to VI. The aim is to ensure that pupils of all grades of primary education cycle benefit from the programme thus safeguarding against relapse.

Madam Speaker, an evaluation of this programme is being currently carried out by the World Bank in collaboration with my Ministry. Such an evaluation will be an opportunity to provide feedback to a wider set of stakeholders, especially teachers and parents to strengthen support for the programme. At the beginning of Grade III, a diagnostic assessment is carried out to give the level of literacy and numeracy attained by the pupils. The teachers use this assessment to develop relevant remedial measures for an effective continuation of the pupils' learning.

Madam Speaker, all the different measures enunciated above are working in synchrony so as to ensure effective learning. Pupils not having attained the proper standard at the end of Grade III will be required to repeat the grade.

Madam Speaker, for the pedagogical measures being implemented to be successful, a close monitoring is fundamental. To that effect, the Primary Inspectorate cadre has been fully trained both to better support schools in the delivery of such programmes and help sustain these. Madam Speaker, I would like to reassure the House that these innovative pedagogical programmes are aimed at creating stimulating learning environments and consolidating the foundations for learning.

Thank you, Madam Speaker.

**PUBLIC BILLS***First Reading*

*On motion made and seconded, the following Bills were read a first time -*

- (a) the United Nations (Financial Prohibitions, Arms Embargo and Travel Ban) Sanctions Bill (No. VII of 2019);
- (b) the Anti-Money Laundering and Combatting the Financing of Terrorism and Proliferation (Miscellaneous Provisions) Bill (No. VIII of 2019).

*Second Reading***THE ROAD TRAFFIC (AMENDMENT) BILL****(NO. V OF 2019)**

*Order read for resuming adjourned debate on the Road Traffic (Amendment) Bill (No. V of 2019).*

*Question again proposed.*

(4.34 p.m.)

**Mr J. F. François (First Member for Rodrigues):** Madam Speaker, I stand in support of this Road Traffic (Amendment) Bill (No. V of 2019), which is a clear Government's commitment and interest to make it an offence by driving under the influence of drugs and intoxicating substance in the system of drivers.

Madam Speaker, Government is absolutely right in assuming its responsibility to protect road users. And it is up to road users to assume theirs as road safety is everybody's responsibility.

I value the vision for a drug free society for our Republic and I do consider drug driving as unacceptable. In fact, with this Bill, Government is consolidating the Road Traffic Act by putting human beings at the centre of its policies by criminalising drug driving, which is a significant road safety concern, health risks and saving lives. This is a laudable decision and it is about time to include drug-driving testing by our Police.

Madam Speaker, the history of our road traffic legislation and its offences, continue to show that we are making significant progress. I have to say that the mechanism set in the Bill for detection and testing of any individual driving under the influence of intoxicating substance, drug or alcohol is meritorious. We all know the trauma of families and the State

itself with regard to unnecessary deaths, pain, sufferings and injuries following roads accidents.

I seize this opportunity to sympathise with all those who lost their love ones in roads accidents and, in particular, to the family of the young Rodriguan born Police Constable PC 3102, Jean Sebastien Ludovic Emilien posted to SSU (Anti Robbery Squad), who passed away, on 01 May 2019.

Madam Speaker, allow me to put on record, on behalf of his family and myself, our appreciation and thanks to the PMO, Ministry of Defence, Commissioner of Police and Team, for an early repatriation of late PC Emilien to Rodrigues for his funeral. It is well appreciated and thanks again.

Coming back to the Bill, Madam Speaker, this amendment, to deterring impaired driving is critical to road safety, especially for our youth *'ki parfois contan mette nissa, apres conduire et quitte zot la vie ou la vie les autres lor coltar'*.

Driving under the influence of alcohol or illicit drugs should not become a weapon to kill innocent people on our roads. The Thirteenth Schedule of the Bill – Field Impairment Assessment Questionnaire - provides that the reasons for suspicion can be assessed by the physical symptoms, such as difficulty to keep balance, difficulty to stand up properly, slurred speech and signs of over excitation, euphoria, apathy or anxiety.

I believe that other symptoms, whether it is considered as impairment or not, such as bloodshot eyes, which in Creole jargon, they say – *"ler nissa batte dan la tete, lizie vine rouge couma difeu"*, the smell of alcohol or smell of drugs, such as marijuana and lack of co-ordination should be added as well.

As provided in the Bill, in clauses 7, 8 and 9, the Police Officer has reasonable suspicion of a person's behaviour, that this person is under the influence of alcohol, drugs or intoxicating substance. Madam Speaker, that person must be immediately pulled off the road and as per clause 13, subsection (2), that person shall be detained at a Police Station if preliminary test is positive. And I think that is perfectly correct.

Madam Speaker, in the speech of hon. Minister Bodha, on 17 July 2018, during the debate on the amendment to the Road Traffic Act, he pointed out that, I quote –

“The Forensic Science Laboratory has issued the Letter of Award for the procurement of a Liquid Chromatography High Resolution Mass Spectrometry for testing of

physical form of both synthetic and non-synthetic drugs. The equipment will be delivered by the end of August 2018. Tests may be carried out from September 2018 after the commissioning of the equipment.”

My question is: has there been any test carried out so far and what are the concluding results of the tests? If no test carried out, being given the sensibility of this legislation, may I ask the hon. Minister whether he would consider the application of this legislation on a trial basis for a given period of time to see the functioning of the technology and the Police operations rather than prosecuting drivers caught straight forward during that time.

Madam Speaker, I have to say that, in as far as the Police are concerned, with regard to the procedures for alcohol and now drugs testing along our roadside, the police will have to accentuate their responsibility in educating road users that the testing is not simply a criminal investigation rather an initiative for road safety.

However, one fundamental question is: what is the profile of drug-drivers on our roads today? Is it simply young drivers, middle class drivers or high profile persons? What is basically the age group of drug abusers in our society today? Have there been any surveys carried out so far in that direction?

Further, Madam Speaker, this implies that, beyond the areas of legislation, testing and enforcement, the following measures also need to be put in place and implemented in a comprehensive manner, that is, prevention, awareness-raising, counselling and treatment for those drug drivers.

There must be regular drug-driving campaigns designed to inform road users and promote adherence to the new law, especially for our teens in our secondary and tertiary institutions, and why not from primary schools.

People charged for drug driving on our roads must be also offered professional support without delay to help them to reduce impaired driving and to handle their problems.

Madam Speaker, this Bill provides our jurisdiction to improve road users' safety with a zero tolerance law that makes it unlawful to drive with any amount of the specified drugs in the body and an impairment law that makes it unlawful to drive when the ability to drive has become impaired following drug use.

I fully agree that the zero-tolerance approach of the presence of any illicit drugs concentration in the blood or oral fluid of any driver as per the list of the Twelfth Schedule,

Part 1, are sufficient for the offence to have been committed. Madam Speaker, this is commendable and appreciated throughout our Republic.

Madam Speaker, as per the World Health Organisation, psychoactive drugs such as amphetamine, MDMA (Ecstasy) have the ability to affect the mental process of an individual consciousness, mood or thinking.

We have all witnessed videos being circulated on social media here in our Republic showing how tragic it is for those young drivers or young people filmed under the influence of new psychoactive substances “*la drogue synthétique*” - *synthetic cannabinoids, synthetic cathinones*; synthetic drugs that are consumed with expectation of effects of well-known illicit drugs.

Here, I have to reiterate a very important point what the hon. Minister said during his second reading with regard to the definition of an intoxicating substance and he said, I quote

–

“Madam Speaker, the intoxicating substance includes such other substance as may be prescribed given that this is a highly evolving sector as new drug substances continue to flood the international market and they may easily find their way on the local market.”

I appreciate the pro-activeness in that regard, very important. Madam Speaker, it is known to us all, that Cannabis (*le gandia*) with its principal psychoactive ingredient delta-9-tetrahydrocannabinol (THC), as specified in the Twelfth Schedule - Part I – Drugs With Zero Tolerance, is one and if not the most widely used illicit drug in our Republic.

Today, with this amendment to the Road Traffic Act, we are making a great step ahead, for a cleaner and a safer society –

*“areter sa le temps ou fume enn mass ou d’autre chimiques, mette full nissa apres rouler lor coltar.”*

Madame la présidente, permettez-moi de m’adresser directement à la Jeunesse de notre République. La Jeunesse, vous avez un choix, un choix simple et responsable –

- *soit ou mett nissa ou tasser ek la police lor coltar, quand pran enn drogue illicite li illegal ek fatal.*
- soit vous aimez votre vie, soit vous n’aimez pas votre vie, car nous, nous voulons une République avec une jeunesse saine, sans drogues et surtout une jeunesse sans drogues au volant.

Madam Speaker, however, I have a point of concern with regard to cannabis method of detection via oral saliva, as regards to its test after several days of consumption.

From a report, by the American Transport Research Institute in March this year, with regard to its title “Marijuana Legalization and Impaired Driving: Solutions for Protecting our Roadways”, it is specified, and I quote, that –

“Marijuana Testing Methods, can be done using a number of methods. Testing methods that identify recent marijuana use - that is in blood, oral or saliva, or methods that identify use over a greater time span (that is in urine, or your hair) and mass spectrometry methods that can be used on any biological specimen”.

I have cited also, in my research, the judgement of a case - Police V J. Carrall, Lismore Local Court, New South Wales in Australia, on the 01 February 2016 from which the Magistrate in the NSW Local Court dismissed a charge of cannabis driving.

What happened was that, and I quote –

“During a roadside drug test, the police detected marijuana in his system but Carrall claims he hadn't smoked weed in nine days. Allegedly he was also following the advice of a police officer, who'd told him a week would be sufficient and he won't be detected by any sort of instrument or whatever.”

Madam Speaker, the Lismore Magistrate found that Carrall was not guilty of drug driving. Very interesting. It was decided that Carrall had made an "honest and reasonable mistake of fact."

I think, it is important to ponder about the impact of this case in relation to what is exactly the scientific proven number of hours or days that a person may drive after having consumed marijuana in our local context, bearing in mind that cannabis is an illicit drug as per the Dangerous Drugs Act.

I make you understand that marijuana is processed by the body in a far different manner than alcohol, and which therefore different approaches are needed to identify and prosecute marijuana-impaired driving.

Madam Speaker, having said so, training for Police Officers should not be only for testing rather should be, to better address drug-impaired driving in court, on how drugs impact driving safety and driving safely.



It is very critical that the drug-driving law becomes visible and methodically enforced. There is need, I believe, for consistent random stops at checkpoints and many crackdown operations in various regions, all around the island and throughout our Republic.

We are all aware that our Police work in difficult and high-risk environment, where at times, their life might be in danger.

Let us anticipate possible situations where a driver who knows that he is under the influence of drugs failed to stop, and maybe driving with false or tempered plates. For me, Madam Speaker, these remain a point of concern for the Police, along our roadside. I think the penalty for this part of our law, together with this amendment, shall be toughened and criminalised with imprisonment and not only a fine.

Madam Speaker, further I am thinking whether drug testing must become a tool in the private sector for them to have an obligation or a duty of care towards their clients or workers. Let us say, for example, to place alcohol and drug testing kits at the exit of 'Night Clubs and Hotels'. It is not a secret that during weekend night-time, consumption of drugs and alcohol mainly by our youngsters is a major concern necessitating strict actions.

Madam speaker, I will say a few words on drink driving to avoid road accidents. I will suggest that Government looks into introducing what we call Alcohol Interlock Device, as exists in country like Australia, provided to drivers under a special scheme to prevent them from starting a vehicle with a blood alcohol concentration of or above the prescribed level of blood alcohol content, that is, in our law, 11 micrograms of alcohol in 100 millilitres of breath.

I understand that the interlock device can be fitted to any vehicles, be it motorcycles, cars, trucks or buses. This process is successful in Australia, and Australia is today leading the world in terms of road safety performance.

I will suggest the Road Traffic Authority to look into a trial of this device with voluntary drink driving offenders to see its impact on the behaviours of drink drivers' offenders for the possibility to validate its future applicability in our Republic.

Coming to another issue, Madam Speaker, in my speech during the last amendment to the Road Traffic Act in July last, I raised concerns on a very important issue on the non-gazetted of roads in Rodrigues, which has a great bearing on cases in the Rodrigues Court. I referred to a Rodrigues Court case, Police vs Joseph Alexandre Lawsan, Cause No 629/2016, where on the technical ground of non-gazetted roads and track-roads the case was dismissed.

Just to remind the House, it was about prosecution on charge of exceeding speed limit in breach of section 124(1) (4) (a) of the Road Traffic Act.

However, in another case, in the Court of Rodrigues, Police v/s Christian Agathe, Cause No 1207/17, the Magistrate has a different interpretation of the road traffic law application in Rodrigues, where prosecution was ensued against the offender.

In that judgement, it was noted that the accused, even though was unrepresented, offered submissions in law to the effect that there are no main roads in Rodrigues, as per section 3 of the Road Act and also as per section 46 of the Road Traffic Act.

I would not go into all details of the judgement, Madam Speaker, but one meaningful issue is that the Magistrate had recourse to the concept of amendments to align the conviction to the statutory elements of the offence. And you see the bearing why I am correlating these cases with regard to the present amendment.

Allow me, to quote the Magistrate –

“The Court *proprio Motu* amends the information by deleting the word “main” in the information. It is not disputed that the accused was stopped at Mangués, - Mangués, which is a village - which in itself is a road within the definition of the Road Traffic Act.”

The accused certainly was found guilty. I believe, Madam Speaker, that these cases are still leading to confusion for road users and Police in Rodrigues.

Madam Speaker, with this new amendment to the Road Traffic Act, the enforcement of the law with regard to classification and gazetted roads remains an issue for Rodrigues despite, in the Explanatory Memorandum, subsection (d) of the Bill which stipulating that -

“any person, who, whilst being under the influence of a drug or an intoxicating substance – is in charge of a motor vehicle on a road or any other public place; shall commit an offence”.

My question is: would the words “on a road or any other public place”, allow the Rodrigues Court to act against any offenders, whether the road is neither gazetted nor classified in Rodrigues?

Madam Speaker, public roads classification in Rodrigues is different from classification of roads in Mauritius. I have to say that this issue needs to be cleared once for all.

However, it is worth noting that following the Ministry of Public Infrastructure/Traffic Management and Road Safety Unit and the Road Development Authority, mission in Rodrigues, in September last year, they recommended the Regional Assembly to come up with regulations to regularise the classification of public roads in Rodrigues.

Madam Speaker, another issue is Police Officers in Rodrigues who surely will have to be empowered to enforce this legislation in conducting this sensible drug testing on drivers on our public roads. I also expect them to be fully equipped with the required test equipment.

It is worth noting that the actual Police strength in Rodrigues is around 457 regular Police, 58 Coast Guards and 45 SMF. With the shift system and officers on leave etc., there is need to increase the Police strength for more presence of Police along our roads, and to enforce the present amendment as proposed in this present Bill.

In fact, those Police officers are great. Let us give them their due. I consider them as Jack of all trades. They are the one controlling traffic on road-crossings, clamping vehicles on our roads, doing breathe tests, doing public enquiry, attached to the newly Divisional Support Unit despite their limited strength and resources, - by resources, I mean limited number of vehicles attached to the different Police stations and even the headquarters at Port Mathurin.

Here, again, allow me, Madam Speaker, to humbly request the Commissioner of Police to increase the Police strength in Rodrigues, with especially those Rodriguans born Police officers posted here, in Mauritius, having already gained working experience to be transferred back to Rodrigues Police Division. There are about 50 or so of them here, if I am not mistaken, who were recruited from Rodrigues and have requested their transfer back to Rodrigues Police Division. And one will imagine the unrest of their parents. I am making a plea, especially following the recent death of - I have just mentioned - late PC Emilien.

Madam speaker, in addition, I have received complaints that there is a sort of - excuse me - double standard treatment of those Police officers. Why I am raising this? Because we need additional Police officers to enforce this piece of legislation in Rodrigues. They do not receive the 50% disturbance allowance, no regular air ticket to visit their families, not enough rent allowance to pay a lodging here.

**Madam Speaker:** Hon. Member, this has nothing to do with the Bill.

**Mr François:** Sorry, Madam Speaker!

**Madam Speaker:** I am really sorry, but this you can take it up at Adjournment Time.

**Mr François:** Adjournment time? As PPS I do not have this opportunity Madam Speaker. I am sorry!

**Madam Speaker:** The conditions of service of Policemen, you cannot raise it up on the intervention, on this Bill. You can raise it up at some other time.

**Mr François:** I bow to you, Madam Speaker. Thank you.

*(Interruptions)*

No worries! Why I mention this? Because I know the correlation between the shortage of Police officers in Rodrigues and with regard to the enforcement of this legislation, which is very important for our road users, our drivers in Rodrigues, Madam Speaker.

And a last point, again in that regard, and as mentioned by the hon. Minister, where he mentioned that today motorcyclists are the most vulnerable groups on our roads. He rightly pointed out. In that regard, I will request that the hon. Minister and his Ministry, in collaboration with the Regional Assembly, complete formalities and modalities for the setting up of a “*Moto-Ecole*” in Rodrigues.

Madam speaker, to conclude, I fully support this Bill, for the protection of people in our republic, by preventing them from drink and drug driving on our roads.

I only hope that the decision of today, without any doubt in the years to come, shall allow us to achieve a ‘no roads alcohol, drugs or intoxicating substance related accidents’.

Madam speaker, with these words, I thank you for your kind attention.

**Madam Speaker:** Hon. Osman Mahomed!

(5.03 p.m.)

**Mr Osman Mahomed (Third Member for Port Louis South & Port Louis Central):** Thank you, Madam Speaker. I would like to commend the Government for recognising the need to do more to reduce the number of fatal and road accidents on our roads. I would also like to congratulate hon. François for his speech. I am so sorry for my voice, I have sore throat.

This is an important subject, close to everyone’s heart. We all know of the devastating impact road accidents have on the lives of family, on friends and on the people we represent, be it at constituency level or national level. Now, more than these strategies, in this Bill

before us today, we are called to examine all that harm to our society, combined with the terrible scourge of drug use and addiction in our midst. We would all, I am sure, Madam Speaker, yearn to live in a society liberated from these two evils or, at least, to live in a society by our legislative powers which is set on a path with fewer lives cut short or ruined by the cruel dual impact of drugs and driving. So, we have before us today a highly charged emotional Bill for debate.

Madam Speaker, this is a serious Bill, indeed, which is a brave attempt to address the issues of drugs and driving and deserves a serious and rational response with a constructive critic to make our roads safer. And the Bill before us today could have been a better one, had it taken into consideration more cost effective ways of tackling this severe problem of death and serious injuries on our roads. This Bill specifically addresses the issue of the use of drugs and driving in Mauritius. It is true it comes at a propitious time. Firstly, being in the World Health Organisation Decade of Action for Road Safety 2011-2020. Secondly, it comes on the heels of the WHO 2016 Road Accidents and Drug Use Policy Guideline, and of course, the technical report from the WHO on drug use and road safety, which I propose to use as a standard against which to judge the details of how far this Bill addresses the problem.

Madam Speaker, first and foremost, let me raise some detailed technical points on the specific parts of the Bill. And to begin with, I would like to ask for clarification on the definition of a drug that is used in the Bill. In the interpretation section of the Road Traffic Act, drug is defined as follows, and I quote –

“drug” means any substance which, when consumed, inhaled, applied to or injected within a person’s body, may influence the performance of a person to safely drive, and which includes, but is not limited to, an intoxicating drink;

Under the Mauritius Dangerous Act, there are listed in the five Schedules over 200 dangerous drugs. Now, it is of some importance that the WHO in its 2016 Road Accident and Drug Use Policy Guideline makes a distinction between three types of drugs –

- (i) illicit drugs such as cocaine, heroin, cannabis, for example;
- (ii) new synthetic, psychoactive substances, such as synthetic cannabinoids, and these drugs are used to simulate the effect of illicit drugs, and
- (iii) prescription drugs such as anti-depressants, painkillers and so on.

The WHO Guideline reports that for certain of these drugs, the relative risk of fatal road accidents when driving is five times as great as for others. They are not by any measure all equal in effect and some of the threshold levels have yet to be assessed.

One might ask whether the proposed tests are meant to cover all the prescription drugs as well, and if so, I would like to hear from the hon. Minister further on this during his summing-up maybe, although I have seen that table, Part II at Schedule 20 does provide some drugs with specified limits.

Madam Speaker, when it comes to legislation and new regulations as set out in this Bill, it is our duty to consider two key questions –

- (i) Are the provisions of this Bill likely to be effective in reducing road accidents and serious injuries?
- (ii) Is it likely to be cost effective in the light of the best evidence we have and by comparison with other important interventions on which our hard work Police Service, for example, might be better spending their time?

In preparing my intervention on this Bill, I have had the chance to speak to an experienced scientist who was partly of the drafting of the first legislation on alcohol when alcotest was first introduced in 1992 in Mauritius. He did that together with the then Solicitor General. Well, there was still a lacuna in the first, second sample, of course, if properly taken and sealed in front of the offender and appropriately labelled, has to be offered to him in case he wants to have an independent analysis done. This is the practice in the UK and the Bill before us is an opportunity to correct this. Although I have seen that there is a proposed amendment to be moved at Committee Stage, I am not too sure whether this covers this aspect fully.

My subsequent points onward, Madam Speaker, will be of further technical nature and, as a matter of fact, the first one has to do with the measurement units used in the Bill, which in my opinion, should be better expressed in nanogrammes per millilitre than micrograms per litre, as this Bill proposes to use at Schedule 20 and Twelfth Schedule Section 2, table, Part II of the amendment Bill.

The reason behind my suggesting this is that nanogramme per millilitre is commonly used in medicine for therapeutic drugs monitoring and, hence, more appropriate. Another point I would like to raise here, Madam Speaker, pertains to paragraph 8 (1) (a) on the subject

of 'Reasonable suspicion of person being under influence of drug' and where it is being recommended –

“(1) (a) (...) where a police officer has reasonable ground to suspect that a person is under the influence of a drug (...), he shall require that person to undergo a field impairment test, either at or near the place where the requirement is made or at the nearest police station where the test may be carried out.”

May I add that this is reminiscent of the clinical examination doctors use to perform before the advent of either blood, alcohol or breath tests legislation to know whether a person was under the influence of alcohol. Nowadays, with a reliable and approved accredited method of analysis for alcohol in, either blood, urine or breath, this clinical examination is nearly obsolete. In its chapter devoted to the apparently very severe shortcomings of the Forensic Science Laboratory of Mauritius, the Lam Shang Leen 'Report on drug of inquiry trafficking in 2018', quoted Betty Layne Desportes, and I quote from the Report –

"If forensic evidence is not objectively tested, analysed, and interpreted by adequately trained scientists, the search for truth will potentially be compromised, if not defeated."

If in a well-established laboratory like the FSL such issues can crop up, then one can wonder about how objective a field impairment test can be, as proposed in the present legislation. Have Police officers been adequately trained to do this? On a related note, Madam Speaker, the last line in the Thirteenth Schedule [Section 123G] makes mention of a Field Impairment Assessment Questionnaire. I question whether Police officers are technically trained, as we speak now, to perform the preliminary tests over excitation, euphoria, apathy and anxiety, as provided for in the table for Reasons for suspicion at the Thirteenth Schedule.

Another point I would like to raise, Madam Speaker, is the provision of two specimens of breath for analysis by means of a device of a type to be approved by the Minister as per section 123H (1)(a) of the existing legal provision to be amended. There is no mention of which device is to be used for this test. I am not an expert in these technical matters, but I would rather think that it is important that it be specified either here, in this Bill, or in the Regulations, otherwise, lawyers, for their defence, would run rings around the prosecution for failing to use a statutory method and a validated equipment.

Also, another question I have is, whether Police officers will be trained to perform this delicate saliva test, what training will they receive and who will train them. Furthermore, I would like to touch on Section 123G (3) (a), regarding the carrying out of preliminary drug tests either *in situ* or at Police Station. I am just wondering why there is a provision in there for going to the hospital under this section. If a person is medically fit, I believe this person can be made to provide urine at Police station itself albeit under supervision, like the case is in the UK. However, if the person is deemed medically unfit, then the urine sample will also need medical a practitioner's opinion.

Madam Speaker, furthermore, I believe that Section 123H (1) (a), which provides that, and I quote -

“Where, pursuant to section 123G(1), a preliminary drug test does not indicate that the person is under the influence of a drug but the police officer has reasonable ground to suspect that the person's physical state is impaired, he shall require that person to provide, at a hospital, a specimen of blood for a laboratory test.”

Well, I think this section could have been better defined and needs more precision to avoid conflicts in the Courts. My next comment is on the Twelfth Schedule [Section 2] Part 1 – Drugs with Zero Tolerance, more specifically on 6-monoacetylmorphine (heroin). This product, I am advised, is not heroin per se, but rather a breakdown product of heroin. So, should the text be in brackets be left alone or should it be written ‘for heroin’ instead of simply ‘heroin’, I further question. Furthermore, at the table, Part II - Drugs with Specified Limit, I am made to understand that Morphine under 80µg/L would be indicative of heroin consumption, as it is also a breakdown product of heroin as is 6-monoacetylmorphine. Hence, my proposing that it should be included in Part I as well. Both Morphine and 6-monoacetylmorphine could be detected in anyone case following intake of heroine.

Madam Speaker, may I now turn to the WHO policy guideline as a standard for reviewing this Bill. Can we be reassured that, if this Bill is to be passed, the Government would adopt the other aspects of the WHO policy guidelines, namely –

1. Plan enforcement based upon well-tried and tested methods of assessment of drug use and training of staff.
2. Awareness raising programme amongst the general public and professional drivers both in the private and the public sectors.
3. Counselling and treatment of offenders to reduce recidivism.



4. Health service advice to practitioners on the link between prescribing practice and impairment of driving performance, and
5. Research into prevalence of drug use by drivers and the impact of policy and interventions.

For this last, if we were intent on rationally going down this pathway, we would probably need to consider a dedicated research unit for this highly complex and important field as they have in other countries cited by the WHO.

Then, Madam Speaker, there is the question this whole Bill raises about the cost-effectiveness of this specific intervention at this time. Surely, in 2019, we should be demanding - in this House - evidence-based interventions, which are not only effective, but cost-effective. Road Safety comprises three broad elements primary prevention, that is –

- to avoid road accidents
- prevention to reduce the risk of death and injury when they do happen, and
- prevention to mitigate the impact of the accidents.

This Bill deals with only one aspect of primary prevention. We should ask, as rational legislators, before we proceed with this Bill, whether it is the best intervention of all those available now to reduce the overall toll of road accidents. I wonder. I certainly have not seen the evidence presented to justify this Bill. What is the prevalence of drivers on drugs? Have any roadside surveys been conducted as in many other countries? What is the prevalence of drug users in those killed in road accidents and severely injured - of course, the drivers? I have seen some figures that the Minister has mentioned from the FSL, but we need more precision on this.

Many surveys have been done elsewhere as a backdrop to considering legislation but, apparently, none here. Studies suggest that the more cost-effective interventions for reducing fatal accidents include lowering the speed limit on hazardous roads, traffic signal at road junctions, the use of car seat belts, use of helmet by a motorcyclist, traffic calming measures and emergency ambulance rescue services. But when was the last prosecution for jumping of traffic lights? When was the last prosecution for a cyclist driving at night without lights? When was the last prosecution for carrying a child on a motorbike who is not wearing a helmet? These people are not doing this because they are under the influence of drugs, they are doing it because we are not enforcing existing legislation, which has done a good job in the past, but needs more attention now. Today, we are asked to approve new legislation on road safety, but how far is the existing legislation being enforced? Is it credible that the

technical features of this Bill are enforceable? We have serious deficiencies existing in enforcement.

Why should we burden ourselves with another Bill with all the issues that I have raised? Moreover, in terms of the relative value of the Bill, I found bound to ask: are we to see regulations to require helmets to be worn for those who are on motor scooters, for example? How long will it take for Government to recognise the growing risk of young children riding unregistered, unsecured, mini electric motor scooters on public roads which in other countries are causing increasing number of youngsters being killed or going to hospital with serious injuries?

Let us get our priorities right! Let us first enforce existing cost-effective measures for road safety and let us all insist on sound evidence based for legislation of this kind! Let us see the evidence that this Bill at this time is the priority for road safety! Nevertheless, the Bill has given us the time to pause and ask serious questions about drugs and road safety. I have tried to be constructive in my critic and I trust that these comments will encourage the Minister to revisit the WHO policy guideline and review the research on this subject and ready to come up with something that is more likely to be effective and worth the immense responsibilities it would place on our heavily burdened Police and health services.

Thank you.

**Madam Speaker:** I suspend the sitting for half an hour.

*At 5.23 p.m., the sitting was suspended.*

*On resuming at 6.01 p.m. with the Deputy Speaker in the Chair.*

**The Deputy Speaker:** Hon. Leopold!

**Mr J. B. Leopold (Second Member for Rodrigues):** Thank you, Mr Deputy Speaker, Sir.

Mr Deputy Speaker, Sir, there is no doubt that driving requires skill and concentration at all times. We are coming with a new law tonight to better equip and gave enforcement officers powers to tackle drug driving. This new legislation will make it illegal to drive while a driver is on certain drugs. With this law, officers will now be able to screen suspected drivers at the roadside by doing field impairment tests and preliminary drug tests.

This law, Mr Deputy Speaker, Sir, no doubt will save lives as driving under the influence of drugs is dangerous. Taking drugs and driving is dangerous to the drivers and

others. Mr Deputy Speaker, Sir, tonight, I wanted to comment only on one thing. It is about my concern on Twelfth Schedule (Section 2) as to its definition, that is, its definition of drugs. As the aim of this amendment is to prevent or disallow drivers to take any substance, be it by the anterior route, sublingual, by inhalation or by injection which will impair the ability of a driver and which will affect the ability to drive.

Therefore, Mr Deputy Speaker, Sir, this Bill, through the Twelfth Schedule (Section 2) only covers certain drugs like Amphetamines, stimulants, narcotics and Benzodiazepines which is also known as tranquilisers. But if you go to the definition of 'drug', drug is any substance which when taken can adversely affect the ability to drive and this Schedule does not cover some other drugs which can cause impairments and are very dangerous to driving.

There are other drugs which are commonly used and they are therapeutic drugs like anticonvulsant drugs; we have antidepressants; we have antihistamines which are widely used and we can have it over-the-counter very easily in supermarkets and everywhere. We have anti-hypertensive drugs, barbiturates and antipsychotic drugs. Those drugs can cause consequential adverse effects on concentration and thus affect driving.

Mr Deputy Speaker, Sir, I am not saying that we need to make all those therapeutic drugs to be illegal, but I think it has to be considered under the Twelfth Schedule as we are talking about any substance which will impair driving and we are taking about this amendment so as to prevent accidents.

Therefore, I have a few suggestions which may be the hon. Minister will comment on that when he is summing-up, about my concern. One is to have a Part III in the Twelfth Schedule and the Part III is to make it mandatory for prescribers and pharmacists that those groups of drugs which I have just mentioned, when taken, must not drive because of the adverse effects on the brain leading to diminished concentration and to add Part IV as well under the Twelfth Schedule (Section 2) to make it illegal to combine Part II drugs, that is, all the tranquilisers with Part III, with all the drugs which I have mentioned like tranquilisers, barbiturates and so on.

If we combine the two together, that is, the therapeutic drugs and the tranquilisers and Benzodiazepines, it will cause impairment and when the Police will do the field impairment tests, the field impairment tests will be positive.

These are the two concerns which I have on this Bill. Mr Deputy Speaker, Sir, I would also like that this Bill makes provision so as to make drug tests compulsory in fatal

accidents and serious road accidents, so as to have enough data to relate to the effectiveness of this law, and finally, Mr Deputy Speaker, Sir, the fact that we are here to vote a law which will prevent accidents, we will need to harmonise this law with the Dangerous Drugs Act because let's say, for example, if the Police stops a person under illegal drugs in his body, we will need to make provision because the person has not only contravened the road traffic accident but has contravened the Drugs Act as well. So, they have to make provision for that. That was my participation and my concern which I would like the hon. Minister to give his views on.

Thank you very much.

**The Deputy Speaker:** Hon. Mrs Selvon!

(6.08 p.m.)

**Mrs D. Selvon (Second Member for GRNW & Port Louis West):** Merci, M. le président. M. le président, j'ai été la première personne dans ce Parlement à proposer, et cela depuis 2015, des tests de détection de drogues sur le chauffeur en plus des tests de détection d'alcool.

J'avais, en 2018, suggéré en premier lieu le *standardised field sobriety test* ou SFST pratiqué aux États-Unis et le ministre a accepté et intégré le concept dans son amendement. Ainsi le *field testing* y est inscrit comme un exercice préliminaire de détection de *substance abuse* sur la route.

Selon moi, ce test de sobriété est très important avant tout autre test et il est révélateur de l'influence à la fois d'alcool et de drogue. Qu'est-ce que le SFST ? C'est un *roadside test*, visuel, rigoureux de l'aptitude d'un conducteur à poursuivre sa route au volant par le policier qui l'arrête. C'est un test de sobriété que des médecins connaissent bien. Le SFST a été validé par les plus hautes autorités scientifiques du gouvernement américain et adopté par le ministère américain du transport aussi appelé le *department of transportation*.

Aux États-Unis, les policiers sont rigoureusement formés à cette méthode d'observation, de gestes ordonnés aux conducteurs interpellés par la police au bord de la route. Ce test est une observation visuelle pouvant déterminer si le conducteur maîtrise ou non son corps, son équilibre sur ses deux jambes, les mouvements de ses yeux, c'est un test validé par la loi et l'Académie des sciences. En lisant le projet de l'honorable ministre Nando Bodha, je constate qu'il a repris toutes mes suggestions et conseils de mon discours fait en juin 2018, je l'en félicite.

Les paragraphes 2 et 3 de l'*Explanatory Memorandum* du ministre résumant bien ce que je viens de dire, je cite –

- “2. *The Bill further provides, in cases where a person is suspected to be driving or to be in charge of a motor vehicle or to be riding a cycle under the influence of a drug or an intoxicating substance, for the procedures and methods of detecting whether that person is under the influence of a drug or an intoxicating substance.*
3. *Opportunity is being taken to clarify all the sections in the Road Traffic Act which pertain to the procedures and methods of detecting whether a person driving or being in charge of a motor vehicle, or riding a cycle, is under the influence of alcohol.*”

Dans l'amendement même, un nouvel article 123E est introduit qui dit, je cite –

“*No person shall –*

- (a) *ride a cycle on a road or any other public place;*
- (b) *drive, or attempt to drive, a motor vehicle on a road or any other public place;*
- (c) *drive, or attempt to drive, a vehicle which is involved in a road accident;*
- (d) *be in charge of a motor vehicle on a road or any other public place; or*
- (e) *occupy the front seat of a motor vehicle as a competent driver supervising a learner driver who is driving the motor vehicle on a road or any other public place, where he is under the influence of alcohol and the proportion of the alcohol in his breath, blood or urine exceeds the prescribed limit, or he is under the influence of a drug specified in Part I of the Twelfth Schedule, or he is under the influence of a drug specified in Part II of the Twelfth Schedule and the proportion of the drug in his blood exceeds the specified limit, or he is under the influence of an intoxicating substance.*”

Venons-en, M. le président, à la notion des *intoxicating substances*. Ces substances sont contenues dans divers médicaments. On peut d'en trouver dans les drogues mais pas nécessairement dans le cannabis. La raison en est que le cannabis utilisé pour faire des vêtements surtout de hautes coutures sous la marque Armani portées par exemple par les *VIPs*, les *VVIPs* s'appelle le chanvre, un cannabis non-intoxicant ; non-intoxicant tout comme

le cannabis médical que les Nations Unies ont légalisé à Genève cette année et qui n'est pas intoxicant. Pour établir que quelqu'un est sous l'influence du cannabis au volant, il faut trouver dans son sang ou son urine les ingrédients intoxicants du cannabis appelés cannabis récréatif. Ces ingrédients sont les cannabinoïdes intoxicants que sont les THC et le CBD. Le THC c'est tétrahydrocannabinol le plus présent dans la plante de cannabis. Le CBD est le deuxième cannabinoïde le plus étudié après le THC.

M. le président, on ne trouvera pas ces substances intoxicantes si le conducteur a pris du cannabis médical car je la souligne ici, le cannabis médical ne les contient pas et est non-intoxicant. Il faudra alors tester le conducteur interpellé pour l'alcool seulement. Permettez-moi une parenthèse ici sur que la police doit comprendre sur le cannabis médicinal par rapport toujours à cet amendement. Le cannabis médicinal saisi le 12 juin 2018 à l'aéroport de Heathrow, sous la forme d'huile de cannabis médicalement prescrite au Canada, sur un gosse de 13 ans a dû lui être rendu par le Home Office avec des excuses parce que ce saisi a failli causer sa mort car il souffre d'une forme d'épilepsie très grave. Depuis ce scandale, la Grande Bretagne a été forcée de reconnaître le cannabis médicinal alors que Maurice continue, avec les mêmes risques sur des étrangers, à saisir, M. le président, le cannabis médicinal sur les étrangers, sur les touristes et autres visiteurs malades, le cannabis médicinal trouvé sur à Plaisance. C'est au gouvernement d'assumer ses responsabilités en la matière.

Par rapport au Road Traffic Act Mauricien, j'avais plusieurs fois suggéré des tests sophistiqués avec de nouveaux équipements car il faut que la police puisse identifier scientifiquement toutes drogues, cannabis ou pas devant les tribunaux. Je suis heureuse que l'honorable ministre annonce aujourd'hui avec son amendement qu'il va acquérir des tels équipements pour la détection des cas de *drug driving*.

M. le président, je propose au ministre un amendement pour sanctionner comme en Grande Bretagne tout conducteur trouvé sous l'influence d'un intoxicant en charge d'un enfant de moins de sept ans dans le véhicule. La punition en Grande Bretagne est d'un mois de prison. Je cite ici la loi en question, le Licensing Act 1902 dit ceci, je cite l'article 2 –

*“Penalty for being drunk while in charge of child.*

- (1) *If any person is found drunk in any highway or other public place, (...), while having the charge of a child apparently under the age of seven years, he shall, if the child is under that age, be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale, or to imprisonment, for any period not exceeding one month.*
- (2) *If the child appears to the court to be under the age of seven, the child shall, for the purposes of this section, be deemed to be under that age unless the contrary is proved.”*

Pour conclure, M. le président, je vais voter pour cet amendement et je remercie la Chambre de m’avoir écoutée.

**The Deputy Speaker:** Hon. Dr. Boolell!

(6.18 p.m.)

**Dr. A. Boolell (Second Member for Belle Rose & Quatre Bornes):** Mr Deputy Speaker, Sir, the Road Traffic (Amendment) Bill corrects an anomaly as there was no provision in the legislation for those driving under the influence of drug.

I will refer or quote an excerpt of the Minister’s speech which I think is very relevant to the amendments being brought to the Road Traffic Act. I would refer to statistics –

“concerning drugs, according to records available from the Forensic Science Laboratory, out of 151 cases of Fatal Road Accidents referred for toxicological tests for drug detection by the Police in the year 2018, it is found that as at now, 20% showed the presence of drugs in their body fluids, and for the year 2017, this figure was 36 %.”

As far as the object to the Bill is concerned, I have not quarrel but of the say - the devil is always in the details, although I must confess there are not many devils in the details, but, nevertheless, there are some points which create some uneasiness and some confusion.

Let me refer to Section 2 of the Principal Act, which defines an intoxicating substance. Though it is not spelled out, the Minister has to inform the House without any ambiguity that the dangerous drugs or the illicit drugs specified in the First Schedule to the Dangerous Drugs Act, other than drugs specified in Part I of the Twelfth Schedule are non-permissible.

I want to know what is the meaning of zero tolerance in saliva, urine or blood, and you know as well as I do, Mr Deputy Speaker, Sir, it is not possible. There are some drugs like amphetamine which is prescribed for narcolepsy, obesity and attention deficit hyperactive disorder. I wish also to draw the attention to definition of heroine. The 6-monoacetylmorphine is not heroine. The bracket should instead read “for heroin” because it is a degradation of product or a metabolite of heroin. Now, drugs with specified limit are listed in part 2 of the 12<sup>th</sup> Schedule.

Mr Deputy Speaker, Sir, drugs have long half-life, that is, they take time to be eliminated from the body and cases being treated for allergic disorders, seizures or psychotic disorders may be unfairly dealt with by Police Officers. There are patients who are slow to metabolise drugs and the risk of false positive cannot be ruled out. Compared to the list of controlled drugs established by UK, temazepam and ketamine are included whereas their absence is noted in the 12<sup>th</sup> Schedule of the Bill.

Mr Deputy Speaker, Sir, I stand to be guided, but as far as I know, all drugs in the UK Schedule list have specified limits. This is a medico-legal Bill on drug, drink and drive. Let me say which others are saying loud and clear, repressive is not a measure to a huge societal problem. Of course, there is a call for sentences, for stiff penalties but, in my humble opinion, the sentences are too hard for first offenders. I am not talking of offenders who have run over pedestrians or who have provoked the death of people. And notwithstanding section 123E (1) (a), this is a licence to make all offences arrestable. Let me refer to a specific case to give substance to what I am saying. You may recall, Mr Deputy Speaker, Sir, the case of a young man who is a university student, allegedly a consumer of synthetic drugs and he had a psychotic disorder. He heard a voice asking him to cast stone at the house of a resident of La Rosa in New Grove. The poor guy, of course, would have been lynched by hostile crowd had he not been rescued by the Police. He was asked to stay in the Police van and while the officers were pacifying the crowd, the young chap made away with the van and crashed after chased by the Police. Thanks God, nobody was hurt. I have put the question: what good would it serve to sentence him to prison? And by the way, although it is not directly related, but I have to make the point: the demarcation line and the difference between a consumer and a trafficker should be wide.

One arrest, Mr Deputy Speaker, Sir, is too many for something with low and manageable risk for some people relative to the potential benefits of the drug. I have in mind drugs used for patients with several disorders, some of which I mentioned. Getting a Police



Officer to wear a white coat overnight is indeed a daunting task. As for those on synthetic drugs or the hard-core drugs, the victims have to be treated. The politics of prevention, harm reduction, treatment rehabilitation and re-insertion have to be clearly defined. To be truly great, one has to stand with the people and not above the people. The Bill is intrusive for two reasons –

- (i) There is no adequate safeguard. There is no medical provisions in the legislations, and
- (ii) It confers wide powers upon the Police Officer and the element of subjectiveness becomes inevitable.

The object of the Bill, as I stated, is worthy, but in my humble opinion, the demerits far outweigh the merits. And there are lessons to be learned from the experience of Ireland and UK. I do not know of any legislation which is as dynamic and controversial as the Road Traffic Act. As I say, the Bill before us is a stiff legal arsenal but with no medical defence. The amendments, I agree, send strong, deterrent signals but should not be an opportunity for law officers to have a field day.

Mr Deputy Speaker, Sir, no one should go to jail, lose their children, lose their job and lose their citizen's right if the capacity is attributable to medical reasons. I do grant you that law should medical reasons be a licence to run over pedestrians or hit vehicles. Therefore, I ask the Minister as to whether it is going to become compulsory now to impress upon medical practitioners to issue the patients with a certificate to say that they should not drive under specific licences and there is no provision for this. I think this call for an explanation and as of now, I do not know of any medical practitioners being informed that he or she should issue a medical certificate to a patient at risk when he has to drive and he is on a specific medication.

Now, what are the lessons that have to be learnt? Mr Deputy Speaker, Sir, we are dealing with cases of drugs, drink and drive. And the problem boils down to threshold, to permissible limits and to zero tolerance. The element of subjectiveness has to be ruled out with respect to field impairment assessment. It is not because the law is an ass that we are going to behold. And it is good to refer to the amendments that were brought to the UK Road Traffic Act of 1988 which I would call a golden retriever legislation because it ensures and it makes sure that there is no violation to human rights. And again, I will re-iterate what I stated

earlier, it makes provision for defence on medical grounds. And I will refer to the UK legislation of 1988, under section 7(a) (1) (d), I read –

“It appears to the Constable that the person’s incapacity is attributable to medical reasons.”

Now, before I come to procedures, you may recall, Mr Deputy Speaker, Sir, when I intervened on the previous amendment to the Principle Act and I stated what many people are saying. Not that I do not believe that the law should deter but at the same time, the law cannot take away the small pleasures of life. And others made it quite clear that the prescribed limit of alcohol in the breath or blood for drink and drive offences were on the low size. In other words, anybody can get caught more often for the wrong reasons. And you know what happen, Mr Deputy Speaker, Sir? And we all shake in our boots if we are stopped for routine check simply because we had a glass of wine or a pint of beer. As I say, I have no problem if my drinks have been laced because it is a different kettle of fish.

Mr Deputy Speaker, when we look at procedures with respect to drink and drive of alcohol, when we are pulled over by the Police officer, procedures are clear; from the preliminary tests to early warning, then followed by a two-breathalyser test, collection of urine and blood specimen, there is no cause for concern. In fact, there is no subjectiveness, there is no missing link in the conveyor belt. The result of the breathalyser is at permissible level, it is the end of the story. But when it comes to drugs, whether we have laced our alcohol with drugs or we are driving under the influence of drug. The fact that there is no provision for medical defence in the legislation, so there is the field impairment test. Mr Deputy Speaker, Sir, when we talk of field impairment test, I will put the question as to how many people can raise one leg 6 inches off the ground to the finger to nose test or tilt their neck backwards, what we call the Romberg test, easier said than done.

Then, the problem is, it is the almost unfettered powers that are being conferred upon the Police officer. He has the wide power. Irrespective of the result of the field impairment test, he has the power to refer the patient to hospital, accompany the patient to hospital for blood and urine test, he so decides. As of now, we don’t know whether the equipment is available to detect level of cannabis in the saliva. We don’t know whether this equipment is available. And if it is available, it is not met for 1,001 drugs, it can only test two drugs, cocaine and marijuana. Now, we are being told that the device has to be approved by the Minister. Nothing has been mentioned with respect to the specific kit. Has validation been

carried out for this particular kit, we don't know. I would expect the Minister to inform us accordingly. And let me remind the House the risk of false positive and false negative is there.

So that's why I would impress upon those who are going to undergo those tests, if ever they have to go to hospital, to make sure that two specimens of blood are taken. The risk of having one specimen being taken and the risk of results not being highly specific are there. I would advise that two specimens of blood be taken. One locked under seal so that the alleged offender has the right to send the specimen to be examined by an independent laboratory. Now, much has been said about the Forensic Scientific Lab, and even there have been criticisms levelled at the Forensic Scientific Lab by Justice Lam Shang Leen. As to whether the criticisms are justified or not, but one thing remains certain, the Forensic Scientific Lab I have been told is world recognised and has an ISO status. But the Forensic Scientific Lab needs to have the relevant resources.

It is not properly equipped and there is a backlog of tests. What we say when there is a backlog of tests, when lawyers do not have all the evidence or when the Court wants to hear a case and there is lack of evidence, and you know what happens, the case is postponed. So, if we want the service to be efficient and if we want our people working at the Forensic Scientific Laboratory to be diligent, first of all, we have to make sure that they are constantly being trained and their skills being updated. Secondly, we have to make sure that they have the appropriate equipment. As of now, they don't have the equipment despite the fact that the Minister is trying to rush this legislation through.

Let me remind the House what the Minister has stated –

“On the other hand, the Forensic Science Laboratory is also in the process of acquiring the required laboratory testing equipment to detect the presence of dangerous and synthetic drugs in the human bodies.”

They don't have the appropriate resources, physical human and where they are it's almost they are working in an environment which is conducive and yet we were told that land has been identified to relegate them elsewhere. But when is this going to happen? The Minister is keen to rush the legislation like Speedy Gonzales with the consequences that we are going to harm a lot of innocent people because this Bill is not an all-encompassing Bill.

There are many loopholes in that legislation. That's why I say it's a dynamic legislation, but, at the same time, a highly controversial legislation. And we talk of synthetic

cannabinoid, Mr Deputy Speaker, Sir! There is an array of products. Anybody can manufacture synthetic cannabinoid. But the test in UK, do you know the number of synthetic cannabinoids that it can identify? Only 6! So, let us not rush this Bill through. I think we need to have good interactive session with all the stakeholders. We have to make sure that Police officers are well trained, that their knowledge is updated and, at the same time, Forensic Scientific Lab needs to have a level of preparedness which responds to the needs of our people.

As I stated earlier, this is a societal problem. We cannot wear blinkers and look at this problem from a tunnel vision. I stated earlier it's all-encompassing. Rushing a legislation through doesn't solve the problem. We all need to sit together, do what Ireland did, prepare a corporate strategic plan, identify all the relevant issues and make sure that they are addressed in an effective and diligent manner. I know for certain that the days of this Government are numbered, but this is no reason why they should rush the Bill through and go for a straight crash.

Mr Deputy Speaker, Sir, thank you very much.

(6.38 p.m.)

**The Deputy Speaker:** Hon Rutnah!

**Mr S. Rutnah (Third Member for Piton & Rivière du Rempart):** Thank you, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, let me say, at the very outset, that this Bill is not being rushed into this Parliament. The debate in relation to drink driving and drunk driving has been in the forefront of our society since a very long time. Hon. Mrs Selvon is quite right that in 2016, when we were debating amendment in the Road Traffic (Amendment) Act, she argued in relation to drug driving and, again, in 2018, when amendment were brought, she and other Members of this august Assembly during their discourse spoke about drug driving.

But I would remind everybody in the House that when those issues were raised in the House, hon. Nandcoomar Bodha actually explained in so many terms that he was actually looking into the matter and in 2016, in reply to hon. Mrs Selvon, during the summing-up, this is what hon. Bodha stated –

“(...) As regards the testing of drugs raised by hon. Mrs Selvon, I was in Reunion Island and I raised this issue to see how this is being done, and I have to say that testing is still on a very experimental stage and we are going to gradually introduce

same with the appropriate testing equipment. In fact, there is Dr. Guillon who has already been here and he presided over a seminar on the issue. The State Law Office is already working on a draft Bill and we will come back to this issue later.”

The issue is now before us. Hon. Minister Bodha has worked it out. The State Law Office has worked it out and the Bill is here today and the criticism that hon. Dr. A. Boolell levelled today that he has not found many devils in the detail, means that he has found some devils in the detail. But I will persuade the nation, the people that there is no devil in the detail, and if you like it, we are all in the same game, just different levels, dealing with the same hell, just different devils. But if you want to invoke devils in this Bill, you will require lots of incense sticks, lemon and camphor to do that. There is no devil at all in the detail.

Mr Deputy Speaker, Sir, the debate about drug driving is out there. We know that a lot of accidents have been taking place in Mauritius because we are a country where we have a driving behaviour that has developed as a result of a driving culture. This driving culture has developed a driving behaviour and the norm is, was, at least until 2018, when we passed the zero-tolerance legislation against alcohol. People used to say, let me have a few pegs, and drive, I can make it. That is the attitude, the culture: *enn deux grog, mo kapav conduire*. But, since last year, this has stopped and the rate of driving while under the influence of alcohol has been reduced. However, Mr Deputy Speaker, we have noted - which was pointed out by hon. Minister Bodha and hon. Dr. Boolell - that out of 151 fatal accidents, at least 20% of drivers were found to have drug-related substance in their blood.

*(Interruptions)*

**The Deputy Speaker:** Can you stop talking, hon. Barbier? Please, let him deliver his speech. Thank you.

**Mr Rutnah:** I am grateful, Mr Deputy Speaker, Sir. So, as a nation, as a Government, we are under a duty to deal with this matter because it is becoming very serious on the road. A lot of fatal accidents are taking place and we are not able to actually prosecute because there is a lacuna in the law. Now, this has been corrected. We are, today, Mr Deputy Speaker, Sir, introducing of three-tier test. The first test is the field impairment test on which I will elaborate in a minute. The second is the preliminary drug test. The third is the blood laboratory test.

If we look at the Bill, for the field impairment test, the Police officer has to have reasonable suspicion first. He has to have reasonable suspicion. No need to go into a debate

about what is reasonable suspicion because there are established laws, there are case laws, there are laws that define what reasonable suspicion is, and the standard criminal procedure to be applied is that the Police Officer must have that reasonable suspicion to actually arrest or to carry out a search. So, firstly, the officer will have to ascertain whether the driver is keeping his balance, whether he has a slurred speech or some other form of impairment that is likely to be noticed on the driver. Once that is established, the Police officer will ask the driver to fill a form, the questionnaire which is to be found in the Thirteenth Schedule of the legislation. So, once that is filled, once the test has been satisfied, it is only then that we go to the second stage of the test. The second stage of the test means the preliminary drug test and this is where the driver is required to provide his specimen of saliva or urine. And once the saliva and the urine have proven positive, it's only then that the driver will be required to have a laboratory test. So, it's a three-stage test that one has to go through in order to ascertain whether that person has committed, or at least is suspected to have committed, a prohibited act under the new Road Traffic (Amendment) Bill.

Mr Deputy Speaker, Sir, the Bill has also defiled because I heard what my colleague hon. Leopold was saying about the concern that he expressed in relation to other drugs that do not form part of the Twelfth Schedule of this Bill. And if I may refer to the definition provision of this Bill, which is to be found at Clause 3, Section 2 of the principal Act, at (d) in particular, where it is said -

“3. Section 2 of the principal Act amended

“intoxicating substance” –

(a) means a dangerous drug specified in the First Schedule to the Dangerous Drugs Act, other than a drug specified in Part I of the Twelfth Schedule; and

(b) includes such other intoxicating substance as may be prescribed;”

So, what are the drugs prescribed in the First Schedule of The Dangerous Drugs Act? They are: Amphetamine, Cannabis, also named as Gandia or Indian hemp, Dexamphetamine, Phenetidine, Khat, Methaqualone, Secobarbital. So, these are scientific name of drugs which are prohibited when you are driving. Now, the issue raised by hon. Dr. Boolell, that some patients, for example, who are prescribed Amphetamine, they have got slow metabolism. But, we all know that if you take Amphetamine as a prescribed medicine or any other medication that causes someone to be drowsy, the doctor automatically advises you not to drive and not to take it during the day.

Even if you take something like *Piriton*, the doctor tells you, the pharmacist advises you not to drive, not to take it during the day, if you take it, go to bed. So, the patient with slow metabolism should know that when he is taking any medicine which is likely to cause drowsiness or which is likely to cause impairment whilst driving, he should not take the wheel, it's so easy, it is straightforward. If you do so, then you are going to be subjected to the full machinery of this Bill and that of the investigative authority and later with the full machinery of the judicial process. It's so simple. So, the Bill, in its entirety, is very simple. The message out there is that if you are on drugs, taking voluntarily any substance, then you don't drive. It is as easy as that. There is no need for me to go into detail in relation to all the sections. I think orators before me have dealt with the provisions.

So, in conclusion, Mr Deputy Speaker, Sir, this is the Bill that is going to enhance a change in the driving culture, a change in the driving behaviour, because people will now think twice before drugging themselves and going on the wheel.

Thank you, Mr Deputy Speaker, Sir.

**The Deputy Speaker:** Hon. Baloomoody!

(6.52 p.m.)

**Mr V. Baloomoody (Third Member for GRNW & Port Louis West):** Thank you, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, the introduction of new offences in our Road Traffic Act reflects increasing evidence that drug driving is a significant road safety problem in this country and that the existing offences under the law are insufficient to deal with this complex problem effectively.

Mr Deputy Speaker, Sir, when we were debating the last Road Traffic (Amendment) Bill 2018, that was the fourth amendment brought forward by the hon. Minister, both hon. Bérenger and myself, we raised the growing concern about drug use and driving on a public road. And the hon. Minister, I remember, did reply that at that time they were not equipped and that he will come with a Bill.

What is good with that Bill is that it includes also cyclists, which is very important, because we know the main victims of road traffic accidents and especially when we come to motorcycle riders, the number of fatal accidents we have had and many, according to my information from colleague doctors whom I have talked to, many of these toxicology tests have revealed the presence of drug, but, unfortunately, it can be revealed only when they are

dead, because we don't have any equipment, the FSL and the Police are not equipped to identify drugs prior to an accident.

The hon. Minister has given statistics 20% compared to 36%, etc., but one thing which I will invite the hon. Minister to enlighten us, what types of drugs have been identified? Is the FSL equipped now? When we say there were drugs in their body, 20% or 36% of the fatal accidents were found to be drug positive. What types of drugs have been identified? This is very important because we will see later that according to the World Health Organisation, as mentioned by my friend, hon. Osman Mahomed, there are three types of drugs: illicit drugs, for example, cocaine, heroin, methamphetamine and cannabis; these are internationally controlled drugs. Then, we have prescription drugs, antidepressants, benzodiazepine and opioid analgesics which can be bought legally over the counter or prescribed by a doctor for management of acute medical condition. Then, we have the main one which we hope that this Bill will tackle, but, up to now, we need some more information from the hon. Minister, the synthetic drug, because synthetic drug is locally made. In certain cases, it is homemade, the component of which is much unknown today, and all these drugs we have in the Schedule of this Act, be it in the main Act, be it in this Bill. My question is: can we produce a synthetic drug without the components in the Schedule? Because my information is that people are having drugs making with *médecine le rat*, glue, Baygon, *la queue poisson*, I don't know, all these, the blood from certain fishes. Are we going tomorrow to be able - forget about the illicit drugs, the prescription drugs - to identify the components of this synthetic drug? Will the apparatus that the FSL is going to acquire, be able to identify this? This is the most important issue because let's not forget the synthetic drugs. Like I said, it is homemade, but then you have people taking synthetic drugs and alcohol and this becomes even more difficult to identify. And the other issue is that somebody who is taking illicit drugs and driving, he has committed two offences. One, consumption of drug under the Dangerous Drugs Act, and secondly, driving under the influence of drug. So, it is very important to identify that drug, and what is worse in this case is when it comes to prescription drugs.

Hon. Dr. Boolell mentioned it. This law does not make any defence for medication, no medical defence, unlike in UK, if you are arrested or you are suspected, driving with impairment under a drug, I quote –

“It is a defence for a person, a defendant charge with an offence under this section to show that –



- (a) the specified controlled drug had been prescribed or supplied to defendant for medical or dental purposes. That he took the drug in accordance with any direction given by the doctor. And that he has followed the prescription of the doctor and drink it accordingly.”

So, at least, there, we have that medical defence, but what we are doing here is strict liability offences. If it is zero tolerance, any milligram of drug is found, you are sentenced. I will come to the sentence later. They don't bother whether it is medical. We should have had a statutory defence to make the difference between prescription drugs and illicit drugs. This is very important. For example, Morphine may be prescribed for chronic pain or Diazepam may be prescribed for anxiety and these are in the Schedule. So, I think the question of medical defence is very important, especially when we look at the sentence which the Court is required to pass.

Are we going to amend appropriate legislation, if need be, to make it a duty on the medical officers to give a prescription informing the patient that driving under the influence of this drug is not allowed or if one produces a prescription to the Police Officer when he is arrested, when he is asked to stand on one foot and look in their eyes, all this? At what time will the Police Officer take this into consideration? And should the Police Officer take that into consideration, is the Police Officer trained enough - let alone to see whether that gentleman can stand on foot - to read a prescription, just to read a prescription. Are our Police Officers trained enough to read a prescription? These are issues which we have to look carefully. We are for the law, we are against drug and drive, but, of course, we should protect honest citizens. We cannot have a strict liability offence with no defence, especially for those who are taking medication.

Now, Mr Deputy Speaker, Sir, let me turn to some aspects of the Bill. I won't go into all because many people have spoken before me. Let me refer first to the offence itself, Section 123E, with regard to the sentence, very harsh. First offender, not less than Rs20, 000 and to imprisonment for a term not exceeding five years; second offender, Rs50, 000 together with imprisonment, so for a second offender, imprisonment is compulsory – not less than 12 months nor more than 8 years. My concern with this is that the law does not make any difference, firstly, between medical prescriptions and secondly, with regard to the limit one has in one's body. So, if somebody has 000.4 gram, he will serve the same sentence that somebody who has consumed God knows how many *ti pouliah*. Is that fair? It does not make any difference whether you consume it yesterday or five days before or eight days before.

And we have been told that all human beings are not the same. The consumption of these drugs may last for seven, eight, ten days. So these are things which I hope that the hon. Minister will enlighten us because we are talking, like I said, of a strict liability of funds with no defence in law.

Now let me come to the section dealing with alcohol. So what we are doing today, in fact, by this amendment, we are reducing the difference of error, the margin of error to only 2 micrograms compared to what there was before. We are, in fact, reducing the margin of error. It is only to 2 milligrams, when we know internationally, in the UK, it is 6 milligrams the margin of error. And the reason is clear because there are four main reasons for breath tests which may lead to inaccuracy. Poor calibration is one reason. Secondly, electronic interference, inherent with the apparatus itself...

**Mr Deputy Speaker:** May I interrupt you, hon. Baloomoody. May I request hon. Abbas Mamode to resume his seat please? Thank you. You can now resume your speech.

**Mr Baloomoody:** Electronic interference. Third, we have health conditions of the patient himself, and, most importantly, his exposure to chemicals. Breathalysers do not actually measure the alcohol level in a person's blood, instead they measure the alcohol in the air and a formula is used to convert that reading into an estimate of the person's blood alcohol level. This is why, in the UK, there are judgements - *Osman v United Kingdom* [1989] PTR page 360 which say that you should have at least six micrograms to allow for discrepancies.

Now, coming to that test, the field impairment test, Mr Deputy Speaker, Sir, hon. Rutnah said that it is the driver who is going to fill the form. No, it is the Police Officer who fills the form, not the driver. It makes a big difference, you will see. We know cases, cases of accidents especially, where drivers are not brought on the spot but rough sketches are being drawn stating that the driver was there. I personally know a case where the driver was in hospital on that day and the Police Officer drew a rough sketch and in the rough sketch, he said that both drivers were in attendance.

Now, one Police Officer, it is not mentioned the rank, a simple Police Officer who has done only six months training of which he learned at the school for only two months. Four months is on the beat. He will make that field impairment test and you know, Mr Deputy Speaker, Sir, it is good that we learn from other countries. In the UK, there was going to have riot in the country because of that field impairment test. People were being discriminated,

minorities were being arrested everyday; as they saw a Jamaican driving a car or a black person driving a car, he must be taking cannabis. Stop him, search him, bring him to the station. We have to be careful of the risk of abuse by the Police Officer in this case. And this is why in the UK they have introduced the Road Testing Kit. I hope the sooner we come with the testing kit, the better because that impairment test is subjective and the form you see in the Schedule, like I said, is filled by the Police Officer – only a tick; difficulty to balance, yes or no – tick. Difficulty to stand up properly? Yes or No? tick. Difficulty to slurred speech, yes or no - tick. Somebody is arrested. His liberty, his constitutional right...

*(Interruptions)*

There is not even a signature in the questionnaire, the accused does not have to sign, counter check or read it and sign it. If it is for the Police Officer to fill it, take you to the station, you are under arrest. Come on. Is that what we want? And we know in how many cases of abuse when it comes to innocent people who are being arrested.

Now Section 123H, this is where it hurts –

“Where, pursuant to section 123G (1) (...)”

Which I have just referred

“(...) a preliminary drug test does not indicate that the person is under the influence of a drug”

So the preliminary drug test does not indicate but that Police Officer, in his mind, believes that this suspect is under drug, he takes him to Police Station - urine, blood everything. So it is clear that there will be cases of abuse. We are not talking about simple Police Officers. If it was not below to the rank of a Sergeant or an Inspector; okay, a Senior Police Officer. But now are talking about a simple Police Officer. This is the joke in this Bill. So, if the preliminary drug test does not indicate that that person is under the influence, he is brought to the Police Station.

“A Police officer shall, on requiring any person to provide a specimen of blood or urine for a laboratory test under this section (...)”

This is the section where preliminary test has failed and if he does not accompany the Police the burden shifts. If he fails the preliminary test, the burden shifts, there is a *prima facie* evidence that at that material time he was under the influence of intoxicating substance.

So, where are we going? Now, if somebody whose preliminary test is negative, fails to provide a specimen of breath, blood, urine or saliva or failure to undergo field impairment test, he commits an offence. And that offence is quite a heavy offence –

“shall commit an offence and shall, on conviction, be liable to a fine of not less than 20,000 rupees nor more than 25,000 rupees.”

And a second subsequent conviction - 50, 000 rupees and imprisonment.

Mr Deputy Speaker, Sir, we need to have some safeguards in this law. It is important that we should introduce a medical defence, a statutory defence. There should be a statutory defence. We should look at the definition of that Police officer. He should not be a simple Police officer. We should look at the form. It has to be countersigned by the suspect. You cannot leave it to the Police officer himself. So, somebody who refuses to give his breath, there is a presumption that he is guilty, he will pay a fine of Rs20,000.

However, the officer has to warn him that he has committed an offence. There is another section which says that if the officer has not warned him, he has committed no offence. So, if I am arrested tomorrow, I refuse to collaborate with the Police, there is a presumption that I have taken drug. Now, the Police officer has to warn me: *Misier Baloomoody ou koner ou fine komet enn offence*. If he has warned me, I have committed any offence. Now, if he has failed to warn me then, I have not committed an offence. How can I prove in Court? Can you expect somebody who has been arrested there is only his evidence against a Police officer. Do you expect the Police officer to come in Court and say: I did not warn him? If he says so, I have not committed any offence.

The warning should be in writing, countersigned by the suspect in order to avoid abuse, not just an oral warning, 101 officers over 100 will come to the Court and say: I have given him a warning. Do you expect officers to come to Court and say: I have not given a warning? Well, my friend, hon. Rutnah knows very well what is the usual practice of that caution in a Police Station, *2 calottes ou bien 3 coup de poings*. This is the regular, usual warning that they get before they give their statement when arrested. Now, you tell me that the Police officer will come to Court and say: yes, I have given him this warning even though he has refused to give. But this should be in writing.

So, like I say, I am going to conclude on this one because I find this one is the most aberrant section in this Bill. So, Mr Deputy Speaker, Sir, we welcome the Bill, we should ensure that our road is safe, that those who take drug, drink should not drive car but on the

other hand, we are in a democratic country where we have constitutional rights to protect. We have to ensure that no authority, be it the Police, be it the medical Police Officers, have in their hands a tool which may deprive a citizen of his constitutional rights, rightly so.

Thank you, Mr Deputy Speaker, Sir.

**The Deputy Speaker:** Hon. Boissézon!

(7.16 p.m.)

**The Minister of Civil Service and Administrative Reforms (Mr E. Boissézon):** M. le président, j'accueille cet amendement au projet de loi et je note avec plaisir qu'il y a presque unanimité dans la Chambre.

Aujourd'hui, nous notons que la sécurité routière est un sujet de préoccupation pour le gouvernement. Plusieurs mesures ont été mises en place pour améliorer la sécurité dans notre pays, mais quand en 2014, nous avons hérité d'infrastructures qui demandaient à une révision, le gouvernement a mis en place un plan stratégique de sécurité nationale qui a consisté à une révision de nos infrastructures routières, une campagne de sensibilisation, une révision à la hausse des amendes pour infractions au code de la route. Les statistiques démontrent que nous avons noté une diminution du nombre d'accidents fatals et graves mais malgré cela, nous devons être vigilants.

Des principales causes d'accidents de la route sont la vitesse, la conduite sous l'influence de l'alcool, mais malheureusement le phénomène de la conduite automobile suivant un usage illicite de drogues gagne en importance au niveau national. L'alcool et la drogue doivent être considérés comme ayant le même niveau de présence et de gravité dans les accidents. Si l'alcool au volant est à l'origine de quatre accidents graves sur 10, les drogues, elles présentent un accident grave ou plus, ou mortel sur cinq. Le cocktail explosif, drogue et alcool ensemble, multiplie le risque d'avoir un accident par 15 si on compare à un conducteur en état de sobriété.

Parce que ces deux produits sont aujourd'hui à égalité de présence dans les organismes des conducteurs et que la drogue altère, de la même manière que l'alcool sinon plus, gravement les facultaires des conducteurs, les pays européens et occidentaux ont décidé de contrer ce problème et ont adopté des législations routières pour réprimer la conduite sous l'emprise de produits stupéfiants en permettant le dépistage des drogues chez les conducteurs.

La France en 1999, la Grande-Bretagne, l’Australie, la Belgique, pour ne citer que cela, tous ces pays ont adopté une législation, qui affirme que la conduite sous l’emprise des stupéfiants, constitue une effraction spécifique, qui prévoit des moyens de contrôle, qui fixe des sanctions souvent inspirées et dispositions pour lutter contre l’alcool au volant.

Le projet de loi que nous examinons maintenant va dans ce sens, donc dans le bon sens. Un retour à la première raison d’être émise par la législature internationale que la conduite soit sous l’emprise des stupéfiants constitue une infraction spécifique. Et en parcourant l’*Explanatory Memorandum*, nous voyons que ce projet de loi va dans le bon sens, parce qu’il spécifie clairement à la première phrase –

*“The main object of this Bill is to provide that any person who, whilst being under the influence of a drug or an intoxicating substance”*

énumère les différents sujets ‘*shall commit an offence*’.

Deuxièmement, les provisions internationales prévoient des moyens de contrôle et c’est là où nous devons faire attention. Les sections de ce projet de loi, les sections 123F, 123G et 123H nous donnent un protocole pour s’assurer que nous sommes dans la bonne direction concernant la répression des personnes qui conduisent sous la conduite d’alcool et de drogue.

La section 123F contrôle spécifiquement l’alcool au volant et ce qui est intéressant de noter aujourd’hui, c’est que cette section vient revoir et vient spécifier à la section 123F (4) (b). Et là, je ne comprends pas l’orateur précédent, car nous avons déjà voté une loi de zéro tolérance et retourner sur ce sujet me donne l’impression qu’il fallait dire quelque chose contre ce projet de loi.

L’orateur précédent nous a donné plusieurs raisons pour venir faire croire que si quelqu’un est sous l’influence de l’alcool, mais qu’il y a eu *poor calibration, electronic interference, health* de la personne et autre point que la personne n’est pas sous l’influence de l’alcool, cela veut dire qu’elle n’est pas sous l’influence d’une déficience de conduite, et je pense que c’est son côté professionnel de légiste qui l’emmène à penser comme ça. Mais pour nous, aujourd’hui, quelqu’un qui est en situation de déficience de conduite est quelqu’un qui ne doit pas être sur une route.

D’autre part, quand nous regardons à la section 123G, cette section a été sujette à beaucoup de discussions aujourd’hui, parce que c’est la section qui parle de *reasonable suspicion of person being under influence of drug*.

M. le président, ce projet de loi amène un protocole. Ce projet de loi, aujourd'hui, donne au policier, donne aux autorités un plan d'action quand il s'agit de vérifier si quelqu'un est en état de déficience de conduite. En prenant le cas, et là, je retournerai sur l'intervention du ministre des Infrastructures publiques en juillet 2018, où lorsqu'on parlait de drogue, il disait –

*“(... ) there is no provision in the law today to enable a Police Officer to carry out the ‘Field Impairment Assessment’ or preliminary test to detect the presence of any drug. The law will thus be amended to insert the protocol for these procedures to be followed by the Police and to withstand the test in Court regarding its veracity.”*

Aujourd'hui, l'orateur qui m'a précédé est venu faire croire que c'est le policier qui décide de la sentence appliquée, c'est au policier de décider. Et le ministre a été plus loin, il a dit qu'aujourd'hui il prévoit que –

*“The test should be carried out by detection kits (road side kit) to be procured by the Police and validated by the Forensic Science Laboratory (FSL).”*

Le ministre est au courant des difficultés de cet examen, ce test de sobriété. C'est pourquoi que nous prévoyons de donner au policier des kits de détection. Et il a été plus loin pour dire -

*“It should be pointed out at the very start that the Police will not be able to determine if the person is under the influence of dangerous drugs or therapeutical drugs. This will be determined only after evidential testing of blood is carried out by the FSL.”*

Je ne comprends pas pourquoi le précédent orateur a été si loin pour venir faire croire que ce projet de loi est fait pour faire mal aux gens. Au contraire, c'est un projet de loi qui vient améliorer la sécurité routière. Il a parlé de la section 123H *Reasonable suspicion of person being under influence of intoxicating substance*. Et là, vous vous êtes mis à rire, et dire que, if a preliminary drug test does not indicate that the person is under the influence of a drug, but the Police officer has reasonable ground to suspect that the person's physical state is impaired. Et c'est lui-même, l'orateur précédent, qui a dit qu'avec les drogues synthétiques on ne pouvait pas savoir les molécules. Aujourd'hui, avec cet appareil, ce kit de détection que le policier a devant lui, si en l'utilisant il n'arrive pas à détecter la molécule qui est la cause de l'état du conducteur, il a encore - heureusement - la possibilité de demander à faire d'autres tests supplémentaires. Et c'est lui-même qui a parlé de ces molécules dans les produits synthétiques.

M. le président, aujourd'hui, sanctionner la conduite sous l'emprise de la drogue est indéniablement complexe. Le dépistage des stupéfiants est plus délicat que celui de l'alcool. Donc, on retrouve les molécules dans toutes les boissons alcoolisées. Beaucoup d'études ont été faites à ce sujet et les scientifiques arrivent à bien mesurer les effets de l'alcool sur l'organisme humain dès son absorption et sa pénétration dans le sang.

M. le président, avec les moyens dont nous disposons aujourd'hui, la Police arrive à évaluer le taux de concentration d'alcool dans le sang d'un conducteur avec un fort pourcentage de fiabilité - l'élimination de l'alcool se faisant à un taux constant. Quant à la drogue, les études en laboratoire ont démontré une importante différence sur ses effets sur l'être humain, comparés à la consommation d'alcool. Vu la multitude de drogues et les réactions des différentes molécules, je me contenterai de parler de la drogue la plus utilisée, le cannabis. L'élément psychoactif de ce produit est le Tetrahydrocannabinol, communément appelé THC. Dès qu'on fume le cannabis, le THC, est absorbé par la masse de graisse avant d'être injecté dans le sang et le fumeur ressent immédiatement les effets de cette drogue.

Généralement, la concentration dans le sang chute rapidement, voire de 80% dans les trente minutes. Plus la concentration du THC est forte dans le sang, plus l'élimination est rapide, mais les effets dus aux agents psychoactifs restent pendant très longtemps. C'est pourquoi j'accueille l'amendement qui a été fait, et qui demande que si quelqu'un doit fournir un échantillon d'urine, il faut qu'il le fasse dans l'heure qui suit la production du premier échantillon.

Maintenant, on a parlé de formation. L'orateur précédent a parlé de policiers avec six mois de service. Maintenant les policiers seront formés à cet effet. Aujourd'hui, la Force Policière est prête. Je citerai le *Deputy Commissioner of Police*, M. Taujoo, patron de la *Traffic Branch* qui nous dit ceci –

« Une fois les nouvelles lois en vigueur, les policiers sauront comment procéder. »

Et il va plus loin pour dire –

« (...) la drogue au volant est devenue un véritable problème. »

C'est vrai, peut-être qu'aujourd'hui nous n'avons pas de statistiques fiables concernant la drogue au volant, mais le point demeure que nous devons prendre la décision d'aller de l'avant avec cette loi. Tout à l'heure, l'honorable Dr. Boolell, je pense, a demandé pourquoi est-ce que le gouvernement était pressé avec cette loi. Nous savons aujourd'hui que des incertitudes subsistent sur le lien de causalité existant entre la consommation de stupéfiant et



la sécurité routière. Demain, il se pourrait que les avocats en tirent profit. Mais devons-nous rester immobiles quand la sécurité routière est en jeu ?

M. le président, je citerai M. Charles Mercier-Guyon, expert, qui a été présent à Maurice pour nous aider à formuler ce présent projet de loi. Alors que le projet de loi était en préparation en France, il avait ceci à dire, et je cite –

« M. Charles Mercier-Guyon, expert auprès de la direction générale de la Commission européenne chargée des transports, a pour sa part considéré que les tests de dépistage ne sont pas plus imparfaits que ceux pratiqués pour détecter la consommation d'alcool, et ne présentent qu'un à deux pourcent de faux négatif. En état de cause, on peut considérer si ces tests pour l'heure n'étaient pas fiables. Il ne faut pas oublier qu'au moment de la présentation de l'alcotest, qui permet de détecter la présence d'alcool chez le conducteur, la connaissance scientifique n'était pas qu'à ses débuts.

Ce qui prouve qu'aujourd'hui il nous faut aller de l'avant. Si nous prenons en ligne de compte toutes les choses qui pourraient nous empêcher d'aller de l'avant avec ce projet de loi, nous n'allons pas avancer, nous devons prendre la décision aujourd'hui de faire ce pas. Ce sera peut-être un petit pas, mais un grand pas pour la sécurité routière. »

Je terminerai sur ce point. L'honorable Veda Baloomoody a parlé de molécules mais quand il a parlé de substances, on ne pourrait reconnaître et, aujourd'hui, si on ne l'a pas acheté, il doit être en voie d'acheminement vers Maurice. Quand nous parlons de cette machine qui coûte très chère, la *liquid chromatography, high-resolution mass spectrometry*, cet appareil nous permettra de détecter les différentes molécules que les gens consomment. Et cela nous permettra d'avancer dans ce domaine très nébuleux aujourd'hui qui est la contenance des drogues synthétiques car la chromatographie est une technique de chimie, permettant la séparation et l'identification d'espèces chimiques contenues dans les mélanges.

Je terminerai, M. le président, en réitérant mes félicitations au ministre des Infrastructures publiques pour la présentation de ce projet de loi qui de loin va nous aider dans notre démarche à améliorer la sécurité routière à Maurice.

Merci, M. le président.

**The Deputy Speaker:** Hon. Rampertab!

(7.42 p.m.)

**Mr R. Rampertab (Second Member for Flacq & Bon Accueil):** Mr Deputy Speaker, Sir, this August Assembly today has been debating an extremely important piece of legislation, the Road Traffic (Amendment) Bill. Indeed, it is with an immense sense of humility and duty that I am contributing to the debates today.

Mr Deputy Speaker, Sir, road safety and prevention of fatal and non-fatal accidents have never before been such a national urgency. Our Government has been relentless in tackling the causes of road accidents on all fronts. Today, however, through this Bill, we are passing one of the most crucial and advanced legislation geared towards making our country a safer one. I would like to thank hon. Bodha, the Minister of Public Infrastructure and Land Transport, for presenting this long overdue Bill.

Mr Deputy Speaker, Sir, the bold and decisive measures in the legislation should be most welcomed by everyone. In fact, we have reached a situation where each fatal and non-fatal accident being reported in the news is sadly scarring the families of the victims for life. The raft of measures which have been implemented by this Government, is however contributing to staunchly reducing the number of fatal accidents in our roads.

Mr Deputy Speaker, Sir, from January 2019 to 01 May 2019, we have had 44 fatal accidents with 66 deaths compared to 59 for the same period last year. However, our endeavour should not stop here, as our aim should be to reduce the number of fatal and non-fatal accidents to the minimum possible.

Mr Deputy Speaker, Sir, losing a dear one is already a devastating situation. But losing a friend or a family in a deadly road accident is even more distressing, leaving the family and friends behind in dreadful circumstances.

Mr Deputy Speaker, Sir, numerous surveys and laboratories test results from various countries have demonstrated the presence of psychoactive drugs in either the saliva, blood or urine of injured or killed drivers. For instance, according to a recent Drug Use and Road Safety Report by the World Health Organisation, the prevalence of psychoactive drugs, amongst drivers, ranges from 3.9% to 20%. In addition, the report also mentions that population surveys of self-reported driving, after using psychoactive drugs, mostly cannabis, vary in different countries between 3.8% and 30%.

Mr Deputy Speaker, Sir, in Mauritius, according to the Forensic Science Laboratory, out of 151 cases of fatal road accidents referred to toxicological tests for drug detection by the Police in 2018, around 20% showed the presence of drugs compared to 36% in 2017.

Hence, Mr Deputy Speaker, Sir, the trend is clear both locally and internationally. Although there are more deaths due to drink driving, the risk of death from drug driving is equally high and increasingly worrying.

Mr Deputy Speaker, Sir, globally, according to the World Health Organisation, around 160 countries today have already passed and implemented national legislation which ban drug driving with hefty offences. For instance, Germany started back in 1996, whereas countries like France, Belgium and Switzerland started drug driving testing back in 2005. Scotland, similar to Mauritius, will be starting drug drive tests in 2019 and it will be a good case study for further comparative research and enhancement of the legislation. It is clear that this legislation is in line with our hon. Prime Minister's intense and unflinching commitment in eliminating both the demand and supply of drugs in our country.

Only through this Government, Mr Deputy Speaker, Sir, Mauritius will now be joining the list of countries which have the legal framework, but, more importantly, the enforcement resources and the latest forensic equipment required to track and detect offenders.

Mr Deputy Speaker, Sir, the World Health Organisation suggests five axes on which drug driving must be combatted comprehensively to ensure the minimum consequences in our society and economy, namely the legislation, testing, enforcement, awareness raising, and counselling and treatment. I am glad to note that through this new legislation, the Ministry of Public Infrastructure and Land Transport is unwearingly fulfilling the international best practice of the World Health Organisation in delivering the crucial first four pillars, namely legislation, testing, enforcement and awareness raising.

On the other hand, Mr Deputy Speaker, Sir, the Ministry of Health is unyieldingly providing the best in-class counselling and treatment services for those impacted by long-term dependencies on drug consumption. In general, Mr Deputy Speaker, Sir, the different types of legal framework do vary accordingly to the nature of social, legal and economic characteristics of those jurisdictions. However, I am glad to note that this proposed legislation was drafted after consultation with all the key partners within the field of road safety, policy-making, enforcement and forensic testing.

Mr Deputy Speaker, Sir, as I pointed out in my previous speech during the Road Traffic (Amendment) Bill of 2018, the Police Force should be adequately equipped with the best technology available on the market. For instance, in Spain, researches with the

collaboration of the Spanish Police Force have developed a drug driving test kit. This test can give results in around six minutes.

On the other hand, in Reunion Island, they have recently updated the drug-driving test. Hence, a saliva test is performed using the drug wipe 5S, Road Side Kit. In fact, as per the regulations, if the saliva test comes out positive on the first instance; a second test is performed and the results are then sent to the medical lab for further tests as pointed out by hon. Rutnah as well. The sanctions for convicted offenders include among others a potential driving licence suspension of up to three years or licence cancellation for life as well as up to three years imprisonment. In case the accident led to a loss of life and the driver was under the influence of drugs, the offender risks up to 10 years of imprisonment. It is also interesting to note that if the driver refuses a drug test, the person is liable for up to two years of imprisonment.

Mr Deputy Speaker, Sir, what this Government has delivered through this Bill is a comprehensive legislation crafted with the best expertise in the associated fields. Unfortunately, we have heard some unfavourable comments from the other side around issues such as medical defence. However, for them, I will suggest that they clearly check the 15 substances listed in the legislation and how seven of them have been listed with specified limit.

Mr Deputy Speaker, Sir, every doctor and pharmacist will carefully explain the prescribed limits of a medication the patient is supposed to consume. However, if the same patient decides to self-medicate by not taking the on-board medical advice of the medical practitioner and the pharmacist by driving on medication above the prescribed limit then the driver should bear the responsibility and definitely should be punished.

Mr Deputy Speaker, Sir, to conclude I would like to congratulate the hon. Minister of Public Infrastructure and Land Transport for bringing forward this piece of legislation. I thank him for his vision and unflinching commitment. Undoubtedly, the drug drive testing will have to be enhanced over the years as so many countries have done and continue to do so. However, nobody can deny this significant achievement of this Government aim at reassuring and protecting the population from the national issue of road safety with utmost urgency.

Mr Deputy Speaker, Sir, I urge every parliamentarian from both sides of the House to rally behind this piece of legislation to make our country safer and secure.

Thank you, Mr Deputy Speaker, Sir.

**The Deputy Speaker:** Hon. Ramful!

(7.53 p.m.)

**Mr D. Ramful (Third Member for Mahebourg & Plaine Magnien):** Thank you, Mr Deputy Speaker, Sir.

Mr Deputy Speaker, Sir, when it comes to road safety, we should rise above party politics and as responsible representatives of the people, we should combine our efforts and make positive and concrete propositions that would consolidate the Road Traffic Act to the benefit of all road users.

We, on our part, I can speak for the Labour Party, we welcome any such propositions that would help, as I have said, to consolidate the Road Traffic Act. Now, previous orators have made very pertinent remarks, pertinent observations and opinions about the Act. Some have made constructive propositions, I do not intend to repeat what they have said but, on my part, I have four propositions that I wish to make. The first one it looks like - and I hope that the hon. Minister is taking note of this because it is a pertinent point - there is a loophole in the law with regard to those who are found to be under the influence of intoxicating substances. I am talking here in particular with regard to the powers of the Police to detain those persons.

The hon. Minister will recall that, very recently, in the past, he, himself, came with amendments to the Road Traffic Act to allow and empower Police officers to detain those found under the influence of alcohol. They are placed in what they call *la cellule de dégrisement*. Now, what these amendments seek to do is to extend the operation of the law to three categories of cases. There is currently one category: those who are found to be under the influence of alcohol. There is no problem with the test that will be carried out. If someone is suspected of being under the influence of alcohol, an impairment field test is carried out by the Police Officer. If that is found to be positive or if he fails that impairment field test then a breath test is administered. If this is found to be positive, the person is called upon to give a blood sample or urine at the hospital. I won't go into the details about the rights, etc., but this is the procedure that applies to someone who is suspected of having consumed alcohol whilst driving. What is important for the safety of that driver himself and for other road users, the Police is empowered to detain that person until he is found to be fit to drive. There is an amendment which is being proposed now, in particular clause 13, where that power to detain

is extended to those who are found or suspected to be under the influence of drugs. The same procedure would apply. That person would be called upon to effect the impairment field test. If he fails that test then the preliminary drug test would be administered and that preliminary drug test has been defined under the Interpretation section, it would apply to specific drugs as listed under the schedule to this present Bill. It excludes drugs that are listed under the Dangerous Drug Act. If that drug test is found to be positive, that person will be called upon to effect a laboratory test and again, in those circumstances, that person can be detained by the Police for his safety and the safety of other road users until he is found fit to drive. What the law fails to provide is in cases where that person is suspected of having taken drugs which are found under the schedule to the Dangerous Drug Act. What is important is that that Schedule includes synthetic drug which is causing a lot of harm to the society. In that particular case, if that person fails the impairment test, there is no such preliminary drug test that can be administered to him because, as I have said, that preliminary drug test is restricted and limited only to other drugs that are listed in the present Bill not synthetic drug because that drug test cannot detect synthetic drug or intoxicating substances then that person will be called upon if he fails the impairment test.

There is a suspicion that he is under the influence of an intoxicating substance which may include synthetic drug. That person will then be called upon to provide a blood sample at the hospital. Now, what is important is if that person refuses - he has a right to refuse as in the other cases - then what happens? Nothing has been provided in the law. That Police officer cannot detain that person. There are certain categories of drivers who may be found under the influence of synthetic drugs, they would be free to drive away. So, there is a loophole, I hope the hon. Minister will take that into consideration at the stage when he will be doing his summing-up, but this is a major problem with this amendment.

Now, the second point that I wish to make is with regard to the drug testing device. Now, there are about 15 of them that have been listed in the law. My question is: presently, do we have drug-testing devices that can detect all the drugs that are listed in the schedule? Because we are providing for this, we are saying that these drugs would be detected by devices; do we currently have drug-testing devices that would detect all 15 of them? The reason why I am asking this is because in the UK, presently, the approved testing devices can only test two of the drugs that are listed in the UK legislation, cocaine and cannabis. So, is this the case for Mauritius as well? I hope that the hon. Minister will enlighten the House as

to whether or not we have currently testing devices that can test all those 15 drugs that are listed in the schedule.

The third point is with regard to the preliminary impairment test. Now, previous orators have already talked about this and I wish to impress on this because it is very important. In the UK Act, express provision has been made. It has been provided expressly in the law that a constable may administer a preliminary test which includes the impairment test only if he is approved for that purpose by a Chief Officer of the Police Force to which he belongs. Even a code of practice is issued which includes provisions about the kind of training that that particular constable should have undergone or the kind of qualification he must possess before he could administer such preliminary impairment test. It is not just a matter of the Minister coming before the House and saying: you know, the Police officers are going to be trained. No, the law provides expressly that that particular constable must have been approved by a Chief Police Officer. If he is not, then the whole procedure is null and void. So, I will again hope that the hon. Minister will enlighten the House on this particular point.

Now, one last point, this issue cropped up in the UK and again let us hope that the hon. Minister will reply on this. All those tests, the drugs tests, is it the case that these tests will be used only for detection of road traffic offences and not other offences? Because in the UK, it has been expressly provided that any result, any detection should be used only for prosecution of offences under the Road Traffic Act. So, Mr Deputy Speaker, Sir, these are the four points I wanted to make on this Bill.

Thank you.

(8.06 p.m.)

**Mr Bodha:** Mr Deputy Speaker, Sir, I would really like to thank all the hon. Members who have participated in the debates. There have been many ideas which have been expressed, many concerns, there have been many clarifications requested and there has been a proper debate about all this. But as far as we are concerned, Mr Deputy Speaker, Sir, I think it is a question of method, whether we adopt a soft method or whether we are adopting a system which will give results, Mr Deputy Speaker, Sir. When we see the driving culture in Mauritius, on its own, independently of the way we drive, independently of the law, whether the law should be harsh, whether we are rushing or not and when we see the DNA, the Mauritian driving DNA, there is cause for concern and we have to make people responsible. The law cannot be soft. I understand the concerns of hon. Baloomoody, hon. Dr. Boolell and

hon. Ramful. Do we adopt a soft approach or do we really say that we mean business and we want people to change their DNA culture?

Now, when we came with this issue of drink-driving, I said we are not preventing people from drinking. *Les plaisirs de la vie, comme l'a si bien décrit, l'honorable Dr. Boolell*. We never said you cannot drink. We never said you cannot drive. We said you cannot drink and drive. That is the issue. We are not saying that you cannot be under medication. If you have to be under medication, you have to be under medication. But if the medication is an impairment on your skills and expertise to be on the road and the Police finds that there is this impairment, what does he do? You present him a prescription and the Police says: now, you are under prescription and you can go. But is not that person at risk for himself and for the others? What we are saying is that when you are under medication, please take some precautions and let yourself be driven. So, I think this issue of saying that we can still drive when we are under medication and we can still drive under alcohol, this does not stand, Mr Deputy Speaker, Sir. And we have chosen, I understand, maybe we can relax later when the education people would change their driving DNA.

Mr Deputy Speaker, Sir, last year we had 70 casualties, 70 victims on the roads and out of them, you had 23 between the age of 16 and 25, and 23 between the age of 25 and 50. This year, Mr Deputy Speaker, Sir, from 70, we have reached 50. There are 20 less casualties on the roads this year. We pray that we do not have a casualty every two and a half days. That was the rhythm last year.

Now, statistics do not mean that the whole thing has changed but it means that we should continue with the enforcement, with the education, with addressing the issue of infrastructure where you have dark spots. So, I think that the law should be there to help the Police do what the Police have to do.

Mr Deputy Speaker, Sir, these amendments have been inspired from the UK legislation, but the person, the expert who has helped us to really draft the Bill is Dr. Guyon. And he was rightly mentioned by my colleague, hon. Boissézon. He is a Forensic Medicine and Emergency Doctor and he is the Head of the Licence Training Centre of Haute-Savoie and he advises the European countries on this matter. And we had also had the recourse to all the guidelines from the United Nations Office on Drugs and Crime, Mr Deputy Speaker, Sir.

Now, as rightly mentioned, out of 151 cases of fatal road accident in 2018, 20% showed the presence of drugs and for the year 2017, it was 36%, that is, one out of three. So,



there is a problem, and we have seen, *on a vu les crimes atroces qui ont été commis sous l'effet de la drogue synthétique ces derniers temps, rien à voir avec la sécurité routière, mais on a vu qu'il y a un comportement criminel différent. Il y a un comportement criminel beaucoup plus violent, beaucoup plus virulent, M. le président.*

So, I think that we have to see the global picture. Accidents are causing Rs6 billions of casualty in terms of human losses and in terms of material damage, and it is 1.5% of GDP. Now, I am talking in terms of figures, but we know the tragedy of an accident, I have always said that. Life is never the same before and after. So, when we see what is being done, we have worked on the recommendations of the WHO and the United Nations Office on Drugs and Crime. We have used the terms of illicit drugs, synthetic drugs and therapeutic drugs.

Let me now come to the FSL Laboratory, about the training. I have been told that the FSL is accredited as per international standards for drug analysis and it is mandatory for its staff to be competent and they participate in the United Nations Office on Drugs and Crime, competency and proficiency tests for all its staff. Now, if training has to be done, we should do it. If we have to bring Dr. Guyon again and a team, we will do it. If we have to train the Police - hon. Baloomoody said we have a Police Constable who has just been recruited.

No, I think we should recommend the Commissioner of Police that they choose seasoned officers, they choose officers who are going to be able to provide for those tests, give them the proper training, Mr Deputy Speaker, Sir, and the Police will have to be able to carry out those tests in the best manner. When we came with the sobering cells, again, there was this criticism that they are going to be an abuse. But we have never heard of an abuse - except in the case of one former member - I think he is still a Member of the MMM. There was a case, but, in fact, in the end we came to find out that it was not a real case, there was a controversy about it, and that was the only thing which came in the papers. But then, as I said, we found out that it was not a matter of controversy. But, there has not been any case or complaint about the sobering cells and sobering cells are working. That is why I am saying that we have to give faith and we should believe in our Police Force, that they will have the right attitude. Of course, there can be abuses, then we should have the complaints and we should deal with the complaints, Mr Deputy Speaker, Sir.

Now, I have been told that the FSL has carried out about 30, have been able to identify as regards to synthetic drugs, a number has been presented to me. I think the hon. Member mentioned 36. The FSL has been able to identify 36 different synthetics drugs. It

means that the laboratory can do well. Now, we are setting up a system, Mr Deputy Speaker, Sir. You have the law, you have the Police and you have, at the end of the day, the whole thing is about education, about people understanding that you cannot take drugs and drive the vehicle, you cannot take alcohol and be on the road. The message is very clear, Mr Deputy Speaker, Sir, that you cannot have alcohol and you drive, you cannot take drugs and you drive. The law is implemented, how the tests are done, this is what the laws provide for, Mr Deputy Speaker, Sir. But we have a conviction, we want the DNA of the Mauritian driver to change. This can happen by law enforcement, this can happen by education. Education will take a lot of time, but we are trying to do it. The figures are showing that there is some respite. I hope this is going to continue. There was one area of the law where we had a vacuum, I had mentioned that we were working on it. We have had the guidelines from the UK legislation, from the United Nations Office on Drugs and Crime, we have had Dr. Guyon.

Now, we will work on the implementation of this system, that is, the purchase of this famous machine. There has been a problem because there was a first tender for this project, and then the first tender was cancelled on advice of the PPO, for the second tender, the project was above the estimated budget, but now, I have been told that the budget has been increased and a new tender exercise is starting to have this famous machine. I still have it here also. I mentioned that the FSL has already identified 36 different types of synthetic molecules, Mr Deputy Speaker, Sir.

So, I understand that the law can be seen as being harsh, it seems that it's a bit like a strict liability. There is no medical defense, I have been told. But what we want to do, Mr Deputy Speaker, Sir, *nous devons avoir un arsenal à la fois législatif. Il y a aussi la dimension concernant l'application sur le terrain et bien sûr l'éducation. Et j'espère de tout cœur que les efforts que nous sommes en train de mettre dans le domaine de la sécurité routière, qui reste un vrai problème de société aggravée par le problème de la drogue et notamment, la drogue synthétique, il fallait donc mettre en place un arsenal, une architecture, nous sommes en train de le faire. Et nous allons donc faire de sorte que tous les acteurs puissent participer de sorte que nous ayons les résultats.*

*Avec ces mots, M. le président, je fais la conclusion des débats. Merci beaucoup.*

*Question put and agreed to.*

*Bill read a second time and committed.*

## COMMITTEE STAGE

*(The Deputy Speaker in the Chair)*

**THE ROAD TRAFFIC (AMENDMENT) BILL**

**(No. V of 2019)**

*Clauses 1 to 6 ordered to stand part of the Bill.*

*Clause 7 (Section 123F of principal Act repealed and replaced)*

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

**Mr Bodha:** Mr Chairperson, I move for the amendment as follows -

“in clause 7, in the proposed section 123F, by deleting subclause (3) and replacing it by the following subclause –

(3) Where a person is required to provide 2 specimens of urine for a laboratory test under this section in relation to an offence committed under section 123D or 123E, he shall provide the second specimen of urine not later than one hour after the provision of the first specimen of urine”.

*Amendment agreed to*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clauses 8 to 22 ordered to stand part of the Bill.*

*Schedule*

*Motion made and question proposed: “that the Schedule stands part of the Bill.”*

**Mr Bodha:** I move that the Schedule form part of the Bill and we vote the amendment as follows -

“in the Schedule, in the proposed Twelfth Schedule, in Part 1, by deleting the following item -

Delta-9-tetrahydrocannabinol (cannabis)

and replacing it by the following item –

Delta-9-tetrahydrocannabinol (cannabis).”

*Amendment agreed to.*

*Schedule, as amended, ordered to stand part of the Bill.*

*The title and enacting clause were agreed to.*

*The Bill, as amended, was agreed to.*

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

*Third Reading*

*On motion made and seconded, the Road Traffic (Amendment) Bill (No. V of 2019) was read a third time and passed.*

**The Deputy Speaker:** I suspend the sitting for one hour.

*At 8.25 p.m., the sitting was suspended.*

*On resuming at 9.37 p.m. with the Deputy Speaker in the Chair.*

**The Deputy Speaker:** Hon. Members, the hon. Prime Minister has requested to make a statement out of turn in view of the fact that he will be travelling and will not be in Mauritius next Tuesday. Madam Speaker has, in the circumstance, agreed to the request.

Hon. Prime Minister!

**STATEMENT BY MINISTER**

**FILM REBATE SCHEME - COMPANIES - REFUND**

**The Prime Minister:** Thank you, Mr Deputy Speaker, Sir. Further to my reply to the PNQ of this morning, I wish to make the following statement to reaffirm that the figure concerning the amount refunded to film production companies under the Film Rebate Scheme for the years 2017, 2018 and 2019 to date, that I tabled, that is, Rs364,185,078.53 is the true and correct figure. That was indeed the amount actually disbursed.

The figure of more than Rs800 m. that the hon. Leader of the Opposition referred to, in fact, includes Rs500 m. which has been granted by Government as seed capital to the Film Promotion Fund that was set up and managed by the EDB.

Thank you.

*Second Reading*

**THE CURATELLE (AMENDMENT) BILL**

**(No. VI of 2019)**

*Order for Second Reading read.*

**The Attorney General, Minister of Justice, Human Rights and Institutional Reforms (Mr M. Gobin):** Mr Deputy Speaker, Sir, I move that the Curatelle (Amendment) Bill (No. VI of 2019) be read a second time.

Mr Deputy Speaker, the Government Programme 2015-2019 which is entitled “Achieving Meaningful Change”, provides at paragraph 174 as follows –

“Government will amend the Curatelle Act with a view to making further and better provision for the administration of vacant estates.”

Mr Deputy Speaker, at the outset, I wish to state that this Bill is of a technical nature and I will endeavor to explain the clauses in as simple terms as possible. However, Mr Deputy Speaker, before going to the clauses of the Bill, let me provide the House with some background information in relation to the Bill.

The Curatelle (Amendment) Bill (No. VI of 2019) seeks to cater for changes and developments that have taken place since the enactment of the Curatelle Act in 1973, more than 40 years ago, so as to make further and better provisions for the administration of vacant estates and to adapt certain of its provisions to the present time.

Mr Deputy Speaker, Members of the House will see from Hansard, way back in 1973, when the Curatelle Bill (No. X of 1973) was presented by the then Attorney-General and Minister of Justice, he had stated that the then Curatelle Bill of 1973 was in the nature of a consolidation of the existing law. The present Bill is also in the nature of a consolidation, but a consolidation of the prevailing practice in some areas and a consolidation of some other clauses, as I will explain.

I wish also to state, before I come to the clauses of the Bill, that before proceeding with the drafting of the Bill, my Office had consultations with stakeholders, including the Ministry of Finance and Economic Development as well as with the Curator of Vacant Estates. It is only after consultations were held that Government is coming with the amendments which are before the House today.

Coming to the clauses of the Bill, Mr Deputy Speaker, Sir, clause 3 seeks to amend Section 10 of the Curatelle Act. Presently, the law requires a debtor who cannot trace his creditor, to publish a notice in any two daily newspapers. It is now proposed to make such publication in any two newspapers as opposed to two daily newspapers. This proposed measure aims at ensuring increased transparency in the publication process. Not all daily newspapers have wide circulation and we are thus providing for the option of publication in

any newspaper as opposed to a daily newspaper, provided the newspaper has wide circulation.

Mr Deputy Speaker, Sir, the amendments I am proposing at Committee Stage are indeed to provide for the words 'wide circulation' which have been omitted in the (Amendment) Bill which is before the House today.

In addition, the proposed amendment aims at providing for greater flexibility in the case of publications which are made in Rodrigues as it may be difficult, as a matter of practice, to have 2 newspapers in Rodrigues of wide circulation. So, for a publication in Rodrigues thus, we are providing the words, I quote –

“as far as is practicable”

In Clause 4(a) of the Bill, we are amending Section 12(1) of the Curatelle Act to make it clear that an application under that section is to be made before a Judge in Chambers as is indeed, Mr Deputy Speaker, Sir, the case in practice. Clause 4(b) of the Bill seeks to amend Section 12(4) of the Act to provide for more clarity in terms of language in which the section has been drafted.

Clause 5 of the Bill also seeks to amend the Act by clarifying that an action pursuant to Section 13(3) is to be dealt with by a Judge in Chambers as is the case in practice.

Likewise, Clause 6(a) of the Bill seeks to repeal subsection 14(1) and replacing it by a new subsection which clarifies the drafting of that section. And further, Clause 6(b) of the Bill seeks to amend Section 14(4) by making it clear that an application for a vesting order in respect of unclaimed property under section 14(4) is to be made before a Judge in Chambers as is the case, once again, Mr Deputy Speaker, Sir, in practice.

The aim is to clarify the law, Mr Deputy Speaker, Sir, by mentioning specifically the jurisdiction of the Judge in Chambers to align with the provisions of the *Code Civil* pertaining to *La Curatelle*, *La Tutelle* and *Le Curateur aux biens vacants*. Secondly, it is also to clarify the respective jurisdiction of the Judge in Chambers as opposed to the jurisdiction of the Court. The House will note, for instance, in Section 25 of the Curatelle Act, it is the jurisdiction of the Court and the Supreme Court which is mentioned. So, therefore, the amendments brought today, once again, is to make it clear what is the jurisdiction of the Judge in Chambers as opposed to the jurisdiction of the Court.

Clause 7 of the Bill seeks to amend Section 15 of the Curatelle Act and to give the Curator the power to take possession, with the written authority of the Attorney General but without the need to comply with any other formality, any property which forms part of a vacant estate and which does not exceed Rs100,000 in value. Presently, the Curator can exercise this power only in relation to properties not exceeding Rs1,000. This clause, therefore, Mr Deputy Speaker, Sir, is to bring the law in line with the realities of the day.

Clause 8 of the Bill is an amendment which clarifies the current Section 17. Presently, Section 17 of the Act provides, I quote-

“A vesting order shall remain in force until a divesting order is made or until the Curator has given up the vacant estate in Accordance with this Act.”

The proposed amendment seeks to delete the words “has given up the vacant estate” to replace them by the words “has handed over all the properties vested in him” and this amendment will provide a wording which is consonant with the statutory duties of the Curator of Vacant Estates under the Curatelle Act.

In relation to the proposed amendment to Section 18(3) of the Curatelle Act, presently, the law provides that where a claim is made against a vacant estate and the Curator is satisfied that the claim is valid and that the estate has adequate assets, the Curator may settle the claim. In the proposed amendments, Clause 9(a) of the Bill clarifies the fact that the “estate” referred to in Section 18(3) of the Curatelle Act is a vacant estate and 9(b) of the Bill gives legal recognition to the long-standing practice of the Curator settling valid claims against any vacant estate having adequate assets with the approval of the Attorney General.

In relation to Clause 10 of the Bill, it is important to highlight that at present, the immunity given to the Curator applies only in respect of proceedings initiated against the Curator in his capacity as representative of an absentee. The proposed amendment seeks to amend Section 20 of the Act to provide immunity to the Curator in respect of proceedings initiated against him, as the representative of a vacant succession vested in him, and this immunity is in relation as the Act presently provides in relation to any tort committed before the date of the vesting order.

Clause 11 of the Bill seeks to amend Section 22 of the Act to give legal recognition to the long-standing practice of the Curator selling any immovable property vested in him with the approval of the Attorney General. At present, this long-standing practice is not reflected in the law as presently drafted.

The present Section 23 of the Curatelle Act provides for the mode of sale of immovable property vested in the Curator. There are two modes of sale - one for immovable property below the prescribed amount and one for the immovable property above the prescribed amount as contained in Section 23(1) and 23(2) respectively.

Under the present law, the Curator may sell immovable property below the prescribed amount by notarial deed at a price which shall not be less than the value determined by an appraiser appointed by the Attorney General. In the case of immovable property which is valued above the prescribed amount, the sale is to be, as per the current law, done in accordance with the Sale of Immovable Property Act, that is, before the Master's Court. It is proposed to amend Section 23 in Clause 12 of the Bill to provide –

- (a) for the legal recognition of the now current practice of the appraisal of the value of an immovable property, prior to its sale, being carried out by the Director of the Valuation Department as opposed to an appraiser appointed by the Attorney General, and
- (b) where the value of the immovable property vested in the Curator, as determined by the Director of the Valuation Department, exceeds the prescribed amount, there are two options –
  - (a) the Curator may, by notarial deed, sell that property at a price which shall not be less than a value determined by the Director of the Valuation Department, and
  - (b) in case the Curator has not been able to sell that property by notarial deed, the Curator may then sell that property in accordance with Sections 125 to 128 of the Sale of Immovable Property Act.

The House will appreciate that this new method will fetch a better price for those properties. Furthermore, where the Curator proposes to sell property by notarial deed, he shall give public notice of the sale in two newspapers having wide circulation and he shall exercise such power in the best interests of the vacant estate. Amendments which I will move for at Committee Stage have already been circulated, Mr Deputy Speaker, to include the words 'having wide circulation' after the words two newspapers.

Clause 13 of the Bill seeks to amend section 24 of the Curatelle Act by adding a new subsection (2) which will provide, for cases where property is to be rented, that the rental value of a lease shall not be less than the value determined by the Director of the Valuation



Department. This amendment will ensure that the best interests of the vacant estate are taken care of.

Clause 14 of the Bill seeks to amend section 26 of the Curatelle Act to give legal recognition once again to the long-standing practice of the Curator referring to arbitration any claim to which he is a party, concerning any claim, debt or right with the approval of the Attorney General. This amendment to subsection (1) gives effect once again to a long-standing practice. Furthermore, the amendment to subsection (2) will provide that the homologation is done before a Judge in Chambers. The amendment to section 26(3) to delete the word “the estate” and to replace them by the words “that estate” are meant to bring clarity to the section.

In Clause 15(a) of the Bill, amendment is brought to section 28(2) of the Curatelle Act by providing that the application before the “Judge” is an application, Mr Deputy Speaker, before a “Judge in Chambers” as reflected in current practice before our courts. Clause 15(b) of the Bill seeks to amend section 28 of the Act to increase the maximum fine and term of imprisonment for the offence of failing to furnish a summary statement of the administration of a succession to the Curator upon a Judge’s Order to that effect and the fine is being increased from Rs2,000 to Rs100,000 and the term of imprisonment is being increased from six months to one year respectively.

Mr Deputy Speaker, at present, the Curator of Vacant Estates exercises the discretion to deliver any property not exceeding Rs500 which a minor or interdicted person is entitled to recover from him, to the legal administrator or guardian of that minor or interdicted person without the need to take an inscription of legal mortgage or to comply with any other formality. Clause 17 of the Bill increases the maximum amount which is presently Rs500 to Rs10,000 to reflect the realities of the day.

Clause 18 of the Bill, once again, displaces the responsibility from appointing a valuer from the Attorney General and confers that to the Director of the Valuation Department.

Clause 19 of the Bill seeks to amend sections 37(2) and (3) of the Act by making it clear, once again, that reference to a Judge means reference to a Judge in Chambers.

Clause 20 of the Bill seeks to amend section 37A subsection (3) to provide that the Court must take cognizance of the stand of the Curator before granting an application pursuant to section 37A subsection (2) of the Act. At present, there is no requirement clearly

set out in our law which provides that the Court must take cognizance of the stand of the Curator before granting an application made under that section.

At present, section 38 of the Act provides, I quote –

“Where the Curator has been vested with immovable property of 50 acres or more, he shall give notice of the fact to the Conservator of forests.”

Clause 21 of the Bill now seeks to impose this duty on the Curator to notify the Conservator when he has been vested with 42,208 m<sup>2</sup> or more of immovable property.

Clause 22 of the Bill increases the prescribed amount provided for in the Curatelle (Prescribed Amount) Regulations 1989, the value is presently at R1 m. and it is being increased to Rs1,500,000 and this value demarcates whether a property is sold by the Curator at a price which is not less than that determined by the Director of Valuation Department.

Mr Deputy Speaker, once again this Bill is of a technical nature. I have endeavoured to explain the clauses in as simple language as possible. I do not believe there is any controversy on this Bill and I now commend the Bill to the House.

**The Deputy Speaker:** Hon. Uteem!

(09.57 p.m.)

**Mr R. Uteem (First Member for Port Louis South & Port Louis Central):** Thank you, Mr Deputy Speaker, Sir. Preparing for this Bill, I went and had a look at Hansard to see what was said when the Curatelle Act was enacted in 1973 and, to my surprise, there was only four interveners less than one page. Then it was amended in 1975 again, three interveners, one page and then it was amended again in 1989, one and a half page. And today also, on the list of interveners, there are only four people and the hon. Attorney General tells us it's a very technical Bill, which it is, but we should not forget that we are dealing with the very important institution, the Curator of Vacant Estates.

Now, who is a Curator? The Curator is a civil servant which falls under the administrative responsibility of the Attorney General. What does he do? He applies to the court to have vacant estates vested into him. What are vacant estates? There are three types of vacant estates –

- (i) if someone dies in the estate without having any heirs and leaves property in Mauritius, this is a vacant succession;

- (ii) if there is the same type of vacant estate, unclaimed property, this is where the owner of any property in Mauritius cannot be ascertained. We just had reference to that two weeks ago when we were discussing the amendment to the Building Act. If there is today, a property which is left abandoned, procedures will have to be taken to have it vested in the Curator, and then
- (iii) the third type of vacant estate is absentees where someone is not in Mauritius. He has property in Mauritius but has not left anyone with authority to deal with that property.

In these cases, what the curator does? He goes to court and gets a vesting Order but before going to court, he needs to swear an affidavit and show that he has done all the necessary diligence to try to ascertain the missing person.

Today, coming to this House, I was expecting the hon. Attorney General to tell me figures on how well this Curator is performing; what is the amount of vacant estates under his administration; whether he believes that the office is properly staffed. For example, in last year's estimate, we had made provision for the appointment of a Deputy Curator of Vacant Estates and this post has still not been filled.

So, I am a bit disappointed because I wanted reassurance from the Attorney General telling me that the system, as it is, is working perfectly well. In my humble opinion, Mr Deputy Speaker, Sir, the system is not working well. I know it from personal experience, a few years ago, there is a section under the Companies Act, section 315 which tells you whenever a company is removed from the Register of Companies, the money is vested into the Curator of Vacant Estates.

So, there was a case - I had personal knowledge - where a company had been removed from the register and yet went on to dispose of assets, assets which ought to belong to the Curator of Vacant Estates. So, I wrote officially to the Curator of Vacant Estates and informed him about this situation. He wrote back and said: 'I do not know anything about this, I cannot do anything about it'. Two years ago, the law was amended. Now, anyone who is aggrieved, an interest party goes to Court and apply for vesting order.

I know, as a matter of fact, that the Curator of Vacant Estates office is not working as it should be. And the way the law is drafted today, the Curator before he does anything he needs to get the consent of the Attorney General. Before he leases any property, before he decides to dispose of assets, anything he has to do, he has to go to the Attorney General. Yet,

we are talking about a public officer dealing with property which belongs to the State and each time having to get the permission of a political appointee. So, I am expecting, in this proposed amendment, in this Bill, the Attorney General to explain whether the system is working. Instead of this, the Bill before us is amending the law to give even more powers to the Attorney General. There were two instances where the Curator of Vacant Estates did not need the authorisation of the Attorney General. He could dispose of assets, immovable assets, without the consent of the hon. Attorney General, and he could also refer cases for arbitration and settle cases, judgement without going through the Attorney General's Office.

Now, these two clauses are being amended so that even to sell any immovable property and before settling any case, the Curator of Vacant Estates needs the consent of the Attorney General. Now, this is consistent with the law as it is because clearly, as the law is correctly worded, the Office of Curator of Vacant Estates has to always refer to the Attorney General. But, my point was: in 1973, the Act was amended, so more than 45 years later, is not it time for us to have a full-fledged Curator of Vacant Estates as the Statutory Body with all the powers to acquire property, to administer property, to dispose of property without any political intervention? I not imputing any motives on the current bearer of the Attorney General's Office, but at the end of the day, the Attorney General is the partition and there may be situations of conflict if you require the consent of a politician before you dispose an asset which belongs to the State.

As the law currently stands, Mr Deputy Speaker, Sir, the safeguard is that you need to have consent of Court. Today, the power of the Curator of Vacant Estates is very relevant because increasingly, Mauritians are migrating. There is an increase in number of children who are studying abroad and who do not come back to Mauritius. So, when their parents passed away, very often there are absentees, they are not in the country. There may be immovable property in Mauritius, but they are not in Mauritius. So, for example, in the case of the Building Act which is amended, if you just put a notice affixed to that property, and if no one claims it, the Curator of Vacant Estates will come and take possession of that property. But, if you are in England, if you are living in Canada or anywhere else, you are not aware of what is going on in Mauritius. So, there is a danger here that the Curator of Vacant Estates can come and take possession of these vacant Estates. That is why you need to go to Court and before going to Court, you need to satisfy the Court that you have done diligent search. Now, whatever that means is a different matter. We have to show diligent search. So, that was the protection. But, there is one instance where you do not need Court approval,

where you could actually have the property vested in you and that was under section 15 of the Curatelle Act –

“(...) the Curator may, without a vesting order or compliance with any other formality, but with the written authority of the Attorney-General, take possession of any property which is comprised in a vacant estate and which does not exceed 1,000 rupees in value (...)”

Now, Rs1,000 is a very small figure, so, in practice it did not matter because for all major property you would have gone to Court.

Now, in this Bill, we are proposing to amend this section so that for property worth Rs100,000 and less, the Curator of Vacant Estates does not need a vesting order, there is a need to go to Court to take possession of the property. Now, Rs100,000 today is a lot a money. You can get a car in Rs100,000, you can get a used car, you can get computers, you can get valuable things for Rs100,000. This Curator of Vacant Estates now will be able to have all these properties vested into him without the protection of the co-process, without having to show it has exercised all diligence to try to ascertain where the missing people are. So, on this front, Mr Deputy Speaker, Sir, I would ask the hon. Attorney General to reconsider the figure of Rs100,000 and if that could be brought down to a more reasonable figure. I totally agree that Rs1,000 is too low, but maybe Rs25,000 would be the right balance in the circumstances.

Mr Deputy Speaker, Sir, the other amendment is to section 10 of the Curatelle Act. As the hon. Attorney General rightly explained, previously, you needed to have a publication in two daily newspapers. When the Bill was circulated, instead of two daily newspapers there were simply two newspapers. That reminded me of a case that we studied when we were students where there was a Chinese gentleman who had to make publication. So, what he did to ensure that no one will know about it, he went and published the notice in a daily newspaper of Chinese. It was only in Chinese. He was compliant because it was a daily newspaper, but it was in Chinese. So, most of the people would not know about it. Now, I am glad that the Attorney General has circulated amendments because this is what I was going to propose - that he does - that we add the word ‘of wide circulation’. Because at least wide circulation or even wide general circulation, because not wide circulation in one particular community, wide circulation amongst all Mauritians.

Otherwise, Mr Deputy Speaker, Sir, we are agreeable with the other amendments to the Curatelle Act, especially the amendment which would require the valuation to be carried out now by the Director of Valuation which, I think, will be a more transparent and objective test than previously, because previously it was the Attorney General who would approve the valuer.

Thank you.

**The Deputy Speaker:** Hon. Mrs Jeewa-Daureeawoo!

(10.09 p.m.)

**The Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare (Mrs F. Jeewa-Daureeawoo):** Thank you, Mr Deputy Speaker, Sir. Allow me, first of all, to thank the Attorney General for bringing the Curatelle (Amendment) Bill in Parliament tonight. Well, I will say a long-overdue Bill indeed.

To reply to hon. Uteem, as far as I know, the authorisation and consent of the Attorney General has always been sought as a manner of long-standing practice and this practice exists for more than 30 years. As an Attorney, I have had cases where we have applied for vacant estate procedures. So, the consent and authorisation of the Attorney General has always been sought. Well, on this side of the House, we welcome and commend the introduction of the Curatelle (Amendment) Bill in the National Assembly tonight. The Bill is proposing to bring some amendments to the existing Curatelle Act which dates back to 1973, as has been pointed out by the Attorney General.

Well, the current amendments are made to revise the existing provisions of the Curatelle Act 1973 with a view aligning them with the economic realities of the present time. The Bill, Mr Deputy Speaker, Sir, is in line with the Government Programme 2015-2019 which stipulates at paragraph 174, I quote –

“Government will amend the Curatelle Act with a view to making further and better provision for the administration of vacant estates.”

So, this is what we are doing tonight, implementing one of the measures announced in the Government Programme. Now, first and foremost, the Bill is conferring the right denomination on the forum and jurisdiction responsible for granting, vesting orders of vacant estates in Mauritius. You will recall that pursuant to the Courts Act 1945 and the Supreme

Court (Judge in Chambers) Rules 2002, applications to be led into possession of the end administered property and rights of a party diseased or absent *envoi en possession* should be finally disposed of by a Judge in Chambers.

The Curatelle Act 1973 as it stands now, unfortunately, leads to confusion as the Judge is cited as having jurisdiction in such matters. A Judge is necessarily a Judge of the Supreme Court of Mauritius but the jurisdiction being seized is that of a Judge sitting in Chambers. Clauses 4, 5, 6, 15, 16 and 19 of the Bill rightly propose to replace the word ‘a Judge’ as actually defined in the Curatelle Act 1973 by ‘the Judge in Chambers’, which is the appropriate jurisdiction provided under the Courts Act 1945 and the Supreme Court (Judge in Chambers) Rules 2002. Well, this, Mr Deputy Speaker, Sir, indeed, I must say, brings clarity and certainty to the law.

Clause 7 of the Bill is amending the existing section 15 of the Curatelle Act 1973 to bring it in line with the economic realities of the day. Section 15 of the existing Curatelle Act 1973 provides that the Curator of the Vacant Estates may for the time being without a vesting order and any other formality, but with the written authorisation of the Attorney General take possession of any property not exceeding Rs1,000 in value found in a vacant estate.

The House will agree that in light of today’s economic context, this value of Rs1,000 is nominal and too minimal to attract the intervention of the Curator of Vacant Estates. This is why clause 7 of the present Bill is now increasing the value of the property that can be taken in possession by Curator of Vacant Estates to a more reasonable sum of not exceeding Rs100,000.

Clause 9 of the Bill refers to the long-standing practice of the Curator where he has the power under section 18(3) of the Curatelle Act 1973 in relation to a claim made against a vacant estate. Where the curator is satisfied that the claim is valid and that the vacant estate has adequate assets, the Curator may settle the claim. The Bill is now imposing on the Curator the condition of seeking the prior approval of the Attorney General before settling such a claim.

This further amendment to the Act will only ensure consistency in the application and also execution of the provisions of the Bill. And, as I have said earlier, Mr Deputy Speaker, Sir, this is the practice, the authorisation and consent of the Attorney General has always been sought during the past 30 years.

There is also clause 11 of the Bill which equally gives legal recognition to a long-standing practice of the Curator under Section 22 of the Curatelle Act 1973. That provision enables the Curator to sell immovable property vested in him. The amendment proposed under clause 11 of the Bill adds the condition of obtaining the approval of the Attorney General before the sale of any such immovable property vested in the curator. This measure provides a further degree of responsibility and security in the transactions and disposes of immovable properties forming part of the vacant estate.

Clause 10 of the Bill is also proposing to provide additional protection and immunity to the Curator during the discharge of his functions in good faith.

Today, section 23 of the Curatelle Act 1973 provides for immunity given to the Curator only in respect of proceedings initiated against the Curator in his capacity as representative of an absentee. The proposed amendment is extending this immunity and protection to situations where proceedings are initiated against the Curator in his capacity as representative of a vacant succession as well. So, no proceedings shall, therefore, be instituted against the Curator in both his capacity of representative of an absentee and a vacant succession in relation to any tort committed before the date of the vesting order. This additional protection and immunity will surely allow the Curator to discharge his function and duties without any fear and in all good faith under the Act. As it is, there is no reason why the Curator should be afforded immunity only in situation concerning absentees.

The object of clause 12 of the Bill is to facilitate the mode of sale of immovable property by the Curator. Under section 23 of the Curatelle Act, the current law provides that the value of any immovable property vested in the Curator has to be determined by an appraiser appointed by the Attorney General before the sale. The Curatelle Act, however, does not give any indication as to the factors to be considered nor the mode of appointment to be used by the Attorney General in the appointment of an appraiser. Clause 12 of the Bill clarifies the matter by removing this power and discretion of the Attorney General. Before the sale, the value of the immovable property will now be assessed and appraised by the Director of the Valuation Department.

The Valuation Department operates under the aegis of the Ministry of Finance and Economic Development and provides expert professional services in valuation and appraisal in relation to real estates. This will lead, I must say, to a more effective use of the available



resources and will bring once again consistency in the valuation process. This will ensure fairness in all circumstances.

Clause 15 of the Bill is aimed at toughening the criminal sanction provided by section 28 of the Curatelle Act. The Bill is proposing to increase the maximum fine and term of imprisonment for the offence of failing to furnish a summary statement of the administration of a succession to the Curator upon the Order of the Judge in Chambers to that effect. The maximum fine is being increased from Rs2,000 to Rs100,000 and the sentence from six months to one year.

So, increase in the sentence will send a signal to people that failure to abide by the time limit fixed by the Judge in Chambers for the furnishing of the relevant information sought amounts to a serious offence. This will deter people from contravening the Order of the Judge and will enable the Curator to obtain the summary statement sought on a timely basis.

Clause 17 of the Bill is also proposing to amend section 30 of the Curatelle Act 1973 to bring it in line with today's modern economic realities. At present, the Curator exercises the discretion to deliver any property not exceeding Rs500, which a minor or an interdicted person is entitled to recover from him to the legal administrator or guardian of that minor without the need to take an inscription of legal mortgage under the Civil Code. This amount of Rs500 in the law is too minimal in 2019, so the Bill is increasing this amount to a more reasonable amount to Rs10,000.

In conclusion, Mr Deputy Speaker, Sir, on this side of the House, we believe that the proposed amendments to the Curatelle Act 1973 will align our present legislation with the economic realities of our country and also improve the administration of vacant states in Mauritius.

Thank you.

**The Deputy Speaker:** Hon. Rutnah!

(10.22 p.m.)

**Mr S. Rutnah (Third Member for Piton & Rivière du Rempart):** Thank you, Mr Deputy Speaker, Sir. Mr Deputy Speaker, Sir, although we are technically amending about 19 sections of the Bill, it is not that difficult to understand what is going on in relation to the changes. The law is not designed to be static; the law has to be dynamic. And prior to 1973,

the law in relation to Curatelle was to be found in a number of ordinances and we have got, for example, the Curatelle amended ordinance of 1942, and prior to that, other ordinances, Curatelle amended ordinance of 1964. Thereafter, we had the Curatelle Act 1973, and the 1973 Act, as rightly pointed out by my friend hon. Uteem, that it has been amended on two occasions, one in 1975 and the second time in 1989. I adopt most of the things said by my friends who have spoken on this side of the House and I also adopt partly, in relation to the introductory remarks that hon. Uteem has made, save to say that there a few things which I don't agree with hon. Uteem.

Mr Deputy Speaker, Sir, if we look at the debates of the 1973 legislation, most of the worries that had been raised by my friend hon. Uteem will be answered. At the time in 1973, the then Attorney General and Minister of Justice, one Mr J.P. Hein presented the Curatelle. At that time, there were two main concerns that were expressed in the House. The first was in relation to prescription and the second was in relation to the power that was given to the Attorney General. So, at the time, the concern in relation to prescription was put in this way, the period of prescription which was of 20 years in all cases was of 30 years for absentees. This has been uniformed, from 30 years for absentees, 20 years. And because of the integration of the Curatelle Office with the Attorney General's Office, the powers of the Accountant General in relation to administration of vacant estates are transferred to the former, that is, the powers of the Accountant General were transferred to the Attorney General. And quite rightly, the then Leader of the Opposition, one Mr M. Lesage took issue and he asked questions. In relation to prescription, he said –

*«Le titre même de propriété est la prescription. Sans prescription, pas de propriété. Nous aimerions savoir si cette période de 20 ans est pour aider le gouvernement à entrer dans des dead men shoes. Quelle est la situation actuelle et quel est le changement envisagé ? »*

So, this is the first question he put in relation to the prescription issue. Then, he put a second point –

*« Si on peut exprimer ainsi en quoi l'administration est facilitée par les transferts du pouvoir du comptable général à l'Attorney General quand on sait qu'il s'agit de l'administration des transactions financières. Je crois que le comptable général est la personne idéale »*

So, these were over the two questions raised then by the Leader of Opposition. During the course of this debate, Mr Guy Ollivry took part and literally raised similar concern, but the answer given by the then Attorney General is very telling. And this answers my hon. friend's Uteem concern about absentees, that is, those who have gone to study abroad and have been there for a number of years. And this is how the reply was made –

*« Si quelqu'un au bout de 20 ans n'a pas trouvé qu'il avait quelques biens avec le curateur, il ne trouvera jamais. D'ailleurs, je dois préciser ici que nous allons faire publier une liste de tous les biens qui sont maintenant en curatelle. »*

This was the answer given by the then Attorney General. So, if for 20 years, you have not found out that you have got state, you have got property vested with the Curator, then when would you know? When is your dream or your deep sleep break to come to know the reality of your own property? So, 20 years is a long time. And relation to the second point about the transfer of the power from the Accountant General to the Attorney General, this is what was said –

*« Le second point était pourquoi l'Accountant General à l'Attorney General. Le fait c'est que la loi existe déjà actuellement, que c'est sous les ordres de l'Attorney General mais autrefois il fallait que l'Attorney General réfère le cas à l'Accountant General que cela revienne à lui. C'est simplement pour raccourcir la procédure. »*

And what is being done today is basically keeping in line with the legal realities that exist insofar as the Institution of Curatelle is concerned. In 1989, the concern was in relation to the value and the valuation of the property. So, the then Minister of Finance presented the amendment and at some point in time, although very small intervention, two pages, he said this –

“As the law is at present the Curator can, after valuation of the property, sell it with the approval of the Attorney General by notarial deed if the property is not worth more than Rs6,000. If the property is worth more than Rs6,000 the property must be sold by public auction before the Masters Court.”

So, in 1975, it was thought that Rs6,000 is nothing and it was then finally justified that there are at present very few plots of land in a town which are worth less than Rs6000. I would submit to the House that a figure of Rs25,000 would be a more realistic figure in the present circumstances.

So, again this is a classic example of how the law has changed in order to keep abreast with the legal realities. And then, in 1989, the Rs25,000 appeared not to be realistic and, in 1989, then the valuation to be done by way of regulations. So, this is a bit of historical background and I am not going to repeat everything that has already been said. As I said, I adopt everything that has been said. With regard to whether this office is functioning properly - the question raised by hon. Uteem - if we look at case law dating back from 1973 up to now, we can see that it is an institution that is working. When we see the judgements, when we see the powers given to the Curator, we see that the institution is working properly and the only difference was and that difference today has been dealt with, there is this concept in the previous law that the mention of the Court, but not the Judge in Chambers. In fact, as a matter of practice, as hon. Mrs Fazila Jeewa-Daureeawoo, Vice-Prime Minister put it that under the Courts Act and under the Supreme Court rule, all applications normally go to the Judge in Chambers. So, the Judge in Chambers seizes jurisdiction of all applications and if there is an appeal, of course, it goes to the appellate jurisdiction of the Supreme Court.

So, this practice that existed has now been codified in this current legislation. Insofar as the valuation is concerned, the valuation going to the Valuation Department is evidence to suggest that this Government is doing everything in line with principles of good governance, transparency, independence so that when the Valuation Office acts independently for the purpose of valuation, there is no interference by the hon. Attorney General. So, at the end of the day, Mr Deputy Speaker, Sir, what is happening is simply a codification of the practice of the Office of Curator which normally was involved in.

On this note, I thank you very much for your attention.

(10.33 p.m.)

**Mr Gobin:** Mr Deputy Speaker, I also want to reassure, not only my learned friend hon. Uteem but also all Members of the House and the public at large, that the system is functioning according to law and to my satisfaction. I say this for a number of reasons. I did not want in my speech to start by giving a history of who the Curator is and what he does, but I will have, at this stage, to say to reassure everybody that one can simply go to the website of my Office [attorneygeneral.govmu.org](http://attorneygeneral.govmu.org) to see what is the role of the Curator of vacant estates. *C'est un fonctionnaire de l'État.* He administers, he doesn't prescribe, he doesn't take property to be his own, he administers vacant estates, vacant successions, unclaimed property or property of absentees. He does so by virtue of a law called the Curatelle Act. He is vested

with property by a vesting order and he can be divested of property by way of a divesting order. He doesn't become the owner of those properties. He administers in the interest of the estate. This is why we have amended the law, to make sure that the interests of the estate are preserved, for example, when an estate is to be rented out or sold, it is a question of valuation and it cannot be a valuer appointed by me. It has to be the Director of the Valuation Department. I also reassure the House that in the exercise of his functions, the Curator operates naturally under the supervision of the Judges of the Supreme Court. As we have seen in the law, all these orders are made by a Judge.

Furthermore, there is this provision in the Act which is already there since more than 40 years, in Section 8 of the act. That the accounts which are kept by the Curator are at all times open to examination and audit by the Director of Audit. He is therefore under scrutiny of a number of other institutions and not only under my supervision and the supervision of the Attorney General is not new. That general principle is already contained in Section 4 of the law as it is and it has been so for more than 40 years in Section 4 where it reads –

“The Curator shall, in accordance with such directions as the Attorney General may give, administer all vacant estates and exercise all the powers vested in him as he thinks best in the interest of the persons entitled to the estates.”

And I have said it a number of times, we are putting it in the law now to make it clear. To make what clear? To make clear that the practice that has been going for the past 40 years, should be reflected in the law! The records at my Office, Mr Deputy Speaker, Sir, will show that all the Attorney Generals who were in office before me for the past 30 years and more, in fact, when you walk in my Office, Mr Deputy Speaker, Sir, you will see a list of all those Attorney Generals. They have all given their approval in writing in the Curator of Vacant Estates to sell, to rent or to give out. As I have said, it is a long standing practice. We are writing it in the law and making it clear so that nobody can say it is not written in the law. So, for all these reasons, I, once again, reassure everyone that the system is working well.

Insofar as staffing is concerned, it is this Government that has created the post of Deputy Curator, we know it is a very lonely job for him, the Curator. So, we are giving him more resources to staff. Of course, this comes through budget, terms and conditions of employment have to be prescribed and these appointments are not advisory in nature. They are not appointed by me or by the Prime Minister, they are appointed by a Service

Commission, so there is a long process to go through for appointment and all this will come in due time.

There is also the report of the Director of Audit on the Curator who administers a Curatelle Fund and that is also prescribed by way of a regulation under the Finance and Audit Act. So, for all these reasons put together, I, once again, reiterate that the system is working well. I do not propose to say more at this stage, Mr Deputy Speaker, Sir. I, once again, therefore commend the Bill to the House.

*Question put and agreed to.*

*Bill read a second time and committed.*

### **COMMITTEE STAGE**

*(The Deputy Speaker in the Chair)*

### **THE CURATELLE (AMENDMENT) BILL**

**(No. VI of 2019)**

*Clauses 1 and 2 ordered to stand part of the Bill.*

*Clause 3 (Section 10 of principal Act amended)*

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

**Mr Gobin:** Mr Chairperson, I move in Clause 3 for amendment as per amendment circulated –

“in clause 3, by deleting the words “a notice in 2 newspapers and” and replacing them by the words “a notice in 2 newspapers having wide circulation and””

*Amendment agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clauses 4 and 5 ordered to stand part of the Bill.*

*Clause 6 (Section 14 of principal Act amended)*

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

**Mr Gobin:** Mr Chairperson, I move for amendment in Clause 6 as per the amendment circulated –

“in clause 6(a), in the proposed subsection (1), by adding, after the words “in 2 newspapers”, the words “having wide circulation””

*Amendment agreed to.*

*Clause 6, as amended, ordered to stand part of the Bill.*

*Clauses 7 to 11 ordered to stand part of the Bill.*

*Clause 12 (Section 23 of principal Act amended)*

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

**Mr Gobin:** Mr Chairperson, I move in Clause 12 for amendment as per amendment circulated –

“in clause 12(c), in the proposed new subsection (2A)(a), by inserting, after the words “notice in 2 newspapers”, the words “having wide circulation”.”

*Amendment agreed to.*

*Clause 12, as amended, ordered to stand part of the Bill.*

*Clauses 13 to 22 ordered to stand part of the Bill.*

*The title and enacting clause were agreed to.*

*The Bill, as amended, was agreed to.*

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

### *Third Reading*

*On motion made and seconded, the Curatelle (Amendment) Bill (No. VI of 2019) was read a third time and passed.*

*At this stage, Madam Speaker took the Chair.*

(10.46 p.m.)

## **MOTION**

**NON-CITIZENS (EMPLOYMENT RESTRICTION) EXEMPTIONS (AMENDMENT No. 3) REGULATIONS 2019 & NON-CITIZENS (EMPLOYMENT RESTRICTION) EXEMPTIONS (WORK PERMIT) (AMENDMENT) REGULATIONS 2019 –  
DISALLOWANCE**

**Mr A. Duval (First Member for Curepipe & Midlands):** Madam Speaker, I beg to move the motion standing in my name on the Order Paper, namely –

*“This Assembly resolves that the Non-Citizens (Employment Restriction) Exemptions (Amendment No. 3) Regulations 2019, published under Government Notice No. 68 of 2019 and the Non-Citizens (Employment Restriction) Exemptions (Work Permit) (Amendment) Regulations 2019, published under Government Notice No. 69 of 2019 and laid on the Table of the Assembly on 16 April 2019, be disallowed.”*

Madam Speaker, my motion today is with regard to the Regulations Nos. 68 and 69 of 2019 which was laid on the Table of the Assembly on the 16 of April 2019 and my motion is that these two regulations be disallowed.

Madam Speaker, Regulation No. 68 of 2019, as it was published in the Government Gazette and laid on the Table of this Assembly, is firstly, Madam Speaker, badly drafted, and I will get to that in a few minutes. What I want to say, Madam Speaker, first of all, is why is it for people to understand that I am bringing a motion of disallowance, what is the importance of a motion of disallowance, how is it we challenge, in our law, a regulation which is a subsidiary enactment, which does not come through Parliament other than being tabled and there is no debate.

It is important, Madam Speaker, that the Mauritian people understand that a Minister can through Regulations make subsidiary enactments, therefore, he can make changes to the law just by publishing in the Government Gazette a list of provisions in the Regulations and that those changes to the law do not entail a full-fledged debate in the National Assembly and often as you will see, the Gazette, which has been laid this morning in this House, often goes unnoticed.

The Interpretation, General Clauses Act at Section 20, Madam Speaker, provides that whenever a Regulation is gazetted and laid on the Table of the Assembly, a Member of Parliament has only 30 days to disallow that regulation and, therefore, there is a time limit. It is a very serious matter, and some people last week took it very lightly, and I wish to denounce that. It is a very serious matter, a matter which, in this case, concerns many, many people. Today as the Regulations, the laws are in force since the 08 March 2019, they will affect the lives of many people in the years to come. So, it’s a very serious debate, Madam Speaker.



Madam Speaker, I was saying that the Regulation is badly drafted. First of all, at Regulation No. 68, you will see on the second paragraph it refers to –

“In these regulations –

“principal regulations” means the Non-Citizens (Employment Restriction) Exemptions Regulations 1970.”

It does not exist. What exists, Madam Speaker, is the Employment Non-Citizen Restriction Exemption Regulation 1970. They have made a mistake with regard to the Regulation itself. They have put Non-Citizens in front of Employment, so the Regulations it refer to does not exist.

This is the first point why it is badly drafted. It refers to something that does not exist. Most importantly, Madam Speaker, and this is the first point I wish to make, and I do apologise for people who are listening, if it’s a legalistic point. I will get, later on, to the merit of it, the political points, but this one is a very legalistic one, Madam Speaker, because the Minister has assumed power that he does not have under the Act. If you look at paragraph 7, it reads that the schedule to the Principal Regulation is amended in part I by adding before item 2 the following new item - this is where it adds that spouses of citizens of Mauritius and until remarriage the surviving spouse of citizens of Mauritius.

But the Schedule, Madam Speaker, as you know, forms part of an Act. This is also defined in the interpretation in General Clauses Act at section 6 that the Schedule forms part of the Act. Therefore, the Schedule, Madam Speaker, forming part of the Act, for it to be able to be amended, expressed the power to make regulation to amend the Schedule has to be defined in the Act, which it has not been in this particular Act.

If you follow me, Madam Speaker, let me just explain it. In the Non-Citizens (Employment Restriction) Act, the substantive Act to which the regulations were made, there is no power given to the Minister to amend the Schedule. No power! Yet, the Schedule to the Act is, in fact, the regulations. By amending the Schedule in this Government Notice 68, he is, in fact, doing something that he does not have the power to do. Madam Speaker, if you see, for example, the changes to that particular regulation that has been made in the past, never was it mentioned that it amended the Schedule. And if you look at the case law that we have in Mauritius, for example, there is *Compagnie Sucrière de Bel Ombre vs. Moorghen*, you will see that the Court has said clearly that for one to have the power to amend the Schedule, that power must be expressly stated and it is absent in this Act. Why is it present,

for example, in the Economic Development Board Act, expressly provided under regulations that the Minister may make such regulations as he thinks fit for the purpose of this Act? And then, there is sub clause 2 –

“Any regulation made under subsection 1 may provide for the amendment of the Schedules.”

This is the same for the Dangerous Drugs Act, - very serious legislation – it is the same for the Employment Rights Act, for the Employment Relations Act, for the Land and Duties Act. For any Act you will see, Madam Speaker, the power is expressly given to amend the Schedule and that power was never given to the Minister, yet this is what he is doing in his regulation. It is a very serious point which I wish the hon. Minister will hopefully come and refute it. But, Madam Speaker, most importantly, if you look at the Guidelines for Legislative Drafting from the Attorney General’s Office which was prepared in 2011 with the assistance of Sir Victor Glover, you will see that at Chapter 4 - Subsidiary Legislation, it says, at page 35, under 5E that sub clause 2 in an Act which I have read where it defines the power to make regulation that sub clause is required where it is intended to confer power to make regulations for matters such as the amendments of the Schedule which are not powers that can be implied. This is from the drafting authority that is used by the State Law Office to draft legislations, Madam Speaker.

Therefore, Madam Speaker, I hope that the hon. Minister will come with his reply. But if my point is, in fact, the correct one, it means that this regulation now can be taken to Court by way of Judicial Review to review its legality. There has been no expressed power to amend the schedule of the Act and the Minister could not refer it to clearer terms than in his regulation he is amending the Schedule. Therefore, Madam Speaker, this is the first point and I hope that the hon. Minister will reply.

Madam Speaker, now, as you know, I have made it a point last time during the Immigration Act, which is very similar to this Act in its application in discriminating, you will see, Madam Speaker, that we are today with the regulation of the Minister, touching on the rights of persons, spouses of citizens of Mauritius who are residents, who before 08 March, before the regulation that was brought by hon. Callichurn, had the automatic right, unfettered right to work and this right has now been subject to the amendment in that Regulation no. 68 which now says that any person who was not exempted before 08 March 2019, so any person now who is getting married to a Mauritian and who is going to live in

Mauritius after 08 March 2019 will have to apply to the Minister of Labour, at his Ministry for a work permit, and it is only then that that person will be allowed to work. This is the change in the law. It is a change, Madam Speaker, we are reviewing the rights of this class of persons, spouses of Mauritian citizens who have had this right for many years, Madam Speaker, and we are doing so without any explanation. So, this is the purpose of my Motion. It is, firstly, to obtain the explanations of the Minister with regard to his motivations. But, Madam Speaker, as I said last time, any person who is married to a Mauritian has some special rights which are given to that person with marriage. That person used to have the unreserved right to enter and stay in Mauritius. This has been removed by the Immigration (Amendment) Act and that person used to have the automatic right to work in Mauritius, to engage in any trade or business or art that he so desires. This also has been taken away now.

But we should not forget that this class of person, Madam Speaker, have according to our Constitution, section 24, the right, the eligibility to become Mauritians themselves. In our Mauritius Citizenship Act, you will see, Madam Speaker, that with regard to this category of persons, people married to Mauritians, they are - and this is what it says in the Mauritius Citizenship Act - entitled to be registered as citizens. So, there is an entitlement to be registered as citizens provided they comply with the four years minimum. There is a minimum of four years for them to be eligible to stay in the matrimonial roof in Mauritius. This is the only condition they have to respect to be eligible for registration. We are not talking about naturalisation where they need to make an application based on this question of the Prime Minister. Here, we are talking about eligibility to be registered. As if one could say it is a right given to them that can only be refused to them. I have said it last time; if it is contrary to national interest, national security or public policy, it is only then you can refuse that right. This, as I said last time, is subject to the Court. You can challenge it. There are cases that I mentioned last time, where it has been challenged; the case of Esther where, therefore, there would be strict conditions for the Prime Minister to use that discretion.

So what we are doing today, Madam Speaker, it is Act 2 of the Immigration (Amendment) Act. The Immigration (Amendment) Act has sought to stop these people from entering or from residing in Mauritius by revoking their status of resident. Today, it is Act 2, now we are going to stop them if we so wish to work in Mauritius.

What does this means, Madam Speaker? It means that you are interfering with the rights as conferred by section 24 of the Constitution of these people to become citizens of Mauritius. Because it follows, Madam Speaker, that when you remove or you deny someone

the right to work, then you are *de fait* stopping that person from being able to stay four years in Mauritius unless he has the means to, from stopping that person from staying four years in Mauritius for him to be eligible to be registered as a citizen of Mauritius. So, therefore, this is what you are doing. This regulation now conflicts again with that constitutional right.

Madam Speaker, we are discriminating now from those who before 08 March were married and, therefore, exempted, and all those unlucky persons now who have got married after 08 March. Therefore, Madam Speaker, we need to have a serious explanation, a real motive to go and interfere with the rights of these people that they have enjoyed for decades, Madam Speaker, and unfortunately, this has not been done. So, I hope that the Minister will enlighten us with regard to his motives.

This is especially striking, Madam Speaker, when we remember that during the last budget, we were offering citizenship for sale, for a million USD, passport for sale, striking that for people who are married to citizens of Mauritius, we can interfere with their chances of becoming Mauritians by taking away their right to work, by denying them a right to work and, therefore, leaving them no choice than to go back to their country, if they want to make a living for themselves, if they want to have a future, a professional future and yet, on the other side, some months ago, we were announcing *en grande pompe* that we would be selling our citizenship for a million USD.

I hope the population will judge themselves with what kind of regard we have, what kind of regard we give, *le regard que nous donnons à tous les étrangers et étrangères qui sont mariés à des Mauriciens*.

Madam Speaker, if you look at the process in other countries like the UK, to become a citizen, you will see that in the UK, there is a process, of course, but once you clear through the process, then you become eligible for citizenship after five years. Similar to the process in Mauritius, but then, there, you do not have to obtain a work permit because they are intelligent enough to realise that it is conflicting that one can exclude the other and, therefore, in the UK, although you need to wait five years and go through a lot of stages to become citizens, you have the right to work when you are married.

If you look at New Zealand, it is similar. If you look at other countries, there is always a choice that is made. Singapore, for example, you have to go for a work permit and then, there is no minimum length of stay in the country to become eligible for citizenship through marriage. So, it is one or the other, Madam Speaker, it cannot be both. It is either that you

will impose the condition of four years to live in Mauritius to become citizen under the conjugal roof and you give that person free access to work or then it is restricting that person from work and you will decide if he can work, but then you do not have a minimum stay because one excludes the other, and it is the constitutional right. That is the point, Madam Speaker. This is why I think now that with this legislation, we are touching at fundamental rights without any valid excuse.

Madam Speaker, if you look at the impact that this will have on the lives of the class of people we are now restricting from working unless they obtain authorisation. The impact it will have on their lives is very simple, Madam Speaker. First of all, we need to realise that we will now have - the Minister has given himself the discretion now to authorise or refuse any person who is married to a Mauritian, who is a resident in Mauritius, to obtain work and also to revoke that authorisation whenever he so wishes, Madam Speaker.

So, we are putting these people in a state of precarity, this is what we are doing. If you look at how this law in its application will even increase that environment of precarity, you don't need to go and look further than the guidelines that have been published by the Minister himself in April 2019, you would see, Madam Speaker, having a look at the guidelines, first of all, that the Minister is treating spouses of Mauritian citizens in the same way that he is going now to treat any other foreign worker. What does it mean? It means, Madam Speaker, that, first of all, for the Minister to consider whether to authorise someone to work, he has to be satisfied that, that person possesses the skills, qualification and experience required for the job applied for.

Therefore, the Minister is going to decide for those persons, who are residents, who are going to become Mauritians down the line, he is going to decide as he does for any other foreign worker who comes to Mauritius, he is going to apply the same considerations. The question, Madam Speaker, is who is he to decide that for this special class of people? These are not any foreigners. These are not any persons who come to work for Mauritius. These are people who have married Mauritian citizens and who are going themselves one day to become Mauritian citizens. But the Minister now has given himself the right now to decide subjectively if that person is qualified enough or has enough experience or is skilled enough to justify his employment in the job he has applied for.

Then, you turn the page, you will see in the checklist that any applicant will have to enclose the contract of employment. And you will see that when you do so, there is a fine

print at the bottom which says that any information which you have given should be correct and if there is a change in any of these information, you have 15 days to notify the Ministry, and failure to do so obviously would warrant revoking your permit. It means what, Madam Speaker? That you are employed on the terms and conditions of your contract of employment. You are employed with regard to the posting that you have applied for.

So, when your work permit is given and it should be noted that it is given for a limited amount of time renewable, one year, three years, the Minister will say. But so, when now someone who before 08 March, could work wherever he wanted, in whatever capacity, now he will have, while applying for his work permit, to state precisely in what posting he will be, to state precisely the salary he will draw, to state precisely on the terms and conditions of his employment. What does it mean? You remember there is this fine print that if anything changes, he has to notify the Minister. If tomorrow his posting changes, he gets a promotion, for example, then his work permit will no longer be on the terms and conditions, he will have to go back to the Minister, he will have to have the approval of the Minister to get that promotion, then his work permit, his conditions will be amended, varied to cater for the new posting.

Do we realise that, Madam Speaker? Do we realise in practice, now, the burden that we are putting on these people? If that person wishes to move from a company to an annex, he will have, first, to obtain the approval of the Minister because the work permit is given to that person for that posting with that employer. So, that person cannot go and look for better opportunities without first ensuring that his permit will be given, will be amended. This is the guidelines of the Minister himself that has been printed in April 2019, Madam Speaker. So, therefore what it means, Madam Speaker, do we realise it? You have so many spouses of Mauritians today in different postings, with different qualifications, different experience and they are fine if they have married before the 08 of March, but for all of those who are now getting married, or who have been married after, they will have now to be the prisoners of the hon. Minister of Labour. They will have now to report their professional moves career-wise, they will need to have, first, the authorisation of the Minister of Labour to be able to accept the promotion, to be able to change posting, to be able to change employer, to be able, in fact, to do anything professionally speaking now, Madam Speaker. This is now the kind of consideration that you are giving to people who are married to Mauritians and who can themselves soon become Mauritians. So, we understand the problem, Madam Speaker, especially when you look at other information that has to be furnished, you will see that the

Minister has unlimited powers to act, authorise, refuse or revoke, but the worst days, Madam Speaker, are yet to come, in that it is going to treat those persons under the same condition where he refuses to grant a permit, that they can only appeal once to his Ministry, for himself to review his own decision about whether he was wrong in the first place to refuse. We are giving those persons the chance to appeal only once, as we are giving to any other foreign worker in Mauritius. And this is important, Madam Speaker, the level at which we are treating now spouses of Mauritian citizens, who, before this Government, had so many special rights, special considerations, the right to enter and to stay in Mauritius, to work in Mauritius, all these are gone now with the recent amendments being brought and with these regulations.

So, we need to understand, Madam Speaker, *ce n'est pas à prendre à la légère*, there will be changes brought to the livelihood of these people because who now is going to invest in the professional development of a person who is not a Mauritian, married to a Mauritian, when we do not know if that person next year will still have their work permit; when we do not know if tomorrow the hon. Minister of Labour wakes up and decides to revoke that permit; if tomorrow, this person is in competition with a good friend of the hon. Minister and he decides to revoke that permit. There is such a potential for abuse, Madam Speaker. And now, who is going to be the victim of all of this? It is going to be these persons! Who is going seriously to form these people, to even employ these people now because the hon. Minister of Labour has made them now a slave at his Ministry.

The worst, Madam Speaker, is in the terms and conditions of the work permit for non-citizens. You will see that the holder shall not be permitted to seek or accept alternative employment in Mauritius, or to engage. So, the holder shall not be permitted to engage in any trade, art or gainful occupation. Therefore, if you are married to a Mauritian, you have been lucky enough to get a work permit, you can't, if you are a musician, organise concerts or whatever and getting remunerated. This is in the latest regulation, you cannot do so. Therefore, if you have any side activities where you gain any financial interest, you cannot do so. If you have any other trade, any other side business, you cannot do so. So, if you are employed under a work permit to work for 'X', you cannot be director of another company, you cannot have any interest in another company, you cannot have anything at the end of the day. These are the terms and conditions that are in force, unless, and I hope, the Minister will reassure us that this will not apply.

Madam Speaker, we realise then the gravity of the situation. Madam Speaker, worst is yet to come. According to the latest figures 2017- 2018, with the different permits issued by the Ministry of Labour, you will see that we have given 26,068 permits to skilled workers. These are workers working in factories, construction sites, restaurants. Usually workers from Bangladesh, - those who attend some political meetings - the 26,000 of them, what do we do to regulate the activities of these 26,000 workers? We give a blank cheque to factory owners' employees, we give them a number of licences, 500 licences per factory, we tell them, go and recruit your workers in Bangladesh, I am not concerned in practice how it works, I am not concerned with the skills and qualifications. It is for you to go and recruit; the permit that I give you is for you to do as you please; if you recruit 500 workers, and tomorrow you are fed up with one of them, you send him back and you bring in another one because the permit is for you!

So, for skilled workers, Madam Speaker, we give a lot of leeway to factory owners, to employers to go and decide themselves, without having any regard to the certificate of character of that person, to his competence, as long as the private sector, the employer is satisfied that that person is good, then, he can bring that person. This is how it works, Madam Speaker. For 26,000 people, you don't judge it necessary to go and personally check their credentials, their experience to personally appose your signature to authorise their permit, you give a number of permits to the employers and they will do as they please and they will replace at will. But then, for the 654 - again these are the figures from July 2017 to June 2018 - non-residents residing as spouses of citizens of Mauritius, you go all this way, with all the conditions you are attaching to their permit, while you let 26,000 people out of your sight, totally out of your sight and in the hands of the private sector and you go and worry about 654 people. *Il y a anguille sous roche*, Madam Speaker and this is why we need to know what is the reason. And don't come and give false pretences that it is to combat drug trafficking or to combat terrorism or to combat fake marriages, because we all know whatever was given last time, was, in fact, not at all the case, and the case of Mr Hoffman is unfortunately the living example.

So, Madam Speaker, the point is that we are removing the right of people who before the passage of this hon. Minister had, for decades, enjoyed the right to work. We are treating them as low as any other foreign worker. We are now imposing such conditions on them, that they will no longer be able to freely move from jobs, while we give, as I said, for skilled workers. Madam Speaker, we don't realise, forget about these people becoming Mauritians in



four years, but a lot of people who are not yet married to their spouses already have Mauritian children. So, now it is for the Minister to take away the bread from the mouth of those children. If he refuses - if he wants to - that person a work permit, it is the Mauritian children who suffer. So, how can we justify that? You are saying no, what have you done for Hoffman? It is exactly this. You are saying no. This is what can happen, Madam Speaker, but we don't realise that so many of these persons already have children who are citizens of this country. So, then when you force that person to leave the country and to go seek employment elsewhere, the family has to split up or follow him. So, they have to abandon their rights to live in Mauritius now, and the Mauritian citizen who is the spouse, he or she has to leave as well, because they don't want the family to split up.

From a single regulation such as this, Madam Speaker, we can have a profound impact on the life of many Mauritians today and this has to be used judiciously, Madam Speaker. Unfortunately, all the signs point towards abuse. This is *atout* of the Government's ambition to completely erode the rights of people today who are married to Mauritian citizens.

Madam Speaker, the third point is, it doesn't make any sense with regard to the policy of Government as announced in the Budget Speech of Vishnu Lutchmeenaraidoo in 2015-2016 with regard to the Diaspora Scheme. It completely kills off the Diaspora Scheme. Let me just read it to you when hon. Vishnu Lutchmeenaraidoo was still among us as Minister of Finance, he said –

“Madam Speaker, many families in Mauritius have sons and daughters who have chosen to stay abroad after their studies. Many of them are highly qualified and experienced professionals. The State has invested in them and their departure constitutes a brain drain and a loss for their country and their family.”

And what did he do, Madam Speaker? He gave them a 10-year tax exemption, 10-year tax break if they qualified for the Diaspora Scheme and returned to Mauritius. The hon. Minister of Finance at that time gave them Rs2 m. of duty-free on a car, so, a certificate of duty-free and gave them thirdly, possibility to bring back all their belongings without paying any custom duties and VAT. So, therefore, he was very generous in the Diaspora Scheme, and do you know how he ended up, Madam Speaker? He said –

“If I have to sum up our appeal to the Mauritian Diaspora, in four words, I would say: Our Country Needs You.”

But, Madam Speaker, who is going to come back? So many of these Mauritians abroad are married to foreigners or are going to marry foreigners. Who is going to come back now under your Diaspora Scheme which is a flop, by the way, who is going to come back if now they will have to go, *gramatin, tanto al trap lipie minis travay?* Who is going to come back? Therefore, it does not make any sense, Madam Speaker, with regard to the policy of Government itself.

The last point, Madam Speaker, is when we are giving so much power to a Minister to impact directly on the economic livelihood of someone, we are opening the door to corruption. This is what we are doing. This is exactly what this regulation is doing. It is opening the door to corruption when we have the power to authorise someone to work, or when we have the power to deny that person the right to work or to revoke that right to work, it is an invitation to treat, Madam Speaker.

So, the question to the hon. Minister of Labour is: why is it, why on earth are we coming with this regulation? Why is it that you are changing the acquired rights of these people after so many years without any communication, why it is that we have had to wait for my motion for you to now come, the Minister, and explain yourself, why it is that then the Government has tried to do this *sous tapis*, and has tried then to limit and curtail as much as possible the debate? Why is that you are today going to have a profound impact on the rights of those people who have the right to become Mauritians, and why is it that you are giving yourself that power to decide on their future? If you could answer that, I would consider this motion for me a success and for all these people who are waiting for your answers.

Thank you.

**Mr Lepoigneur rose and seconded.**

**Madam Speaker:** Hon. Callichurn!

(11.27 p.m.)

**The Minister of Labour, Industrial Relations, Employment and Training (Mr S. Callichurn):** Madam Speaker, I would start by saying that the arguments put forward by hon. Duval simply do not hold water. I will explain. However, I would like to thank him for giving me this opportunity of explaining to the population the reason behind coming up with the amendment to the Non-Citizens (Employment Restriction) Regulations.

Madam Speaker, I need not remind the hon. Member of the power conferred upon me as Minister of Labour to make subsidiary legislation under the main Act. The PMSD was in Government. Together, we wrote the Government Programme 2015-2019 and they agreed to the proposition. We took the commitment together to introduce strong regulations to address the issue of fake marriages involving locals and foreigners, amongst other issues.

Madam Speaker, let me reply to the hon. Member regarding what he stated at the beginning of his intervention. Regarding the schedule, Madam Speaker, the Non-Citizens (Employment Restriction) Act, Section 10 Regulations provides that –

“The Minister may make regulations generally for the purposes of this Act and, without prejudice to the generality of the (...).”

Madam Speaker, the main Act itself does not contain any schedule. The schedule was introduced in 2017 when the Non-Citizens (Employment Restriction) Act (Work Permit) Regulations were proclaimed.

Madam Speaker, what the Schedule provides for is simply a form where the details of the non-citizen in respect of whom the application is being made is provided for. We have changed the Schedule to allow flexibility in the first instance, to make it more user-friendly and I will explain later the rationale behind.

Madam Speaker, the aim of the amendments that have been brought to the Non-Citizens (Employment Restriction) Exemptions (Amendment No. 3) Regulations 2019 is in no way discriminatory or punitive towards persons who are compliant with the law. This entails that the reference to this category thereafter will only be made in respect to non-citizens who are either fraudulent and who are likely to be a threat to the security and well-being of Mauritius as well as to those non-citizens who are victims of such crimes. This Government is committed towards providing the safest possible place for Mauritians, and I must stress, for non-citizens equally to work and stay.

Members of this House would conquer that, unfortunately, the occurrence of sham or bogus marriages has become a stark reality in Mauritius. Official reports increasingly bear conclusive evidence of marriages being used as the pretence for not only by-passing the country's work and immigration requirements, but also for committing transnational organised crimes such as human trafficking and it is inherent that the Government had to devise a way.

Mauritius, Madam Speaker, has always demonstrated openness to new economic opportunities and expertise through successive reforms undertaken for business facilitation. While it is the trademark of Mauritius to be welcoming foreigners, the handful of persons who misuse the system for outlaw activities have to be deterred and punished. I must here emphasise that as we go along, I will provide statistics where appropriate for sustaining my points.

As a matter of fact, exemptions from the requirements of work permits were previously granted to non-citizens where who were spouses or surviving spouses of Mauritians until remarriage under the Non-Citizens (Employment Restriction) Exemptions Regulations. It is important to note that, as at April 2019, there were 12,962 spouses registered, according to the figures of the Passport and Immigration Office. However, surprisingly, statistics available at my Ministry indicate that, for the corresponding period, only 650 non-citizens had declared their intention to work in Mauritius. Based on their marital status, they have made requests to my Ministry for a testimonial of this exemption. The probability of this relatively few number of registrants correlating with fishy activities under the keys of marriage to a Mauritian is not negligible.

Let us take another case in point, Madam Speaker. I am referring to Section 7 of Mauritius Citizenship Act where foreign spouses of a Mauritian citizen may register as a citizen of Mauritius.

Section 7 actually provides, Madam Speaker, that –

“(2) Where a non-citizen is or was married to a citizen of Mauritius, he may be registered as a citizen of Mauritius if he satisfies the Minister that he has lived with his spouse under the same conjugal roof in Mauritius for a period of not less than 4 years immediately preceding the date of his application for registration.”

Madam Speaker, it is good to note that applications received from 2015 to date in respect of those categories are 1,337 and, out of those, there were 120 applications rejected, for various reasons, I must stress. Among those reasons were - either they were sentenced or convicted for criminal offences or spouses do not live together or have left conjugal roof and finally spouses do not support applications. This explains why, Madam Speaker, we have had since 2010 only limited number of citizens that have applied for Mauritian citizenship. It is worth noting that, since 2010 to date, on average, there have been 700 marriages celebrated

between non-citizens and Mauritian nationals according to offshore figures. Out of those who have applied for citizenship, on average since 2010, there have been only 300.

So, one of the main reasons why applications are not being made - there are a number of reasons - is that spouses do not live together or have left the conjugal roof or the spouses do not support the applications. Madam Speaker, I will leave it for the Members to draw their conclusions.

During investigations carried out, it has emerged that offences such as fraud and deception predominate as a part of a chain of organised crime leading to and comprising bogus marriages. That is why the non-citizen accounts for failing to apply.

Madam Speaker, I will have to refer to one case, a very sad one actually. It is the case of one H.S. Madam Speaker, the Attorney General received a letter on 04 April 2019 and this lady wrote in that letter, if I may quote with your permission –

“I wish to congratulate the Government for bringing the amendment to the Non-Citizens (Employment Restriction) Act which will necessitate all non-citizens to obtain a work permit despite being married to a Mauritian national”

So, this lady was married to an Indian national and she states in that letter that they stayed for only 14 months together and then the husband suddenly abandoned her and her child. The reason she evoked in that letter is as follows –

“I presume that he has been using me to enter Mauritius and it is a marriage of convenience to suit his professional plans to reside and work in Mauritius”

Madam Speaker, she goes on pleading to the authorities concerned to take necessary measures against the above non-citizen in view of his conduct towards her. So, Madam Speaker, what I have mentioned earlier, we have seen in reality it is happening. Madam Speaker, actually there are in effect uncounted victims of bogus marriages both citizens of Mauritius and non-citizens. Statistics, I have mentioned earlier, could actually be a disproportionate dark figure of unreported cases. The reasons why victims are diverse, it is for fear of dishonour as the crime has occurred within the private sphere of the family, for fear of reprisal or for fear of being prosecuted because of previous partnering in such offence.

Bogus marriages and affiliated crimes have had and can have irreversible effects on victims ranging from financial difficulties to even life threats in extreme situations. This could be concerning our own citizens who have had to face the brunt of fraudulent partners.

In practice, things might be as worrisome for non-citizens who are trafficked for Labour purposes and promise marriages are used as a mean for accomplishing same. There are what has come to be known as sham marriages having direct complicity with unscrupulous recruitment agencies, corporate syndicates for this purpose.

The cross-border criminal groups, as we have seen, track impoverish persons and execute scam aim at trafficking national of different countries for labour exploitation. As we know, there are sophisticated means at their disposal to carry out their activities in a systematic and flawless manner. As the law stood, marriages were seen as a shortcut to an exempted status. As such, we can imagine how far the problem would have spread, Madam Speaker.

In fact, the extent of the problem has been and is perhaps still grossly underestimated. This situation would certainly be worsened by one dimensional assertion that those who want to sway the public opinion on an emotional account of the situation like hon. Adrien Duval just stated. Let us not be narrow minded in our analysis, otherwise we will jeopardise the very interest of those we intend to protect.

Madam Speaker, this state of affairs left no room for deliberating over options, we have to be proactive and take immediate action accordingly. A policy in line with our programme - when I say with our programme, including the PMSD - was taken to rescind the exemption in respect of such foreigners. The appropriate legal amendments as follows were made to give effect to this decision. Madam Speaker, the non-citizens (employment restriction) regulation had initially been amended on 21 and 28 March 2019 to the effect that foreigners who are married to a Mauritian citizen would have to apply for a permit should they have been working or intended to work in Mauritius.

In a spirit of dialogue, I had consultations with the representatives of the Prime Minister's office, the Passport and Immigration Office, representatives of the Economic Development Board and Business Mauritius. Further to the representation made, the amendment published on 28 March 2019, through Government Notice 55 of 2019, were repealed and have been replaced by amendment of GN68 of 2019 effective as from 15 April 2019. Accordingly, Madam Speaker, a non-citizen who was spouse of a Mauritian citizen prior to 08 March 2019 will continue to be exempted from the requirement of a permit, therefore, their rights remain unchanged. The same applies for the Mauritian diaspora and

other categories of non-citizens who were not required to apply for a permit under the Non-Citizens (Employment Restriction) Act.

With regard to those who will have to be holder of a valid permit thereon, the law has made provisions for an exemption period of three months as from the date of coming into operation of these regulations. A permit will have to be applied for and obtained under the Non-Citizens (Employment Restriction) work permit regulations 2017.

To this end, the said regulations have been amended to provide for linear procedures, I say 'linear procedures' and flexibility for applicants to apply for a permit as the circumstances would require. Simple guidelines for application for a spouse employment permit and a new application form in respect of such category of non-citizens have been drafted. They have been uploaded on the website of my Ministry and I would invite hon. Adrien Duval to have a look at them closely.

Madam Speaker, so as not to make the system too cumbersome, the criteria for an application have been kept to the strictest minimum compared to a straight forward registration procedure where the applicants will be required to produce basic identification documents along with proof of residency and marriage and their contract of employment where applicable.

I was going through the guidelines, Madam Speaker. It is as simple as providing names, copy of marriage certificate and a copy of residence permit, four passport size photographs compared to the other guidelines where we have a set of documents to be provided for a non-citizen, for example, he mentioned Bangladeshis and Indians in his intervention. So, Madam Speaker, regarding the powers he mentioned under the law, I have already used my discretion to exempt the applicants from payment of fees for this permit. This will relieve employers of any financial burden with regard to employment of such non-citizens. I understand the apprehension regarding the duration of such permits. Now that the policies and guidelines have been published, it is known that the duration will commensurate with the residence permit, that is, four years, even if that person changes employment during the course of his residence permit.

So, Madam Speaker, all the inconveniences mentioned by hon. Adrien Duval simply is not in the new regulations. In the spirit of fairness, Madam Speaker, we have also ensured that any applicant who is dissatisfied with the decision of my Ministry has the opportunity to make an appeal for redress.

Let me say this, the application itself will not be dealt by the Minister. The application will be dealt by a Committee upon satisfying the criteria and the guidelines mentioned in the regulation. Hon. Shakeel Mohamed is laughing, he knows that the work of a Committee always looks at the permit in the Ministry and we have the last hand on the decision and appeal, as I have said, they can obtain redress by the Minister.

In essence, Madam Speaker, there is no prohibitive aspect to this employment permit for any concerned applicant. It should be reassuring to one and all that the new framework will ascertain that each non-citizen in the labour market is well protected and is less vulnerable to exploitation. This can be evidenced by the fact that there has been a positive response from non-citizens who have promptly started submitting application for spouse employment permit.

To conclude, Madam Speaker, may I reaffirm that the changes brought to the law had become indispensable and the previous legal arrangements had become unsustainable and would have caused prejudice to our country in the long run. These amendments have in no way withdrawn the rights and privileges of any non-citizen married to Mauritian to work in Mauritius provided though their intention is genuine and that they do so in accordance with the legal framework. After all, we have a country where the rule of law of law prevails.

Madam Speaker, before ending, it is good that the House is aware of one thing. I had a phone conversation with the number two of EDB last week and he reassured me that the business Chambers of Commerce has welcomed the new amendments.

I thank you, Madam Speaker, and I hope that I have been able to clarify our position, the policy of the Government, and I would say that the motion of hon. Duval is unwarranted in the circumstances.

Thank you.

**Madam Speaker:** Hon. Baloomoody!

(11.53 p.m.)

**Mr V. Baloomoody (Third Member for GRNW & Port Louis West):** Thank you, Madam Speaker.

Madam Speaker, what we are talking about tonight is the right of a spouse, of a Mauritian citizen to work in this country after having married a Mauritian citizen. It is good that we go back briefly to see how the law has developed since 1970. In 1970, we had the



Employment Non-Citizen Restriction Act where section 3 says non-citizens required a work permit, all non-citizens required a work permit, then subsequently in Part I, there was an amendment in 1970, where wife and widows were exempt from the work permit, wife and widows, not husband and widower. And we had to wait for the ruling of the United Nations Human Rights Committee in the case of hon. Mrs Shirin Aumeeruddy-Cziffra and 19 other women who declared that restriction against the Convention of the UN Human Rights Commission and in 2001, we introduced the concept of spouse and surviving spouse until re-marriage.

So, as from 2001, each and every spouse of a Mauritian citizen was allowed to work. We are talking about the spouse of a Mauritian citizen, not a foreign worker. This, we have to make the difference, spouse of a Mauritian citizen and we are not talking about foreign workers.

The hon. Minister mentioned, made reference to the Government Programme of which, of course, MMM was not a party, about controlling fake marriage and today, he has been on and on and on, bogus marriage, fake marriage, *mariage blanc*, sham marriage, to come and tell us this is why they are bringing that regulation. Probably, he would have had a sort of excuse in saying that, had we not amended the Immigration Act recently, because when we amend the Immigration Act, the Immigration Act today allows the Minister - because the Immigration Act talks about the time of marriage. So, if you get a letter from that lady and that lady tells you that the husband has used her just to get to come to Mauritius, the Immigration Act allows you to send him back. Send him back, but we are debating today, you can come back because under pressure. And let me refer since March 2019, this year there have been three amendments to that employment non-citizen. There must have been pressure from the private sector for you to go back, amend again, come to a second and third amendments. So, you can always come with a fourth amendment. Go back to the original position now that you have the amendment Immigration Act, declare that gentleman you have mentioned a prohibited immigrant and undesirable person, send him back.

Why do you have to penalise all the honest mothers and fathers of Mauritian children? They cannot have a job. You are equipped now, you can do it. Because once somebody honestly wants to settle in Mauritius, leaves his country to come in Mauritius, he comes here to set a family. He or she has the right to contribute to the household, contribute to the benefit of their children who are Mauritian citizens. And if you feel that there have been – again, you talk about terrorist, about all these. We heard it when the hon. Prime Minister came with that

amendment to the Immigration Act, and when you are to deport a person, there is no mention of terrorist, there is no mention of immigration. It is, therefore, a personal grudge that he has against that gentleman. So, don't come again with all things of terrorists...

**Mr Callichurn:** Madam Speaker, on a point of order. We are debating on the Non-Citizen Restriction Exemption Regulation. At no point in time, during my intervention, I made reference to the Immigration Bill that was debated in this House. So, I would invite you to bring the hon. Member to order.

**Madam Speaker:** Hon. Minister, let me tell you, first of all, that I have given some leeway to the hon. Member to talk on the Immigration Act because one is related to the other. But the motion itself is not on the Immigration Act, but he has been given some leeway to talk on that Immigration Act.

**Mr Baloomoody:** In fact, Madam Speaker, I am making reference to the Immigration Act only because the hon. Minister mentioned the programme, which said that we are going to control bogus marriage, fake marriage, and I am telling him now, if he does not know, the amendment to the Immigration Act allows him to do that now, and to come with a fourth amendment to the regulation.

So, why if people who intend to come and settle here, who are honest, because now the hon. Prime Minister can declare somebody a prohibited immigrant, why do we have to penalise all honest wives and husbands of Mauritian citizens? Why cannot allow them, as of right, to work? And what is more important, why are not these people allowed to work, do a job of their choice, because to have a work permit, it has to be in a specific field where no labour is available. To have a work permit, he or she has to be employed by an employer who can give this specific job. So, why can't he or she have the job, practise the profession of his or her choice? He/She will be a Mauritian citizen in four years' time if he/she lives an honest life and the marriage was a real marriage, a true marriage, why should he or she be treated like a foreigner? The hon. Minister has been using statistics, saying that there were 12,000 marriages and only 600 applied for citizenship. Hon. Minister, are you aware that many foreigners, although they want to stay in Mauritius, they don't apply for citizenship, especially the Indian people, because they have to give away their Indian nationality? Simple! There are many Asian countries...

*(Interruptions)*

There are many countries where if you take the citizenship of Mauritius, you have to give away your nationality. In many countries, dual-nationality is not allowed, and in their interest they prefer to have both nationalities; the husband keeps his nationality and the wife keeps the Mauritian nationality. So, there are many countries, like South Africa, Germany etc. where you can't have dual-nationality. So, you are saying that when we look at the statistics, this means that there have been bogus marriages, fake marriages and all these, well, it does not stand. We are, in fact, discriminating, Madam Speaker. If you read the judgement in the case of Aumeeruddy-Cziffra, in fact, we are going against that ruling of the Human Rights Committee, and this can be challenged, because we are talking about genuine people who are married, a genuine marriage and they want to make a family in Mauritius. We cannot discriminate against them, and this is why we are inviting the hon. Minister - in one month, he has managed to come with three amendments – to come with a fourth amendment, do away with the last amendment to the regulation, let's go back to the original position, where the spouses of Mauritian citizens are allowed to work. Because like I say, you have the tool now, if you think that there is something bogus about that marriage, you can take action to repatriate the foreigner. So, this is why, we, on this of the House, the MMM we are going to vote for the motion, because we feel that it is a right of a wife of a Mauritian citizen or a husband of a Mauritian citizen to practise his/her job freely, to practise her profession freely and to earn a honest living, to look after his/ her family and contribute to the household.

I am done, Madam Speaker.

**Madam Speaker:** Hon. Rutnah!

(00.05 a.m.)

**Mr S. Rutnah (Third Member for Piton & Rivière du Rempart):** Thank you, Madam Speaker.

Madam Speaker, this regulation is not about discrimination, this regulation is not about restricting or imposing on a spouse of a Mauritian citizen who is honest to live here and to work here. But, as a Government, we are entitled to protect our territory, our sovereign country. The Minister...

*(Interruptions)*

Hon. Baloomoody may make comments from a sitting position, because that is a culture here.

*(Interruptions)*

I am not going to do...

*(Interruptions)*

**Madam Speaker:** Hon. Baloomoody!

*(Interruptions)*

Hon. Baloomoody, I had given you the floor and you have had the opportunity to intervene.

*(Interruptions)*

Hon. A. Duval !

*(Interruptions)*

Now, if all of you continue, then I will have to take sanctions.

**Mr Rutnah:** Madam Speaker, they are using all sorts of tactics tonight in this House to make people believe out there that this Government is discriminating against spouses, and from a sitting position, especially hon. Adrien Duval and hon. Baloomoody will keep on interrupting this debate, because they know if we argue here and keep the flow, they are going to lose the argument They will try to interrupt the debate all the time. They will not extend the courtesy that I extended to them when they were on their feet. That's a classic feature of hon. Adrien Duval and hon. Baloomoody.

Now, coming back to the Bill, the Minister...

*(Interruptions)*

**Madam Speaker:** This is unacceptable, hon. Shakeel Mohamed! Last time I give you a warning, because I am not deaf.

**Mr Rutnah:** The hon. Minister is entitled to make regulation, to protect citizens of this country. Hon. Mohamed was a Minister; he occupied the same Ministry as hon. Callichurn is now. When hon. Mohamed was Minister, the PMSD was in Government together. Hon. Mohamed equally made regulations, all be it controversial, but the PMSD never opened their mouths because then it was a question of butter, ghee as hon. Mohamed used to say.

*(Interruptions)*

And now, I see hon. Adrien Duval leaving the House. He is not interested in listening to what I have to say.

*(Interruptions)*

Now, at least, I can speak to my leader, because he leads his party, while his leader is led by his party. The Leader of the Opposition is not even here when a Member of the PMSD is presenting this Motion.

*(Interruptions)*

**Madam Speaker:** Hon. Thierry Henry!

*(Interruptions)*

No! From a sitting position, are you allowed to make comments?

*(Interruptions)*

You are not allowed to make comments. Then, either you sit here or you go outside.

**Mr Rutnah:** They have in the past made regulations together, and all Ministers who were empowered by virtue of the law to make regulations will continue to make regulations.

Hon. Baloomoody is right, the regulation is about the spouse of a citizen of Mauritius. Where does it say in the regulation that an honest mother and father of a child of this country cannot work and cannot live? But what it says is that there should be some degree of control because there are cases of abuse and where there are cases of abuse, we have to act as a responsible Government, and if we do not act, we will be tomorrow blamed by the future generation.

Madam Speaker, as I speak today, there are, at least, 46,000 foreigners working in our country. At least, 46,000, that we know who are legal, but we do not know how many illegal are staying here. And if you go to the Passport and Immigration Office in Port Louis in Sterling House, on a weekly basis, you will see illegal immigrants are being deported. Among them, there are a number of them who have married a Mauritian citizen and not complied with the regulation, with the provision of the law of this country. Some of them have got married simply to secure a job, to secure their personal future, not the future of the family. There are certain of them who have got children in this country and abandoned the children and disappeared in thin air. The issue of fake marriage, the issue of bogus marriage, yes, of course, is linked to this debate, to this argument today. And this is what we are trying to stop, the abuse that is going on and on.

Hon. Duval always refers us to Section 24 of the Constitution whenever he formulates his argument, but he never reads Section 24 for the purpose of the record so that those who are listening to us from home, so that the people of Mauritius will know what the provision of Section 24 of the Constitution says. And for the record, so that those who are listening to us know what it is all about. Section 24 deals with marriage to a citizen of Mauritius –

“Any person who, after 11 March 1968, marries another person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed and, if he is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius.”

Now, the caveat –

“Provided that the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions (...).”

The operative words now –

“(...) such exceptions or qualifications as may be prescribed in the interests of national security or public policy.”

Operative words here in this Section which hon. Adrien Duval failed to address are as follows: “exceptions or qualifications” and as a matter of “national security or public policy”.

Here, we are not very much concerned about National Security but we are concerned about the issue of Public Policy.

Madam Speaker, if we do not exercise control, if we do not control immigration, if we do not control the issue of marriage to Mauritian citizens, we are going to be facing a social explosion. And people from foreign countries know that Mauritius is a peaceful island. You travel to Mauritius; within 500 metres, you will see a Christian Church, a Mosque, a Temple and other places of worship. This demonstrates that we, as a citizen, we can coexist together and we can live together. But there are certain foreigners over whom we do not have any control, and that is why the Immigration Act was amended. The Immigration Act was not amended to victimise anyone personally. This regulation has not been made to victimise any spouse or to disallow the spouse to work. It is simply a control mechanism; it is simply to ensure that we are controlling our migration policy. But, of course, if you have lived in this country and you have complied with all the regulations, all the laws, all the procedures and you fall within those categories of people who are entitled to apply for Mauritian citizenship,

then you are allowed to do so. There is no problem with honest foreign spouses. The right to family life is guaranteed in Mauritius, the right to family life is sacrosanct, the right to family life, we can say that we are a nation where we can see it live; the number of Mauritians who are married to foreign spouses and live here, if and only you go to Grand Baie in the north, you go to the south, you go to the east, you go to the west, you go to the central, you will see Mauritians married to foreigners, and they have children and they are living here; they are working here. An honest foreign person is welcomed to our country, he/she is welcomed. He/she is entitled to put his/her skills, whether professional or otherwise, to the disposition of our country, for the advancement of our economy. But we cannot allow x, y, z to take advantage left, right and centre and to abuse our liberty, our freedom, our way of life.

We take the example of what happened in New Zealand. Because reference was made to the Immigration (Amendment) Act by hon. Baloomoody, so, in passing, I am entitled to say if New Zealand had same provision of law controlled, do you think a man acting like an animal would have gone into a Mosque and start shooting innocent citizens? Do you think that in Sri Lanka, if they would have had proper control, people would have gone and killed hundreds and hundreds of people on a day when they were supposed to be praying? As a peaceful nation, as a rainbow nation, as a nation where we coexist together, we are entitled, as a Government, to defend and protect our territory. This is what we are doing.

This regulation has nothing to do with abuse. When I hear hon. Duval repetitively talking about discrimination, about abuse, about a Mauritian citizen who is married to a foreign person, his right is curtailed, that is not right. No rights have been curtailed, but there have been some degree of control introduced because we are now living in a different era. We are not in the 70s, we are not in the 80s, we are not in the 90s, we are now beyond the year 2000 and that world has changed. The immigration landscape of our country has changed. There was a time when people were leaving our country going to Europe, now it's a time where Europeans are coming to our country and trying ways and means to work and to live here.

People from Asian countries are coming here trying to find ways and means to live and to work here. And there is no need to be repetitive about the fact that we are discriminating, the fact that we are abusing, the fact that we are acting as if as a King, as a Monarch, but that is the extreme that they can go.

Madam Speaker, the regulation is very simple. The regulation as the hon. Minister has pointed out is to ensure that those who are marrying a foreign citizen comply with the law of this country, to abide by the law that exists and to bring a certain degree of controlled immigration, good immigration practice, good marriage practice, good family life, that is what it is all about.

On this note, thank you, Madam Speaker.

**Madam Speaker:** Hon. Shakeel Mohamed!

(00.22 a.m.)

**Mr S. Mohamed (First Member for Port Louis Maritime & Port Louis East):** Madam Speaker, thank you very much for giving me the opportunity to contribute to this Motion that I think is of utmost interest, not only to us today but to a lot of people watching us; listening and trying to understand what this whole motion is about and what's this fuss about it?

But then again it is important to recall and I believe my hon. friend Duval did not go back into last week, I mean, the background as to how this motion has come to this Assembly is of utmost importance. It was supposed to be a debate that should have been heard and taken place last week. Now the stratagem that was adopted by Government to ensure that it should not be heard is quite interesting. Clearly, it was for one and all logical and understood that it should have been heard last week.

**Madam Speaker:** Hon. Shakeel Mohamed, please resume your seat. As to what happened last week I had already given my ruling on that matter and I don't think that it would be appropriate for you to come back on that.

**Mr Mohamed:** Well what happened last week I will not dwell long on it, it was very, very bad.

**Madam Speaker:** No, even if you are not dwelling long on it, I will ask you not to dwell on it at all.

**Mr Mohamed:** We have already dealt with this so I will move on. So, as I was saying following what happened last week now we come to this week. After having listened to hon. Rutnah speak and I think he has made a very dangerous speech, in actual fact very dangerous because I have taken note of some of the things that he has said and he has *ad nauseam* repeated something which I think is important for us to analyse.



He has said: there is no problem with honest foreign spouses. So, what is he trying to say here is that for all those who have to apply as from the 08 of March 2019, it is a filtration process in order to ascertain who are those who are honest and who are those who are not. So, when he says there is no problem with honest foreign spouses, he is telling us that the mechanism put in place by Government is to be able to identify those who are dishonest. But then he goes on to use the same word, it is important he says and I quote him 'to control' and it is not once that he used the word 'control', he used the word 'control' many times, control, control, control and he went on to say that Government needed to control and he went on to make me understand and all of us here understand that Government needs to control marriages.

While I was observing hon. Rutnah, it was almost like watching a Game of Checkers, everything felt very square for a minute even though his argument was not very squarely understood by myself. What he said was: we cannot allow abuse of our freedom. Understand that - he says that this regulation here was going to help in order to ensure that there is no abuse of our freedom, what exactly is this freedom that is being threatened. So, here he is trying to create this impression that our liberty is gone or our liberty is going; our liberty is being threatened. Our freedom is there going to be saved by this regulation by the hon. Minister of Labour who is at his third try for that particular regulation.

The dangerous language hon. Rutnah uses shows, in fact, Madam Speaker, what exactly is in the intention of this Government and this is where sometimes hon. Rutnah cannot hold his tongue. He comes out with the truth and he does not even control himself. What he says here: we cannot allow people to abuse our freedom and our way of life. 'Our way of life' what does he mean by that? What exactly does hon. Rutnah mean when he says that foreign spouses, if not controlled, may abuse our freedom and our way of life. This is what he said, he is a Member of Government, he is a Member of the Executive. We welcome him here and we will squarely try to make him understand that it is important that he understands what he says because what he says is dangerous.

This is the square I am referring to or the rectangles. Now, what exactly an hon. Member of Parliament belonging to Government side means when he says that he has to protect the way of life of Mauritius by ensuring that this regulation is being brought in order to protect this way of life? What exactly is the way of life? What differentiation is he trying to make? Which particular group of people is he pointing the finger to? Who exactly is he trying to pinpoint? What group or what community is he trying to pinpoint that threatens the

freedom of Mauritius and that community, according to his mind, which I don't agree with, is, in fact, dangerous to our way of life?

Those are the words of hon. Rutnah, a brother in arms of all those hon. Members sitting on the other side; a brother in arms who sits on the same benches of this Government and I presume therefore that if you sit on the same bench as hon. Rutnah you share his ideas and his ideals, the ideals of protecting your freedom, the ideals of protecting your way of life against the dangerous spouses. Therefore, you have hon. Callichurn coming forward, as the hero of the day, with this regulation, first time wrong, second time no, third time. Interesting!

I think the real intention of this Government is being hidden, I think that the real intention of pinpointing one particular group of people is the real reason why this regulation is being brought forward. That is the dark intent of this Government, but they cannot come and say it openly. They have to shroud it in hypocrisy, they have to hide it behind their dirty minds of coming up with a regulation in order to control. Why do they use the word control every time? Precisely, because they do not believe in democracy. Why do they keep on using the word control? Because they do not believe in liberty

Madam Speaker, the universal declaration of human rights is something we should know exactly what it is all about. Lawyers, most importantly, should know what it is all about. Lawyers, on both sides of the House should know what it is all about. The universal declaration of human rights that remains as relevant today in 2019 as it was on the day that it was proclaimed and adopted by the United Nations General Assembly back in 1948, this very same universal declaration of human rights that we love to refer to in Courts when we are trying to defend certain causes and talk about the freedom, liberty that we have to protect, that we have to ensure that we put our protecting arms around the freedom of liberty of individuals, we talk about the universal declaration of human rights. But it cannot be that we only refer to the universal declaration of human rights when it suits us. But when it does not suit us, we just seem to ignore the very relevant clauses of the universal declaration of human rights. This is what this Government is doing, trying to come up with a beautiful language of being the protector of liberty, the defenders of the faith, the defenders of freedom, those who are going to protect us against terrorists. Sri Lanka was referred to.

What is hon. Rutnah trying to refer to here? That dangerous spouses of Mauritians are going to come here in Mauritius and blow up our churches, our mosques, our temples. Is this what he just said? Because it is precisely what he said. How dangerous a comment on his part

trying to tell us - him, giving lessons to New Zealand, him trying to give lessons to the Prime Minister of New Zealand as to what should have been done to control immigration in New Zealand. Him, hon. Rutnah! He just went on to say that if there were proper controls in New Zealand, maybe this attack in New Zealand would not have happened. Preposterous! How preposterous could you get when you have to make a speech and to fill some time at this ungodly hour! You just do not pronounce words without understanding what you are saying of such a dangerous nature. Hon. Rutnah, the brother of all those sitting there, opposite us, your brother in arms, the one who shares your ideals, the one whom you will go to the table and upload when he made his speech just now. He said that there should have been better control in New Zealand and that is the reason why such a regulation is important and he is trying to be *le donneur de leçon* of the Prime Minister in New Zealand. He goes on to say, had there been any proper control in Sri Lanka, maybe there would have been no issues about the explosion in the church and this is what the regulation is going to protect us against. What is he telling us? That there are dangers lurking Mauritius! Is this the way they do politics, by sitting next to hon. Rutnah, uploading his speech, therefore, uploading those dangerous remarks?

Our country is not in danger. Our country has not been in danger and is not in danger, but gets into dangerous territory when you have such speeches. What is he telling the world outside? This is all being transmitted on the Internet. This is all going to be reported on the news that this regulation is coming here because we are to avoid what happened in Sri Lanka and New Zealand. How dangerous! This is what we all believe. This is what happens, Madam Speaker, when you have to justify what cannot be justified. This is what happens when you send a soldier to the front and he knows that he has lost the battle in advance. That is, hon. Rutnah, who has fallen on the battle field by his own gun because he, himself, has shot himself in the foot, painting Mauritius to the world at large to be a place where we are in danger, painting Mauritius to the world at large, to the international community that this Government has to control the immigration process because we are in danger of having our churches, mosques, temples and places of worship blown up, because the spouses who are in Mauritius, we have to find out who they are, those dangerous terrorists. And he is going to stand up and give lessons to the Prime Minister of New Zealand. Be humble and admire how great the Prime Minister of New Zealand has been and how she is admired in the world. But, no, hon. Rutnah will give lessons to her. My god!

So, when we talk about the Universal Declaration of Human Rights, - I see that hon. Rutnah is feeling hot, I understand because he has more to come - extraordinary vision and resolve of the drafters of the Universal Declaration of Human Rights, producing a document that for the first time had articulated the rights and freedoms to which every human being is equally entitled. It provides the foundation for just a decent future for all and has given people everywhere a powerful tool in the fight against oppression, impunity and affronts to human dignity. Article 16 of the Universal Declaration of Human Rights - and I say this, Madam Speaker, to my good friend, the hon. Minister of Labour - provides and I quote –

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

A family, a husband, a wife, children if there are, deserve the protection by society and the State, a family. It also provides that –

“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry, not only to marry and to found a family.”

But it goes on and goes further –

“They are entitled to equal rights as to marriage, – important - during marriage and at its dissolution.”

That is article 16. Article 23 of the same Universal Declaration of Human Rights states –

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

This is the Universal Declaration of Human Rights. Hon Rutnah says there is no discrimination. But then again, what one would not say simply because you have to show your loyalty to Government after a recording been leaked in the Press. What would not say is simply to climb back into the good books of those in power and to be able to tell them: ‘Please, listen to me! I will even forget what is in the Universal Declaration of Human Rights, I will forget what is in the Constitution, I will say what I believe to be preposterous that there is no discrimination only, because I want you to take me back into your arms, because I did not expect you to hear and to listen to what I have said about my seniors’. But then, when one tries to hold back onto power, one does fall into very, very strange places, but let us not walk there with those people, Madam Speaker.

The Constitution of Mauritius, maybe it is about time that someone puts politics aside and tries to remember what is in the Constitution. Section 3 of the Constitution of Mauritius states –

“It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms”.

Section 16 - Protection from discrimination –

“(1) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.”

Let us analyse whether when reading together Section 3 of our Constitution, together with Section 16 of our Constitution, is this regulation in anyway discriminatory in itself or in its effect? How does one see whether a law is discriminatory?

Subsection (3) states –

“(3) (...) “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste (...)”

Is this law affording different treatment to different persons? Simple question: is this law, that the hon. Minister of Labour has, according to him, made law by regulations - I will come back to that, because I do not believe this was done properly, I will share that as well - but if at all this regulation has been made what is its effect? Is it affording different treatment to different persons?

And once, we answer that question, we are then able to decide whether Section 16 has in anyway been violated together with Section 3 of the Constitution. The law, as it stands today, as provided for with this new regulation, makes it, Madam Speaker, that spouses, foreign spouses of Mauritian citizens do not require a work permit if they are in Mauritius working before 08 March 2019. They don't.

Then, hon. Rutnah's worries about controlling, protecting the freedom, the way of life is not an issue. I am trying here to simply analyse to show how my good friend, the hon. Minister of Labour, was wrong, in my humble view, to come up with such a regulation,

Government was wrong to approve such a regulation, and how hon. Rutnah was totally *à côté de la plaque* for obvious dark reasons when he made his arguments. This is what I am trying to show.

You have one category of spouses, foreign spouses who were working before 08 March 2019, who do not require a work permit, they are exempted. But, you have another category after 08 March, you need a work permit. Why, therefore, do we have two categories of foreign spouses? Why, therefore, the date of 08 March was chosen? Why do we end up in reality with two categories of foreign spouses, one requiring a work permit, the other not requiring a work permit. Is this not discriminatory in effect? Is this not affording different treatment to people, foreign spouses, based on that Section 3 of the Constitution is very clear? Section 3 of the Constitution states, and there is no doubt about that, that if at all issues have to be taken into account in order to curtail any of those freedoms, but it is subject to the respect for the rights and freedom of others, and for the public interest. What public interest? To have two categories of people, one as from 08 March 2019, now you require a work permit. What is the logical explanation that whilst before does not require one? Why give the wives before a different treatment? Why give the husbands and wives afterwards another treatment? What is the logical explanation?

There is only one logical explanation, pressure put in upon Government by the private sector, by all those hundreds and thousands of Mauritians whom the Government has tried to encourage to come to Mauritius. What was the speech? What are they trying to sell? Mauritius, the Diaspora. Come back, come to Mauritius. And just like the hon. Prime Minister always likes to say, when he meets all those laureates, telling them: 'Go to study', and then, he stands in a very solemn manner: 'Let's not forget, come back, your country needs you'. But he should put another clause there: 'Your country needs you, but do not marry a foreign spouse, because they will require a permit and we will have to decide', The Minister, not necessarily you. Most probably next election it will be another Government in power. So, the Minister will then decide who will be entitled to work in Mauritius, because even for the foreign spouse, what happened to the issues about scarcity, it won't apply? Who decides that it won't apply? The Minister of the day. Does the law say it won't apply, the issue about scarcity? What I am trying to get at here, look at the law. The fact that this person who is a foreign spouse will require a work permit. The laws says it is in the same category as everyone requiring work permit, simple. What are the guidelines that will be applied? Is there a regulation that will say that this scarcity issue will not reply?

Today, Madam Speaker, in order to apply for a work permit, you have to ensure that there are no Mauritians available in that field, and only then will a foreigner be able to get a work permit. Does the law say, does the regulation say that another category of guidelines and standards will be applied for foreign spouses who have not worked before 08 March 2019? No. The Minister tell us, 'Oh no, we will be flexible. Oh no, we will just be very relaxed about it'. He is trying to reassure everyone that he, as Minister, having the sole discretion to grant or not to grant a work permit, will be flexible. But does the law say that he has to be flexible? Does the law say that he will not base himself on the guidelines of scarcity of labour, and what sector there is scarcity, which sector there is not? The law does not say that. So, the issue, Madam Speaker, is the future of whether a person will be able to work in Mauritius as a foreign spouse or not depends on the Minister of Labour's decision, who is himself subject to the orders of Prime Minister, who is himself having to listen to what the Prime Minister says to him: 'Don't give that permit or give that permit'.

Then, the Prime Minister will have the last say. Why is it, therefore, that the spouses before the 08 of March do not fall under this? This is discriminatory! And hon. Rutnah tells you that he does not find any discrimination there. The hon. Attorney-General, who will speak after me, will obviously say the same thing: "Oh, no! I don't find anything discriminatory because I am the Attorney-General and I say so. And all those who have spoken before me do not know what they are talking about". Fair enough! Hon. Baloomoody does not know what he is talking about, I don't know what I am talking about, hon. Adrien Duval also does not know what he is talking about. Just because you are in Government, obviously, you know what you are talking about! This is how they are living in their own ivory tower.

Why is it, Madam Speaker, that until now, I have not heard the hon. Minister tell us how many sham marriages have there been exactly? Officially, 11 in 2017. Those are figures of Government, officially 11 in 2017. So what do we do when the Immigration Act itself, as hon. Baloomoody rightly put, even before the amendment of the hon. Prime Minister was there, it was enough for him to revoke the residency of any person who embarked upon a sham marriage. It was enough, it was there. The law was there even before the recent amendment brought to the Immigration Act; the law could have been used to oust an unwanted resident because of a sham marriage. The law already provided for it. What is the dark intent of this Government? Why is it that the hon. Minister of Labour has not been able to give us any statistics, any data? Why? Why is it that he simply says there are a lot? He

talks about the big figures, but he does not talk about precisely the number of sham marriages. Give us facts, give us data! Has there been a research carried out, a report carried out, a survey carried out in order to justify such a piece of legislation? No, there has not. There is, therefore, a dark intent and design behind this regulation. What is it? Hon. Rutnah knows about it. Hon. Rutnah knows exactly what is the dark intention and design of this Government, to protect the way of life of those whom he wants to protect. Now, the hon. Minister is of the view that he brought in a regulation and he was entitled to bring in that regulation. I have gone to the original Act of 1970, which is obtained from Parliament itself. The hon. Minister says that the Schedule does not contain the regulation. I have looked at the original Act, the Schedule is in the regulation. And what is in the schedule? The Employment (Non-Citizens) Restriction Exemption Regulations! So, therefore, the regulations which the hon. Minister has tried to amend is in fact part of the Second Schedule of the Act. It is not a regulation separate to the Act; it is part of the Act itself. It is part and parcel of the main Act of 1970. Section 10 of the Employment (Non-Citizens) Restriction Act empowers the Minister to make regulations, but does not - and I have read the Section 10 - empower the Minister to amend Schedules. I will give an example. Let us draw a parallel. I am here going to refer to extracts of legislation where the power to amend the Schedule is specifically provided for in the regulations. Regulations 40 – the Economic Development Board Act of 2017 –

“(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.”

This is in the Economic Development Board Act of 2017.

“Any regulations made under subsection (1) may provide for –

- (a) the levying of fees (...);
- (b) the administration of any Scheme (...);
- (c) the amendment of the Schedules;”

*(Interruptions)*

Yes, you are right Minister; they have done a big mistake. I have got good ears.

*(Interruptions)*

No, no! I think you have just confessed.



*(Interruptions)*

Yes. But, you can't afford to do it now, otherwise you will embarrass Government.

*(Interruptions)*

Yes, I know. Now you will be embarrassing Government. But, I have heard you. Now, be honest. You took an oath, and this is my message to the hon. Minister. He took an oath here to be a Minister and to act responsibly, and I have faith in him. If there is a mistake made, there is a mistake made, just not hide about it. Because, here, when you look at the Economic Development Board Act of 2017, it specifically provides, Madam Speaker, that in order to amend a Schedule, it is provided for in the main Act. And if it not provided for in the main Act, you have no power to amend the Schedule. Not only that! The Land and Duties Tax Act, Section 47, subsection (2) –

“Regulations made under subsection (1) may provide for the amendment of the Schedules (...).”

Income Tax Act, Section 161, it is specifically provided that you can make regulations and by regulations amend the Schedules.

The Ports Act, Section 25 –

“The Minister may, by regulations, amend the Schedule.”

The Statutory Bodies, (Accounts and Audit) Act.

“Section 10 - the Minister may make such regulations as he thinks fit and by regulations amend the Schedule.”

So, in order to amend a Schedule, you need to have, in the main Act, the power to do so. You cannot take what you don't have. You cannot do what you are not empowered to do. You cannot sign what a change in the law, that legislature has not entitled you to sign. When you go back to Section 10 of the law, it says that the Minister may make regulations generally for giving effect to the provisions of this Act, but without prejudice to the generality of the foregoing may make regulations. At no place in Section 10 is the word ‘Schedule’ mentioned and at no place in Section 10 is the Minister given the power to amend the Schedule. So, from where, Madam Speaker, does the Minister ascribe, give to himself the power to amend the Schedule? What is this regulation that he amended? He amended the regulation that is found in the Second Schedule of the Act. The Minister will say, but “In my copy - just now, he tried - I don't see it.” But one should always go to the source, the original. Now, if he does

not believe me, I can let him have my copy. In fact, it is not even mine, it is hon. Adrien Duval's copy and I thank him for that. So, if you don't mind, I will sub-lend it for a while - at no charge. And then, Madam Speaker, if he would like to have his own, simple, *s'il a encore l'abonnement* to the Supreme Court Judgements, as all barristers normally do, and it is open to the public now, he will have a copy of the Act, the original one of 1970.

The original Act of 1970, which is good law, put on the website of the Supreme Court with the authorisation of the Supreme Court also contains a Second Schedule and the Second Schedule contains the regulation that the Minister has amended.

How, therefore, can he amend a regulation without having the power to do so? What he could have done is come up with a new regulation altogether because the law allows him to come up with regulation, but the law does not allow him the power to amend an existing regulation, which is part of the Schedule. That is the difference. What this Government has done and I, in my humble view, believe that this is a sign when one's intention is dark and when the design of this Government is so dark and there is no honest intent, this is what happens, a blunder. Because this law, he has written it, signed it, without him being empowered to do so.

Madam Speaker, I have explained very clearly, according to my view, not only the Universal Declaration of Human Rights but also according to Section 3 and Section 16 why this is discriminatory. It is clear for one and all, Madam Speaker, that we are treating foreign spouses differently, those who are working before 08 March 2019 and those who are not working before 08 March 2019. This is clear for everyone to see. You cannot have two categories of spouses with two categories of impositions, two categories of laws, two categories of results. You can't have that. This is *l'abc* of discrimination.

Now, let us understand this very carefully! A foreign spouse married to a Mauritian citizen, one day may have happy news of having children, so, if it is a woman, Madam Speaker, who is the foreigner, she will bear for 9 months, she will carry a child and this child will be a Mauritian citizen. This child will see his mother or father not allowed to work without a work permit. But the same child, who is a Mauritian citizen, will have maybe a friend of his slightly older but his parents, foreign spouses married to Mauritians, will be allowed to work because they started before 08 March. Even that child, in his young mind, this young Mauritian from parents, one foreign and one Mauritian, would ask himself: why the difference? So, what this child would ask himself, the senior Members of this

Government do not see and then they come with this supposed bogus justification and what a sham here are not the marriages, it is the intent of the Government. What a sham here is what this Government has done. Supposedly coming to protect the way of life of the Mauritian population! What way of life? We have various ways of life and that is the beauty of this country. What is the beauty of this country, there is no one way of life, we are all different and this is what makes us this beautiful country.

But hon. Rutnah, who summarises the views of Government led by hon. Pravind Jugnauth that this regulation is important to come and protect our way of life, I am really disappointed by what I have heard today. Now, this motion has all its *raison d'être*. What is going to happen is very simple, we are used to it. We are going to deal with this motion in a vote and the motion is not going to succeed because we haven't got the majority but out there the people already see what exactly is the truth; out there, each and every Member of Government bears the responsibility of this regulation; out there, each and every Member of Parliament sitting here, will have to ascribe to the position adopted by hon. Rutnah. However, extreme right in his philosophy his position is. You know once upon a time who spoke like hon. Rutnah? Adolf Hitler! He spoke like that. He said it was important to protect the way of life of certain people that others required permits to circulate. Do you know who spoke like him? Those at the time when Apartheid existed, certain people were allowed to circulate freely only with permits; others were more equal than equal. And what's happening today in Palestine, certain people can only go to work in certain places when their masters allow them to work.

You see the differentiation of supposedly protecting their way of life. We have heard it before but we all know how they ended up, those who supposedly were the defenders of the way of life. We believe in freedom, we believe in people being reasonable, we believe that people should not be discriminated against, we believe in a simple thing, the provisions of our Constitution. Does it mean nothing in the face of wanting to win in the eyes of the public? Does it mean nothing just in the name of politics trying to put our ego first and the Constitution second?

The Universal Declaration of Human Rights, do we trample upon it simply because we have to show our loyalty to a philosophy that is insulting to our Constitution? So, we will lose today, but in the eyes of the public, let me say to the mover of this Motion, we have won. Let alone we, in actual fact, the people have won, the country will come out stronger because today we have seen how dangerous politicians of this country can be simply because they

want to grasp onto power by using such dangerous language like giving lessons to the Prime Minister of New Zealand and protecting our way of life. Shame!

Thank you, Madam Speaker.

**Madam Speaker:** Hon. Gobin!

(1.10 a.m.)

**The Attorney General, Minister of Justice, Human Rights and Institutional Reforms (Mr M. Gobin):** Madam Speaker, if my learned friend Mohamed is so sure about his very eloquently explained point on the Schedule and the amendment of the Schedule, then there is only one Authority to decide who has won or not. It is not his opinion whether he has won or whether the people have already decided. I would invite him to make the very same submission in a Court of Law.

*(Interruptions)*

If he is so sure about this regulation on the point of the Schedule and his original Act which he brandished, I would invite him to make the very same submission in a Court of Law.

*(Interruptions)*

Don't change the argument from *ultra vires* to one of elections. You made a legal submission in this House, go make the submission in the very same words, in fact, print the Hansard and produce it in a Court of Law and we shall see!

*(Interruptions)*

**Madam Speaker:** Hon. Shakeel Mohamed, you have spoken for more than one hour, he is not talking to you, he is making his argument and he has got the right to make his argument.

*(Interruptions)*

**Mr Gobin:** Very painful probably to hear what I have just said. Every person, I believe, when dealing with regulation or an enactment, Madam Speaker, especially a qualified lawyer, should look at what the law is, what the principle is and what is the exception before making demagogical remarks and making an abuse, once again, of your live television broadcast, Madam Speaker. What is the law? No one here has offered a submission to this House as to what the law is. What is the principle applicable under the Non-Citizens (Employment Restriction) Act? Everybody has been labouring under the impression that

these regulations as if have fallen from the sky and nobody has spoken about the Non-Citizens (Employment Restriction) Act which I think is on our statute books since 1970 and has been amended a number of times.

The principle in that law is that there is a restriction on employment for non-citizens, that principle has been there on the statute books since the existence of this Act. What is the exception to the principle of restriction on employment? The exception is provided in the regulation. A non-citizen, spouse of a Mauritian citizen, was exempted and not exempted for the pleasure of anybody or on the whims and caprices of any authority but exempted by way of a regulation, which contains a schedule in the regulation, that a spouse of citizen of Mauritius shall be included in Part I of the Schedule and they shall be therefore exempted from what, exempted from the restriction on employment. The principle is restriction on employment.

What does the new regulation provide? There is simply a cut-off date of 08 of March of this year. So, when someone pretends that it is my God-given right to work, I beg to disagree because I read the law, I do not come here to make demagogical remarks and make a show just to please a tiny few people outside. The principle once again is restriction on employment and the exemption was provided. We have done away with that exemption which was a blanket exemption. From the cut-off date of 08 March, an application has to be made for a permit. Nobody has read is a new section 4A of the new regulations. The new section 4A provides, I quote –

**“4A.** The exemption granted under regulations 3(a) and 4(a) shall apply only in respect of those non-citizens who, prior to 8 March 2019, were exempted from the provisions of section 3(1) or (3) as the case may be, of the Act”

The exemption granted, I repeat, under regulations 3(a) and 4(a) shall apply only in respect of those non-citizens who, prior to 8 March 2019, were exempted. This is the operative word, they were exempted and this begs the question, they were exempted by virtue of what? They were exempted by virtue of marriage and by virtue of the regulations, it works together. These new regulations have put in place a new regime of a permit.

Let me come to the permit. Hon. Mohamed has been talking about scarcity, what will happen in case where the non-citizen has applied for a permit in an area where the criteria of scarcity will apply. Once again, he is labouring under the impression that the permit under the non-citizen restriction and the other work permit - and he is an expert in that, I know, he has

himself been a Minister of Labour. There are two different regimes. The criteria of scarcity and whatnot, come under another set of regulations. I will not say that he has misled the House. I will invite him simply to repeat the same argument before a court of law and challenge the regulations if he is so confident that these are *ultra vires*.

We cannot come here just to make a show. We should respect this institution which we call Parliament. I think he qualifies for the rebate scheme, on the film rebate scheme. We have had to hear this kind of cinema and we are in 2019, we are in our fifth year. That must have been the most difficult part of my parliamentary life to hear such type and such level of argument. We have even heard that the Minister does not have power to make the regulations which he did because of that famous Schedule and because he does not have power to grant any exemption and it is so regrettable that we have had to hear such arguments tonight when there is this simple section in the Act and I thank Madam Speaker for authorising us to make use of our mobile phones because these allow us to retrieve legislation which are available in electronic form to those who care to read.

Yes, the Act is also available in printed format, thanks to my colleague hon. Rutnah. In section 7 of the Act, I can read the following –

**“7. Power to grant exemptions**

The Minister may prescribe that any person or class of persons shall be exempt, either unconditionally or subject to such conditions as may be prescribed, from this Act. ”

What did the Minister do in these regulations? He created a class of persons, subject to exemptions and subject to conditions. So, once again, I will invite my learned friend to repeat his argument before a court of law because he will lose the vote tonight. We can have our day in court if he so wishes.

Madam Speaker, I do not want to dwell any longer. Such type of motions are an utter waste of time in this House. We should all vote to say ‘no’ to such type of motions.

Thank you, Madam Speaker.

(01.20 a.m.)

**Mr A. Duval:** Allow me, first of all, to thank all the orators who have intervened on this motion, especially on the Opposition side, because they have remained as far as possible constructive in their criticism, trying to raise serious issues, hon. Baloomoody and Mohamed.

Madam Speaker, first of all, let me say, just to clear the record, that the regulations 68 was not the first time the hon. Minister sought to make a work permit for spouses. He did so a month before that, on 08 March with GN 55, where he wanted this to have retrospective effect, which was in itself not possible. It is only after my motion of disallowance the next day or a few days after that he revoked the regulation to come with this one. It was atrocious the one before, but this one also is unacceptable.

Madam Speaker, firstly, I am shocked that the Attorney General did not even care, first of all, to follow the debate properly and to go and see what were the points raised with regard to the schedule. I reiterate, Madam Speaker, that his office has published, in 2011, the Guidelines for Legislative Drafting which says black on white –

“For you to have the power to amend a schedule, it has to be expressly given to you by the Act.”

Hon. Mohamed has spoken about the 1970 original Act. But, one must not follow far, look at the latest version, the one that he was talking about, one will see that the schedule in the latest version. There is only one schedule and what is in the schedule is the Regulation 1970. I expected the Attorney General to come and explain why his Office has so badly drafted this regulation, even the principal regulation’s title is *à l’envers, enbas la haut*.

Why did he not instead explain that? The schedule which contains the regulation, which is amending the material part with regard to the exemption, why instead of challenging us to go to Court when anybody knows, first of all, that as a Minister, the more so, Attorney General, one should act responsibly. It can be clearly seen in the Act itself, in section 10 Regulations that the Minister has no power to amend the schedule. But, I trust my colleague, the hon. Minister of Labour, to do the right thing. He is more reasonable, he is less blinded by politics and much less arrogant, Madam Speaker. But I hope and I am confident that the hon. Minister of Labour has taken the point. He was not aware of it and I am not going to criticise him for that. What I am going to say is that the objective of this motion was, first of all, to raise your awareness. Clearly, this is *ultra vires*. Madam Speaker, the hon. Minister has no power to amend the schedule, if he wants to do so, he comes with an amendment to the main Act and he gives himself that power or he amends the schedule. This is the only way, and we maintained that, Madam Speaker.

Madam Speaker, with regard to fake marriages, I have taken note of all the points that were raised during the debate. Madam Speaker, we tend to forget about the Immigration

(Amendment) Act of 2 to 3 weeks ago and even before that, under the Civil Status Act, the Civil Status Office already has the power to investigate prior to giving clearance for a non-citizen to marry. It already has the power to try and identify fake marriages and can already resist an application to marry. That was before. But then, let us talk about the Immigration Act, the pre-amendment under section 6, the Minister could revoke the status of any resident, spouse of a Mauritian citizen. Any resident, he could revoke his status of residency if he could show - and that is the point I made last time - that it was in the national interest and that was challengeable.

Even before that, Madam Speaker, if really that was the intention, Government had all the tools to combat fake marriages. What we have done Madam Speaker, is we have given unlimited discretion to the hon. Prime Minister in the Immigration Act, and that unlimited discretion under section 8 of that Act which we have given him is more than enough, even in a dictatorship, to combat any fake marriage. So, why after having fought nuclear wars, would you bring a knife to that war with the regulation he is bringing. For me, Madam Speaker, the pretence that the hon. Minister of Labour is bringing with regard to fake marriages - leave aside the point that there is only 11, following what hon. Mohamed has said in 2017 - it is an insult to our intelligence, as Members of this House, and an insult to the intelligence of the people of Mauritius. With all the atrocious amendments that the hon. Prime Minister has done to the Immigration Act, he has more than enough to combat whatever he wants, if someone seems to him to be undesirable that would be enough. But then, do not come with false pretences and act as if the biggest problem in this country is fake marriages when you already have so much power.

The programme of *Lepep* Manifesto was not to come with abusive legislations, giving arbitrary powers. I explained last time what was arbitrary, it is unrestraint use of power. Do not now insult our intelligence again and say that we had agreed to bring legislations such as this one or the Immigration (Amendment) Bill. If it was said that we needed to combat fake marriages, that was one thing. Never did we ever agree to the erosion of fundamental rights of people who, let it be stressed, if they have resided four years in the country, are entitled to be registered as Mauritians.

Madam Speaker, another let down in the debate from Government side was the criticism of the hon. Minister. He is accusing, and the hon. Attorney General is doing so, accusing hon. Mohamed for not having understood, or in bad faith, for not making the difference between what is applicable for employment permit and work permit. Madam



Speaker, the Guidelines are here, I can table it. Guidelines for Application for Non-citizen Spouse's Employment permit, April 2019, after the coming into force of this regulation. It says in the Guidelines, I will read it again –

“Foreign workers should possess the skills, qualifications and experience required for the job applied for;”

It says, with regard to appeal, that the person may submit only one appeal and that would be decided by the Minister himself. It says that it should be on the terms and conditions of the contract. It says everything that we have said before, Madam Speaker, and I denounce the fact that instead of bringing clarifications, what we are doing today is drowning the debate.

Madam Speaker, the Minister has not explained how in practice he will ensure now that there will be appropriate safeguards, and that was the point of this motion, appropriate safeguards to stop him by prejudice or bias, to refuse a work permit of an applicant simply because he might be a threat to his good friend's interest, or simply because he might be of a certain political opinion or simply because he might be of a certain religious opinion, religious faith, etc. We have heard no safeguard, Madam Speaker, and that for me is the most dangerous part of this regulation. It is that the Minister himself cannot here give to this House any guarantee that he will respect the most basic principles, Madam Speaker, as pointed out by hon. Mohamed and hon. Baloomoody, of non-discrimination. He would consider all applications with utmost impartiality of opinion and biased Madam Speaker. We have not heard anything from that. And that makes me even more scared because we all remember the case of Hoffman and then, in reply to hon. Rutnah, who says that we are using tactics, that we are trying to scare the population. Why did he not explain why false pretences were used for the Immigration Act and the first victim was for something what was completely different, he had dared to criticise the Prime Minister. This is exactly, Madam Speaker, and we are sure of it now. It has been certified now by Government that this regulation will be applied in the same way as the Immigration Act is being applied with a view to persecute people. This is exactly what is going to be done. This is exactly the motive for bringing such powers now to the Minister. It is to persecute and I am sure of it, of whatever I am saying, Madam Speaker.

Madam Speaker, hon. Rutnah talks of tactics. How dares he, Deputy Whip, talk about tactics when we all remember last Tuesday the colourable devices that were being used on my Motion. He says this act is not to victimise, he says...

*(Interruptions)*

**Madam Speaker:** Hon. Adrien Duval, please withdraw these words because I will not allow you to say that there have been colourable devices. You were not present in this Chamber at the time the Motion was called and automatically your Motion lapsed, and that was my ruling. So please withdraw these words.

**Mr A. Duval:** Madam Speaker, I have not said that you have perpetrated any colourable device.

*(Interruptions)*

Well, because I want to make my speech, okay.

**Madam Speaker:** Not even me! Anybody over here! Nobody over here in this Chamber has devised any colourable devices.

**Mr A. Duval:** Madam Speaker, I will remove it because I want to make my Motion. But let me just tell you...

*(Interruptions)*

**Madam Speaker:** Are you questioning me, hon. Shakeel Mohamed? Please sit down! From a sitting position, you do not have to argue with me. You cannot argue with me. My ruling is final.

**Mr A. Duval:** Madam Speaker, as I was saying, hon. Rutnah dares to say that this law is not intended to victimise. Go and tell that to the family of Hoffman for the Immigration Act. Go and tell that to the first victim of this Act. Madam Speaker, we know that there are shady thoughts that are being applied with the bringing of this regulation.

*(Interruptions)*

**Madam Speaker:** Hon. Rutnah!

**Mr A. Duval:** We know, Madam Speaker, that the whole point of this law is to victimise, it is to persecute, it is again *fer dominere*. This is the point of this legislation. I have shown it, Madam Speaker. 26,000 people - you give a blank cheque to the private sector, you say: go and choose whoever you want, I do not want to see the Certificate of Morality, I do not want to see their qualifications or skills, I do not want to know all of this. You give a blank cheque and yet for 654 people you want to have total control. Madam Speaker, this makes us think of the worse and I think the worse is yet to come with this kind of regulations and amendments of fundamental rights.

Madam Speaker, I am very disappointed that my questions have fallen on deaf ears. I think in opening the debates, I was very fair, I was concise. I did not go into attacks. I tried to remain objective and asked, in my opinion, legitimate questions but, in any case, questions that had to be answered by Government; none of them, Madam Speaker, have been answered.

Madam Speaker, why waste the Court's time, why waste the Supreme Court's time with Judicial Review when we clearly see that? Why?

*(Interruptions)*

But let me invite any person, Madam Speaker. If they wish to be irresponsible, let me send an invitation Madam Speaker to any person...

*(Interruptions)*

**Madam Speaker:** Order!

**Mr A. Duval:** Madam Speaker, let me invite any person who is going to be a victim of this law. Let me send an invitation. I would like, and I am not the only one, to challenge this law. Let me send an invitation to everyone who will be a victim of this law that they do not have to comply. They would not have.

*(Interruptions)*

**Madam Speaker:** Order please!

*(Interruptions)*

**Mr A. Duval:** *Elections dans six mois! La ki to pou decider...*

*(Interruptions)*

**Madam Speaker:** Order, please! Order on both sides of the House!

**Mr A. Duval:** Madam Speaker. they are growling. Elections are coming. You will be judged soon by the people of this country. You will be judged soon.

*(Interruptions)*

**Madam Speaker:** Hon. Jhugroo!

**Mr A. Duval:** Madam Speaker, what is the point of resigning? We all know that there will be no by-elections in No. 7 and it is just...

*(Interruptions)*

*Un effet d'annonce!*

**Madam Speaker:** Hon. Shakeel Mohamed, please do not make provocations. I have heard you. You are trying to make provocations!

*(Interruptions)*

**Mr A. Duval:** Madam Speaker, let me just reassure hon. Members there is no need to resign. There will be no by-elections in No. 7. We all know that. General elections are coming. You will have the chance to be challenged in your Constituency and we will challenge you there. Don't you worry! We will challenge you there!

**Madam Speaker:** Order!

**Mr A. Duval:** Madam Speaker, as a responsible Government and as a responsible Minister of Labour, the role of the Minister of Labour is to protect those...

*(Interruptions)*

**Madam Speaker:** Hon. Thierry Henry!

*(Interruptions)*

Hon. Mrs Perraud, do you want me to take sanctions at this late hour? And if need be, I will.

**Mr A. Duval:** Madam Speaker, as I was saying, the role of the responsible Minister of Labour is to protect the rights of employees in this country. It is not now to create a new vulnerable class of employees; people who will have to be subject to the whims and caprices of their employers because it would be so hard to get new employment on the now new regulations. There is so much uncertainty. There is so much obscurity as to who is going to be given a permit? For how long and when is it going to be revoked? Therefore, Madam Speaker, we are creating a new class of slaves to the employers. Employers will always have the upper hand now because where you had once freedom to choose another job, you do not really enjoy the same freedom anymore. So, the role of the Minister responsible for Labour is to protect employees and I am shocked Madam Speaker that he has not even cared to answer about the genuine legitimate questions and apprehensions of the Opposition.

Madam Speaker, let me end by saying this, this is not a victory in numbers. We all know you have the majority. To retake the words of the former Speaker of this House: "This is the victory of morality" and this is what we are doing. This is the victory of morality. You have been judged. Your actions will have reactions, don't you forget that.

Thank you, Madam Speaker.

*The motion of the hon. First Member for Curepipe and Midlands (Mr A. Duval) was, on question put, defeated.*

**The Deputy Prime Minister:** Madam Speaker, I beg to move that this Assembly do now adjourn to Tuesday 21 May 2019 at 11.30 a.m.

**Mr Roopun rose and seconded.**

*Question put and agreed to.*

**Madam Speaker:** The House stands adjourned.

*At 1.41 a.m., the Assembly was, on its rising, adjourned to Tuesday 21 May 2019 at 11.30 a.m.*

## WRITTEN ANSWERS TO QUESTIONS

### RAW SUGAR - TATE & LYLE

**(No. B/371) Dr. A. Boolell (Second Member for Belle Rose & Quatre Bornes)** asked the Minister of Agro-Industry and Food Security whether, in regard to raw sugar, he will state the amount thereof exported to Tate & Lyle over the past three years.

**Reply:** I am informed by the Mauritius Sugar Syndicate (MSS) that the volume of raw sugar for direct consumption exported to Tate & Lyle (UK and Portugal) for the past three years is as follows –

2016	88 metric tons
2017	1,386 metric tons
2018	433 metric tons

I am further informed by the MSS that, since 2011, Mauritius is no longer exporting raw sugar for refinery purposes.