Mr Speaker, Sir,

I move that the Affidavits of Prescription Act (Suspension of Certain Provisions) Bill (No. XXV of 2012) be read a second time.

Mr Speaker, Sir,

As Members of the House will recall, the Commission of Enquiry on the System of Acquisitive Prescription was issued by the then Acting President of the Republic on 21 May of this year to inquire and report on whether the system of acquisitive prescription gives rise or has given rise to any malpractice or wrong doing, or causes or has caused undue hardship or prejudice to the public. As per its terms of reference, the Commission of Enquiry is also to report on such changes, including statutory amendments, as may be necessary to better safeguard the interest of the public at large.

Mr Speaker, Sir,

I have been given to understand that the Commission of Enquiry has had preliminary meetings with various persons and institutions involved with prescription of lands, namely, attorneys, notaries, barristers, the Registrar-General/Conservator of Mortgages, the Curator of Vacant Estates and the Ministry of Housing, and that it has, since its first sitting on 6 August 2012, been hearing professionals and representatives of various institutions concerned directly or indirectly with the prescription issue, including members of the public.

However, Mr. Speaker, Sir, it is with great concern that I have to inform the House of certain matters which have been brought to the attention of Government by the Commission of Enquiry, in one of its correspondences, and which are as follows –

- firstly, under our law, as it presently stands - i.e. the Affidavits of Prescription Act which dates back to 1958 - it is extremely easy to prescribe an immoveable property. Indeed, 2 persons simply have to swear an affidavit stating that a party has occupied a land for more than 30 years, following which the affidavit is deposited at the office of the Registrar-General, together with a memorandum of survey, and publications are then made in the Government Gazette as well as two daily newspapers. Thereafter, if there is no objection within a period of 3 months of the last publication, the affidavit of prescription is transcribed and the person concerned is deemed to be the owner of the land;
secondly, the 2 persons swearing the affidavit usually do not know the exact location of the land and sometimes they do not even know the applicant;

thirdly, most of the persons whose land is being prescribed do not have access to the Government Gazette or the daily newspapers where publications are made;

fourthly, in many cases, the memorandum of survey drawn up by a sworn land surveyor contains important irregularities such as fake Land Survey number, inappropriate boundaries and fake neighbours' particulars.

Mr Speaker, Sir,

Another major cause for concern is that the Commission of Enquiry has further noted a considerable increase in the number of applications for prescription in daily newspapers since its setting up. Consequently, the Commission of Enquiry has requested that, pending its recommendations and any amendment to the law, and with a view to protecting the public against possible fraudulent prescriptions, certain provisions of the Affidavits of Prescription Act (“the Act”) be suspended so that no application for the transcription of an affidavit of prescription can be made to the Conservator of Mortgages – which explains why the present piece of legislation is before this House today.

The Bill therefore, Mr. Speaker, Sir, seeks to suspend certain provisions of the Act so that, pending the recommendations of the Commission of Enquiry and any amendment made to the law as a consequence, no application for the transcription of an affidavit of prescription can be made to the Conservator of Mortgages. It is to be noted that the Bill also makes provision for applications for the transcription of an affidavit of prescription that are pending on the Bill becoming law.

In so far as the different provisions of the Bill are concerned, Mr. Speaker, Sir, Clause 3(1) of the Bill accordingly suspends –

- firstly, section 3 of the Act - which provides for the conditions for the transcription of affidavits of prescription;
- secondly, section 4 - which deals with applications for the transcription of affidavits of prescription;
- thirdly, sections 6 – 9 - which respectively deal with objections to the transcription of affidavits of prescription, disposal of such objections, prohibition of transcription of affidavits of prescription and transcription of affidavits of prescription); and
- finally, the Schedules to the Act.

However, Mr. Speaker, Sir, I would here like to point out that, under Clause 3(2) of the Bill, where, on or after 23 July 2012 but before the commencement of the
Affidavits of Prescription Act (Suspension of Certain Provisions) Act 2012, notice of an application for the transcription of an affidavit of prescription has been published in accordance with the Act, an objection to the transcription of such affidavit of prescription may be made in the manner specified in section 6(1) of the Act by any person claiming to have an interest in the immovable property in respect of which the affidavit of prescription was sworn, within 6 months, or such longer period not exceeding 12 months as may be prescribed by the Attorney-General, of the commencement of the Affidavits of Prescription Act (Suspension of Certain Provisions) Act 2012.

As regard applications for transcription made before 23 July 2012, Mr. Speaker, Sir, the affidavit of prescription shall be transcribed in accordance with section 9(1) of the Act, where no objection has been received by the Conservator of Mortgages on the commencement of the Affidavits of Prescription Act (Suspension of Certain Provisions) Act 2012. In the case where an objection was received by the Conservator of Mortgages within 3 months of the last publication of the notice under section 4(3) of the Act, the objection shall be dealt with in accordance with section 7 of the Act.

Consequently, by virtue of Clause 4 of the Bill, the Affidavits of Prescription Act (Suspension of Certain Provisions) Act 2012 shall, on being passed, be deemed to have come into operation on 23 October 2012.

Mr Speaker, Sir,

I have absolutely no doubt that Members of the House will agree that, in the light of the observation of the Commission of Enquiry and the increasing number of applications for the transcription of affidavits, it is most imperative that the above relevant provisions of the Act be suspended for the protection, and in the interest, of the public at large in order to ensure that the property rights of individuals of this country, as guaranteed by our Constitution, are not violated or interfered with.

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