



**MLA**  
MINISTRY OF LEGAL AFFAIRS

# **NATIONAL CONSULTATION ON CONSTITUTIONAL REFORM**



## **REPORT TRINIDAD AND TOBAGO CONSTITUTION REFORM COMMISSION**

***December 27, 2013***



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## REPORT

TRINIDAD AND TOBAGO  
CONSTITUTION REFORM  
COMMISSION

*December 27, 2013*

# LETTER OF TRANSMITTAL TO THE PRIME MINISTER

27th December, 2013

The Honourable Kamla Persad-Bissessar, S.C., M.P.  
Prime Minister of the Republic of Trinidad and Tobago  
Office of the Prime Minister  
13-15 St. Clair Avenue  
Port of Spain

Dear Prime Minister,

I write at this time to present you with the Report of the Constitution Commission.

The Commission was launched on Saturday 2nd March, 2013 at the University of the West Indies, St. Augustine, and has now completed its deliberations. During its tenure, it held seventeen public consultations and two private consultations, and received various forms of correspondence in either hard copy or electronic format.

One member, Mr. Justice Sebastian Ventour, resigned in July 2013, consequent upon his appointment to the Integrity Commission.

This Report has been subject to open and frank discussion among members of the Commission and the legal team that supported the Commission.

I am confident that the Report will advance the cause of constitutional reform in 2014 as promised in the Manifesto of the People's Partnership. The Manifesto framed the policy agenda by which the Government was to be guided during its term of office.

Yours sincerely,



Prakash Ramadhar, M.P.  
Minister of Legal Affairs

# EXECUTIVE SUMMARY

The system of government being proposed is a hybrid of parliamentary and presidential features (elements of Westminster and Washington). It is designed to foster political consensus and power-sharing; a clearer separation between the Executive and the Legislature, with neither dominating the other; stricter scrutiny and accountability; and increased citizen participation. Some of the key features are set out below.

## The Preamble

- The wording of the Preamble should not eliminate the reference to God, but should be amended to provide a sense of inclusion as opposed to a feeling of anyone being excluded.
- The Preamble should not promote any differentiation among citizens of Trinidad and Tobago.
- The Preamble should include a statement about the protection of the environment.

## Fundamental Rights and Freedoms

- The Chapter on Fundamental Rights and Freedoms should not be altered.
- The issue of sexual orientation and human rights should be made the subject of further national discussion and public education.

## The Head of State

- The Presidency should be retained in its current form, but the power to nominate and vote for a President should be extended to Senators elected by the people.

## General Elections

- The House of Representatives should continue to be elected as it has been since Independence – voters in each geographical constituency electing a representative by the first-past-the-post method.
- The President should continue to appoint nine Senators in his/her own discretion. However, the rest of the Senate should be elected, by the Hare method of proportional representation.

- The number of elected Senators should be equal to the number of seats in the House of Representatives.
- Each voter should be entitled to two votes, one for his/her Member of Parliament (MP) in the House of Representatives, and the other to elect Senators.
- For the election of Senators, each political party would have to submit, on nomination day, a list of candidates headed by its prime ministerial candidate.
- If one party gains more than 50% of the total vote country-wide, that party's prime ministerial candidate is appointed Prime Minister.
- After the election, the number of senatorships allocated to each party is determined by the percentage of the total vote gained by that party.
- Each party would then have to choose its quota of Senators from the list it submitted on nomination day.
- If no party gains more than 50% of the total vote, the elected Senators choose a Prime Minister from among the prime ministerial candidates declared before the election.
- If there is a tie or deadlock in the Senate vote, the President appoints as Prime Minister the leader of the party list that earned the largest single number of votes cast by the electorate.

## The Parliament

- The House of Representatives and the Senate should have equal powers.
- Members of the House of Representatives should not be eligible for appointment as Ministers. They should focus exclusively on their constituency duties and the duties of scrutiny as members of committees that oversee the Executive branch of Government.
- Ministers should be appointed only from among the elected Senators.
- Members of the House of Representatives should be subject to the right of recall by their constituents.
- There should be fixed dates for general elections.
- There should be a limit of two consecutive terms for the office of Prime Minister, with the option of a Prime Minister returning after another person has served a term as Prime Minister.



## **The Executive**

- The Cabinet, drawn from the Senate, should consist of the Prime Minister; the Deputy Prime Minister; the Attorney General; the Ministers of Finance, Foreign Affairs, and National Security; and a limited number of other Ministers drawn from among the elected Senators.
- The Deputy Prime Minister should be appointed by the President, on the advice of the Prime Minister, from among elected Senators.
- In the event that the Prime Minister is temporarily unable to perform his/her functions, the Deputy Prime Minister should perform the functions of Prime Minister.
- In the event of the Prime Minister's resignation, death or removal from office, the President appoints a Prime Minister from among elected Senators on the same party list as the Prime Minister. Until a new Prime Minister is appointed, the Deputy Prime Minister performs the functions of Prime Minister.
- The Prime Minister must be accountable to Parliament.
- The Cabinet should be collectively responsible to Parliament, while individual Ministers should also be accountable to Parliament for the discharge of their duties.
- The mechanism for removing a Prime Minister during his/her term of office should be a motion of no confidence passed by a two-thirds majority in the Senate.
- The title of the office of Leader of the Opposition should be changed to "Minority Leader".
- The Director of Public Prosecutions should be awarded an independent fiscal vote to be audited by the Auditor General, whose report should be laid in Parliament.
- The Director of Public Prosecutions should report annually to the President, and this report should be laid in Parliament.

## **The Public Service**

- There should be constitutional recognition of local government, as well as provision for fixed dates for local government elections.

- The names of proposed members of State Boards should be laid in Parliament at least seven days before their actual appointments.
- The Auditor General should be empowered to conduct Value for Money audits of Government Departments and agencies, as well as State corporations.

## **The Institutions and Processes of Scrutiny**

- The report and recommendations of the Ombudsman should be made subject to the oversight and scrutiny of the House of Representatives and its committees.
- All persons in public life should now be required to swear to an undertaking that they would provide declarations of their assets and liabilities upon the request of the Integrity Commission if they are the subject of an investigation. This would replace the current requirement of annual declarations of assets and liabilities.
- No Minister should be eligible to sit on the Public Accounts Committee (PAC), or the Public Accounts Enterprises Committee (PAEC).
- References to the Opposition should be removed from the Constitution with regard to the Chairmanship of the PAC and PAEC.
- An Office of Contractor General should be created.
- The annual and special reports of such Contractor General should be laid in Parliament for consideration and investigation by parliamentary committees.

## **The Judiciary**

- The Judiciary should be awarded an independent fiscal vote to be audited by the Auditor General, whose report should be laid in Parliament.
- The issue of Trinidad and Tobago making the Caribbean Court of Justice its final Court of Appeal should be put to a national referendum.
- The membership of the Judicial and Legal Service Commission should be broadened to include a representative of the Law Association appointed for a period of three years by the President of the Republic after consultation with the Council of the Law Association.

# INTRODUCTION

1. The undertaking to reform the constitution of Trinidad and Tobago was made in the Manifesto of the People's Partnership when it campaigned for the general elections of 24th May, 2010. At page 16 of that manifesto the following promise was made :  
  
"We will establish a Constitution Commission to engage in the widest possible consultation as a pre-requisite to constitutional reform."
2. The Commission was established on Saturday 2nd March, 2013 and it embarked upon a hectic itinerary of consultations all over Trinidad and Tobago. The general thrust of the consultation process was to engage the population in a dialogue about their aspirations and desires in respect of constitutional reform.
3. The range of issues raised at these consultations encompassed both constitutional and general public policy matters. The Commission adopted an approach of listening to persons speak on matters they wished to raise, rather than exercising a judgment about whether the particular matter being raised was of a constitutional nature or not.
4. The engagement of the general population ranged from the traditional meetings to crossing the digital divide to permit electronic submissions through the official website for the Commission at [www.reformtheconstitution.com](http://www.reformtheconstitution.com) which allowed broad participation well beyond attendance at formal meetings.
5. The Commission was advised that before considering changing the constitution, there should be a determination of its philosophy and what changes can be enacted.
6. There was a view that the structure of the consultation and reform process should have been implemented in phases to accommodate public education, public discussion, and then recommendation.
7. The Commission was mindful of the fact that there has been so much public discussion and dialogue over the years on constitutional reform that there was sufficient information placed in the public domain that was available for public education.
8. It was important to get the unvarnished views of the population to consider the way forward in making recommendations about constitutional reform. All sessions were open to the public and the venues chosen were representative of an adequate geographical spread.
9. The Minister of Legal Affairs, who is the Minister with responsibility for the process of constitutional reform, chaired all but two public consultations for the Commission.
10. On the two occasions when the Minister was unable to chair the public consultations, Mr. Justice Sebastian Ventour served as the chairman of the proceedings.
11. There was a general understanding that the fate of the report of this Commission ought not to be the same as that of the Wooding Commission whose report was rejected by the then Government in 1974. The Minister has a direct responsibility to take this report to the Cabinet with a clear mandate for implementation.
12. There were fundamental philosophical debates that revolved around the issue of the recognition of God as well as references to moral and spiritual values.
13. The central debate on this subject involved the issue of whether the recognition of God should be removed from the Preamble to the Constitution or retained.
14. One fundamental philosophical discussion involved a debate over the formal recognition of lesbian, gay, bisexual and transgendered persons in respect of their ultimate right to feel a genuine sense of inclusion in the society.

15. Another philosophical debate centred on the issue of First Peoples and their relationship with all others in the society. The view was expressed that the Constitution should protect the inherent rights and legacies of these peoples.
16. It was argued that the word “Amerindian” should not be used to describe First Peoples, who consider this term as being derogatory of them.
17. Other social issues, related to the rights of the differently abled, the protection of children, animal rights, and the environment, were raised before the Commission for deeper consideration.
18. In general, the consultation exercise created an atmosphere where a very wide cross-section of social, political, religious and economic issues were ventilated. The Commission recognized that its forum had become a venue for society to articulate its wider concerns. This suggested the need for some kind of mechanism to permit an institutional response to genuine participatory democracy.
19. The issue of campaign finance reform was raised. It was seen as a constitutional matter to the extent that the political process can be governed by the way in which all political parties obtain their funding. More than worthy of attention is the need for greater transparency in the process, a transparency that goes well beyond the existing rules for individual candidates. These rules were designed for a different era.
20. The solutions offered ranged from the banning of all private funding for political parties and substitution by taxpayer-funded campaigns, to full disclosure of all contributions made to political parties as a requirement of the law. In this instance, the law in question would be the Representation of the People Act.







# CHAPTER ONE

## Preliminary

21. One of the shortcomings of the Westminster-Whitehall model in the Commonwealth Caribbean has been the slow development of a culture of scrutiny of public officials by dedicated institutions that are expected to play an enquiring role in the affairs of State. This has tended to be exacerbated in small states where the concentration of power in majoritarian democracies has only been undone by the will of the electorate, or by internal political struggles between persons who belong to the same political party and who are seeking power for themselves.
22. The creation of a culture of scrutiny can only come through a fundamental systemic alteration that will not undermine the ability to govern, but will curb the excesses of the zero sum game that emerges after victory in a general election. After more than fifty years of independence, an image of the State has emerged as an agent of victimization against persons of a different political persuasion who end up on the losing side of an election outcome. The political culture that has emerged of making sweeping changes to State Boards and other areas of discretionary appointment by the State has made citizens vulnerable to the swing of the political pendulum, owing to the consequences associated with supporting the winning or losing side. The nature of political patronage has to be tempered against the desire of a new government to reward its supporters.
23. The Constitution of Trinidad and Tobago belongs to a stock of constitutions that are based on a parliamentary system that previously recognized the person of the Monarch of the United Kingdom as their Monarch. Queen Elizabeth II was the Queen of Trinidad and Tobago, and the Governor-General was Her Majesty's Personal Representative in Trinidad and Tobago. The prerogative powers of the Crown were exercised by the Governor-General in the name of Her Majesty, and these powers were primarily exercised on the advice of Ministers. In some cases they may have been exercised on the advice of persons or authorities other than Ministers, or in the deliberate judgment of the Governor-General.
24. Trinidad and Tobago chose the option of becoming a parliamentary republic in 1976. The constitutional status of Trinidad and Tobago is a product of its political

history and political culture and, therefore, the changes proposed will have to take account of this reality.

25. Simultaneously, the influence of the Washington model and some of its techniques cannot be underestimated. This may present the opportunity for hybridization, in some instances, between parliamentary and presidential models. Some of the more popular Washington model techniques are: confirmation hearings for the appointment of certain public officials; the ratification of Executive appointments by the Legislature; the right of recall; term limits for certain public officials; the use of elections for a wide range of public officials; and fixed dates for elections.
26. The balance between the Westminster-Whitehall and Washington models will provide philosophical challenges in advocating reform, as the attractions of the latter model are, in some instances, incompatible with the former. Dominica, and Trinidad and Tobago, the two parliamentary republics in our region, have adopted some Washington-model constitutional techniques that are reasonably compatible with the parliamentary model, e.g. term limits for the President of Dominica, and, in Trinidad and Tobago, an Electoral College for the election of the President.
27. The parliamentary system is designed to function on the basis of domination of the Parliament by the Cabinet on a natural foundation of majoritarian division (Government majority and Opposition minority). This system cannot accommodate consensual techniques of divided government that may involve the Executive being controlled by one party and the Legislature by another with no harm to the political system. The essence of the parliamentary system is the rotation of power from one side to another, based on domination, as opposed to other political systems that promote power-sharing based on political consensus.
28. It is easier for many Commonwealth Caribbean societies to absorb the effect of a change from a parliamentary monarchy to a parliamentary republic (as was the case in Trinidad and Tobago), as opposed to skipping the parliamentary republic stage and heading directly for a presidential republic, because of the severity of the change in political culture. Nevertheless, the effect of the Washington model on the evolutionary processes of Commonwealth Caribbean constitutions in their Westminster-Whitehall attire is likely to prevail in years to come. Caribbean societies are becoming weary of the authoritarian tendencies of the Westminster-Whitehall model as it is practised in small island states with small parliaments that are just the opposite of Westminster.
29. In the UK, the Westminster model itself has moved with purpose over the last decade to catch up with Commonwealth Caribbean countries whose separation of powers was far advanced compared to theirs. The mother of our parliaments has done some reforms of its own on itself. The highlights of these have been the dismantling of the office of Lord Chancellor and the introduction of executive, parliamentary and judicial reforms.
30. On 1st October, 2009, history was created in the United Kingdom when the long-standing tradition of having the House of Lords as the final court of appeal in that country came to an end with the establishment of the United Kingdom Supreme Court. The Lord Chancellor is no longer the Head of the Judiciary, but rather the Lord Chief Justice is. The Lord Chancellor is no longer the minister responsible for the judiciary in the Cabinet, but rather, the Secretary of State for Justice is. The Lord Chancellor no longer presides over sittings of the House of Lords, but rather, the Lord Speaker plays this role.
31. With such far-reaching reforms, the Westminster system itself is no longer what it used to be. Constitutional reform has been embraced in a manner that has changed many constitutional and administrative law textbooks within the last ten years.
32. At every step of the way, the Commission has noted the comments of the public that encompassed (i) promoting a meaningful expansion and widening of democratic participation by citizens in government; (ii) addressing

possible weaknesses in the constitutional framework which political practice has highlighted over the years; (iii) re-fashioning the Constitution so that it better accords with our changing social and political circumstances; and, (iv) promoting better governance and greater equity in the constitutional framework generally.

### **Constitutional Reform and a Referendum**

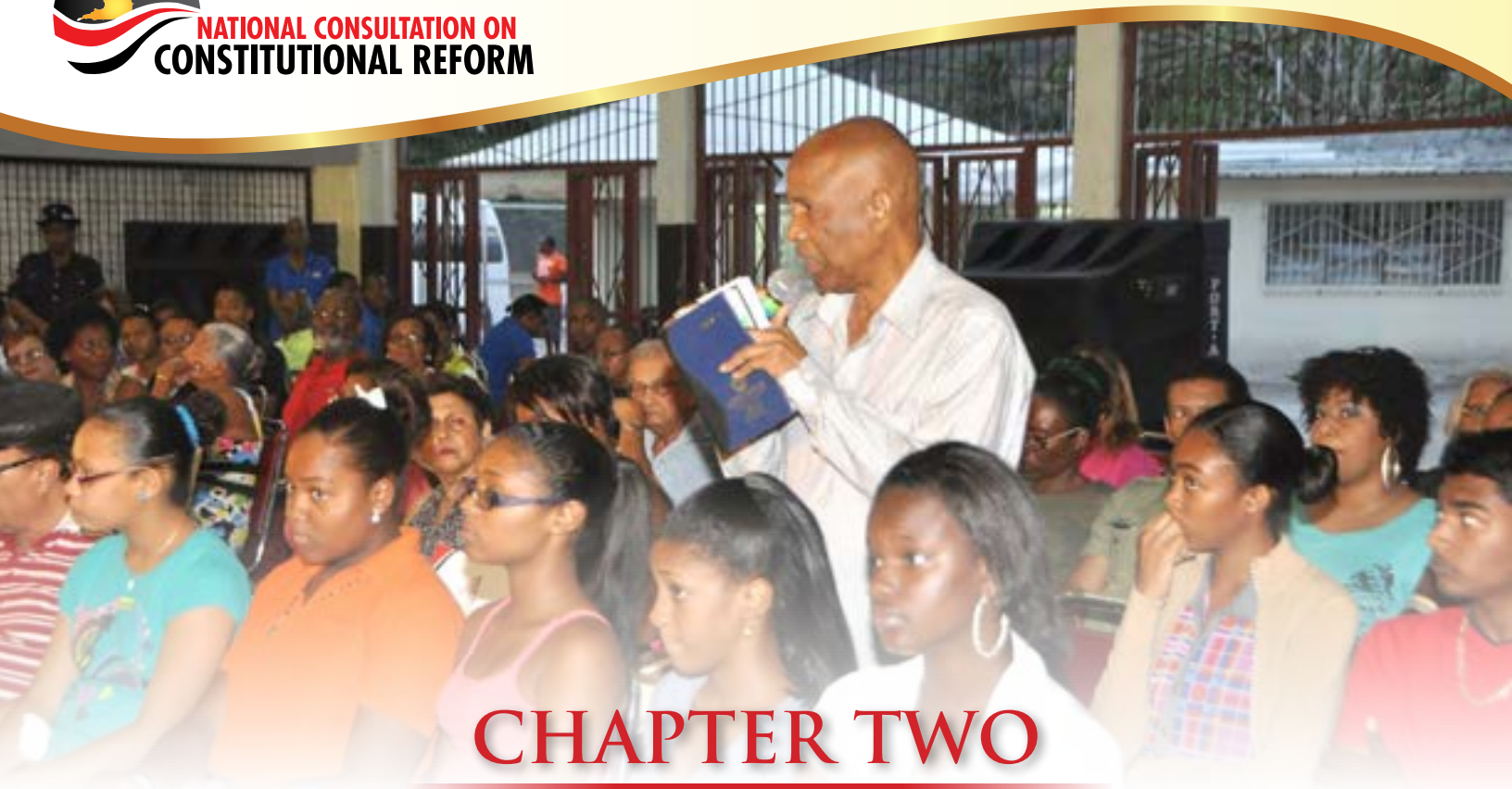
33. In attempting to ensure that the constitutional reform process should have the widest public participation when it comes to making that final decision on a new draft constitution, there was discussion among Commissioners on whether issues raised in this constitutional reform process should form the basis of a referendum.
34. There was a clear recognition that any referendum on a new Constitution for Trinidad and Tobago should not be treated as a party political issue. Thus there should

be some distance between the holding of a referendum and the holding of a general election. That, however, will be a matter of political strategy, which falls outside of the remit of the Commission.

35. The Commission is ever mindful of the fact that its recommendations will have to be converted into a Bill or separate Bills to be debated in Parliament and that, once these are successfully passed by the required majority or majorities in the Parliament, there will be new constitutional provisions for the country. For this reason, a deliberate decision was made to provide the country with a philosophical document that explains the rationale for its recommendations to provide a new constitutional formula. This is done with the understanding that the drafting of a new constitution will require resources not currently available to the Commission. Additionally, there will need to be political consensus on the new constitutional formula before drafting can proceed.







## CHAPTER TWO

### Rewording The Preamble

#### Language of the Constitution

36. In seeking to reword the Preamble, the Commission was ever mindful that, on the whole, the language in the Constitution is very legalistic and that it should be made simpler, more contemporary, and void, as far as possible, of technical legal jargon. It was a matter of concern that the layperson has difficulty in understanding all of the niceties of the language of constitutional draftsmen. However, it is recognized that there is room for two versions of the Constitution, namely the official one which will contain all of the technical language required, and an unofficial plain English version whose content can be made more accessible and understandable to citizens, making the Constitution itself more user friendly.
37. There were also concerns about gender bias in the language of the Constitution, with the masculine pronouns being used generically. There was consensus that the language of the Constitution should be gender neutral. For example, the masculine pronouns could be replaced with "the person" or he/she, him/her and his/her. These are general guidelines that the draftspersons ought to consider in preparing the draft constitution.

#### The Preamble

38. The purpose of a Preamble to the Constitution is to provide a statement of prevailing beliefs and values at the time of the introduction of the Constitution. While the Preamble is not a justiciable part of the Constitution, its importance lies in the fact that it introduces the Constitution and states quite clearly what the values of the State are and, by so doing, gives character to the Constitution. The Commission is of the view that the Preamble is an umbrella or underlying sentiment that informs the beliefs, customs, or practices of the society.
39. Since 1st August, 1976 when Trinidad and Tobago became a republic, there have been changes to some of the values that constitute the very essence of the Constitution. Indeed, there have been latter-day debates about the importance of the environment; the need to preserve the national patrimony; and the broadening of human rights considerations that have questioned the inalienability of human rights themselves, as well as articulated the need to recognize greater social diversity.



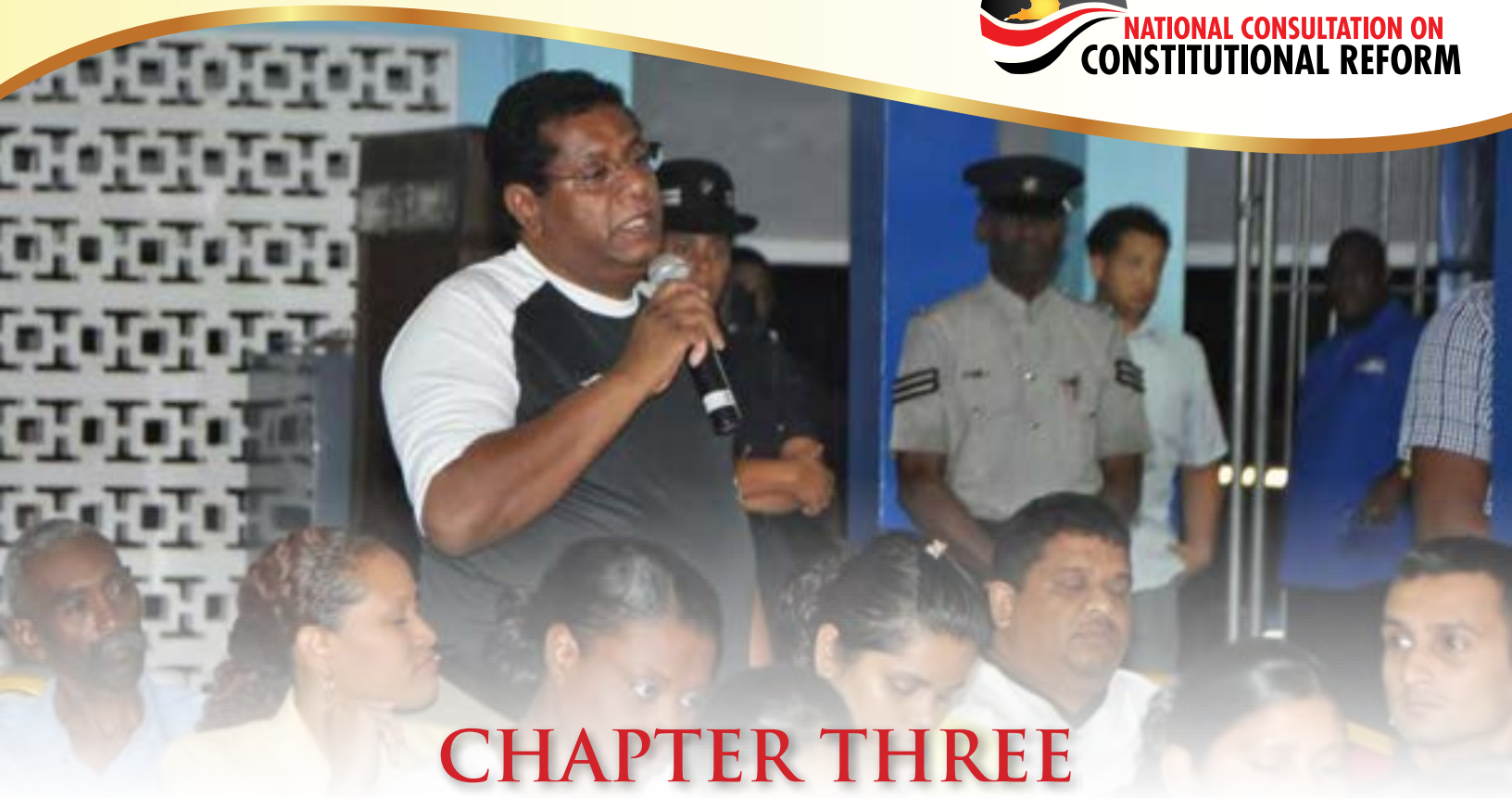
## **The Recognition of God**

40. One of the major areas of debate in respect of the Preamble was the issue of the mention of God and the concern that such references excluded non-believers. While the rights of non-believers are recognised, it is felt that the existing constitutional statement made when Trinidad and Tobago became independent in 1962 and became a republic in 1976, that the State was founded on a belief in the existence of God, must be modified to demonstrate tolerance of diversity that does not eliminate God, but includes others who do not believe in the existence of God.
  41. To remove references to God in the existing Preamble would be extreme and disruptive, and the atheist, the agnostic, and others who do not participate in religion, must find recognition in our diverse society.
  42. As a tolerant society, Trinidad and Tobago does not have to eliminate the reference to God in order to accommodate other views.
  43. The many concerns/ proposals about the Preamble, over which there were conflicting views, can be accommodated in a new Preamble by an appropriately worded statement which would provide a sense of inclusion as opposed to a feeling of anyone being excluded.
  44. It is important that the Preamble be worded in an inclusive manner even though it has no function for the purpose of interpreting the later provisions in the Constitution, and bearing in mind the fact that the Commission also received submissions on the separation of church and state.
- mention of the environment in the Preamble and make specific provisions for it in the Fundamental Rights and Freedoms. The Commission gave consideration to embodying in the Preamble, the sentiment that the current generation should use our natural resources in a way that ensures sustainability and development, and safeguards the patrimony of future generations.
46. There were submissions that sought to define the indigenous people of Trinidad and Tobago. The Commission considered the United Nations Declaration on the Rights of Indigenous People. A definition given by the UN Special Rapporteur, José Martínez Cobo, for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, states that indigenous communities, peoples and nations are: "...those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems."
  47. The Commission considered the question of whether the indigenous people of Trinidad and Tobago should be recognized in the Preamble.

## **Recommendations**

### **Additional Matters for Consideration**

45. There were a number of submissions suggesting that protection of the environment be among the extension of rights. Generally, the trend is that Constitutions make
- (a) The wording of the Preamble should not eliminate any reference to God.
  - (b) The Preamble should be amended to provide a sense of inclusion as opposed to a feeling of anyone being excluded.
  - (c) The Preamble should include a statement about the protection of the environment.
  - (d) The Preamble should not promote any differentiation among citizens of Trinidad and Tobago.



## CHAPTER THREE

### Fundamental Rights and Freedoms

48. The existing constitutional provisions for the fundamental human rights and freedoms currently enjoyed by citizens are based on the model of the Canadian Bill of Rights 1960 that was adopted in 1962 at our independence and was retained in 1976 when we became a republic.
52. It is to be noted that some constitutions express such principles, not as rights, but as inspirational targets which they profess to aim at providing. That is to say, they are dealt with within the realms of guiding principles for State policy.

49. It is important that the history of our Fundamental Rights and their retention from the Independence Constitution to the Republican Constitution now be juxtaposed against some of the issues raised in the various sessions of consultation with the public.

#### The Right to Health

50. There were submissions that the right to health should be protected under the Constitution. This is generally formulated as the provision of a basic standard of living and a safe environment.
51. The view was expressed that the high cost of medical care and the proliferation of disease and chronic illnesses make the right to health, or the provision of a basic standard of health care, even more relevant today.

#### The Right to Work

53. Proposals were made that related to the right to work.
54. It is to be noted that the International Labour Organization provides for the Right to Decent Work which takes into account factors such as proper standards of safety, a healthy working environment, proper services, decent remuneration and the right of association.

#### The Right to Privacy

55. There were submissions that there was too much violation, by the media, of people's right to privacy. However, at the same time, it is to be noted that care should be taken not to stifle the media but to find ways to ensure that they report with due accuracy and prudence.

## **Sexual Orientation**

56. With respect to sexual orientation, there were conflicting views as to whether or not it should be included as one of the provisions of the Constitution. Some could not accept that such a significant percentage of the population should be ostracized in a modern constitution.
57. It was noted that giving sexual orientation constitutional recognition would have implications for certain sexual offences such as buggery. There may have to be legislative reforms on a wider scale.
58. The point was made that there was a high level of violence and abuse directed against persons who fall outside of the category of heterosexuals and have other sexual orientations. It was felt by some that such recognition would ensure that state-sponsored organizations would not discriminate against such individuals.
59. Proposals were made that persons should not be fired from their jobs or excluded from employment on the basis of their sexual orientation. This ought to be so as the fundamental rights and freedoms clauses of the Constitution ought not to enshrine any discriminatory practices against anyone, regardless of their sexual orientation.
60. An argument for the inclusion of sexual orientation as a ground for discrimination is that constitutions must have a built-in ability to reflect the times as they are. It is to be noted that there is no consensus on the issue of sexual orientation. Race, place of origin, political opinions, colour, creed or sex, were the issues of a time when the emphasis was on political and civil rights. Most constitutions that have been reviewed in recent times are beginning to recognize another class of rights, and have gone the route of extending the grounds of discrimination to include social and economic rights.
61. The Commission received submissions on same-sex unions and intimacy. One school of thought proposed that same sex unions should not be criminalized, and another

advanced the view that sexual intimacy between two consenting males should be decriminalized.

62.

The Commission recognized how divisive these issues were in respect of competing schools of thought. In the circumstances, sexual orientation and same-sex unions ought to be made the subject of further national discussion in the context of public policy.

## **Discrimination Against Women**

63. On the issue of defining discrimination against women, it is to be noted that the Convention on the Elimination of All Forms of Discrimination Against Women (1979), establishes an agenda for action to put an end to sex-based discrimination.
64. Trinidad and Tobago is a signatory to the Convention. Those countries ratifying the convention are also required to enshrine gender equality into their domestic legislation; repeal discriminatory provisions in their laws; and enact new provisions to prevent discrimination against women. By accepting the Convention, States commit themselves to undertaking a series of measures to end all forms of discrimination against women, including:
  - (a) to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
  - (b) to ensure the elimination of all acts of discrimination against women by persons, organizations or enterprises.

## **The Right to Life**

65. On the issue of the right to life, submissions were made to advocate for the protection of the unborn as well as when life begins. Advocates for the right to life considered conception as the commencement of life.
66. There were arguments that while the right to life is already afforded constitutional protection, there has always been a clear restriction on abortion.



### Capital Punishment

67. There were many recommendations calling for the retention of capital punishment and fewer calling for its abolition.
68. This issue has bedevilled the Commonwealth Caribbean ever since the Judicial Committee of the Privy Council took an abolitionist stand in their judgment on the Pratt and Morgan matter from Jamaica, in 1993.
69. The Commission is mindful of the controversy that capital punishment has generated and recognizes that consensus may be difficult to attain.

### Referenda and Citizen Participation

70. The Commission received submissions to the effect that there should be a right to citizen participation on fundamental national issues through the medium of referenda. This was proposed in a variety of ways such as:

- (a) changes to the Constitution should become the subject of national referenda;
- (b) major policy issues should be made the subject of national referenda;
- (c) the performance of the Government should be made the subject of national referenda.

71. The Commission concluded that the original intent of section 14(1) of the Constitution be reinforced notwithstanding the decision of the Privy Council in *Takoor Persad Jaroo v Attorney General of Trinidad and Tobago* (Privy Council Appeal No. 54/2000).

### Recommendations

- (a) The Chapter on Fundamental Human Rights and Freedoms should not be altered.
- (b) The issue of sexual orientation and human rights should be made the subject of further national discussion and public education.
- (c) The definition of existing law in section 6(3) of the Constitution should remain as at 1st August, 1976.







## CHAPTER FOUR

### The Head of State

72. The post-independence era in the former British West Indies has witnessed the creation of three presidencies, namely Guyana (formerly British Guiana), Trinidad and Tobago, and Dominica. In two of these three territories, Guyana and Trinidad and Tobago, there was a change from independent monarchy to independent republic. This change involved replacing the authority of Queen Elizabeth II in person as the Queen of Guyana and the Queen of Trinidad and Tobago, respectively, with the post of President, in which the executive authority of the State is vested.
73. In the case of Dominica, associated statehood was terminated, and an independent republic was created in 1978. This had the effect of terminating the personal authority of Queen Elizabeth II over Dominica as its Queen at the point of the termination of associated statehood.
74. Guyana was an independent monarchy between 1966 and 1970 and became a republic with a ceremonial President in 1970. In 1980 its presidency was altered in a such a manner as to make it an executive one. Trinidad and Tobago was an independent monarchy from 1962 to 1976 and then it became an independent republic in 1976 with a quasi-ceremonial president.
75. With the creation of independent monarchies in Trinidad and Tobago and in Guyana, the relationship of Queen Elizabeth II to the colonies of Trinidad and Tobago and British Guiana was substantially changed. From a situation in which, as Queen of the colonies, she acted on the advice of British Ministers, she moved to being Queen of these independent monarchies, acting on the advice of her Guyanese or Trinidad and Tobago Ministers, as the case may be.
76. Owing to the fact that Queen Elizabeth II is the Queen of so many countries simultaneously, it is necessary for her to have a personal representative in each independent country of which she is Queen, in the person of the Governor-General. The authority of the Governor-General of any Commonwealth country is located in the Royal Prerogative of the British Monarchy. It is those powers that are exercised by the Governor-General on behalf of Her Majesty and on the advice of local Ministers.
77. The reality is that the executive authority of the State is accordingly grounded in the Royal Prerogative of the British Monarchy. In the circumstances, Ministers and certain other public officials pledge an oath of allegiance to Queen Elizabeth II, her heirs and her successors, upon taking office.

78. The transfer from monarchical to republican status in Trinidad and Tobago saw the transfer of the Royal Prerogative to the new republic as the basis of their State power. Transitional provisions were also included in the Act of Parliament creating the Republic and the new republican Constitution. In Guyana, provision was already made in the Independence (monarchical) Constitution of 1966 for Guyana to become a republic upon the approval of a resolution to that effect in the National Assembly by simple majority vote. There were no transitional provisions in the Guyana Constitution, but rather replacement provisions to give effect to the transfer. In 1980, Guyana enacted a new Constitution to become the Co-operative Republic of Guyana with an executive presidency.
79. In the case of Dominica, the island had become a State in free association with the United Kingdom (an Associated State) in 1967, under the provisions of the West Indies Act 1967. Dominica enjoyed full internal self-government, while citizenship, defence and external affairs were the responsibility of the United Kingdom. Either party (the United Kingdom or an Associated State) could withdraw from the arrangement unilaterally under the provisions of the Act. The Independence Constitution of Dominica of 1978 came into force on 3rd November, 1978. Also coming into force on that date was an Order made after a resolution was passed in the Dominica House of Assembly on 12th July, 1978 that led to the termination of Dominica's associated statehood. This order followed discussions with the British Government. Transitional provisions relating to the transfer from associated statehood to a sovereign democratic republic were included in the Constitution.
80. Republicanism is the dominant form of government among the fifty-three member states of the Commonwealth. Thirty-two Commonwealth countries are republics. There are also sixteen monarchies of which Queen Elizabeth II is the Head of State. There are five indigenous monarchies, namely (i) the Sultan of Brunei; (ii) the King of Lesotho; (iii) the Yang di-Pertuan Agong (or King) of Malaysia; (iv) the King of Swaziland; and (v) the King of Tonga.
81. The removal of monarchy and its replacement by republicanism in Trinidad and Tobago and in Guyana, and the creation of a republic at independence in Dominica required a method of election to choose an indigenous Head of State, namely the President of the Republic. It may be argued that this became necessary because the method of succession to the British Monarchy could no longer be applied.
82. During the period of monarchy in Trinidad and Tobago and in Guyana, the appointment of the Governor-General was normally based on Letters Patent from Her Majesty, given on the advice of the Prime Minister of that independent monarchy. The Governor-General in both Trinidad and Tobago and in Guyana held office "during Her Majesty's pleasure". This allowed the Prime Minister of the day considerable control over the actual appointment of a Governor-General, as the Queen would normally act on the advice of the Prime Minister in appointing a Governor-General.
83. The heir to the British Throne would become, upon succession, the new Head of State of those independent monarchies in the Commonwealth that shared the person of the British Sovereign as their Head of State. This line of succession was recently amended by the Succession to the Crown Act 2013 that was enacted by the British Parliament and came into effect on 25th April, 2013. The Act removes the previous limitations of primogeniture (where the firstborn succeeds to the throne by right). It also provides for succession to the British Throne without recourse to considerations of gender, and removes the specific disqualification of an heir who is married to a Roman Catholic.
84. In Guyana, the President is now elected by direct election (i.e. by the population); in Trinidad and Tobago the President is elected by an Electoral College which consists of a joint sitting of both Houses of Parliament; and in Dominica, the President is elected by the House of



Assembly, but only if the Prime Minister and the Leader of the Opposition are unable to agree on a single nominee for the office.

85. These methods, therefore, vary from the direct choice of the electorate, to the indirect choice of the Legislature, and to the concurrence of the Prime Minister and the Leader of the Opposition. In all three instances, the President serves for a period of five years.
86. The reform of the process of electing of any President of Trinidad and Tobago will highlight the challenge of devising a method of election that will allow the holder of the office of President an important measure of legitimacy without competing with the Prime Minister and the Cabinet for political dominance in the system. To this end, a draft proposal was advanced by the former Prime Minister, Patrick Manning, in a Working Document laid in the House of Representatives on 9th January, 2009. This document formed the basis for public consultations in 2009 and 2010.
87. The proposal advanced at that time was designed to shift the presidency from its current quasi-ceremonial status to that of an executive presidency in which the offices of President and Prime Minister would have been merged. The proposed President would first have been elected as a member of the House of Representatives, with a running mate to serve as the MP for the constituency should he/she become President. The President would have been elected by a majority of members of the House of Representatives. The running mate would have then assumed the office of MP for the constituency once the President was elected and had vacated the seat as required.
88. Such a presidency was designed to be a hybrid of the current offices of Prime Minister and President. This proposal is analysed and discussed in greater detail in "CHANGING OUR CONSTITUTION" by Dr. Hamid Ghany, published jointly by the Constitutional Affairs and Parliamentary Studies Unit, UWI, and the Office of the Prime Minister, October 2009.
89. The public consultations associated with this proposal commenced in October 2009, and were held in Point Fortin, Chaguanas, Sangre Grande, Petit Valley, Port-of-Spain, Mayaro, Siparia, Cedros and Arima. The consultations were stopped after 10th April, 2010 as a result of the dissolution of Parliament. There was a change of government on 24th May, 2010 and the new government sought to make different arrangements.
90. During the tenure of this Commission, a new President of Trinidad and Tobago was inaugurated. Prior to that, there had been debate about whether the President should have been directly elected by the population instead of being indirectly elected by the Members of Parliament.
91. The Commission received similar submissions; however, these were made without consideration of what effect an elected President would have on the current political process which is based on parliamentarism and not presidentialism.



92. The role of the Office of Prime Minister would be significantly altered once an elected President is introduced to the political process and this would lead to a discussion about an executive presidency.
93. The central debate will revolve around whether the Presidency should continue to be a quasi-ceremonial one or be converted into an executive one. This discussion would involve a consideration of the separation of powers, addressing the overlap between the Executive and the Legislature.
94. Under the parliamentary system, the Executive dominates the Legislature, while in a presidential model, there is genuine separation between the two, and the method of engagement is based on consensus as opposed to domination.
95. A system which retains the Presidency in its current form, while bringing reforms to other offices and structures, would continue to provide the political process with an impartial arbiter. The composition of the Senate is earmarked for reform, namely the introduction of elected Senators, who would be entitled to nominate

and vote for the President of the Republic. The powers of the Prime Minister would be changed, and focus placed on a clearer separation of powers between the two Houses of Parliament. The political party led by the Prime Minister would not necessarily dominate both Houses of Parliament. The Senators appointed by the President (commonly described as “Independent Senators”) would constitute the ultimate tie-breaker for any inconclusive outcomes in votes before the Senate. The President of the Republic would directly appoint the President of the Senate, and this would permit an independent presiding officer to oversee the affairs of the Senate. The domination over the Senate exercised by the Prime Minister would be dissipated by virtue of the direct election of Senators by the electorate; the appointment of Independent Senators by the President; and the direct appointment of the President of the Senate by the President of the Republic.

### **Recommendation**

The power to nominate presidential candidates should not be restricted to members of the House of Representatives, but should be extended to Senators who will be chosen from party lists as proposed later in this Report.







PARLIAMENT  
REPUBLIC OF TRINIDAD AND TOBAGO

## CHAPTER FIVE

### Reforming The Parliament

96. After more than fifty years of independence, the society has been able to judge the performance of the Parliament. The Commission detected that citizens would like to see a parliamentary system where there is more scrutiny of public affairs and less dominance of a party line on all aspects of the functioning of Parliament.
97. The debates about reforming Parliament involved the desire to give the Parliament more powers of scrutiny over the Executive branch of Government. It became apparent that there was influence from the United States Constitution in respect of seeking to have fixed dates established for elections, and the introduction of a right of constituents to recall their Members of Parliament.
98. Essentially, the influence of the Washington model in the reform of the Parliament would ultimately lead to the creation of a hybrid between the Westminster and Washington models as opposed to the retention of the Westminster-style democracy that has existed.
99. The major challenge to be faced here was how to create a greater separation of powers between the Legislature and the Executive, in such a way as to find a mid-point between the parliamentary system that has existed since independence and the presidential system which is best represented by the Washington model.
100. The issue of the method of election of Members of Parliament was raised. Some persons advocated the introduction of a system of proportional representation, while others wanted to see the existing first-past-the-post system retained.
101. Those who recommended proportional representation did not make any distinction between the Hare, Droop, Imperiali, d'Hondt, St. Lague or modified St. Lague methods of proportional representation.
102. The Hare method of proportional representation was introduced for the election of aldermen in the local government elections that were held in Trinidad on 21st October, 2013. The councillors were elected under the first-past-the-post system as they have always been elected.
103. The introduction of this mixed system of first-past-the-post for the councillors and proportional representation for the aldermen brought about a shift in the political

culture of Trinidad. The system of nominating aldermen was modified to allow political parties to make nominations from open lists of candidates provided by the parties before the election. After the election, each party extracted from its list, the names of aldermen to be appointed. The Elections and Boundaries Commission (EBC) determined the number of aldermen allotted to each party, based on the number of votes gained by that party.

104. The lists of aldermen were submitted on the nomination day for councillors, so that the electorate was aware of the talent pool from which aldermen would be chosen.
105. The threshold for being allocated aldermen was set at 25% owing to the fact that every corporation was allowed four aldermen. This meant that the total valid votes cast in each corporation would have to be divided by four in order to determine the quota of votes required to win at least one of the positions of alderman in each corporation.
106. The Hare method of proportional representation requires that where all positions cannot be allocated by the division of the votes cast for each party by the quota, then the unallocated positions will be distributed in sequence to the parties that have the largest remainder of votes, until all of the positions have been allocated.
107. The question of the introduction of proportional representation into the parliamentary electoral process is a matter that the Commission has considered.
108. Proposals were also advanced for the introduction of fixed dates for the holding of general elections. This was proposed as a response to the uncertainty attached to the timing of general elections that is a feature of the parliamentary system of government where the Executive has the power to dissolve the Legislature.
109. It was noted that the United Kingdom Parliament introduced the measure in the Fixed-term Parliaments Act 2011 which came into force in September 2011. Section 3(1) of the Act provides that Parliament will

stand dissolved seventeen working days before the day on which a general election is to be held. Section 1 of the said Act set the next election day to be the first Thursday in May of the fifth year after the previous general election commencing on 7 May 2015.

110. Section 2 of the Act made provision for two means by which a general election can be held ahead of this fixed date. These are (i) a successful motion of no confidence against the Government or (ii) a successful resolution of the House of Commons passed with a two-thirds majority approving an early election.
111. The Commission noted these developments in the United Kingdom.
112. The right of recall of elected parliamentarians was also proposed to the Commission. This was advanced in the context of the measurement of the performance of MPs, and there was some discussion among Commissioners about how one could actually measure the performance of the MP.
113. It was noted that the Salaries Review Commission has regarded the job of an MP who does not hold any ministerial portfolio as being a part-time one. This raised the issue of whether the job of the MP could be a full-time one. A fundamental issue to be resolved is whether elected MPs should also be appointed Ministers or should be elected to serve constituencies alone.



114. The Commission considered the issue of the right of recall of a sitting MP in the context that the MP ought to be afforded the opportunity to have a period of service before being placed in a position to be judged on that service ahead of the end of the parliamentary term for which he/she was elected. Elected MPs being judged on their service to their constituencies may not get equality of treatment as some of them are Ministers and others not. This will create an uneven field for adequate assessment.
115. It was also noted by the Commission that there already exists in the Constitution a provision for the right of MPs to be recalled by the leaders of the parties on whose ticket they were elected if they should resign from, or be expelled by, such party.
116. During the tenure of the Commission, one MP was recalled on the basis of his public resignation from the party on whose ticket he was elected in May 2010. He did not challenge the decision of the Speaker to declare his seat vacant by virtue of his change of allegiance. A by-election was held in that constituency on 4th November, 2013 to fill the vacancy created by the recall of that MP
117. Proposals were also advanced before the Commission for the inclusion of a right to have a referendum on significant constitutional changes and policy measures. This was advanced as a means of promoting greater citizen participation in the making of public policy on significant measures. The manner in which such referenda should be activated for the measurement of the popular will in respect of selected public policy matters of a significant nature will have to be carefully determined.
118. The Commission was also mindful of the fact that there would be considerable cost involved in this process, and that significant resources would have to be given to the Elections and Boundaries Commission to ensure that the registration of electors and the holding of these referenda could be handled with the integrity that would be expected of such a process.
119. The retention of a nominated Senate would ensure that the House of Representatives continues to be dominant over the Senate by virtue of the fact that the House is elected and the Senate is nominated. As a result, some persons who appeared before the Commission expressed concerns about keeping this structure.
120. Proposals were made, in respect of the Senate, that ranged from its outright abolition to its retention with some modifications to the way the Independent Senators are to be appointed, and the number of members in each category of Senators.
121. The availability of more parliamentarians to perform legislative roles as distinct from executive roles as Ministers can lead to more powerful committee oversight of Executive action by these parliamentarians. In order to ensure that committee memberships are seen to be attractive, the Standing Orders of Parliament will have to be amended to ensure a new level of functionality, and legislators will have to be regarded as full-time employees of the State in the same way that Ministers are regarded as full-time employees of the State.
122. The retention of the bicameral system could ensure that there will be diversity in the different chambers of Parliament for hearings as well as the increased use of joint select committees for oversight with all special departmental committees consisting of members from the House of Representatives and the Senate. In the current dispensation, there are Ministers of Government who sit as members of committees and this undermines the real value of the oversight function of these committees. Ministers ought to be prohibited from membership of parliamentary oversight committees.
123. The strength of the Parliament will lie in a diversity of Committees which could lead to the establishment of three types of committees, namely (i) departmental oversight committees; (ii) standing committees; and, (iii) ad hoc committees.

124. The continuation of the existing oversight committees such as the Public Accounts Committee and other Standing Committees of both Houses, and the specific committees for each House that currently exist, such as the Privileges Committee and others could be given new meaning as the business of both Houses will be addressed by persons who are legislators only and not Ministers. This will force a change in the culture of the operations of both Houses of Parliament.
125. To this end, there would have to be an increase in the size of the Senate, if the Senate is to be retained, with the independent Senators holding the balance of power. Otherwise, the House of Representatives will have to be enlarged.
126. If elected MPs are to serve only as constituency representatives, then it may be necessary to draw Ministers from the Senate exclusively. However, such a Senate may have to be endowed with a level of legitimacy that will permit it to become the centre of political power by becoming an elected body as well.
127. The introduction of a method of election that will force consensus among members of a revised Senate will create the conditions for power-sharing and coalition, as opposed to single-party domination which has not been able to unite the population through consensus. Instead, there has been a desire for one party or another to dominate all others, which has not resolved the continuous struggle between major ethnic groups in the society to gain political hegemony. The concept of “winner takes all”, which is a feature of Westminster-Whitehall democracies such as ours, will be diminished if no single political party is able to earn a majority in its own right in both Houses of Parliament. This may be achieved by using a proportionate method of election for the Senate, and giving a second vote to every elector for this purpose, over and above the single vote that is given to electors at present for only the House of Representatives. The prospect of deadlock that can only be broken by consensus, in a system with fixed dates for elections, would mean that inconclusive outcomes can be referred to the population for final settlement by referenda, in cases where the votes of the independent senators still did not make a difference. This will change the political culture.
128. The President of the Senate should be designated by the President of the Republic from among those Senators who are appointed by the President in his own discretion, in order to ensure that the office is not viewed as political by virtue of a partisan selection process. Senators chosen by the President ought to remain at their current numbers, while the size of the overall Senate may be increased to accommodate its new elected status by making the number of elected members equal to the number for the House of Representatives. Whenever the number of members in the House of Representatives is changed on the recommendation of the Elections and Boundaries Commission, the number of elected Senators should be changed accordingly.
129. If Ministers are drawn from the Senate only, and not from the House of Representatives, this will make the Senate the focus of Executive power and the House of Representatives will become more reflective of its name in respect of the duties to be performed by its members.
130. The House of Representatives could play a new and enhanced role of scrutiny for the Parliament, so that its members can address constituency matters there and also play a vital role in serving on a variety of committees of scrutiny that could be designed to keep the Executive in check.
131. The power of the Prime Minister to appoint whomsoever he/she wishes to be a Minister will be diminished. This would be so because the Prime Minister may now nominate Ministers from the Senate only.
132. It is proposed that there be Senators elected by the people, under a system of proportional representation. Each political party presents a list of candidates on which



it identifies its prime ministerial candidate. If in the election one party list gains more than 50% of the votes, the EBC informs the President, who must then appoint that party's prime ministerial candidate as Prime Minister. In the event that no party list earns such a majority of votes, the elected Senators would choose a Prime Minister, when the Senate meets in its first sitting. The President of the Senate would preside over this election. Only persons declared as prime ministerial candidates before they faced the electorate would be eligible for election as Prime Minister. This system of election would ensure that there is consensus over the appointing of a Prime Minister in situations where election results do not present an automatic choice.

133. In a Senate whose composition reflects the will of the electorate in a mathematically proportionate way, it may be impossible for any single party to dominate the process and thereby be able to impose its prime ministerial candidate on the country. It will be necessary to engage in coalition dialogue and power-sharing in order to prevent the worst excesses of single-party triumphalism. In the event that the Senate is unable to elect a Prime Minister after a general election, the President shall appoint as Prime Minister, the person whose list earned the largest single number of votes cast.

134. At the same time, no single person should ever again be allowed to determine who the Prime Minister will be if ever there should be a tie or an inconclusive electoral result based on geographical seat allocation as opposed to actual votes cast by the electorate. The examples from the political history of 1995 and 2001 will suffice to tell a bi-partisan story of how a situation of no overall control has been handled by the political process up to the time of writing.

135. The House of Representatives should continue to be elected as it has always been since independence, in order to permit a fair amount of political continuity. However, its role should be changed in order to permit greater attention to be paid to issues of representation for people in their different geographical constituencies.

136. Such an expectation of dedicated constituency service should be accompanied by a constituency development fund created for each MP so that they may disburse resources to address projects needing attention in their constituencies. This will ensure equitable distribution regardless of whom people choose to vote in as their representative. No one will ever have to face the choice between "being in government" and "being in opposition" to determine whether their communities will be blessed with, or starved of, resources. These MPs should be made accountable to the House of Representatives for the expenditure incurred. A right of recall can then be based on some measure of performance. Under the existing conditions of service, measuring performance would be a more difficult task.

137. With two elected Houses of Parliament, one in its traditional format and the other being converted from nominated to elected, greater citizen participation can be accomplished by affording each elector two votes. One will be for the MP in the geographical constituency that the electorate has always known, and the other for the party of their choice whose list will be headed by its designated prime ministerial candidate. The Prime Minister will now sit in the Senate.

138. The ability of one House to dominate the other will be removed, and the chamber in which the Prime Minister will be located is more than likely to be based on consensus and coalition as opposed to domination and exclusion.

139. Such an equality in the status of both Houses will permit money Bills a much fiercer level of scrutiny in both Houses, while appointments to State Boards can be proposed in the Senate and debated before being approved or rejected by the Senate.

140. There should be fixed dates for elections, and term limits for the office of Prime Minister, if such a system is to work. Once elected to office, every Prime Minister should enjoy the ability to serve for a full term of office unless there is a two-thirds majority vote in the Senate to remove the Prime Minister from office.

141. Senators appointed by the President in his discretion should not vote in the Senate when the election of a Prime Minister is held among Senators, nor should they vote if there is a removal vote that requires a two-thirds majority among Senators. This is an important principle, since those Senators would not have faced the electorate, unlike others whose names were placed before the electorate as part of lists offered by political parties for the electorate to choose.

### **The Retention of Existing Offices and the Creation of Some New Practices**

142. The offices of Speaker, Deputy Speaker, President of the Senate and Vice President of the Senate will be retained, with the same expectation of impartiality in the discharge of their duties being required.

143. The Clerk of the Senate and the Clerk of the House of Representatives will continue to perform their duties with the same level of professionalism in a new environment in which Ministers will no longer dominate the processes of Parliament.

144. Legislation will still be enacted in the same way as it is now, with Bills being debated in Parliament and passed in both Houses, with the exception that the power of delay exercised by the Senate should be removed, given its proposed new status as an elected body.

145. The existing provisions on the prorogation and dissolution of Parliament may have to be altered in order to cater for fixed dates for elections, while prorogation may still be used as a device for sub-dividing the parliamentary timetable.

146. The existing provisions for the tenure of office of members of the House of Representatives may continue, with a right of recall on the grounds of MPs elected on a party ticket crossing the floor or changing their political allegiance, but adding the right of the constituents to seek recall.

147. No recall ought to be effected until the MP has served at least three years of his/her term of office. The process is that two-thirds of registered voters who voted in the election when the MP was elected, sign a petition calling for a recall of the MP. The signatures and bona fides of the petitioners must be verified by the appropriate electoral authorities before a recall referendum can be held.

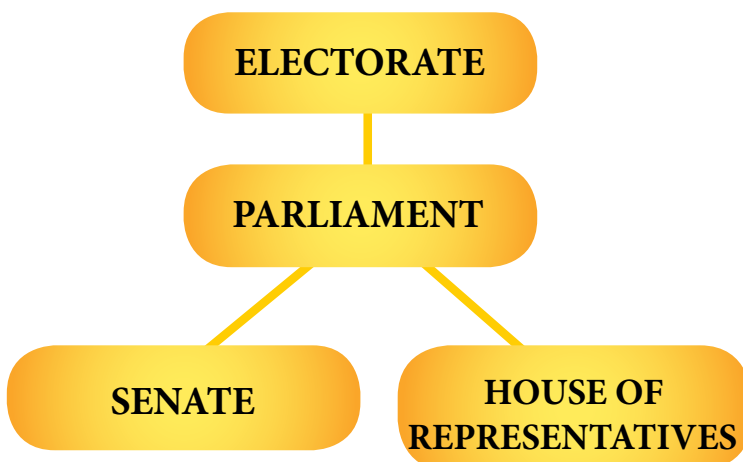
148. The intention of these recall provisions would be to ensure that MPs perform their constituency duties to the satisfaction of their constituents throughout their term of office. Additionally, all MPs will have the same workload, as none of them will be Ministers. This means that they will be expected to devote all of their time to their constituency and the affairs of the House of Representatives as a legislative and oversight body.

149. The Commission considered various types of electoral systems, in a full examination of the electoral process in Trinidad and Tobago. Its recommendations reflect an effort to address the challenges of having fully dedicated MPs who will have to devote all of their time to constituency representation and legislative work in the Parliament without the possibility of any of them becoming Ministers which would diminish their time for service as constituency representatives. At the same time, the Commission is also aware of the need for a closer connection between a mathematically accurate reflection of the wishes of the electorate, and the composition of the Parliament, given that the country has faced many occasions where there have been distortions between voter plurality and seat majorities in the Parliament over the years.

150. The Commission is also mindful that the disadvantage suffered by Tobago, in respect of its relationship with Trinidad, can be addressed by ensuring that the elected representatives from Tobago now be required to focus exclusively on representation of the needs of their constituents, with dedicated resources being provided to them for such work. This would exist outside of the current arrangements for the Tobago House of Assembly,

and would constitute a surplus in the overall budgetary allocation.

151. Additionally, the people of Tobago will be able to have their political groupings represented in the Senate to advocate their positions by virtue of earning the votes of the Tobago electorate. This would guarantee a place in the Senate as determined by Tobago's voters. The existing provisions do not guarantee any place for Tobago in the nominated Senate.
152. Every voter should be permitted the right to cast two ballots, one for the House of Representatives, to elect their MP, and the other for the Senate, to determine which list of parties they would like to see elected to that body.
153. This would represent a shift of political culture from maximum leadership and single-party domination to consensual leadership and multi-party participation. The former has encouraged exclusion, while the latter will force behavioural change among leaders as there can be no guarantee of complete domination, and this will curb the excesses that have been witnessed over the years since independence in 1962.



*The diagram above illustrates that both Houses of Parliament, the Senate and the House of Representatives, will be elected by the electorate who will be given two votes instead of one.*

## Recommendations

- (a) The Senate should be elected by proportional representation using the Hare method.
- (b) The number of party list Senators (i.e. excluding the Senators appointed by the President in his/her own discretion) should be equal to the number of House of Representatives constituencies.
- (c) Each voter should be entitled to two votes, one for their MP in the House of Representatives and the second vote for a party list in the Senate.
- (d) The President of the Republic should designate the President of the Senate from among those Senators appointed by the President in his own discretion.
- (e) There should be no change in the number of Senators appointed by the President in his own discretion.
- (f) The House of Representatives and the Senate should have equal powers.
- (g) Members of the House of Representatives should not be eligible to be appointed Ministers.
- (h) Ministers should be appointed only from among the elected Senators and not from among those Senators who are appointed by the President in his own discretion.
- (i) Members of the House of Representatives should be subject to the right of recall by their constituents after the expiration of three years and not during the fifth year.
- (j) The right of recall should be restricted only to those constituents who voted in the election for that constituency.
- (k) The petition for recall should attain the requirement of two-thirds of the voters who voted in the election of that Member of Parliament for it to be effected.
- (l) There should be fixed dates for general elections.
- (m) There should be a limit of two consecutive terms for the Office of Prime Minister unless there is a two-thirds majority vote in the Senate to remove the Prime Minister.
- (n) The Prime Minister ought to be able to return after the intervention of the term of some other person as Prime Minister.



## CHAPTER SIX

### Reforming The Executive

154. The desire to retain a system of government in which the Executive still has a relationship with the Legislature is the hallmark of the parliamentary model. However, the ability of the Legislature to serve as a check and balance over the actions of the Executive has to be strengthened if the population is to feel secure that their time is not being wasted by voting in a system likely to create the same behaviour patterns among the members of the Executive, no matter how good the first promises sounded when the last election was held that brought them to power.
155. The political culture of Trinidad and Tobago may not be ready for an Executive President, but during the public consultations it was apparent that people wanted greater accountability and more restraints upon the unhindered use of Executive power.
156. The use of restraints on the Executive cannot be designed to hinder the ability of a government to govern, but to ensure that a government does not engage in excesses of power that are disturbing to the national psyche.
157. Restraints on the Executive can cause different political behaviour which will level the field between the Executive and the Legislature in respect of their relations and the overall exercise of power. That restraint can be supplemented by the introduction of meaningful campaign finance reform. This can be effected by amendments to the Representation of the People Act which falls outside the Constitution.
158. The political culture has emerged with an understanding that there is a dominant relationship that the Executive has over the Parliament. This has implications for the separation of powers. Many persons who appeared before the Commission expressed the desire to see stronger checks and balances put in place to alter this dominance and level the relationship between the Executive and the Legislature.
159. Apart from embracing an executive presidency that would bring about a complete separation in the relationship between the Executive and the Legislature, the other option available would be to create a more defined separation in the relationship between the two Houses of Parliament to the extent that the Prime Minister and the Cabinet would not be able to have automatic control over both Houses of Parliament.



160. The suggestion in the previous chapter is that there should be a separation of powers between the House of Representatives and the Senate, with the former playing an enhanced scrutiny role and the latter being chosen by a different electoral method than the former, with each elector having two votes. This model can provide the basis for significant checks and balances.
161. The divisiveness that has been experienced in the society over the swing of the political pendulum has been driven by the desire of political parties to dominate all aspects of life in Trinidad and Tobago so that the country may be branded as belonging to one or the other.
162. Curbing the power available to the political elites in all political parties will never erode their desire to dominate, but their ability to dominate will be eroded. The political culture of domination has to be checked by a systemic alteration that will force behavioural change in the direction of compromise and consensus instead of domination and division among those political elites.
163. Reference has been made to the challenge that faced a former President of having to choose between two leaders to determine who should be Prime Minister after a first-past-the-post election produced a tie. Two parties had gained the same number of seats. The fact that the one eventually appointed into government had fewer votes than the other has also been noted.
164. Under the existing system, the President has the full discretionary authority to appoint a Prime Minister. The deeper issue is whether it was fair to the electorate whose votes were not considered. The system needs to become more sensitive to the wishes of the electorate. The President should be removed from the process of appointing a Prime Minister in favour of permitting one, or both, of the Houses of Parliament, as the case may be, to choose a Prime Minister from among its, or their, ranks after an election, in cases where no party gains a majority of votes.
165. The system of election that should be used is one that will permit a mathematically accurate reflection of the wishes of the electorate in one of the Houses of Parliament, and the Senate would be the likely place to make such a reform. The parties contesting for seats in the Senate should use lists of names that will designate who their prime ministerial candidate will be.



166. If a single party earns more than fifty percent of the votes cast, then it will earn the proportionate number of seats and extract names from its list accordingly. Such a party, with its prime ministerial candidate already designated, can be expected to have the Chairman of the EBC officially inform the President of the name of the person to be sworn into office as Prime Minister.
167. If no party earns a majority, then the Chairman of the Elections and Boundaries Commission advises the Clerk of the Senate to arrange for the conduct of an election among the Senators, at the first sitting of the Senate, to elect a Prime Minister. It will then be up to the members who meet at the first sitting to elect a Prime Minister from among their number with the exception of those Senators appointed by the President in his own discretion.
168. In the event of a tie or deadlock in the vote for the Prime Minister among the Senators, the President of the Republic should be advised of this development by the President of the Senate, and the President of the Republic should be required to appoint as Prime Minister the person whose list earned the largest single number of votes cast.
169. After being appointed by the President of the Republic, the Prime Minister advises the President on the appointment of Ministers and these can only be drawn from among members of the Senate.
170. The Cabinet should consist of the Prime Minister, the Deputy Prime Minister, the Attorney General, the Minister of Finance, the Minister of Foreign Affairs, the Minister of National Security and such limited number of other Ministers drawn from among the Senators as may be defined.
171. No Senator appointed by the President in his discretion ought to be appointed a Minister.
172. The issue of term limits for the office of Prime Minister was advocated by many persons who appeared before

the Commission. This had been directly considered by the Constitution Review Commission under the chairmanship of the Right Honourable Sir Hugh Wooding during the period 1971 – 74. The Wooding Constitution Commission took a hostile view of it in paragraph 284 of its 1974 Report, as follows :

“We considered and rejected the suggestion that a limit should be placed on the number of terms which any person may serve as Prime Minister. Essentially at any general election voters choose the party which they wish to form the government. It seems to us unthinkable to impose any restrictions on the number of successive terms which any party could win. Once that is conceded, it would seem to be wrong in principle to place a restriction on the party’s choice of leadership. This could have a significant effect on their chances of winning the elections. Compelling them to change their leader may, in effect, reduce their chances of success. We do not think that any useful purpose can be served from a study of the experience of the United States of America and some Latin American countries where the choice of President is essentially the choice of a person, not of a governing party. In these systems the office of President stands by itself separate and apart from Congress which may be controlled by a party other than that to which the President belongs.” (*Report of the Constitution Commission, Trinidad and Tobago Printing and Packaging Co., 1974, para. 284*).

173. Forty years have elapsed since those proposals were made. The key factor here is that both the fixed dates for elections and the proposal for term limits are features of presidential models of government. However, the parliamentary system in the United Kingdom has adopted fixed dates for elections. Term limits for the Prime Minister would be the next logical step.
174. Canada introduced fixed dates for elections by amending its electoral laws in May 2007; however, the amendment to the electoral law provided for an exception to the powers of the Governor-General under the Royal Prerogative (in order to avoid having to seek a constitutional amendment). Accordingly, the revised electoral law provided that a general election should be

held at the federal level on the third Monday in October after the previous general election had been held. This established that the next general election ought to have been held on 19th October, 2009.

175. In September 2008, Prime Minister Stephen Harper, whose government was surviving a number of confidence votes in the Canadian House of Commons because of opposition abstention to avoid forcing a general election, was able to secure a dissolution of Parliament in defiance of the electoral laws because the Governor-General, Her Excellency Michaëlle Jean, exercised the prerogative powers of the Crown to dissolve Parliament in 2008, one year ahead of the fixed date prescribed in electoral law which is inferior in the face of the prerogative powers of the Crown.

176. The proposal for term limits for the Prime Minister was considered in the context of the Twenty-Second Amendment to the United States Constitution that was ratified in 1951. The Amendment read as follows :

*"Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.*

*Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."*

177. The amendment did not apply to the person holding office at the time of its approval, but would apply to future holders of the office of President. This amendment came

into effect while President Harry Truman was in office. However, he did not seek to be elected for a third term after the New Hampshire primary in 1952.

178. In a parliamentary system, the appointment of the Prime Minister is not determined by the people, but rather by the Head of State, based on constitutional guidelines. Under a system of term limits with fixed dates for elections, there can be succession planning inside of political parties against a known timeline for effecting change. This will ensure political stability.

179. In the Commonwealth Caribbean, there are written constitutions that regulate the manner in which the Prime Minister is to be appointed. These constitutions may be separated into different methods as regards the appointment, and termination of appointment, of a Prime Minister. One method emphasizes the incumbency theory by making provision for the removal of the Prime Minister only if the changes in the membership of the elected House, after a dissolution and before the first sitting of Parliament, are such that the Governor-General or President, as the case may be, determines that it is necessary to remove the Prime Minister from office. Otherwise, the Prime Minister does not have to be re-appointed if he / she continues to command the support of a majority of elected members after a general election. Commonwealth Caribbean countries that follow this method in their constitutions are Dominica, Grenada, St. Kitts-Nevis, St. Lucia, and St. Vincent and the Grenadines.

180. Another method emphasizes the need for the termination of office regardless of incumbency after a dissolution and before the first sitting of Parliament. In this case, the termination of office comes as a consequence of being re-appointed as Prime Minister so that one term of office ends and another begins for every incumbent. The appointment of someone else as Prime Minister will naturally end the term of the incumbent. However, effect is given to this termination merely by way of the Governor-General or President, as the case may be, informing the incumbent Prime Minister that he / she is to be re-appointed or someone else is to be appointed



Prime Minister. Commonwealth Caribbean countries that follow this method are Antigua and Barbuda, Barbados, Belize, Jamaica, The Bahamas, and Trinidad and Tobago.

be guided by the wishes of the majority of those persons whose names were extracted from such list as was headed by the Prime Minister who is to be replaced.

181. The incumbency method recognizes that there is no need to re-appoint the Prime Minister if the alterations in the elected membership of Parliament after a general election do not warrant any change. The termination method makes it mandatory that the Prime Minister vacate office every time after a general election whether the reason is re-appointment or the appointment of someone else.
182. The Commission also heard submissions that proposed the creation of the office of Deputy Prime Minister. Such an office could provide some measure of certainty about who would act as Prime Minister during the absence or illness of the Prime Minister; and if the Prime Minister resigned, was removed from office or died in office, the Deputy Prime Minister could act as Prime Minister until a new Prime Minister was appointed.
183. The Deputy Prime Minister should be appointed by the President, on the advice of the Prime Minister, from among the persons whose names were extracted for membership of the Senate from the party list headed by the person who was appointed Prime Minister, or from any other party list.
184. In cases where there was resignation, death or removal from office in respect of the office of Prime Minister, the President ought to be required to appoint as Prime Minister another person from the same list of persons, headed by the Prime Minister, whose names had been extracted to become members of the Senate.
185. In the event that the Prime Minister is temporarily unable to perform his/her functions by reason of absence, illness, suspension from the Senate, or any other reason, the Deputy Prime Minister should perform the functions of Prime Minister.
186. In making such an appointment, the President should
187. The Prime Minister must be accountable to Parliament and can only be removed by a motion of no confidence that would be passed by a two-thirds majority of the Senate during his/her term of office.
188. The Cabinet will be collectively responsible to Parliament, while individual Ministers will also be accountable to Parliament for the discharge of their duties.
189. All Ministers ought to have a right of audience in the House of Representatives.
190. Under the existing constitutional provisions, defeated candidates can be appointed Senators and made Ministers. Prime Ministers have been able to have defeated candidates appointed as Ministers in cases where such candidates are defeated and do not become MPs. This has drawn a fair amount of controversy over the years and would be eliminated if the Senate were to become an elected body as well.

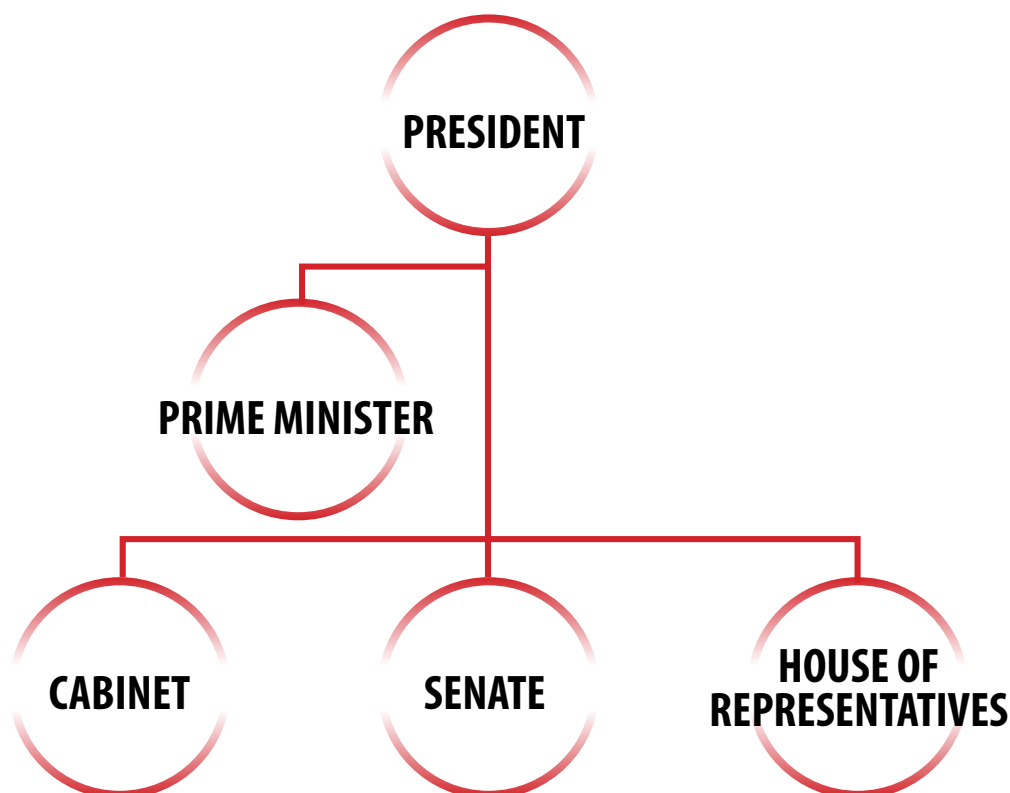
### **The Leader of the Opposition and the Minority Leader**

191. The office of Leader of the Opposition should be reconsidered in light of the fact that the title does not lend itself to seeking consensus, but rather, to the stance of being permanently opposed to the Government. It might be useful to consider changing the title of the office to "Minority Leader" to capture the fact that the office is not about perpetual opposition to the Government. It is, rather, a reflection of the fact that its holder is not of the same political persuasion as the Prime Minister, is not an ally of the Prime Minister, and does not lead a majority of Senators. Other political leaders may not be of the same political persuasion as the Prime Minister, but may become political allies of the Prime Minister. In such a situation of coalition government, it may be necessary to differentiate between these political differences by virtue of alliances and alternatives. In the circumstances,

the Minority Leader would be the person who leads the largest number of Senators who are not supporters or allies of the Prime Minister.

192. The opportunities for consultation between the President and the Leader of the Opposition that currently exist ought to be continued if there is to be a Minority Leader instead.

## CHART OUTLINING NEW RELATIONSHIPS BETWEEN PRESIDENT, PRIME MINISTER, CABINET, SENATE AND HOUSE OF REPRESENTATIVES



*The diagram above illustrates that the President is the Head of State and that the Prime Minister will be associated with the Cabinet and with the Senate, and not with the House of Representatives.*

### The Director of Public Prosecutions

193. The relationship between the office of the Attorney General and the office of the Director of Public Prosecutions ought to be reviewed to ensure the independence of the latter. This review is necessary owing to past controversies involving the two offices.

### Recommendations

(a) The Prime Minister should be appointed first by the President if the party list, headed by a prime ministerial

candidate, earns more than 50% of the votes cast for all lists.

- (b) Where no party list earns more than 50% of the votes cast for all lists, the Senate, save the Senators appointed by the President in his own discretion, shall elect a Prime Minister from among the leaders of all party lists.
- (c) Where the Senate is unable to elect a Prime Minister, either because there was no majority of Senators or because of a tie or deadlock, the President shall appoint as Prime Minister the leader of that party list which earned the largest single number of votes cast by the electorate among all party lists.

- (d) The Cabinet should consist of the Prime Minister, the Deputy Prime Minister, the Attorney General, the Minister of Finance, the Minister of Foreign Affairs, the Minister of National Security and such limited number of other Ministers drawn from among the Senators as may be defined.
- (e) No Senator appointed by the President in his discretion ought to be appointed a Minister.
- (f) The Deputy Prime Minister should be appointed by the President on the advice of the Prime Minister from among the persons whose names were extracted for membership of the Senate from the party list, headed by the person who was appointed Prime Minister, or from any other party list.
- (g) In the event of the Prime Minister's resignation, death or removal from office, the President should appoint a Prime Minister from among elected Senators whose names were extracted from the same party list as the Prime Minister to be come members of the Senate. Until a new Prime Minister is appointed, the Deputy Prime Minister performs the functions of Prime Minister.
- (h) During the period of the resignation, death or removal of the Prime Minister, the Deputy Prime Minister shall perform the functions of the office of Prime Minister until the President appoints a Prime Minister.
- (i) In making an appointment at (h) above, the President should be guided by the wishes of the majority of those persons whose names were extracted from such party list as was headed by the Prime Minister who is to be replaced.
- (j) The Prime Minister must be accountable to Parliament and can only be removed by a motion of no confidence that would be passed by a two-thirds majority of the Senate during his/her term of office.
- (k) The Cabinet will be collectively responsible to Parliament, while individual Ministers will also be accountable to Parliament for the discharge of their duties.
- (l) All Ministers ought to have a right of audience in the House of Representatives.
- (m) The title of the office of Leader of the Opposition should be changed to "Minority Leader".
- (n) The Office of the Director of Public Prosecutions should be awarded an independent fiscal vote which will be audited by the Auditor General whose report will be laid in Parliament for scrutiny.
- (o) The Director of Public Prosecutions shall report to the President on an annual basis on his performance which shall include statistics in such form and in such detail as may be prescribed and such report shall be laid in Parliament.





## CHAPTER SEVEN

### Reforming The Public Service

194. The major challenge facing the Public Service in the post-independence era is the challenge of making a paradigm shift from administration to management. The classical Weberian philosophy of an ideal-type bureaucracy in which the existence of a hierarchy was the foundation for building a career in the public service on the basis of seniority and promotion until retirement, and using the tools of administration of public policy as opposed to management of public policy, has since been challenged.

195. The proactive requirements of governance in post-colonial societies in the Commonwealth Caribbean have to embrace delivery of goods and services to their populations with new tools of outreach, communication and decentralization. The traditional lines of communication between the Government and the various communities that exist in Commonwealth Caribbean societies have tended to reach mainly to urban centres, to the neglect of rural communities in Trinidad and to Tobago in general.

196. In Trinidad and Tobago, the re-engineering of our Public Service must take this phenomenon into account. The Public Service must embrace implementation of public

policy and the ability of the State agencies to reach out to all communities in a manner that promotes equality and diminishes alienation.

#### **The Tobago House of Assembly**

197. On its visit to Tobago, the Commission heard from many persons about the neglect and administrative indifference to the needs of the island practised by many State agencies. What was portrayed was a general impression of neglect of the needs of the island by the central government.

198. In addressing this matter, the Commission was mindful of its courtesy call upon the Chief Secretary at which time the Chief Secretary indicated that he wanted the matter of the constitutional reform agenda for internal self-government for Tobago to be separated from the exercise being undertaken by the Commission.

199. The Chief Secretary held the view that since his discussions with the central government on internal self-government for Tobago were underway, those discussions should be kept separate from the work of the Commission.

200. The Commission is satisfied that such a separation is easier spoken about than done. There are many aspects of the work of the Commission in relation to the overall constitution that will impinge upon the issues of internal self-government for Tobago.

201. As a consequence, in respect of Tobago, the mandate of the Commission did not extend to the Tobago House of Assembly Act 1996 and so this did not form part of the consideration of the Commission. However, the Commission is mindful of the discontent expressed in Tobago and would clearly favour a reform of the relationship between Trinidad and Tobago in order to permit a greater degree of self-government for Tobago.

### **Local Government**

202. In seeking to re-engineer the public services of Trinidad and Tobago, the emphasis has to be placed upon delivery of goods and services to the population. The only effective manner in which to accomplish this will be to strengthen the system of local government on such a basis that the implementation of Government policy can reach to all corners of Trinidad.



203. However, in respect of an overall assessment of the enhancement of local government services in Trinidad, a different approach may be required.

204. There is no other way that the citizens of Trinidad will enjoy the benefits of public policy decisions on an equal basis than if the State is prepared to employ a philosophy of decentralization in which the local government network can serve as the vehicle of delivery.

205. The Commission recognizes that the current form of Local Government is inadequate and that there is an urgent need to improve it. In seeking to make improvements, the Commission advocates that local government be placed within the Constitution and entrenched so that it cannot be treated with the scant courtesy it has been shown in the past, in respect of uncertain elections and erratic releases of funds for local government bodies from the central government.

206. The Commission considers that there ought to be a place for Community Based Organizations (CBOs) in the new arrangements for local government on a non-partisan basis. One of the problems that has bedevilled local government has been its infiltration by political parties who are able to mobilize candidates and voters on particular platform proposals to capture political power as an extension of their own influence at the Central Government level.

207. In many respects, this is counter-productive to the establishment of meaningful articulation of community needs as the application of political lenses can lead to political apologists for public policy lapses or political opportunists against those lapses. This can skew what the real needs of communities are and cause them to suffer hardships because of their perceived political leanings as opposed to simply caring about the objective needs of these populations.

208. The Commission is strong in its resolve that local government enhancement and constitutional recognition are important steps forward in making systemic change.

209. The Commission is aware of the infiltration of political parties into this process as has been the case, but the communities themselves will have to decide if that is the way that they want to go.
210. The recent introduction of proportional representation into the local government system in Trinidad can provide the basis for regional groupings to emerge as electoral forces within various regional, city and borough corporations. This reform has the potential to enhance greater community spirit and participation by political groups that are different from political parties.
211. The mechanism has been put in place. Whether the population in different parts of the country would like the main political parties to continue to provide their councillors and aldermen as opposed to community-based groups that will contest the local government elections will become a matter of local political consciousness.
212. One of the main reasons why political parties will always seek to participate in local government elections is the fact that there is a budget out of which patronage can be dispensed, as well as the ability to make political headway at the community level which can also serve the political parties in their efforts at the national level.
213. If there can be a firm commitment to entrench local government in the constitution and as a result of that to follow on with the re-engineering of the public service, there will be real hope for the satisfaction of the many contributions that were made before the Commission to enhance the status and effectiveness of local government.
214. The challenge here is to determine how well this has worked. The tradition has been to treat service commissions as the sacred cows of the constitution and to place them above the level of scrutiny. However, as bodies charged with making strategic decisions about public bureaucracies there have been questions asked about their efficiency. Scrutiny would be designed to probe their efficiency and effectiveness as opposed to their independence.
215. The Commission also received submissions to the effect that consideration should be given to the introduction of confirmation hearings for the appointment of persons to key positions in the Public Service such as the chairpersons and members of all Service Commissions and other key positions.
216. Such a reform would introduce a level of scrutiny and transparency into the process that would afford the Legislature and the general public the opportunity to ensure that such persons were adequately screened before their appointments were confirmed. It has also been suggested that the approach be adopted with the appointment of State Boards, given the unsatisfactory manner in which such appointments have been made over the years.

### **The Auditor General**

### **Scrutiny of Service Commissions**

214. There were submissions to the Commission that some kind of parliamentary committee should be created to oversee the performance of Service Commissions.
215. As part of the process of re-engineering the public service, some kind of scrutiny of service commissions may be required if their performance is to move the public service forward. The ethos of the service commissions in the Commonwealth Caribbean is one in which their independence is designed to protect the public servants from the politicians.
219. The Auditor General has made a case that Value For Money audits ought to be conducted by that office in respect of the auditing of the accounts of government departments and agencies. Such audits would provide a better assessment of the way in which public money is spent and would require that access be granted to documentation and information that would fall outside of the domain of accounts and ledgers.



220. There are also issues surrounding the ambiguity of whether or not the Auditor General is the designated auditor for state corporations, owing to the ambiguity of the existing constitutional provisions on the matter. The practice ought to be that these state corporations appoint the Auditor General as their auditor at their annual general meetings.

221. This would be required seeing that the Auditor General is “empowered” to conduct such audits. However, many state corporations retain the services of private auditing companies, and the Auditor General is required to sign off on these audits despite not having done them departmentally.

### **General Overview**

222. The overall package of reforms that range from the reform of local government as an agent of the State to deliver goods and services on a decentralized basis to all communities, to the debate about scrutiny of

service commissions, to the introduction of confirmation hearings for key appointments in the public service, offers real hope for re-engineering.

223. A re-engineered public service along these lines will make a quantum leap of difference to life in Trinidad and Tobago if the total package of decentralization and scrutiny are embraced together and not adopted in a piecemeal manner.

### **Recommendations**

- (a) There should be constitutional recognition of local government, as well as provision for fixed dates for the election of local government councils.
- (b) The names of proposed members of State Boards should be laid in Parliament at least seven days before their actual appointments.
- (c) The Auditor General should be empowered to conduct Value for Money audits of Government Departments and agencies, as well as State Corporations.





## CHAPTER EIGHT

### Reforming The Institutions and Processes of Scrutiny

#### The Ombudsman

224. The Commission received submissions that the reports made by the Ombudsman should be debated, as a matter of urgency, once they have been laid in the Parliament. Given the suggested role for the House of Representatives as a body that will address constituency matters and participate in enhanced scrutiny of government agencies and departments, this will attract the kind of attention that the public would like to see in cases of maladministration.
225. The office of the Ombudsman has been viewed as an ineffective institution mainly because there is a perception that Parliament does not take it seriously. The introduction of a system whereby the elected parliamentarians will be expected to perform as full-time legislators, even though they may not be paid as such but instead have revised duties with a clearer representative focus, will create a situation where the enhancement of the committee system in Parliament will provide the kind of forum for the further examination of the reports submitted by the Ombudsman.
226. A properly functioning committee system in Parliament can be translated into an effective watchdog service for the public and, in the process, strengthen this institution of scrutiny over the public service.
227. If every report and special report made by the Ombudsman could get devoted committee time in Parliament, then the problems encountered by average citizens in their daily lives as reported by the Ombudsman will get attention. That will make a difference to people who will feel that their issues matter to somebody and that real action to redress maladministration will be taken.
228. As it stands now, the Ombudsman has to rely on moral suasion to a large extent to get redress for many aggrieved persons. The entrance of parliamentary committee hearings on these reports will change the dynamic of the situation. After all, the Ombudsman is an officer of Parliament and the use of committees to facilitate and highlight the work of that office will make it more efficient and effective.
229. Submissions were made to the Commission that the Constitution should make provision for (i) the jurisdiction of the Ombudsman to be more clearly defined and

enunciated in order to grant greater authority to the office; (ii) the budget of the Ombudsman to be enhanced; and, (iii) more staff to be appointed to play investigative roles in response to requests from the public and from parliamentarians.

230. The major concern of those persons who wanted to see an enhancement in the office of the Ombudsman was whether the recommendations made for remedial action would be implemented. With the addition of dedicated parliamentary oversight and scrutiny of all reports and special reports by the House of Representatives, the potential for meaningful remedial action to provide relief to citizens aggrieved by any act of maladministration will increase.

### **The Integrity Commission**

231. The issue of non-compliance with the Integrity in Public Life Act should be met with sanctions for the offending parties. The obligation to make a declaration to the Integrity Commission ("the Commission") should be enforced rigidly as the practice has emerged over the last decade of the Commission publishing the names of delinquent persons in public life who have failed to comply with the requests of the Commission for further and better particulars or first-time declarations.
232. Consideration should be given to an expansion of the list of persons in public life who ought to be required to make declarations to the Commission. This net should be made wider to rectify imbalances that exist in the system owing to the fact that any provision to enhance the powers and status of local government should include other officers such as the Chief Executive Officers and others who do not now fall within the scope of those required to file declarations.
233. It might be useful to consider altering the procedure of the Integrity Commission to one that requires all persons in public life to swear to an undertaking that they would provide declarations of their assets and liabilities upon the request of the Integrity Commission if they are the subject of an investigation. This would enhance the capacity of the Commission to function more effectively

by changing its focus from chasing down hundreds of declarations to examining only those that require investigation, using its vast powers that already exist.

234. The current procedure has become cumbersome and inefficient, and also has prevented many persons from coming forward to serve because of their concern about the process of mandatory filing of their assets and liabilities with the Commission. The impression has now been created that the Integrity Commission has become an institution that is required to conduct investigations at the behest of politicians who may be seeking to embarrass other politicians who hold offices in public life.
235. It is noted that the last three chairmen of the Integrity Commission, up to the time of writing, have all resigned because of controversies associated with their tenure. This has strained the moral authority of the Commission to assert itself as the moral police of the society.

### **The Public Accounts Committees**

236. Concerns were expressed to the Commission about the functioning of the Public Accounts Committees of the Parliament. The fact that the Committees met infrequently was disappointing. The Public Accounts Committees cannot be effective if the accounts of Government Ministries, Departments and Agencies are not tabled in a timely manner.
237. Consideration should be given to the application of sanctions for non-performance in respect of a body which monitors the national finances to ensure compliance.
238. There should be no Ministers eligible to sit on the Public Accounts Committees as no member of the House of Representatives should be eligible for appointment as a Minister, which enhances the scrutiny role for members of that House.
239. The current arrangements whereby Ministers could sit as members of oversight and scrutiny committees of the Parliament ought to be discontinued as it has the potential to create unfortunate overlaps in the functions of Ministers, who ought not to be scrutineers of the



Government to which they belong. Additionally, it will be necessary to remove references to the Opposition in respect of chairmanship of these Committees.

government officials as well as officials of corporations who are in receipt of government contracts.

### **General**

240. Where it is found that there has been undue delay in the preparation and submission of accounts, or where it is found that there is a matter to be dealt with in an expeditious manner, the Committees should be empowered to obtain the services of a private independent auditor to go in and do the work.
241. Consideration should be given to making provisions for the expansion of technical assistance available to these committees, especially where it relates to the contracting of services necessary for the performance of the Committee.
246. The enhancement of the existing institutions of scrutiny, namely the Ombudsman, the Integrity Commission and the Public Accounts Committees, together with the creation of a new one in the form of the Contractor General, will create a new ethos in the arena of the institutions and processes of scrutiny.
247. There is an expectation that the persons who are appointed to these offices / bodies will take their tasks seriously on behalf of the people of Trinidad and Tobago whose taxpayer dollars require appropriate oversight by competent persons and bodies.

### **The Contractor General**

242. As the issue of public procurement becomes more developed in the public domain, the issue arose of the introduction of the office of Contractor General as applies in other jurisdictions.
243. Controversies have erupted in many Commonwealth Caribbean countries over the award of State contracts which has led to calls for greater monitoring and scrutiny of the processes by which awards are made, as well as any subsequent variations to original awards of contracts.
244. The allocation and supervision of government contracts has now become an area of State activity that has to be conducted separately to ensure proper segregation of duties, transparency of process, exposure of bid rigging, prevention of collusion and conspiracy to defraud the State, exposure of insider informants, and declaration of conflicts of interest.
245. The reports by the Contractor General could also inform the work of the parliamentary committees contemplated for Parliament. Such reports can lead to direct scrutiny of

### **Recommendations**

- (a) The report and recommendations of the Ombudsman should be made subject to the oversight and scrutiny of the House of Representatives and its committees.
- (b) All persons in public life should be required to swear to an undertaking that they would provide declarations of their assets and liabilities upon the request of the Integrity Commission if they are the subject of an investigation.
- (c) No Minister should be eligible to sit on the Public Accounts Committee (PAC) or the Public Accounts Enterprises Committee (PAEC).
- (d) References to the Opposition should be removed from the Constitution with regard to the chairmanship of the PAC and the PAEC.
- (e) An Office of Contractor General should be created.
- (f) The annual and special reports of such Contractor General should be laid in Parliament for consideration and investigation by parliamentary committees with powers to summon and interview persons, government officials as well as officials of companies and corporations who are in receipt of, or have authority over, government contracts.



## CHAPTER NINE

### The Judiciary

248. In the period between independence and the present day, there has been no substantial alteration of the provisions that govern the Judiciary outside of an upward movement of the age of retirement of Judges. However, during the period there have been three major developments which are likely to impact upon the judicial provisions. One is the establishment of the Caribbean Court of Justice (CCJ) in April 2005, the second is the failed attempt to impeach a Chief Justice in 2006-2007, and the third is the establishment of the United Kingdom Supreme Court in October 2009.
249. The judicial provisions that came into effect in the United Kingdom in October 2009 were part of a suite of reforms that started in January 2004 with the announcement of a Concordat between the Lord Chief Justice and the Lord Chancellor that was a precursor to the enactment of the Constitutional Reform Act 2005.
250. The effect of this Act was to make provision for the ultimate creation of a Ministry of Justice which would be led by a Secretary of State for Justice and Lord Chancellor. It was the first time that the office of Lord Chancellor would be held by someone who was not a member of the House of Lords, and the office was joined with that of the Secretary of State for Justice who became the Minister responsible to Parliament for the Judiciary. Such a responsibility had been held by the Lord Chancellor before these reforms that started with the creation of the office of Lord Speaker in 1999 which removed from the Lord Chancellor the right to preside over the House of Lords. After that, the ministerial responsibility for the Judiciary was removed from the Lord Chancellor with the creation of a Ministry of Justice.
251. The final act of dismantling the office of Lord Chancellor from its position of crossing the lines of the separation of powers came in October 2009 with the establishment of the United Kingdom Supreme Court which is led by the Lord Chief Justice. All members of that court ceased to hold their previous positions as Law Lords.
252. However, the title "Lord Chancellor" still exists as there are many statutes that make reference to this office. Insofar as the Lord Chancellor (who is also the Secretary of State for Justice) and the Lord Chief Justice are concerned, the two offices have a Concordat to govern their relations.

253. On 14th February, 2001, the Agreement establishing the CCJ was signed among CARICOM member states. That Agreement came into force on 23rd July, 2003 and the Court was inaugurated on 16th April, 2005. The headquarters for the Court is in Trinidad and Tobago, although Trinidad and Tobago itself has not acceded to the appellate jurisdiction of the Court.

254. The countries that have acceded to its appellate jurisdiction (as opposed to its original jurisdiction in relation to the Caribbean Single Market) and have thereby replaced the Judicial Committee of the Privy Council as their final Court of Appeal, are Barbados, Belize and Guyana. Jamaica attempted to do so in 2004 but the legislation that gave effect to the replacement was held to be unconstitutional by the Privy Council itself in the matter of the Independent Jamaica Council for Human Rights (1998) Ltd. v the Hon. Syringa Marshall-Burnett and the Attorney General of Jamaica (Privy Council Appeal No. 41 of 2004) in a judgment handed down on 3rd February, 2005.

255. These two developments (the creation of the Caribbean Court of Justice and the creation of the United Kingdom Supreme Court) have placed the Commonwealth Caribbean at the crossroads of history as regards the replacement of the Judicial Committee of the Privy Council with the Caribbean Court of Justice.

### **Strengthening the Judiciary**

256. On the issue of strengthening the Judiciary, it must be noted that the Commonwealth has taken a leading role in providing principled support for the ideal environment that needs to be cultivated for an independent and impartial judiciary to operate. To this end, the most recent support for the Judiciary at the level of the Commonwealth has come in the form of the Edinburgh Plan of Action.

### **The Edinburgh Plan of Action and the Independence of the Judiciary**

257. *The Edinburgh Plan of Action for the Commonwealth* was prepared at the end of the Commonwealth (Latimer

House) Colloquium held on 6th and 7th July, 2008 at the Scottish Parliament and presented to the Commonwealth Law Ministers meeting in Edinburgh in July 2008. In recalling the Commonwealth (Latimer House) Principles (CLHP) that were endorsed at the Commonwealth Heads of Government Meeting in Abuja, Nigeria in 2003, the CLHP advocated the following in respect of the Judiciary :

#### "1.3 Independence of the Judiciary

Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought. (CLHP –IV.3)

#### **ACTION:**

The allocation of resources by Parliament, for the judiciary and the running of the courts, should be made following consultation between the Head of the Judiciary and the relevant minister.

Appropriate dispute resolution mechanisms should be put in place to deal with any disputes arising in relation to the allocation of resources.

There remain jurisdictions where adequate resources have not been made available for judicial training, including training on basic constitutional issues. Such resources should be made available and programmes established for judicial training under the control of the Head of the Judiciary." [*The Edinburgh Plan of Action for the Commonwealth* prepared by the Commonwealth (Latimer House) Colloquium, held at the Scottish Parliament, 6 – 7 July, 2008, para. 1.3.].

258. While the Edinburgh Plan of Action for the Commonwealth envisaged consultation between the Head of the Judiciary and the relevant Minister of Government responsible for the operation of the courts before Parliament approves resources for the judiciary, the fundamental premise of the argument is that the judiciary must be given adequate resources for it to function so as not to compromise the independence of the judiciary. The Edinburgh Plan of





Action goes further to say :

"2.3 Judicial accountability and confidence building

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. (CLHP VII- b)

**ACTION:**

The Heads of the Judiciary should submit regular reviews to Parliaments on the financing and administration of the courts.

The judiciary should continue to develop and review their codes of conduct/ethics on a regular basis.

Information on the complaints and disciplinary procedures in relation to judicial misconduct should be publicly available." [*The Edinburgh Plan of Action for the Commonwealth* prepared by the Commonwealth (Latimer House) Colloquium, held at the Scottish Parliament, 6 – 7 July, 2008, para. 2.3.].

consideration at their Meeting in Edinburgh over the period 8th – 11th July, 2008.

260. According to the Communiqué issued at the end of the Commonwealth Law Ministers meeting in Edinburgh in July 2008 at paragraph 7 :

"7. The latter paper provided the basis for the High Level Panel deliberations, which covered many important contemporary issues relating to the diverse challenges facing the rule of law, including the central role of the Justice Minister in defending the independence of the judiciary, facilitating international cooperation in the light of differing legal regimes and governmental structures, and strengthening the interaction of Law Ministries with other stakeholders in the development and implementation of legal policy." [Commonwealth Law Ministers Meeting Communiqué 2008, (Commonwealth Secretariat, London, July 2008), para.7.].

261. At the level of Commonwealth Law Ministers, the question of a Minister of Justice relating to a Chief Justice has been accepted as a means of carrying out the administration of justice. In essence the role being assigned to the Minister of Justice is that of being the defender of the independence of the Judiciary. In the Commonwealth Caribbean, there is still great trepidation about a Minister of Government having anything to do with the Judiciary, which runs counter to the trends in the Commonwealth.

262. The principles espoused in the Edinburgh Plan of Action represent the kinds of values that could be upheld for the Judiciary in the Constitution.

**The Caribbean Court of Justice**

259. The Edinburgh Plan of Action envisages a level of functional cooperation between the Judiciary and Parliament, and the Judiciary and the Executive, on the one hand, and the Judiciary and the public, on the other hand, which will promote confidence building in the public domain. The Edinburgh Plan of Action was submitted to Commonwealth Law Ministers for

263. The judgment by the Privy Council in the matter of the Independent Jamaica Council for Human Rights (1998) Ltd. v the Hon. Syringa Marshall-Burnett and the Attorney General of Jamaica (Privy Council Appeal No. 41 of 2004), that was handed down on 3rd February 2005,

has opened a major debate about the protection of the Separation of Powers in all of the member states who will share the jurisdiction of the CCJ. According to the Privy Council :

“The three Acts do not, singly or cumulatively, weaken the constitutional protection enjoyed by the higher judiciary of Jamaica. The question is whether, consistently with the constitutional regime just described, a power to review the decisions of the higher courts of Jamaica may properly be entrusted, without adopting the procedure mandated by the Constitution for the amendment of entrenched provisions, to a new court which, whatever its other merits, does not enjoy the protection accorded by the Constitution to the higher judiciary of Jamaica. In answering this question the test is not whether the protection provided by the CCJ Agreement is stronger or weaker than that which existed before but whether, in substance, it is different, for if it is different the effect of the legislation is to alter, within the all-embracing definition in section 49(9)(b), the regime established by Chapter VII. The Board has no difficulty in accepting, and does not doubt, that the CCJ Agreement represents a serious and conscientious endeavour to create a new regional court of high quality and complete independence, enjoying all the advantages which a regional court could hope to enjoy. But Dr Barnett is correct to point out that the Agreement may be amended, and such amendment ratified, by the governments of the contracting states, and such amendment could take effect in the domestic law of Jamaica by affirmative resolution. The risk that the governments of the contracting states might amend the CCJ Agreement so as to weaken its independence is, it may be hoped, fanciful. But an important function of a constitution is to give protection against governmental misbehaviour, and the three Acts give rise to a risk which did not exist in the same way before. The Board is driven to conclude that the three Acts, taken together, do have the effect of undermining the protection given to the people of Jamaica by entrenched provisions of Chapter VII of the Constitution. From this it follows that the procedure appropriate for amendment of an entrenched provision should have been followed.” (para. 21).

that the domestic law of Jamaica would have been adversely affected if the legislation giving effect to the provisions of the Treaty in respect of the Judiciary had been implemented. The Separation of Powers is one of the sacred components of every Constitution in the Commonwealth Caribbean and the means by which it is implemented in each Constitution has to be gleaned from the Constitution itself.

265. The danger in Jamaica (and by extension in those other Commonwealth Caribbean countries that share relatively similar constitutional provisions as Jamaica) is that the Executive and the Legislature have the potential to gain the upper hand over the Judiciary when compared to the existing constitutional provisions. As it stands now, judges are protected from easy removal by the fact that the Judicial Committee of the Privy Council enjoys the right to make the final determination in respect of the removal of a Chief Justice or a Judge.
266. Do Caribbean people feel that the CCJ will afford them the same level of impartiality and protection that they perceive that they get from the Privy Council? The reality is that there is little political consensus in the region at the level of the wider population, or across the political aisles in each of the countries, for the region to have the CCJ on a widespread basis. Likewise, the Constitution Commission noted the conflicting recommendations made to it by citizens in the public consultations that it held.
267. After all, it would only take an affirmative resolution by the Jamaican Parliament to confirm the alteration of the Treaty to weaken the Separation of Powers. The proposal for change would come from the Heads of Government and the national Parliament would be dominated by a Government majority so that affirmative resolution is guaranteed (without a special majority). There would be no need for a time delay of six months (as provided in the Jamaican Constitution), a special majority in both Houses of Parliament and a referendum to effect the changes as is the case now in Jamaica.

264. The Privy Council concluded that the mechanism of amendment of the provisions of the CCJ Treaty are such

268. The challenge is for the Government and the Opposition in each territory to come together and agree on the way



forward for the CCJ so that they can promote it jointly among their populations. In cases where a referendum is required, the cross-party unity on such an issue will be crucial. If that does not happen, the CCJ will continue its very slow grind towards acceptance in the region.

their statements prior to their required appearances suggested a more aggressive pursuit to their respective complaints.

269. In Trinidad and Tobago, the same uncertainty that has been manifested in other Commonwealth Caribbean countries has also been manifested here. Two very troubling events, were the attempt to remove a Chief Justice from office in Trinidad and Tobago, and the determination of the Tribunal chaired by Lord Mustill that there was no basis for pursuing the matter further. The essence of the disquiet was caused by the decision of the Attorney General at the time not to appear before the Tribunal. The statements and deliberations prior to the sitting of the Tribunal suggested that the Executive would have had a more forceful position, before the Tribunal, when compared to what eventually happened.

270. The mistrust was earlier complicated by the fact that the Chief Magistrate at the time also failed to appear in court to give evidence in a matter where he was central to the State's case that also had a connection to the Chief Justice of the day who was under investigation.

271. It is events like these that can cause the average citizen to doubt whether the umbilical cord of the Judiciary should be separated from the Judicial Committee of the Privy Council. To this day, no one knows why both the then Chief Magistrate and the then Attorney General adopted their positions of non-participation in these fora when

272. In essence, the debate about the completion of our process of independence and sovereignty by replacing the Judicial Committee of the Privy Council is based on an appeal to nationalism and regionalism. On the other hand, the countervailing position in favour of retention is based on real fears of trust and confidence in a new process that will exclude the perceived (real or imagined) independence of the Judicial Committee of the Privy Council to dispense justice that will be accepted by all.

273. The fact that the United Kingdom has adopted a new Supreme Court that has abolished the role of Law Lords in the House of Lords is a reform that cannot be ignored. If the United Kingdom is moving in the direction of having the judges of its Supreme Court spend more of their judicial time in handling United Kingdom matters as opposed to matters that come to it from the Commonwealth, which would include the Commonwealth Caribbean, then the prospect of judicial delays will have to be factored into the assessment of the issue.

274. In an interview on the issue of the workload of Judges on the Judicial Committee of the Privy Council, the then incoming President of the new United Kingdom Supreme Court confessed to being concerned about the workload of the Court after it was inaugurated. The full article that was published in the Financial Times on 20th September, 2009 is reproduced here for information:



## Privy Council hampers Supreme Court - By Michael Peel and Jabe Croft

Top judges charged with a landmark modernisation of the British legal system will be diverted from their task by an unlikely and perverse duty: serving on a court that is one of the country's fustiest jurisprudential relics.

Lord Phillips, president of the new Supreme Court, said he was searching for ways to curb the "disproportionate" time he and his fellow senior justices spent hearing legal appeals from independent Commonwealth countries to the Privy Council in London.

The concerns highlight how the Supreme Court's creation is a quintessentially British constitutional fudge, separating the judiciary from parliament for the first time but leaving intact a sister chamber widely seen as a

post-imperial anachronism. Lord Phillips said in an interview that he was concerned that the judges who will staff the Supreme Court from next month would – as during their previous incarnations as House of Lords justices – end up spending as much as 40 per cent of their working hours on Privy Council business. He said: "It is a huge amount of time. I personally would like to see it reduced. It's disproportionate."

The president questioned whether some Privy Council cases, which have ranged from Jamaican death row appeals to fights over press freedom in Bermuda, needed to be heard by a panel of five of Britain's most senior judges.

He said he was looking to take some of the pressure off the Supreme Court by drafting in

Court of Appeal judges to help out, although he added that "in an ideal world" former Commonwealth countries would stop using the Privy Council and set up their own final courts of appeal instead.

A creature of Britain's 19th century colonial pomp, the Privy Council judicial committee is now used as a London-subsidised top court by about 15 independent nations, most of them small islands in the Caribbean and Pacific.

Many independent observers say this is both an ideological stain and a financial drain on the newly-created Supreme Court.

The Council judicial committee shares both the court's handsome Parliament Square headquarters and access to the dozen judges whose £200,000-a-year day job is

supposed to be resolving Britain's most important criminal and commercial cases.

Robert Hazell, director of The Constitution Unit at University College London, said it was a "minor public scandal" that judges in the country's top court spent almost half their time on business "of no interest to anyone in the UK".

He said: "If they didn't spend time in the Privy Council, the justices of the Supreme Court could hear almost twice as many cases coming up from the UK legal system."

The Ministry of Justice declined to respond to Lord Phillips' comments, saying that how he ran the Supreme Court was a matter for him.

275. It is obvious that there are strong emotions on both sides of this issue. The workload factor for the judges of the United Kingdom Supreme Court must be balanced against the trust factor with severing the link with the Judicial Committee of the Privy Council. Arriving at a reasonable position after due consideration of both sides of the argument is a major challenge that faced the Constitution Commission.

### The Judicial and Legal Service Commission

276. The Commission received submissions to the effect that the membership of the Judicial and Legal Service Commission should be broadened to include official representation for the Law Association on the Commission itself. Such representation would allow a formal voice for a major stakeholder in the appointment of judges and other judicial officers as opposed to the unstructured informal process that now exists.

277. The Commission also received submissions on the delays in the delivery of judgements by the High Court and Court of Appeal. The Commission considered and discussed this issue and has noted the recent developments and responses from the Judiciary, the Law Association and two retired Chief Justices. The Commission noted the proposed recommendations to resolve this issue.

### Recommendations

- (a) The Judiciary should be awarded an independent fiscal vote to be audited by the Auditor General, whose report will be laid in Parliament for scrutiny.
- (b) The issue of acceding to the appellate jurisdiction of the CCJ should be the subject of a national referendum.
- (c) The membership of the Judicial and Legal Service Commission should be broadened to include a representative of the Law Association appointed for a period of three years by the President of the Republic after consultation with the Council of the Law Association.



## CHAPTER TEN

### The New Constitution and its Effect on Political Culture

278. With the introduction of a new constitution for Trinidad and Tobago, the major paradigm shift is one that alters the functioning of the parliamentary model and embraces aspects of the presidential model, but does not embrace presidentialism. This represents an advance along the continuum from a parliamentary system towards a presidential one that creates a hybrid that is essentially parliamentary in its DNA.
279. The creation of a parliamentary hybrid with presidential features represents a further evolutionary step along the road of development. The political experiences of the post-independence period have left many citizens of Trinidad and Tobago wondering about the functioning of their Constitution and the implications for their democracy.
280. The political turmoil of the 18-18 tied election result in 2001-2002 and the ambiguous attempt to impeach a Chief Justice in 2006-2007 are two controversies that has many by-products. However, these controversies went to the very heart of the constitutional system and had the potential to do untold damage to our system of government. The reality is that Trinidad and Tobago needs to enjoy prolonged political stability with a new political culture that will transform the zero-sum game of the Westminster-style model into a culture of scrutiny, transparency and oversight.
281. The challenges of hybridization present an opportunity to make real political changes that will require political parties to change the way they operate and force their nominees to observe standards of ethics and probity that the current system takes for granted.
282. The enhanced political responsibility that will be placed in the hands of the elected parliamentarians as committee members in a new Parliament will force the system to accept different standards of political behaviour that are higher than what currently exist.
283. There are too many people who complain about the process but when faced with the real prospect of change they shy away to the safe corner of the parliamentary system that they know. Who will dare to change the way that political business is done and embrace such change?

284. The forces of regionalism are not as strong as they should be. The CCJ is the living proof of that. What do some politicians and some people fear the most about the CCJ? This is where the debate needs to go, as only Barbados, Belize and Guyana have made the step to embrace the court as the replacement for the Judicial Committee of the Privy Council. St. Vincent and the Grenadines made an attempt to change in 2009, but this was not accepted by the electorate, together with a proposed new constitution that did not earn the required number of votes in a referendum on the matter.

285. Perhaps the way to handle this is to try to understand the fear and not to get angry. There is a kind of unease among some politicians and people that needs to be explained and allayed. If this does not happen, the possibility of a counter-movement against the Court could emerge. Since 2005 there have only been three countries who have taken that step.

286. The media have an important role to play in making this quantum leap from a parliamentary system to the proposed hybrid. Linear thinking will not advance this cause very much. The challenge here is to engage these reforms on the basis of critical thinking, so that the frequent criticisms of the existing system are not converted into defence mechanisms on how to keep the status quo or to analyze what is being proposed here by reference to the way that political business has been transacted for more than fifty years. A new framework of thought and analysis is required.

287. Trinidad and Tobago will face a new dawn of political responsibility and accountability for which it has yearned.

The maturity of the politicians will be tested in their own consideration of this document.

288. The new political culture that will emerge out of these proposed reforms is designed to create an environment for a new kind of politics to emerge. The excesses of the Westminster-style system that concentrates power in the hands of the Prime Minister could become a thing of the past. Many people have been influenced by the Washington model, especially since the election of Barack Obama as President of the United States in 2008, so that their sensitivity and yearning for reform has naturally taken them to the Washington model in some instances.

289. This phenomenon can only be explained by the fact that people have been observing political events and theorizing in their minds about how such a system could work in Trinidad and Tobago. The fact that so many persons proposed reforms along those lines is revealing in its own right.

290. We have adopted a philosophical approach in making recommendations after discussion, as opposed to engaging in the task of drafting an actual constitution, as this would require resources that were not available to the Commission itself. As a Commission, we listened and we debated. The end product is now before you for your further consideration. We have done our job and the next step is left to our parliamentarians and the population.

We commend the report to you.



# THE CONSTITUTION COMMISSIONERS

## CHAIRMAN | The Honourable Prakash Ramadhar, MP

Minister of Legal Affairs, the Honourable Prakash Ramadhar is the Chairman of the Commission for National Consultation on Constitutional Reform. A graduate of the University of the West Indies and Hugh Wooding Law School, Mr. Ramadhar is a distinguished attorney-at-law who was called to the bar in 1987. At present, Mr. Ramadhar is the Member of Parliament for St. Augustine having been elected to the House of Representatives on Monday May 24, 2010.



## COMMISSIONER | Dr. Hamid Alfredo Ghany

Dr. Hamid Alfredo Ghany holds a Bachelor of Arts from UWI, Master of Arts from Fordham University, and he received his Ph.D. from London School of Economics and Political Science. He has served in the Public Service as member of the Constitution Commission of Trinidad and Tobago (1988-90), the Tobago House of Assembly Technical Team for the constitutional discussions with the Central Government (1992-95), and the Prime Minister's Roundtable on Constitution Reform (2008-10). A well-known analyst and commentator on political and contemporary issues in Trinidad and Tobago and the Caribbean, Dr. Ghany has written extensively on topics related to politics and government, including a series of articles on constitutional reform. Among his publications are a book entitled *KAMAL: A Lifetime of Politics, Religion and Culture* and a proposal for a new constitution for Trinidad and Tobago. Dr. Ghany is a Senior Lecturer in Government in the Department of Behavioural Sciences at the University of the West Indies, St. Augustine campus where his research and teaching are focused in Parliamentary Studies and Constitutional Affairs. He is married to Marilyn (nee Mc Kinstry).

## COMMISSIONER | Mme. Justice Amrika Tiwary-Reddy

A retired Judge of the High Court, Justice Amrika Tiwary-Reddy has served the Judiciary as well as public office with distinction. She served as Senator in the National Alliance for Reconstruction (NAR) government and acted as Attorney General on several occasions (1989-91), becoming the first woman to do so. She has also served as a member of the Cabinet appointed Public Service Review Task Force and of the Council of the Bar Association of Trinidad and Tobago (1982-86). Justice Tiwary-Reddy was admitted to the Bar in England in 1968 and in Trinidad and Tobago the following year. She was appointed a Puisne Judge in 1999, and by her retirement in 2011 she was the most senior female Judge on the High Court bench. Perhaps most notable on her list of accolades is her appointment, at the age of 18, as the first principal of Lakshmi Girls' Hindu College. In 2012, Justice Tiwary-Reddy received the Chaconia Medal (Gold), the nation's second highest award, in recognition of her years of distinguished service to Trinidad and Tobago in the sphere of Law.



## COMMISSIONER | Mr. Carlos Dillon

Mr. Carlos Dillon is a recipient of a Humming Bird Gold Medal in 2008 and the Golden Helm International Award (1992) from Germany for outstanding contributions to the development of international tourism. He began his professional career while attending Ryerson University, Toronto in 1968. It was there that he developed his thesis entitled, *Blue Print for Tourism Development in Trinidad and Tobago*. Over the last forty years this thesis has laid the foundation for increasing productivity and competitiveness within the local tourism industry. Mr. Dillon has been instrumental in the establishment of prominent resorts and real estate projects throughout Tobago and has contributed to the Tourism industry in various capacities ranging from Executive Director, Managing Director, General Manager and Consultant.

## COMMISSIONER | Dr. Merle Hodge

Dr. Merle Hodge is a teacher, writer and activist who obtained her Ph.D. in English from University of the West Indies in 2007. She is a retired Senior Lecturer in the Department of Liberal Arts, Faculty of Humanities and Education, University of the West Indies, St. Augustine. During her tenure there she also taught West Indian and African Diaspora Literature and Creative Writing (Prose Fiction). Dr. Hodge is well known for her continued participation in numerous public service bodies throughout Trinidad and Tobago. Among them is the Advisory Council to The Academy at the University of Trinidad and Tobago (UTT) for Arts, Letters, Culture and Public Affairs. The Trinidad and Tobago National Commission for UNESCO, Women Working for Social Progress (Workingwomen) and The Board of Advocates for Safe Parenthood and Reproductive Rights (ASPIRE). Dr. Merle Hodge has also written articles in local and international journals, on Caribbean literature, language, family, gender and other cultural issues. Her novels *Crick Crack, Monkey* (1970) and *For the Life of Laetitia* (1993) are also popular and she wrote some short stories and published a textbook *The Knots in English: A Manual for Caribbean Users* (1997).







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