

Ms. J Sampson
Clerk of the House

Re: Comments on the Draft Constitution (Amendment) (Tobago Self Government) Bill 2020 and the Draft Tobago Island Administration Bill 2021.

Draft Constitution (Amendment) (Tobago Self Government) Bill 2020

It has been noted that in Section 4 of the Preamble to the Trinidad and Tobago Constitution is to be amended to acknowledge the right of Tobagonians to determine their political status and to freely pursue their economic, social and cultural development in Tobago. While it is possible to envisage the process by which social and cultural development may be determined and pursued, it is more difficult to do so in relation to the political and economic frameworks given the likelihood of dissension between the parties in cases where there is conflict between laws enacted by the Parliament of Trinidad and Tobago and certain laws which may be enacted by the Tobago Legislature even though it is clearly stated that the laws enacted by Parliament will prevail.

In the body of the Bill reference is made to Tobago Division of the Public Service and the Teaching Service Commissions (Clauses 15, 16 and 17). Given the provision of Section 121 of the Constitution, is it possible to have Divisions of the Service Commissions which will be parallel bodies to the Commissions under the Constitution? It may be more appropriate to have an Office of the Commission in Tobago rather than a Division. It has been noted also that the intention is to increase the membership of the Commission by appointing two additional members who must be ordinarily resident in Tobago. I am of the view that there is no problem in increasing the membership of the present Commissions. However, when a Commission sits to discuss matters which involve the affairs of Tobago, the members who are ordinarily resident in Tobago must form part of the sitting Commission.

▪ **Clause 15 to 17 – Amendment of Section 120 of the Constitution.**

- In particular clause 15 (b) “(1A)” which states that the Public Service Commission shall have a Tobago Division with Jurisdiction in relation to offices under the Tobago Island Government (TIG). Clause 17 states a similar provision

with respect to the Teaching Service Commission. I am of the view that instead of creating Divisions of the Service Commissions, a Tobago Office in respect of each Service Commission should be established.

A Division will not be a legal person in its own right. Therefore, any aggrieved officer who has an issue against a decision that has been made by the Tobago Division of a Service Commission can only bring an action in the High Court against the Service Commission as constituted under the Constitution and not the Division itself.

- **Clause 5** – What constitutes “equality of status”? How is the phrase to be defined?
- At the present time, the Tobago House of Assembly (THA) is a body corporate but the Tobago Legislature established under Section 141A(1) of the Constitution does not appear to have legal personality. Without such personality, the new body cannot enter into contracts. It should be remembered that the Government of Trinidad and Tobago does not enter into contractual relationships. The parties to any contractual relationships are either the Republic of Trinidad and Tobago (the Sovereign State) or the Minister of Finance who is designated a Corporation Sole under the relevant Act.
- **Clause 8** – Section 53 of the Constitution amended.

The Tobago Legislature may make laws for the peace, order and good Government with regard to Fourth Schedule matters. If we refer to the Preamble where Tobagonians have the right to determine their political status and pursue their economic, social and cultural development they may enact laws which satisfy such determination but which may cause conflict in relation to an international law or convention to which the Unitary State of Trinidad and Tobago is a party. In such a situation what role will the Cabinet in Trinidad play? To whom will a foreign state complain? As far as that foreign state will be concerned, it will make a complaint to the Unitary State of Trinidad and Tobago and not Tobago per se. Therefore, the Cabinet cannot absolve itself by adopting an arms-length position if and when such a case arises. The Cabinet must be alert to the possibility that the situation referred to above may occur.

▪ **Clause 11 – Amendment to Section 75 of the Constitution.**

(1)...

(b) – Lines four and five – What situation will constitute “an emergency or unforeseen circumstance” requiring the intervention of Cabinet? To avoid any ambiguity, it may be prudent to specify the types of emergencies and unforeseen situations which would warrant the intervention of the Cabinet. Therefore, “an emergency or unforeseen circumstance” should be defined.

▪ **Clause 19 – Section 144 “Mediation Committee”.**

- The use of that title is a misnomer. Mediators must be independent persons and a mediation process where the antagonists are members of that Committee does not make sense. A change of name is necessary and it will be more productive for the relevant mediating body to be wholly independent. Mediation is used as a means to save time and to obviate the need to go to court, therefore subsections (4) and (5) should be deleted.

▪ **Clause 21 – Fourth Schedule.**

- List of Subjects where the Tobago Legislature has exclusive law-making powers in Tobago.

For example (5) – Borrowing of moneys. Quare the authority for doing so.

Does Tobago have a Credit Rating? Does the Body wishing to borrow have legal personality? Laws will have to be enacted to authorize the Tobago Island Government to borrow on the domestic market and the internationally.

- **Fifth Schedule**

Areas for which the Tobago Island Government shall have exclusive administrative powers in Tobago

I wish to record my reservations with respect to the following areas: 4, 5 and 12.

With respect to 12, the only Minister referred to in the Constitution is the

Attorney General. How does one carve out the duties of the Secretary of Legal Affairs? Given the exceptions listed, what duties will that functionary perform?

Draft Tobago Island Government Bill 2021

- **Clause 6 (1)** – The Tobago Island Government is to act on behalf of the Government of Trinidad and Tobago by way of a Memorandum of Understanding. A Memorandum of Understanding is a gentleman’s agreement but is not necessarily legally binding. How does this mesh with the statement in the Constitution (Amendment) (Tobago Self Government) Bill which states that Tobago has the right to determine its political status and the freely pursue its economic, social and cultural development?
- **Clause 6 (2)** – A statutory or state enterprise can only act in accordance with the provisions of its enabling statute or constitution and company law, which provisions may not be in conformity with the policies or programmes approved by the Tobago Island Government.
- Throughout the Bill, references are made to “the Government” and the “the State”. These terms need to be defined.
- Part IV - Finance
 - The Minister of Finance is responsible for the fiscal management of the Unitary State of Trinidad and Tobago. The Tobago Island Government cannot enter into a contract with the Minister of Finance on terms which state that if seeks the approval of the Minister for funds, such moneys cannot be unreasonably withheld since the Minister is under a duty to consider what is best for the Unitary State of Trinidad and Tobago which may be different from what Tobago wants or expects. Is there an intention on the part of the Tobago Island Government to seek a review of the Minister’s decision before the High Court if the Tobago Island Government is not satisfied with the Minister’s response to its request? In light of

the above delete “which should not unreasonably be withheld” from the relevant clause.

- Clause 22 Line 5 - Insert “Review” between “Fiscal Commission”.
- Clause 23 (4) (d) – Put a full stop after “practicable” on line 5. Delete the remainder of the said sub clause. The said considerations as stated in the subsection are policy considerations which may change from time to time and therefore should not be inserted into the Legislation.
- Clause 24 – Tobago Fund
 - (b) “Such other moneys as the Tobago Island Government may lawfully, collect, borrow or be granted”. This subclause needs to be clarified given the exceptions under the Fifth Schedule.
- Clause 28 – This clause states that the Tobago Executive Council may borrow locally and internationally. What is the mechanism to be used to achieve this? The Cabinet in Trinidad, the comparable body to the Tobago Executive Council has no power to borrow. The Cabinet is the decision-making authority and gives its approval for the entity or person who has the legal personality to enter into loan agreements or any other contractual arrangement.
- What is the rationale for the Government (which I believe refers to the State of Trinidad and Tobago) to indemnify the Central Bank against all losses etc. arising from its duties and obligations as manager of investments from the Tobago Fund when the said Government is not a party to any arrangement which is made between the Central Bank and the Tobago Executive Council which is not a legal person? That situation must be clarified.