

# PEOPLE'S NATIONAL MOVEMENT - TOBAGO COUNCIL

## DRAFT CONSTITUTION (AMENDMENT) (TOBAGO SELF-GOVERNMENT) BILL AND DRAFT TOBAGO ISLAND GOVERNMENT BILL

Parliament has an obligation to promote, protect and fulfil the right to self- determination for the people of Tobago. For some time now, Tobagonians have clamored for a relationship with Trinidad which can give us the assurance that, Tobagonians can have equality of status, greater administrative and legislative responsibilities and equal access to opportunities as the residents of Trinidad.

The relationship must in no way be affected by national partisan politics which can eventually become unstable resulting in a lack of progress in our growth and development as a people.

In this regard, we are of the view, that our wishes must be adequately captured in this Bill in a clear and unambiguous manner which does not allow for easy manipulation of the intent.

We are of the view, that, the Bill represents a progressive step, and attempts to address issues such as the power to formulate laws, to collect taxes in Tobago and to borrow within the context of Trinidad and Tobago. However, there are several areas that are of concern to us and the people of Tobago and the more fundamental of these concerns are highlighted as follows.

### **Definition of Tobago**

It is important that Tobago is well defined as it sends a clear message as to the Jurisdiction of control and lends clarity for the purpose of effective administration of both islands. The expressions in this Bill, Section 6(b) of The Constitution (Amendment) (Tobago Self-Government) Bill, 2020, is a total step back from the current THA Act 40, 1996 and other previous proposals on this said matter. We are aware of the challenges surrounding international law, however, an internal arrangement that builds on the six (6) nautical miles is a progressive step for the people of Tobago. The definition in the current submission is vague, it disregards the archipelagic baselines and does not account for places like the Buccoo Reef which is now under the control of the THA. It would not allow Tobago to deal with issues of fishing and environmental management. The broader more inclusive explanation in Ambassador Thompson's advice should be considered.

Our position supports twelve (12) nautical miles which gives the people of Tobago

control over a greater area of marine resources.

## **Equality of Status**

Section 5 of The Constitution (Amendment) (Tobago Self-Government) Bill, 2020 does not go far enough. The island of Tobago was legally made a ward of the colony of Trinidad and Tobago by Order in Council constituting Tobago a Ward of the Colony of Trinidad and Tobago (1898) made under Section 1 of the Trinidad and Tobago Act 1887 (50 & 51 Vict. c. 44). Given that this legislation was not repealed and Section 6 of the Constitution provided for the saving of existing law, Tobago remains an administrative ward within the sovereign democratic state of Trinidad and Tobago equality is not possible.

This definition is reflected on Deeds and legal documents for Tobago and is very irksome and demoralizing for Tobagonians considering the literal meaning of the term “ward” as a place for sick persons or a helpless person in need of protection.

## **Law Making Authority as per the Schedule (Fourth and Fifth)**

The proposal represents a retrograde step from the areas of responsibilities that we currently enjoy under Act No. 40 of 1996. There are in fact thirty-six (36) areas of responsibility mentioned. It was our expression that, the only Schedule to be included in this document is that which spells out the areas for which THA and the Central Government must collaborate.

In this vein, our position is that, the acceptable Schedule is that which is currently included in Act No. 40 of 1996 as the Fifth Schedule and which speaks to the areas of responsibility of Central Government.

Areas such as National Security, Immigration and Customs to name a few.

We are of the view that, all other areas should be the responsibility of the THA. As the intent is to provide Tobago with autonomy, there should be a distribution of power rather than devolution as obtains in the case of the Åland Islands and Finland.

## **Financial Independence**

There are a number of factors taken into consideration in requesting eight (8) percent of the total national budget. These factors are highlighted under Part IV, Finance, 22(d)

Our position is that, the submission of a minimum of 6.8 percent is curious and should be revisited to give consideration also, to at least, 6.9 percent as a minimum allocation. The 6.9 represents the upper limit as stated in the recommendations of the Dispute

Resolution Commission.

With regard to The Tobago Island Government Bill, 2021 (Amendment) Bill, 2021, we are not in support of 23 (1), the composition of the Fiscal Review Commission, as it is not constructed to allow for disputes to be adequately resolved. It is not weighted in a manner to effectively resolve disputes.

We are of the view that a committee comprising of technocrats in the first instance with another avenue of persons at the Policy Level if all else fails.

Further, we are not in support of 23 (4) (a) that is, to determine and recommend to Parliament the sums required to be appropriated to Tobago in each financial year. These responsibilities allow for ambiguity and must be qualified to read, to determine all sums, above the minimum allocation to be appropriated to Tobago in each financial year.

23 (4) (c) Should be deleted from the roles and responsibilities of the Fiscal Review Commission. The THA has in place several layers of auditing systems to unearth and determine compliance with regulations and laws. Some of these are internal audit systems, as well as, the Auditor General Office which has independence of executing tasks.

Additionally, there are several committees inserted in The Tobago Island Government Bill, 2021 (Amendment) Bill, 2021 and at the level of the Assembly Legislature, headed by the Opposition which can cause monitoring of the THA's accounts.

In light of this, we are of the opinion that, the inclusion of special audits exercise control over the affairs of the THA and is a measure aimed at Cabinet and Parliamentary dominance over the THA.

In addition, the bill is silent on how funds are to be remitted to the THA and we wish to have included similar to the current THA Act, 40, 1996, Part IV Finance, 47, that all monies appropriated by Parliament for the service of the financial year of the Assembly shall be credited to the Fund in quarterly releases in advance *en bloc*.

We also recommend that there be a Treasury department established in Tobago for the purpose of treating with matters as it relates to Tobagonians. Such action will eliminate the need for paperwork such as the assessment of pensions and gratuities to be processed in Trinidad. This creates inordinate delays.

### **Establishment of the Tobago Legislature**

Chapter 11 A, 141A (1) defines the Tobago Legislature as comprising the President and the House of Assembly

Section 141B (a) defines the House of Assembly as comprising, Assemblymen and Councilors as well as, the Presiding Officer and the Deputy Presiding Officer

Section 141E (1)9(2) does not make clear who selects the Presiding Officer, whether it is the House of Assembly comprising Councilors and Assemblymen or is it the Assemblymen. When the House first meets after the election the likely persons in attendance will be solely the Assemblymen.

We recommend that, the term “Assemblyman” should be replaced with “Assembly Member” so that it becomes gender neutral.

As per section 37B. The President may, on the advice of the Chief Secretary, appoint a Member to the Office of Assistant Secretary. However, in this Bill this has been omitted. We recommend that, Assistant Secretary be included in the Bill.

## **Human Resources**

The inclusion of the appointment of two commissioners to the Public Service Commission and the Teaching Services Commission does not sufficiently cater to addressing the issues that Tobago faces. While it can be argued that the issues are operational in nature we are of the view that, the establishment of an office can assist with matters on a ready basis. (Section 15 and Section 17 of The Constitution (Amendment) (Tobago Self-Government) Bill, 2020).

The Bill makes no mention of the Judicial and Legal Services Commission The mandatory inclusion of representation from Tobago in the Judicial and Legal Services Commission is critical in improving the efficiency of the Administration of Justice in Tobago.

## **Cabinet and Parliamentary Dominance over Tobago**

The ability of the Cabinet to override or bypass the executive or legislative authority in Tobago is not supported and is in direct conflict with the intent of the wishes and the human right of the people of Tobago to have self- determination. Section 11 of The Constitution (Amendment) (Tobago Self-Government) Bill, 2020 should be redrafted to reflect this.

Laws established by the Tobago Legislature ought not to be subject to Cabinet or Parliament override. Section 8. (4) Section 8. (5) and Section 8. (6) of The Constitution (Amendment) (Tobago Self-Government) Bill, 2020 should be removed from the Bill. There should be no fetter on the law-making powers of the Tobago Island Government. We propose an arrangement similar to Section 64 of the Constitution of Tanzania which governs the Union between Tanganyika and Zanzibar; a unitary government similar to that between

Trinidad and Tobago.

### **The Mediation Committee**

Any entity to treat with alternative dispute resolution must be objective and this should be reflected in the composition. The proposal in section 19 of The Constitution (Amendment) (Tobago Self-Government) Bill, 2020 is not accepted. The proposal that the jurisdiction of the Privy Council in this issue is also not accepted as the development of the jurisprudence in this area would be stymied.

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