

**PRIME MINISTER'S STATEMENT**  
**On**  
**High Court- CV2022-04530**  
**Court of Appeal- CA S293/2022**  
**Judicial Committee of the Privy Council- JCPC 2023/0016–**  
**24<sup>th</sup> May 2023**

Mr Deputy Speaker,

I have been authorized by Cabinet to make the following Statement. I therefore thank you for the opportunity to deliver this Statement on Local Government Reform which has been an elusive dream of this nation for decades. Not only has it been recommended, promised, studied, consulted and attempted but it remains a deed to be done. This Government had undertaken to get it done.

In October 2020, amendments were introduced by the Government to bring about a comprehensive reform of the Municipal Corporations Act 1990. This was introduced by the Miscellaneous

Provisions (**Local Government Reform Bill**) 2020 which was introduced into Parliament and was sent before a **Joint Select Committee**.

This **2020 Local Government Reform Bill** introduced to the Parliament in 2020 was a comprehensive process of Law Reform of Local Government management and elections undertaken by this Government.

In a genuine desire to bring about **Local Government Reform** to better serve the burgesses and improve the quality of their lives through increased responsibility, autonomy and better fiscal operations, that Bill was eventually debated and passed by both Houses of Parliament, noticeably, without Opposition support. It was assented to on 1 July 2022 and became Act No. 11 of 2022, the **Miscellaneous Provisions (Local Government Reform Act) 2022**.

Notwithstanding the difficulties, lack of support from some of our colleagues and myriad obstacles in the way this Government believes that a reformed and modernized system of Local Government, as presented after years of complaints and resultant widespread consultation, was in the best interest of the nation as a whole.

It was within this mission that the Government pressed on cautiously but resolutely to bring this about by the passage of the new law and its sectional, step-by-step proclamation as the necessary preparations were made to operationalize the new arrangements in an orderly and effective manner. Some of these reform measures are quite novel and far reaching and the Government's intention was that the best way to have eased these into being was to have extended the application of the terms of the

new law, as intended, to the incumbents in such a way that it afforded some element of a smooth transition.

This necessitated a short extension of the life of the incumbents and it was the Government's interpretation and option that this exigency was taken care of in the provisions of the new law. By Legal Notice No. 206 of 2022, dated **7 November 2022**, a number of sections of this Act were proclaimed and came into force from **8 November 2022**. This triggered an interpretation battle opportunity. In democratic systems, challenges to Governmental actions, intentions and even legislation are not new nor daunting, indeed they are symptomatic of a vibrant and free democracy.

## **High Court**

On **15 November 2022**, an ordinary, activist citizen filed an application for leave to apply for judicial review. The dispute

concerned the interpretation of the amended provisions of sections **11(4) and 12(5) of the Municipal Corporations Act, Chap. 25:04.**

**On 21 November 2022,** the applicant filed an application for interim relief in which he sought among other orders, an injunction pursuant to **section 18(1)(a) of the Judicial Review Act, Chap. 7:08** restraining all persons presently holding office as Councillors and Aldermen who were elected by virtue of the Local Government Elections held on the 2nd December 2019 (or in any subsequent bye-elections) from acting in the said offices beyond the 3rd December 2022 pending the determination of the main Judicial Review Claim;

A key issue which arose in these proceedings concerned the meaning of the **amended provisions of sections 11(4) and 12(5) of**

**the Municipal Corporations Act.** The High Court, (Wilson J.), employed its approach to the interpretation of legislation governed by established legal principles which require a Court to discern the intention of Parliament as expressed in the language under consideration.

The High Court expressed the view that it must begin its task by carefully considering the language of the particular provisions and must interpret the language, so far as possible, in a way that gives effect to its purpose.

In accordance with the principles of law applicable to interim applications, the High Court judge **firstly** formed the view that the dispute over the interpretation of the relevant sections did give rise to a *serious issue* to be determined on the main application for judicial review; **secondly** and accordingly, on the application for

interim injunction and consistent with applicable principles of law, she proceeded next to evaluate *the balance of hardship or convenience*, which would be caused by the grant or refusal of the interim injunction, pending the determination of the main application for judicial review claim.

In evaluating *the balance of hardship/convenience* the High Court Judge came to the conclusion on the interim application that having regard to the range of services that Corporations provide to the community, the potential impact of a disruption, the scope of the measures that may be taken in the absence of a functioning Council, and the fact that the alleged unlawful consequences asserted by the Applicant turned upon the construing the meaning and intent of the legislation, the validity of which was not in dispute, the Court refused to grant the injunction, ruling that the

refusal of an injunction was likely to cause the least amount of irreparable harm or prejudice.

Accordingly, on **30 November, 2022** the High Court, Wilson J, refused the Interim Injunction Relief, with costs being reserved.

*Accordingly, the challenge brought by the Applicant did not succeed on the interim application and, the Corporations continued to function lawfully consistent with the provisions of the Municipal Corporations Act, and supported by the decision of the High Court.*

### **Court of Appeal Trinidad and Tobago**

On the **01 December, 2022** the Applicant appealed to the Court of Appeal from the refusal of the High Court to grant the injunction



and filed an application for an **Expedited or Urgent Appeal** on the same day, 01 December, 2022

On the appeal, the **Court of Appeal** agreed that having regard to the importance of the case and the seriousness of the consequences, it would determine the “core issue” in the substantive claim, namely, sections 11 and 12 of the Municipal Corporation Act, as amended by the 2022 Act applied to the incumbent Councillors and Aldermen.

On the **10th of February 2023**, in a unanimous judgement, **the Court of Appeal dismissed the applicant’s appeal** but granted permission to appeal to the Privy Council.

*Accordingly, the challenge brought by the Applicant/Appellant did not succeed and by the decision of the Court of Appeal the*

*Corporations continued to function lawfully consistent with the provisions of the Municipal Corporations Act, and supported by the unanimous decision of the Court of Appeal.*

### **Privy Council**

On the **13th of February 2023**, the Applicant/ Appellant appealed to the Privy Council.

On the **18th of May 2023**, the Privy Council delivered its judgement.

**All five judges of the Privy Council decided that a change in the length of the terms of office of the incumbent Councillors and Aldermen did not amount to a contravention or breach of any provision of the Constitution.** This decision, so studiously arrived at, did not prevent some of my colleagues in this House, and some elements in the media from continuing to accuse the Government

of breaching the Constitutional Rights of citizens. To this accusation, the Government pleads **Not Guilty**.

All the way to the Privy Council, the Government and the legal luminaries viewed this entire matter as one of **interpretation** of an intent. It is important to note that up to Wednesday 17<sup>th</sup> May, 2023, the Government's interpretation prevailed, supported by the reasoned decisions of our local Courts (**High Court and Appeal Court**). This is the proof that our legal and protection systems worked and at no time did the Government act with impunity or wanton disregard for our laws or with any malicious intent towards citizens and their rights. The grant of the appeal to the Privy Council is further proof of the systems being allowed to work as we proceed with all good intention of effecting **Local Government Reform**.

## Majority Decision

Given the nature of the interpretation problem being grappled with, it was not surprising that there was a split decision at the Privy Council where Lords Richards, Reed and Hodge, paragraph 20: *"...on any footing, the absence of any detailed provisions concerning local government elections leads to the inevitable conclusion that a change in the length of the terms of office of incumbent Councillors and Aldermen cannot amount to a contravention of the Constitution. The term for which representatives have been elected is important but an increase by one year in the term of incumbent Councillors and Aldermen does not of itself breach any of provision of the Constitution."*

Additionally, in the final declaration two judges voted in favour of preserving the status quo of the successful defences of the relevant interpretation and three voted to disagree and thus change the

status to a new interpretation. Mr Deputy Speaker, we see a change, not a crisis and there is definitely no need for the mayhem, sackcloth and ashes that some desire.

*Throughout therefore, the challenge brought by the Applicant/Appellant did not succeed until 18 May 2023, with the Corporations continuing to function lawfully consistent with the provisions of the Municipal Corporations Act, and supported until then by the unanimous decision of the Court of Appeal.*

*The outcome of the Final Court reverses this comfort and the Government must now act to rectify any shortcomings that now exist that was not there before. I refer here specifically to the actions and workings of the Local Government for the affected period December 2022 to the date of the adverse ruling and beyond.*

## Interpretation Argument

The simple question to be determined at every stage in this legal contest was whether as a matter of construction, applying relevant principles of construction, the amendments to sections 11 and 12 apply to incumbent Councillors and Aldermen at the time that the amendments came into force.

The majority decided the amendments applied to Councillors and Aldermen **after** the amendments came into force and **not** to the incumbent Councillors and Aldermen. [1] The Minority decided that the amendments did apply to the incumbent Councillors and Aldermen. So even down to the bitter end there is a divergence of views on this prickly interpretation of the meaning of the contested section. However, **I want to make it abundantly clear that the Government has no choice but to accept the ruling of the Privy Council** and be guided by its findings and their effect on our operations and intentions.

***It is important to note that throughout the challenge brought by the Applicant/Appellant it did not succeed until 18 May 2023, with the Corporations continuing to function lawfully consistent with the provisions of the Municipal Corporations Act, and supported until then by the unanimous decision of the Court of Appeal.***

As of this date May 18<sup>th</sup> 2023, a new situation developed requiring the Government to respond. The Attorney General has already engaged and described the calming principles of settled law in the context of the **de facto officer doctrine**.

By the application of the common law **de facto officer doctrine** the actions and decisions of the Corporations will be recognized by law as valid.

Consistent with that advice, the Deputy Chief Parliamentary Counsel is in the process of drafting the necessary legislation to validate all acts of the corporations from **December 2022 up to the 18th of May 2023**.

Clearly, notwithstanding the outpourings of glee on the part of those who challenge behind the coats of "**men of straw**", there is no "crisis" as some so triumphantly wish for. All that is required is for the Government to act

within a reasonable time frame to maintain an orderly response and effect the necessary processes, including the calling of elections, gleaned within the rulings set out by the Privy Council.

### **Calling an election**

Following the decision of the Privy Council on the 18th of May, the time for calling an election is now past due. The government is duty-bound to call an election in accordance with the statutory procedure prescribed in the Act and the **Representation of the People Act**. Pursuant to the provisions of the Representation of the People Act, the President, acting in accordance with the advice of the Cabinet [**S. 81 of the Constitution**] is now to be mandated to issue a writ, setting the **Local Government Elections** in motion. Under existing law, a period of not less than 35 days must lapse between the issue of the writ, and the taking of the poll. Immediately, and within three months of the 18th of May the Government will move to issue the Writ so that a poll can be taken within the usual 90 day window.

With the arrival of the new decision the option always exists to extend the office of the incumbents up to the 18th of May, so as to validate their



actions, prior to May 18th, and to call an election to be held within three (3) months from the 18th of May 2023. Of the many options available this is the one most suitable and the one chosen by the Government at this time

Consistent with this advice and decision, the Deputy Chief Parliamentary Counsel is on standby for the drafting of the necessary legislation to validate all acts of the corporations from December 2022 up to the 18th of May 2023 and for the further three (3) month period from 18th May. This piece of legislation is expected to be ready to be laid and debated and taken through all its stages in this Honorable House on Monday 29th May 2023. Once this is accomplished the date for Local Government, within the 90 day window will be announced.

Mr Deputy Speaker, Colleagues I thank you for your cooperation and attention.