



April 30, 2024

Ms. Shalisha Samuel
Secretary
National Advisory Committee on Constitutional Reform

Dear Ms. Samuel,

**Re: Submission of CTA's Recommendations
on Constitutional Reform in TT**

I write following CTA's email to you dated 11 April 2024 in which we informed about the delay in our submission on the above issue.

Call to Action For Social Change Foundation (CTA) is a multi-religious and multi-disciplinary Non-Profit Organisation (NPO). The group was formed in 2021 and was incorporated under the Companies Act on 7th June 2022 and registered under the NPO Act 2019, on 7th June 2022, as well.

CTA's primary objective is *to advocate for and to promote social responsibility and accountability within society by focusing on parenting and family life, education, culture, and law enforcement and to empower the disadvantaged and abused in society.*

As the Chair of CTA's sub-committee tasked with submitting our recommendations on the issue of Constitutional Reform to the National Advisory Committee on Constitutional Reform (NACCR), I apologise for our late submission.

I hereby attach CTA's Recommendations, which we hope the NACCR will consider, in spite of our late submission. In my earlier email, I had stated:

"We hope that, since the remit of the NACCR is to "consider and make recommendations to the Cabinet within three months of its appointment for the promotion and convening of a National Constitutional Conference and Consultation in June 2024", late submissions to that Committee will be accommodated - at least until 1 May 2024."

While there are many areas in our Constitution that may need to be reformed, CTA focused on the following eight (8) areas:

1. Proportional Representation
2. Fixed-Term Elections
3. Term Limits For Parliamentarians

OUR MISSION:

To create opportunities for citizens to become healthy, empowered and to reach their full potential through advocacy and the promotion of equity and social justice

DIRECTORS:

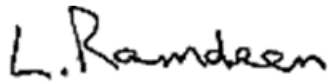
• Shaleeza Khan-Ali (President) • Leela Ramdeen (Vice-President)
• Rev. Joy E. Abdul-Mohan • Azim Ali • Arnaldo Conliff • Pastor Clive Dottin
• Dionne Alicia Guischard • Dr. Katija Khan • Dr. Joanne Shurland

4. Campaign Finance Reform
5. The Right To Recall Parliamentarians
6. Service Commissions
7. Reform Of The Judicial & Legal Services Commission (JLSC)
8. Accession To The Appellate Jurisdiction Of The Caribbean Court of Justice (CCJ)

Please see the details of the above eight (8) recommendations in the appendix attached.

We make a special plea for our late submission to be accepted by the NACCR and look forward to hearing from you.

Kind regards,



Leela Ramdeen
Vice-President



Shaleeza Khan-Ali
President

Appendix

1. PROPORTIONAL REPRESENTATION

CTA recommends that members of the House of Representatives be elected by a system of proportional representation.

CTA believes that the Westminster-style first-past-the-post system for general elections is unfair and promotes inequity. Therefore, CTA recommends that the first-past-the-post system of voting in our general elections should be replaced by proportional representation (PR), which is the most popular form of democracy for countries in the world today.

Thea Ridley-Castle of the UK's Electoral Reform Society states that "there are over 100 countries which use either a Proportional Representation or a mixed system to elect their primary chamber across the world. Less than 50 use the First Past The Post system, a minority of countries globally, one of which is the United Kingdom. Those who still use First Past the Post tend to have it as a result of being former British colonies" (<https://www.electoral-reform.org.uk/>).

T&T gained Republican status in 1976. We are no longer a British colony. CTA believes that Constitutional Reform in this area is long overdue. The current first-past-the-post system has a clear bias in favour of larger political groups. As the late Kenneth R. Lalla SC said: "... it has been established that the first-past-the post system of voting makes a mockery of true democracy because seats are allotted not in proportion to votes cast but on the basis of the winner takes all. Under this system if three or more candidates run for election, then the winner can have less than a majority of the votes." He said PR "provides for parties to win seats in proportion to their voting strength and to remove the tyranny of a government with a minority of votes but a majority of seats over the majority of voters." (<https://www.guardian.co.tt/article-6.2.402356.2e3b5f28e3>).

Our research highlights some of the benefits of a PR system. For example:

- ✓ PR systems provide more accurate representation of parties; offer a better chance of representation to smaller parties and groups. Minority parties and independent candidates stand a better chance of winning seats in Parliament under a PR system.
- ✓ PR systems treats minority parties and independent candidates more fairly.
- ✓ Under a PR system, fewer votes are 'wasted' as more people's preferences are taken into account.
- ✓ PR potentially offers greater and more representative choice for voters.
- ✓ PR may encourage turn-out by the electorate and reduce apathy.

CTA acknowledges that there are a range of PR electoral systems in which the distribution of seats are closely linked to the proportion of the total votes cast for each party or individual candidate. A decision will need to be made as to which PR system is best suited to our democracy.

2. FIXED-TERM ELECTIONS

CTA believes that Election-calling should be a matter for Parliament, not the Government. Therefore, CTA recommends that TT's Constitution be amended to include fixed-term general elections that will occur on a set date every five years and can only be changed by incumbent politicians by a special majority.

Following this Constitution Amendment, an Act of Parliament can place explicit limits on the purpose, length, and timing of prorogation of Parliament.

An election could only be triggered outside of the normal five-year Parliamentary cycle if the Government lost a vote of no confidence and no alternative government was confirmed by the House of Representatives within 14 days.

Election-calling should remain a matter for parliament, not government. Fixed-term elections will:

- a) reduce the stress experienced by the populace when a Prime Minister, as has been done in the past, teases, stating that he has the election date in his back pocket. Fixed-term elections will take away the unfair advantage that a Prime Minister can have in being able to call early elections at a time of his/her choosing for example, when the economic and other conditions are favourable to him/her. Parliament will have this power since the date will be fixed;
- b) allow Parliaments to run their full term;
- c) help to ensure predictability in government planning;
- d) help government to make progress in implementing its programme within a 5-year term;
- e) enable The Elections and Boundaries Commission (EBC) to be better prepared because the election date would be known in advance.

3. TERM LIMITS FOR PARLIAMENTARIANS

CTA believes that term limits, not exceeding 3 terms, should be introduced for parliamentarians. The implementation of these term limits can ensure that:

- a) Politicians don't become entrenched in their position, resulting in a concentration of power in the hands of a few individuals or political parties, hindering fresh perspectives and ideas
- b) Political dynasties are not formed
- c) Politicians are more accountable to their constituents, knowing that they have limited time in office and limited time to deliver on their campaign promises
- d) New candidates with fresh ideas are given opportunities to participate in the political process
- e) There is a rotation of leadership at all levels

4. CAMPAIGN FINANCE REFORM

CTA recommends that the constitution be amended to put limits on the raising and spending of money by political parties and electoral candidates at general elections.

The Organisation for Economic Co-operation and Development (OECD) said in 2019 that: "People's faith in government is stagnating at record lows, with citizens questioning their trust in government leaders to make ethical and moral decisions. People increasingly feel that democracy is not working in their favour. A key reason for this is the perception that when it comes to politics, money talks...Financial contributions by lobbyists in the political process also present a threat to fair and democratic decision-making." The OECD has produced a Framework that "focuses on the need to foster a wider culture of integrity in the public and private sectors, with codes of conduct, conflicts of interest rules, and a framework for lobbying and asset disclosure among others." (<https://search.oecd.org/governance/financing-democracy.htm>).

CTA believes that politicians should represent the general population and not the interests of a few people. Research has shown that funding of political campaigns has an impact that goes beyond elections. CTA agrees that political candidates and parties need to raise money for use in supporting their election campaigns. However, left unchecked, without Constitutional limits, funding of political parties or campaign financing can undermine the system of self-government. It can lead to special interest donors having an unfair advantage. There is a danger that those with "deep pockets" can influence elections and/or set the political agenda. Restrictions should be placed on donations.

There should be, for example, limits on all political contributions and expenditure from non-citizens, including corporations, anonymous organizations, and foreign nationals. Limits should also be placed on a candidate's own spending.

Years ago, the late Election and Boundaries Chairman, Dr. Norbert Masson (TT), stated that election laws in Trinidad and Tobago "do not meet best-practice criteria or benchmarks, most conspicuously on two grounds, registration of political parties and oversight of campaign financing."

Legislation/Regulations drawn up to implement this constitutional amendment, should include the establishment of Political committees to receive, spend, and publicly disclose the sources of contributions and expenditures for political campaigns. Candidates should be required to disclose the amount of money raised for campaigns and how it was spent. The benefits of limits on campaign finance include:

- reducing cynicism about the role of money in politics,
- reducing opportunities for corruption,
- building trust and confidence in government and in the electoral process
- promoting the values of accountability and transparency by political parties and candidates
- empowering citizens to have a voice in election campaigns

In light of the above, CTA recommends that the Constitution be amended to facilitate campaign finance reform.

5. THE RIGHT TO RECALL PARLIAMENTARIANS

Members of parliament should be accountable to the voters who elected them. The electorate shall have the right to recall the member of Parliament representing their constituency before the end of the term of the relevant House of Parliament. This should have the effect of increasing accountability and should also serve to create an environment that fosters a process of meaningful dialogue between public officials and citizens.

Parliament shall enact legislation to provide for the grounds on which a member may be recalled and the procedure to be followed.

The grounds to determine recall should include:

- a) A situation in which the MP has, after becoming an MP, been convicted of an offence and sentenced, and any appeal period has passed without the conviction being overturned. An MP being remanded in custody after being found guilty, would not trigger recall. Instead, he/she will automatically lose their seat.
- b) When a Member of Parliament is declared medically unfit, as certified by an appropriate medical practitioner, to fulfil his/her responsibilities.
- c) When a Member of Parliament has been found to be engaging in unethical behaviour.
- d) When a Member of Parliament has been absent from the community that he/she was elected to serve for a prolonged period.
- e) When a Member of Parliament has been absent from Parliamentary proceedings for a prolonged period.

6. SERVICE COMMISSIONS

CTA believes that there is a need for the various Service Commissions. However, their roles and functions should be reviewed so that there would be:

- Transparency & integrity in the appointment of members.
- Insulation from political interference.
- An increase in their accountability, effectiveness and efficiency.

7. REFORM OF THE JUDICIAL & LEGAL SERVICES COMMISSION (JLSC)

Sections 110-111 of the Constitution prescribe for the existence of a Judicial and Legal Services Commission whose main activity is the appointment of Judicial officers. Its composition includes the Chief Justice as Chairman, the Chairman of the Public Service Commission and other Members. However, the Constitution provides for the Prime Minister to appoint certain Members. This allows politicians to intermeddle directly or indirectly with the appointment of judges. The JLSC should be reconfigured as a truly independent body consisting of retired Judges, senior Attorneys and lay persons.

Section 102 of the Constitution prescribes that the appointment of the Chief Justice is made by the President after consultation with the Prime Minister and the Leader of the Opposition. The appointment of the Chief Justice should not be made by any politician. The JLSC should have an expanded remit to include the appointment of the Chief Justice based on transparent criteria.

The new JLSC should monitor the performance of Judges who they appoint to ensure that these Judges are efficient. Judges must be given a time limits, based on the type of matter, for the production of their Judgments. On average a Judge should deliver his / her Judgement no later than six (6) months from the date of conclusion of the Trial or Appeal.

Section 137 of the Constitution provides the Prime Minister with the power to initiate a Tribunal to enquire into whether the removal of a Chief Justice ought to be investigated. This provision should be removed as it provides an avenue for potential abuse of Prime Ministerial power. Any question of removal should be dealt with by an independent JLSC and the criteria for removal should be strictly defined.

A new JLSC should also be responsible for making promotions to the Court of Appeal from other Courts upon disclosed criteria and based on merit and performance.

8. ACCESSION TO THE APPELLATE JURISDICTION OF THE CARIBBEAN COURT OF JUSTICE (CCJ)

CTA submits that The Caribbean Court of Justice (CCJ) should replace the Judicial Committee of the Privy Council (JCPC) as the final appellate court in Trinidad & Tobago.

Section 109 of the Constitution of TT provides that the JCPC is the final appellate court in this jurisdiction.

There are many reasons in favour of changing the Constitution to provide that the CCJ be the final appellate court in TT. In summary, they include;

- Accessibility
- Costs
- Familiarity with social and economic norms
- Compatibility with Republican status

However, there appears to be only one compelling reason why TT should retain the JCPC, which is that Judges of the JCPC are independent of influence from Caribbean politicians. In 2019 a NACTA poll revealed that only 17% of Trinidadians wish to replace the JCPC with the CCJ. People of TT fear that Judges appointed to a Caribbean court could be susceptible to the influence of politicians or persons who appoint them.

The Regional Judicial and legal Services Commission (RJLSC) is in existence and its role is to appoint Judges to the CCJ whenever vacancies arise. Its Head is the current President of the CCJ and its members comprise senior lawyers from Caribbean jurisdictions. That includes territories which do not now subscribe to the CCJ, such as TT. However, it is not disclosed or otherwise apparent how persons become members of the RJLSC or upon what criteria the selection is made.

It is submitted that in order to convince people of TT that the CCJ will be a better option than the JCPC, a transparent system of appointment to the RJLSC should be implemented. It should be public information as to how persons are appointed to the RJLSC. There should be strict guidelines to ensure that there is equality and diversity among Members and selection should not be skewed in favour of the larger territories. The selection should also comprise a mixture of legal and non legal persons and there should be measures in place to ensure that no one person has excessive influence over the other members.

The members of the RJLSC should adopt a selection process which is also transparent and publicly known as at present the criteria for selection is unknown. It is suggested that the RJLSC use an independent system of assessment rather than just references or ‘word of mouth’.

The performance of CCJ Judges, once they have been appointed, should be continuously under review. There should be a process for removal which allows the Judge to be involved.