

CONSTITUTION REFORM COMMISSION

ADDENDUM TO THE REPORT OF THE COMMISSION

Introduction

1. The Report of the Constitution Reform Commission was submitted to the Prime Minister on Friday 27th December, 2013.

2. During its public consultations in March, April and May 2013, the Commission had promised the general public that it would return to them for feedback on the Report of the Commission.

3. Those public consultations to get feedback from the population were held this year as follows :

Monday February 10th (North) – UWI Sport & Physical Education Centre
Wednesday February 12th (Central) – Chaguanas Regional Corporation
Monday February 17th (Tobago) – Signal Hill Government Secondary
Wednesday February 19th (South) – Paria Suites Hotel and Conference Centre.

4. After due consideration of the feedback received, the Commission met and considered issues that were raised and arrived at a consensus on a suite of recommendations that the Commission felt required further commentary.

5. The discussion below is based on comments sent by the Commissioners to the Secretary to the Commission on 30th April, 2014. The discussion below is an expansion on the seven items that constituted its comments of April 30th instant. These comments of April 30th instant are highlighted in bold text below for ease of reference.

Discussion on Comments of 30th April, 2014

6. The proposals for constitution reform should be separated into different Bills requiring special majorities or simple majorities as the case may be.

7. The Commission felt that there were recommendations that fell into different categories of required majorities in relation to section 54 of the Constitution as it pertains to its alteration.

8. To that end, the Commission arrived at the conclusion that different Bills requiring special or simple majorities ought to be taken to Parliament for consideration in order to allow an up or down vote on specific line item issues as

opposed to the use of an omnibus Bill which may or may not result in the accomplishment of constitution reform.

9. Recommendation: Separate the recommendations into individual Bills that require either simple or special majorities as the case may be.

10. The proposals for the right of recall and for term limits for the office of the Prime Minister ought to be brought forward as soon as possible as they only require simple majorities.

11. The Commission was satisfied that there was sufficient support for the idea of the recall of elected parliamentarians and the introduction of a term limit on the office of the Prime Minister that both issues should be addressed at the earliest possible opportunity.

12. A significant part of the consensus on this issue was the fact that these two proposals only required simple majorities in both Houses of Parliament.

13. Outside of the fact that both of these proposals were advanced in the manifesto of the People's Partnership when it campaigned for office in May 2010, there was enough support for these ideas expressed at the various public consultations to merit serious consideration and no objections were expressed in relation to their implementation.

14. There already exists a right of recall in the current Constitution that is available to the leaders of political parties in the House of Representatives in cases where M.P.s who were elected on a party ticket and who have resigned from, or been expelled, by the parties on whose tickets they ran can be recalled.

15. This was implemented in September 2013 when the then Member for St. Joseph was required to vacate his seat in the House of Representatives after he had resigned from the party on whose ticket he had been elected on 24th May 2010.

16. The recommendation of the Commission on page 24 of its Report is designed to expand the right of recall to permit the constituents who voted in the election that elected the M.P. to have a right to determine whether or not he/she ought to be the subject of a recall petition.

17. With regard to the issue of the term limits for the Office of the Prime Minister, there are no known Commonwealth precedents for this as parliamentary systems can have a term of office for the Prime Minister that could last as long as one day or five years and three months.

18. In the circumstances, regardless of whether or not there are fixed dates for the election of the Parliament, the issue ought not to be viewed in the context of terms of office, but rather as time elapsed.

19. Upon reflection, it may be safer in either case to place limitations upon the office of Prime Minister by placing a prohibition upon the length of time served as a bar to future service beyond a particular period of time.

20 Many Prime Ministers may go into a fifth year of the existence of a Parliament before seeking a dissolution. If a Prime Minister were to go into the fifth year of two successive Parliaments, it is possible that the aggregate would not attain ten years, but rather would exceed nine years.

21. In such a situation, it would be better to define the term limit by virtue of time served as Prime Minister using nine years as the period of prohibition against future appointment.

22. This would allow stability in the processes of government and would require political parties to engage in reasonable succession planning for their continued sustenance and operation.

23. Recommendation: Introduce the relevant amendments to the right of recall for M.P.s and the term limits for the office of Prime Minister as soon as possible as separate Bills requiring simple majorities in both Houses of Parliament.

24. The proposal for fixed dates for general elections ought to be considered within the parameters of the discussion in the Report of the Commission at paragraphs 108 to 111 notwithstanding the special majorities required and should be in a separate Bill.

25. The Commission holds firm to its view that fixed dates for general elections ought to be given priority and pursued in a separate Bill given the fact that it will allow the political culture of the country to become less election-oriented and more policy-implementation oriented.

26. The fact that five general elections were held over a period of ten years between 2000 and 2010 was not a healthy development for the political culture of the country.

27. The Commission did consider the provisions of the Fixed-term Parliaments Act 2011 in the United Kingdom and it recommends that a suitably modified amendment to the Constitution be made to give effect to this reform.

28. Recommendation: Introduce a separate Bill requiring special majority to give effect to fixed election dates for general elections.

29. The recommendation for proportional representation for the Senate was based on a desire to seek a fairer system of election than the first past-the-post system.

30. The Commission remains convinced in its recommendation that proportional representation for the Senate ought to be pursued as a replacement for the current system of nomination of Senators.

31. The principle of allowing the voters of the country to decide who the parliamentarians in both Houses ought to be is an important one.

32. The first past-the-post system has not allowed a truly fair representation of the wishes of the electorate to be translated into the fairest possible means of representation in the House of Representatives on a mathematical basis.

33. The Commission will advance a fairer method of electing M.P.s in subsequent paragraphs of this addendum, but it prefers the introduction of the system of proportional representation into the Senate as a means of ensuring a transfer of the political membership in that House from the choices of the Prime Minister and the Leader of the Opposition over to the will of the electorate by computing the votes cast for all parties at a general election in such a way as to have an accurate reflection of their wishes in the membership of the Senate.

34. There has been some concern expressed about the link between the Commission's recommendation of proportional representation for the Senate and its related recommendation for all Ministers, including the Prime Minister, to be appointed from the Senate because of the recommendation to change that House into an elected one.

35. The philosophy of the Commission in making such a recommendation was to separate the function of the representation of people in constituencies from the task of serving the population through the Executive branch of government.

36. The Commission is not altering its general philosophy that these two important functions of State service to the population ought to be separated, but rather recognizes the challenge that some may feel in making such an alteration to the political culture of the country.

37. While there are powerful trends of thought that wish to retain the Westminster-Whitehall model of government whereby Ministers may be drawn from either House of Parliament, the Commission is not prepared to alter its general philosophy on this point.

38. If, however, it is felt that Ministers should continue to be drawn from both Houses of Parliament as is currently done, then the Commission will insist on its position that proportional representation be introduced into the Senate above all else.

39. The Commission recognizes that the separation of constituency service from policy service in the Executive may have to be accomplished at a future date after

proportional representation is introduced for the Senate and both Houses are made equal to each other as a consequence of such a reform.

40. Having Ministers who will service constituencies while also having their ministerial duties to perform does not provide a level playing field for constituency service across the country when compared to those M.P.s who are not Ministers.

41. As a developing country that is a twin-island state separated by water with various geographical challenges, constituency service and policy delivery have not had an equal treatment as the response time of the State to the plight of constituents has often been mired in delays associated with the bureaucracy of the State and very little parliamentary attention is given to these matters.

42. The Commission would like the constitution reform process to arrive at a place whereby the infrastructure for these reforms is put in place, namely the introduction of proportional representation in the Senate, as a precursor to the introduction of the reform of the Executive that will provide for Ministers to be drawn exclusively from an elected Senate.

43. The priority should be to introduce proportional representation in the Senate first. If that succeeds, given the fact that it requires a special majority in both Houses of Parliament, then further consideration ought to be given afterwards to the appointment of Ministers from the Senate alone which would require a simple majority in both Houses of Parliament.

44. Recommendation: Introduce a Bill seeking to alter the method of acquiring political, as opposed to independent, membership of the Senate from nomination by the Prime Minister or the Leader of the Opposition to a method of proportional representation and only introduce the limitation on ministerial appointments to Senators alone if the proportional representation method of election to the Senate is accomplished.

45. The Commission stands by its recommendation for the retention of the first past-the-post system for the House of Representatives; however, any opportunity to make the first past-the-post system for election to the House of Representatives a fairer one will be welcomed by the Commission.

46. The proposal for the refinement of the first past-the-post system is designed to ensure that all MPs are elected on a majority basis. This is consistent with the proposals advanced by the Commission for proportional representation for the Senate.

47. Seeking a threshold of greater than 50% for the election of all MPs so that the will of the electorate is expressed on a majority basis and not on a plurality basis. Given the emergence of a political culture that is seeking representation on the basis of majority or proportionality, any shift in the political culture of voting and elections ought to consider either majority or proportionality as philosophies to be

embraced. Plurality (or minority) outcomes in constituencies ought not to be preferred over majority outcomes where representation of the people is concerned.

48. This process of fairer representation will provide a superior democratic foundation for election to the House of Representatives and general effect can be given to this by the use of a runoff system of elections in those constituencies where no candidate has been elected by a margin greater than 50% of the votes cast for all candidates in such constituencies.

49. Most constituencies are usually determined on the basis of a candidate winning more than 50% of the votes cast. However, there have been numerous examples over the years of candidates who have been elected as Members of Parliament on a plurality basis, rather than on a majority basis.

50. Some examples are as follows:

1991 General Election – Princes Town

Mohammed Haniff (UNC)	- 7,404
Indira Maharaj (PNM)	- 6,202
Hamza Mohammed (NAR)	- 2,489
Farouk Hosein (NJAC)	- 333

1995 General Election – Tunapuna

Edward Hart (PNM)	- 7,467
Hector Mc Clean (UNC)	- 7,223
Theodore Charles (NAR)	- 368
Nathaniel Pierre (NLP)	- 42
John Singh (TPV)	- 16

2000 General Election – Tobago East

Nathaniel Moore (NAR)	- 3,921
Eudine Job (PNM)	- 3,632
Keston McLetchie (PEP)	- 720

51. In the above examples, if a system of runoff elections using the first past-the-post system were in place, there would have been runoff elections at a later date (possibly two weeks) between the top two candidates who had already been nominated as follows:

1991 – Mohammed Haniff (UNC) and Indira Maharaj (PNM)

1995 – Edward Hart (PNM) and Hector Mc Clean (UNC)

2000 – Nathaniel Moore (NAR) and Eudine Job (PNM)

52. A runoff election between these candidates would have produced a majority result whereby the winning candidate would have earned a guaranteed majority and there would be no uncertainty about their status as a majority representative.

53. The issue of the length of time that would be required for the President to appoint a Prime Minister may or may not be affected by the outcome of any runoff elections depending on whether one party has already won the number of seats required for the President to make an appointment under the current system.

54. If the leader of a party that has a majority is himself or herself involved in a runoff election, the President can await the outcome of the runoff election before making a decision.

55. The late President ANR Robinson delayed his decision to appoint a Prime Minister in December 2000 and in December 2001 in order to await the delivery of official results to him (in December 2000) or to await the decision of contending parties to a negotiation (The Crowne Plaza Accord in December 2001).

56. The elapsed time for the respective delays were as follows:

2000 – general election held on 11th December and Prime Minister Basdeo Panday was re-appointed by President Robinson on 20th December (a delay of nine days).

2001 – general election held on 10th December and Prime Minister Patrick Manning was appointed by President Robinson on 24th December, 2001 (a delay of fourteen days).

57. In the circumstances, the issue of a delay in making appointments to the office of Prime Minister ought not to present any problems in respect of the political culture of the country if the runoff system is adopted for elections to the House of Representatives, because the country has successfully navigated these situations before during the presidency of the late Arthur N.R. Robinson..

58. The Commission is still wedded to the philosophy of separating the representatives from the executive, but based on its arguments in the earlier paragraphs of this addendum, it is prepared to accept the reform of proportional representation for the Senate as a precursor to its proposal for all Ministers to be chosen from the Senate alone.

59. The introduction of a runoff system under the first past-the-post system of election is also designed to address the fact that the recall of M.P.s cannot become an easily articulated matter if they are elected with less than 50% of the votes cast in their constituencies.

60. All MPs ought to start off on the basis that they have been elected by a majority of voters in their constituencies. Recalling any MP ought to be done on the basis that a higher threshold than that which elected the MP ought to be required if he/she is to be recalled to face another election.

61. Seeing that the Constitution makes provision for the first past-the-post system as the system of election, then it is only proper that a refinement of the first past-the-post system be undertaken to ensure the election of all MPs on a majority basis.

62. The philosophy of the recall of MPs is based on recalling MPs who have been elected on the first past-the-post method. If an MP is elected with less than 50% of the votes cast, an argument for recall could form the political basis for seeking a petition for removal from the outset of his/her term of office.

63. This ought to be avoided so that the MP can start serving a term of office with the confidence of majority support by which he/she may be assessed before any political action is taken to seek a recall.

64. The retention of the first past-the-post method for the House of Representatives was recommended by the Commission and the right of recall was also recommended by the Commission.

65. Recommendation: The Commission recommends a fairer system of election under the first past-the-post system and the runoff election as articulated above will address that issue in respect of the retention of the first past-the-post system for the House of Representatives independent of any other reforms that may be linked to it.

66. The Commission maintains its position on constitutional reform for internal self government for Tobago as expressed in paragraphs 197 to 201 in its Report. At no time did the Commission take any directions from the Tobago House of Assembly or any other authority on this subject. The Tobago House of Assembly had no position on this subject in March 2013 when public consultations were held in Tobago and the Tobago House of Assembly still has no position on internal self government for Tobago in April 2014. As such, the Commission is unable to proceed to make recommendations on the subject in the absence of any proposals from the largest stakeholder in Tobago, namely the Tobago House of Assembly. Nevertheless, the Commission recommends that the Central Government should proceed to engage in discussions with the Tobago House of Assembly once the Assembly has arrived at a consensus

position in Tobago bearing in mind the discussion in the Report of the Commission at paragraph 201.

67. The Commission has reviewed the situation in Tobago since April 2014 and remains satisfied as of today's date that there is still no consensus in Tobago on the efforts by the Chief Secretary of the Tobago House of Assembly to create a unified Tobago position on internal self-government.

68. Recommendation: The Commission recommends the retention of its original position that the matter of internal self-government for Tobago must be addressed directly between the Tobago House of Assembly and the Central Government in the ongoing absence of any consensus in Tobago on the issue.

69. The Commission is in favour of the early implementation of its recommendation for the introduction of the Office of Contractor General as contained in our discussion on this subject in paragraphs 242 to 246 of the Report.

70. The Commission notes the provisions of the Public Procurement and Disposal of Public Property Bill 2014 and the intention to create an office of Procurement Regulator.

71. Recommendation: The Commission is supportive of this legislative intention and recommends that protection be afforded to the office of Procurement Regulator at a future date by incorporation in the Constitution as per its original thinking on this matter when a recommendation was made for the office of "Contractor General" at paragraphs 242 to 246 of its report.

Conclusion

72. The Commission is satisfied that it has discharged its duties having regard to the remit given to it and its ability to keep its promise to the public that it would seek their feedback on its report and to transmit such feedback to the Government of Trinidad and Tobago which it is doing in this addendum to its Report.

73. If there is any further task for the Commission to undertake in respect of the further advancement of the process of constitution reform for Trinidad and Tobago, the Commission stands ready to provide such service in the public interest as may be required.