

**Grouping of Civil Society Organisations**

**SUBMISSION**

**to the**

**CONSTITUTION REFORM ADVISORY COMMITTEE**

**Constitution of Grenada (Rights And Freedoms)**

**(Amendment) Bill, 2015**

**March 8<sup>th</sup>, 2016**

# GROUPING OF CIVIL SOCIETY ORGANISATIONS

## 2<sup>nd</sup> Submission to Constitution Review Advisory Committee Review of Constitution Reform Amendment Bills

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### 1. Introduction:

The second review session convened by the Grouping of Civil Society Organisations took place on Tuesday, March 8<sup>th</sup> at the Grenada Red Cross Conference Centre. The session reviewed the *Freedoms and Rights Amendment Bill 2015* with the assistance of two attorneys; it also took the opportunity to review the concerns identified in respect of four of the five bills reviewed during the first session. The following is a summary of observations, points of clarification, concerns and recommendations identified by the review.

### 2. Observations by Participants:

- **Review of Amendment Bills:** The process of reviewing the Amendment Bills should have been done prior to them being sent to Parliament for first reading.
- **Unrefined Bills:** The Bills put forward in Parliament were unrefined and did not have the benefit of being debated upon by bodies such as the Grenada Bar Association. The session welcomed the information that body has now set up a committee to review the Bills and send comments to the Attorney General.
- **Changes to Bills:** Would the input of the Grouping of CSOs and other stakeholders be used to refine the bills and address the concerns raised, notwithstanding that the 90-day period would have to begin all over if substantial changes were made?
- **CRAC Process:** Participants again noted the widespread displeasure about the process/lack of process demonstrated by the CRAC.
  - **Process Outlined in CRAC July 2014 Report:** It was brought to the attention of the session that the July 9<sup>th</sup>, 2014 report of the CRAC, para. 18.1 had noted that, once Cabinet reached conclusions about the amendments that it approved for taking forward to Parliament, there would be another round of consultations. However, **instead of following that process, the Bills were drafted, submitted to Cabinet and then to Parliament without any further consultations.**
- **Encourage Participation in the Referendum:** People need to know what the issues were and they should be encouraged to go out and vote. Voting was the mechanism through which they could participate in the decision-making as to whether the Bills are accepted or not.

### 3. Review of the Concerns Identified at the First Session

The session took the opportunity to review its concerns and queries identified at the first session with the two attorneys. The following is a summary of the observations and comments:-

#### 3.1.Name of State Bill:

- **New Terminology:** The Name of State Bill has introduced new terminology. In its definition, **Grenada means the public islands of Grenada, Carriacou and Petite Martinique.**
- **No Reference to the Offshore Island and Territorial Waters:** The definition in the Amendment Bill does not make any reference to the offshore islands and the territorial waters.
- **Interpretation and General Provisions Act:** This definition is repeated in the *Interpretation and General Provisions Act* which will now read:-
  - "Grenada", "the island", "the State", **means Grenada, Carriacou and Petite Martinique** and the adjacent islands, and all territorial waters adjacent thereto;
- **Constitution the Supreme Law:** The Constitution is the Supreme law. The definition of Grenada in the Interpretation Act was not consistent with that proposed for the Constitution. Since the Constitution is the Supreme Law, **whatever the definition in the Constitution is the definition that will prevail.**
- **Loophole to Challenge Sovereign Rights over Offshore Islands and Territorial Waters:** Since the definition that is proposed by the *Name of State Amendment Bill*, is not consistent with the definition in the Interpretation Act, this **leaves a loophole which permits for the challenge of Grenada's sovereign rights and jurisdiction over the offshore islands and territorial waters.**
- **Citizenship by Investment and Foreign Direct Investment:** Concerns were again raised about this bill in the context of the Citizenship by Investment programme and the purchase of offshore islands by foreign investors. The review took note of the following:
  - **Calivigny Island:** Access to the beaches of this island have been denied to locals. It was also noted that the advertisements for the island do not describe the island as part of the State of Grenada. Among descriptions noted are the following: -
    - *“This privately owned island south of Grenada.....”<sup>1</sup>*
    - *“Located off the coast of Grenada this privately owned and run paradise can be yours for a week or two.....”<sup>2</sup>*

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<sup>1</sup> <http://www.vladi-private-islands.de/en/objects/caribbean/grenada/rent/calivigny-island/>

<sup>2</sup> <http://www.dreamexoticrentals.com/properties/Caribbean/vacation-rental-calivigny-island.htm>

### 3.2. Term Limits for the Prime Minister:

- **Recommendations of the 2006 Review Commission:** The *2006 Constitution Review Commission* led by Justice St. Paul had recommended that no person should hold the Office of Prime Minister for more than 2 consecutive 5-year terms.
- **Recognition of Political Parties:** The current Constitution does not recognize political parties. It recognizes Parliament. If political parties were to be recognized in the Constitution, then that there should also be a definition of political party.
- For the avoidance of any doubt, the amendment which provides for a person to hold the office of Prime Minister for 3 consecutive terms should be amended to provide “**for three terms or any part thereof**” in order to prevent premature resignation before the end of a term and then return on the grounds that the three terms was not completed..

### 3.3. Leader of the Opposition:

- **Bi-cameral Legislature:** Grenada has retained a bicameral legislature, comprised of an elected House of Representatives and appointed Senate, which have separate sittings.
  - **Unicameral Legislature:** In a unicameral legislature, both houses - appointed senators and elected representatives - sit together.
- **Elected House of Representatives:** In the House of Representatives, all members are elected. Therefore, **an unelected Leader of the Opposition in the House of Representatives would be an aberration.**
- **Proportional Representation:** A hybrid system of first past the post and proportional representation would allow into Parliament a number of persons based on the percentage of votes received and therefore there would be an automatic Leader of the Opposition.

### 3.4. Fixed Date for Elections:

- **Parliament to Pass Law:** The amendment provides **for Parliament to pass a law to fix a date for elections.**
- **Manipulating Laws:** The Parliament may manipulate its own laws.
  - **Property Tax Act:** An example was given of how Parliament had manipulated the law regarding the introduction of new tax rates. In order to introduce new property tax rates, the Act has to be published and promulgated by November 30<sup>th</sup> of the previous year. In 2013, government brought in a new rates in December 2013 and made it effective in January 2014.
- **Addressing the Concern of Manipulating the Election Date:** The amendment has not addressed the concern of the manipulation of the election date by the Prime Minister in order to gain political advantage. **This was the precise issue the recommendation to fix the date for elections was intended to address.**

#### 4. Review of the Rights and Freedoms Amendment Bill 2015:

##### 4.1. Amendments:

The session noted the amendments proposed by the Rights and Freedoms Amendment Bill 2015:-

- **Enhance the Bill of Rights:** Amendments intended to enhance the Bill of Rights and broaden the scope of provisions by adding two new Chapters:-
  - Chapter 1A – Directive Principles of State Policies
  - Chapter 1B – Gender Equality
- **Discrimination:** Amendments to increase the kinds of conduct related to discrimination
- **Citizenship:** Amendments to various sections which make reference to Commonwealth citizens, clarifying that a Commonwealth Citizen is a citizen of Grenada and eligible to vote and serve as a Senator or Member of the House of Representative
- **Repositioning of the Supreme Law Clause:** An amendment to reposition the Supreme Law Clause at Section 1(2) from Section 106.

##### 4.2. Observations:

- i. **Provisions Not Enforceable:** While the amendments seek to enhance and broaden the scope of provisions by the addition of *Chapter 1A, Directive Principles of State Policy*, and *Chapter 1B, Gender Equality*, these provisions are not enforceable.
- ii. **Gender Equality:** Should the issue of gender equality be addressed by expanding Section (3) which defines discrimination?
- iii. **Section Chapter 1B, Section 18M - Relevant international human rights treaties should be incorporated into domestic law where appropriate:** It was felt that this provision was not appropriate for the constitution.

##### 4.3. Areas for Clarification:

- i. **Provisions of Section 1** - the protection of rights and freedoms have been broadened to include the following categories - *disability, ethnicity, language, place of birth, national or social origin, social class*
  - a. **National and Social Origin:** What does national or social origin mean?
- ii. **Section 1(b) – Freedom of Expression:** Freedom of expression now explicitly states freedom of the press includes the press and other media
  - a. **Freedom of the Media:** Freedom of expression has been widely interpreted to include freedom of the press and media. Is this amendment therefore necessary?
- iii. **Section 3 - Right to Legal Representation:** A new sub-section has been added to give persons arrested or detained the right to retain a lawyer and the right to due process.
  - a. **At whose costs:** Who pays the lawyer?

- iv. **Section 6 – Protection of Intellectual Property Rights:** A new provision for the protection of intellectual property rights
  - a. Given that modern Trade Mark and Patent Act of 2010 is on par with international standards, should this provision be in the Constitution?
- v. **Section 13 – Protection of discrimination on the grounds of race etc.**
  - a. **new section - 13 A - “Equality as to birth in or out of wedlock** – this already provided for in specific legislation, *A Child Is a Child Legislation*. Is a constitutional provision now necessary?
- vi. **Section 13C – Right to Vote:** Does the right to vote extend to those persons who have purchased citizenship and have been guaranteed lifetime citizenship under the Citizenship by Investment programme, even when they give up their investments in Grenada?

#### 4.4. Concerns and Recommendations:

- i. **Section 1(c) – Public Interest:** The limitations of the enjoyment of freedoms in the public interest is qualified; “public interest and being limitations which are in accordance with the due process of law
  - a. **Recommendation:** Public interests should be defined in the constitution.
- ii. **Section 11 - Protection of Freedom of Association and Freedom of Assembly:** This provision explicitly names political parties and trade unions
  - a. The current provision already includes freedom to assemble/associate with any group. This provision extends to political parties and trade unions.
  - b. **Public Service Staff Orders:** *Staff Orders of the public service prohibit public officers from offering themselves as members of the executive of political organisations.* This is a feature of all democracies. Might the proposed explicit provision in the constitution lead to undesirable developments:-
    - i. **Politicization of public service:** The amendment as expressed would permit public officers to hold office in a political party. There is a danger that the public service could become politicized.
    - ii. **Victimization:** Public officers could be opening themselves up to victimization by an administration in office if they do not support that administration.
    - iii. **Sabotage:** A public officer could sabotage an administration in office that he/she does not support.
- iii. **Insertion of a new section, 13B (4) - “ Every child with a disability shall have the right to special education in accordance with his needs up to eighteen years of age”.**
  - a. **Recommendation:** In order to avoid stigma, this section should be amended. “Special education” should be changed to *appropriate education for children with special education needs*.

- iv. **Chapter 1B, 18 P, Protection of Women:** The provisions of Chapter 1B is not enforceable.
  - a. **Recommendation:** Could this provision could be addressed by expanding Section 13 (3) which already makes provisions for protection from discrimination because of sex?
- v. **Section 25, 26, 27, 30,31 and 34 re References to Commonwealth Citizen:** These amendments clarify that a Commonwealth Citizen is a citizen of Grenada and eligible to vote and serve as a Senator or Member of the House of Representatives.
  - a. **Concern:** Citizenship requirements of Grenada are lax and need to be strengthened.
  - b. **Recommendations:** There ought to be a review of the provisions which confer automatic citizenship of Grenada on citizens of the Commonwealth as well as eligibility to serve its Legislature. Citizenship requirements need to be more rigorous.

#### **4.5.Other Observations and Recommendations:**

##### **i. Section 6 (1) – Protection from deprivation of property:**

- a. **Recommendation:** Re Section 6(1), this section needs to be strengthened. The *Land Acquisition Act* provides for the acquisition of private property for public purpose. **Public Purpose should be defined within the constitution.**