

GROUPING OF CIVIL SOCIETY ORGANISATIONS

SUBMISSION

TO THE

CONSTITUTION REFORM ADVISORY COMMITTEE

ON FIVE CONSTITUTIONAL REFORM AMENDMENT BILLS:

Name of State

Leader of the Opposition

Term Limits for the Prime Minister

Fixed Date for Elections

Elections and Boundaries Commission

February 26th, 2016

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on
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1. Introduction:

The following submission is made to the Constitution Reform Advisory Committee by the Grouping of Civil Society Organisations through Ms. Sandra Ferguson, a civil society representative on the Committee. The submission articulates points of concern, points for clarification and recommendations noted during the review of five of the Constitution Amendment Bills which were laid in Parliament on 4th December 2015. The review was undertaken at a constituent meeting on Thursday, February 18th, chaired by Ms. Ferguson. **A key principle underpinning the review was to consider whether or not the proposed amendments would improve the overall governance process and protect the interests of the citizenry of Grenada.**

2. Review of Constitution Reform Amendment Bills:

Some 30 persons, representing sixteen organisations and advocates/persons interested in the issue of constitutional reform participated in the meeting.

Among the objectives of the session were to:-

- i. enhance participants' awareness and understanding of the Bills
- ii. develop a statement to be released by the Grouping of CSOs to the CRAC and to the public re its understanding, concerns and recommendations in respect of each of the bills reviewed
- iii. Identify a core of persons who would be interested in being part of a CSO Team to conduct public education on the Bills

2.1. Process:

Participants were divided into groups of 5/6 persons to review different Bills. There were four groups. Each group was provided with copies of the specific bill and a copy of the Grenada Constitution, and was asked to review its specific bill guided by the following questions: -

- i. What are the amendments?
- ii. What is the intent of the amendments?
- iii. What are the consequences of the amendments?
- iv. Identify any areas for clarification
- v. Identify any concerns
- vi. Offer a recommendation(s) in respect of the bill

The findings of each group were shared in plenary following which there was robust discussion and further points of concern or points of clarification were noted as well as recommendations and observations.

3. Review Output - Clarifications, Concerns and Recommendations:

Review of the bills was allocated as follows:-

- Two groups looked at the *Name of the State Bill* and the *Leader of the Opposition Bill*. Given that the bills were short, each group looked at both bills and one presentation was done on each Bill.
- One group worked on the *Term Limits of the Prime Minister Bill* and the *Fixed Date for Elections Bill*.
- One group worked on the *Elections and Boundaries Commission Bill*

The following is a summary of points of clarification, concerns and recommendations identified by the participants' review.

3.1. Name of State Bill:

3.1.1. Areas for Clarification:

The following were identified as areas for clarification:

- The *Explanatory Memorandum* notes that the Grenada as the State comprises three PUBLIC islands which are Grenada, Carriacou and Petite Martinique. Given that some islands in the territorial waters are private but all islands in the territorial waters are part of the State, **why is the state of Grenada described as comprising of three PUBLIC islands?**
- Is the state defined by its geographical and territorial boundaries? What are the international standards and the United Nations classifications?
- In the context of this bill, clarification is requested re “public” and “private” islands.
- Alteration of Section 111 by inserting definition in *appropriate alphabetical* order: - what is appropriate alphabetical order?

3.1.2. Concerns:

- By describing Grenada the State as comprising three PUBLIC islands, what are the implications for the jurisdiction of the State and the Government in areas such as security and taxes re those private islands within the territorial waters?
- Is this definition of the State - comprising of “public islands” - facilitating the setting up of enclaves?
- Is describing Grenada as comprising three public islands contributing to the risk of losing public resources and loss of sovereign rights?
- How does replacing the word “includes” with the word “means” in the (re)definition of the State of Grenada under section 3 of the Interpretation and General Provisions Act, Chapter 153, meet the object of the Bill as stated in the Explanatory Notes; that is, *“It is desirable to change the name of the State from “Grenada” to “Grenada, Carriacou and Petite Martinique”; for purposes of inclusion, embracement and identity.”*

3.1.3. Recommendations:

- The Bill should delete all reference to “public islands”
- The State should be described as the islands of Grenada, Carriacou and Petite Martinique and include all the islands in its territorial waters.
- There is no need and/or any good reason to delete the word “includes” and substitute the word “means” under the Interpretation Act, to meet the object of the Bill.

3.2. Leader of the Opposition:

3.2.1. Areas for Clarification:

The following were identified as areas for clarification:-

- **No. of Persons in the House of Representatives:** Given that 15 persons all belonging to one party occupy the House, does this mean that the House of Representatives will now have 16 persons?
- Could there be a Leader of the Opposition without an Opposition? The background to such a Bill is to have effective representation as well as effective checks and balances.

3.2.2. Concerns:

- Is the provision for a Leader of the Opposition more cosmetic than meaningful?
- Does the amendment re the removal of the Leader of the Opposition facilitate:-
 - arbitrary removal by a politically influenced Governor General?
 - Possible manipulation by the governing party as to the choice of the Leader of the Opposition?

3.2.3. Recommendations:

- **Obligatory Language:** The Explanatory Memorandum should use obligatory language - ...there shall always be an Opposition in the House of Representatives and a Leader of the Opposition
- **Proportional Representation:** Proportional Representation should be considered to address the issue of the Leader of the Opposition. It would simultaneously address the issue of effective representation and providing for checks and balances?

3.3. Term Limits for the Prime Minister:

3.3.1. Areas for Clarification:

The following were identified as areas for clarification:

- Do these provisions mean that someone who has served as Prime Minister for two terms and sat out a term can be elected for another three consecutive terms?
- Does the Political Leader of a winning party have to be the Prime Minister?

3.3.2. Concerns:

- Could there be a figurehead of a Prime Minister who will be manipulated by a political leader? (ref. to Russian experience where the Russian President Putin, after serving as President, served for a period as Prime Minister and then returned as President.)

3.3.3. Recommendations:

- **Two Consecutive Terms:** A limit of two consecutive terms was recommended for the following reasons:-
 - **Previous Recommendations:** Historically all previous Constitutional Reviews Committees have recommended a term limit of two consecutive terms; there is no compelling evidence to recommend otherwise.
 - **Continuity:** Two terms provide a guarantee for continuity re projects started. This is in the interest of the nation.
 - **Reduce Corruption and Abuse of Power:** Two terms reduce the potential for corruption and abuse of power.
 - **Efficiency and Effectiveness:** Two terms encourages quicker and earlier actions; shorter terms demands a stronger and more independent public service and state apparatus; shorter terms promote a more efficient and effective institutional and legal framework.
 - **Empirical evidence:** It would appear that, in the democratic world, there is a limit of two terms for a President or Prime Minister, imposed either by election results or by the national constitution.

3.4. Fixed Date for Elections:

3.4.1. Areas for Clarification:

- **Parliament to Set Date for Elections:** Is this bill giving Parliament the authority to determine the Parliamentary term?
- Why should the provision for setting a fixed date for elections not be entrenched in the constitution?

3.4.2. Concerns:

- **Lack of Clarity:** Is there now a lack of clarity about the provisions in respect of fixing the date for elections— current provisions remain but do not apply if the new law is in operation?
- **Predictability about Election Date:** Citizens want predictability about the date of the elections. They want to take it out of the “back pocket” of the Prime Minister. Does this amendment address this concern?

3.4.3. Recommendations:

- **Fixed Date:** A fixed date for elections should be enshrined in the Constitution. It must not be left to Parliament.
- **Dissolution of Parliament:** The date for the dissolution of Parliament should be clearly set – five years less one working day after the first sitting of any new Parliament
- **Election Date:** A clear date for elections must be set – 30 days after the dissolution of Parliament.
- **First Sitting of Parliament after Election:** The first sitting of Parliament must be held no later than 30 days after the elections are held.

- **No Elections Prior to the End of five-Year Term:** No elections should be held prior to the dissolution of Parliament five years thereafter.
- **Amend section 52 (2) – qualify “unless sooner dissolved”:** The clause “*unless sooner dissolved*” facilitates the arbitrary calling of an election. Thus, the constitution should specify the conditions that would constitute grounds for calling elections prior to the constitutional provisions.
- **Recall of Parliamentarians:** Consideration should be given to the Recall of Parliamentarians.

3.5. Elections and Boundaries Commission:

3.5.1. Areas for Clarification:

The following were identified as areas for clarification: -

- **Removal from Office of Members of the Commission:** While a provision is made for an investigation by a tribunal for misbehaviour, and members may be suspended (on the advice of those who appointed them), it unclear about the revocation since the Governor-General has to act in accordance with the Prime Minister or the Leader of the Opposition re persons appointed by them.
- **Removal for Misbehaviour:** What is deemed misbehavior?

3.5.2. Concerns:

- **Does Away with an Independent Office Protected in the Constitution:** Authority is removed from an Office (of the Supervisor of Elections), protected in the Constitution to a 5-person Commission chosen in majority by partisan interests
- **Quorum:** Three members may constitute a quorum. There are no specifics as to who should make up that quorum. Is there now a possibility that decisions will be one-sided and partisan?

3.5.3. Recommendations:

- **Composition of the Commission:** Members should be selected as follows – 1 member on the recommendation of the party in government; 1 member on the recommendation of the opposition; other 3 members on the recommendation of the civil society sector;
- **Consultation with Civil Society Bodies:** The Governor General should consult civil society organisations through the collective body that represents most of civil society, rather than engage individual organisations.
- **Terms of Reference:** There should be a terms of reference for the commission that should also specify what is misbehavior. The Terms of Reference should be in the public domain.
- **Appointment on Basis of Technical Competence:** All five persons should be chosen on the basis of technical competence. It is strongly recommended that consideration be also given to appointment via an application process.
- **Chief Election Officer** - this person ought to be a full time public officer and someone who is not politically aligned.

4. Further Observations and Recommendations:

- **Exclusion of the People from the Process:** Several persons reiterated their dissatisfaction with the process or lack of process followed by the CRAC and challenged the legitimacy of the CRAC to make recommendations on behalf of the people. It was also noted that participation in the public sessions convened by CRAC was very low; it was suggested that less than one percent (1%) of the population participated.
- Some persons were also very skeptical as to whether or not the comments and recommendations of the review session would be considered by the CRAC.
- **Diaspora:** Concern was expressed that the diaspora was excluded from the process. An appeal was made to ensure that the diaspora was included in the process and public education.
- **Public Education for Informed Voting:** There was an urgent need for public education on the bills if there was to be informed voting. The CRAC process to date did not lend itself to serious public education and familiarity with the Constitution to facilitate informed voting.
- **Piecemeal CR Process:** The current constitutional reform process is piecemeal. Bills cannot be considered in isolation from each other, the rest of the Constitution and other legislation that was being passed by the administration. For example,
 - **Office of Governor General:** The Governor-General has important constitutional functions re a number of sensitive appointments. A number of the amendments address areas where appointments or decisions have to be made by the Governor General. The Office of the Governor-General is perceived as being not independent. Each time a new administration comes into office, it appoints its own GG. The process by which the Governor General is selected also needs to be addressed. The matter of the selection of the Governor General by an Electoral College should be addressed.
- **Composition of the Current Legislature:** Constitution Reform was being undertaken during the tenure of an administration which exercised maximum power owing to the makeup of the House of Representatives – one party controlled all fifteen seats. This was not the best time to be undertaking constitution reform where there was a one-sided Legislature.
- **Local Government in Carriacou and Petite Martinique:** Is the change to be effected by the *Name of State Bill* addressing the real issue of exclusion felt by the people of Carriacou and Petite Martinique? While the present Constitution makes provisions for local government in Carriacou and Petite Martinique, this provision has never been implemented. This provision has again been ignored in this Constitution Reform effort.
- **Enhancing the Governance Process:** A key concern and expectation of civil society re the constitution reform process was that it would promote the inclusion and participation of citizens in the decision making process, improve transparency and accountability and address the issue of checks and balances to prevent/address the abuse of power by the Executive. In this regard therefore, the civil society recommends that a number of important areas be further examined:
 - **Proportional Representation:** While implementation of proportional representation can be challenging, it is representative and facilitates inclusion. It would automatically address the issue of ensuring that there would be a Leader of the Opposition at all times. There were various combinations that could be considered.
 - **Issue of Recall of Representatives:** The issue of recall of representatives should be considered.

- **Role and Composition of the Senate:** The Senate is an important check and balance in the Legislature. There is a need for independent senators, outside of political parties. Consideration should be given to reviewing the composition of the Senate.

5. **Referendum and Timelines:**

It was the expectation of the civil society sector that the process of Constitution Reform would contribute to creating and enhancing the political consciousness of the citizenry and contribute to its engagement in the governance process. **The general consensus of the participants was that Grenada was at the beginning of the Constitution Reform education process and therefore a referendum could not and should not be rushed.** More time was required. The bills being proposed have far reaching consequences and it is important that citizens properly understand these bills in order to make an informed vote.

6. **Conclusion:**

The general consensus of participants was that the day's activity was the first real education activity that they had been involved in. It was the first time that they had gotten a real appreciation of the bills, notwithstanding other public education sessions in which they had participated. A number of persons indicated their interest in being part of a core team to conduct community education sessions.

The Grouping of Civil Society Organisations noted that its review of the five Amendment Bills was consistent with *Activity 1.3* of the UNDP's Project, *Support to Referendum on Constitutional Reform in Grenada*, which had committed to support CRAC and civil society collaboration "to implement extensive and inclusive civic education campaign(s) to inform the population of the content of the proposed constitutional amendment/referendum bills(including pros and cons) and Voter Information Strategy designed and implemented to ensure voters properly informed of voting procedures on referendum day". This was the first in a series of similar engagements that the Grouping intended to undertake.