

CONSTITUTION COMMISSION OF TRINIDAD AND TOBAGO



REPORT

OF THE

CONSTITUTION

COMMISSION

PRESENTED TO HIS EXCELLENCY THE GOVERNOR-GENERAL

ON

JANUARY 22, 1974

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His Excellency Sir Ellis Emmanuel Innocent Clarke, T.C., G.C.M.G., Governor-General and
Commander-in-Chief of Trinidad and Tobago

Sir:

In the Speech from the Throne at the opening on June 18, 1971 of the Third Parliament since Independence of Trinidad and Tobago, your predecessor in office, His Excellency Sir Solomon. Hochoy, T.C., G.C.M.G., G, C.V.O., O.B.E. stated that the Government would be concentrating on encouraging and promoting the maximum participation of the people in the political process. The first priority would be the Constitution itself. Against this background he announced the decision to appoint a Commission under section 2 of the Commissions of Enquiry Ordinance with the following terms of reference, that is to say:

"To consider the Constitution of Trinidad and Tobago and matters related thereto and to make recommendations for the revision. of the said Constitution and for matters of constitution reform in Trinidad and Tobago".

2. The Commission was further directed to report in writing upon the said enquiry giving its opinions and recommendations and providing for consideration a draft Constitution for Trinidad and Tobago based upon such opinions and recommendations.

3. The composition of the Commission then appointed was as follows:

The Rt. Hon. Sir Hugh Wooding, T.C. (Chairman)
 The Hon. Mr. Justice Philip Telford Georges (Deputy Chairman)
 Mitra Gokhale Sinanan, Esquire, Q.C.
 Michael de la Bastide, Esquire Gaston
 Benjamin, Esquire,
 Julius Hamilton Maurice, Esquire
 Solomon Lutchman, Esquire
 Reginald Dumas, Esquire
 Dr. Anthony P. Maingot;

And Cecil Haig Dolly, Esquire, a public officer, was appointed to be Secretary to the Commission.

4. On September 15, 1971 a tenth member was added to the Commission, namely Dr. Selwyn Ryan. On July 14, 1971 another public officer, Lennox Wattley, Esquire, was appointed Assistant Secretary.

5. In the said Speech from the Throne His Excellency further stated that the Commission would operate in complete independence of the Government and the Parliament except in so far as funds and staff would be required. The Commission has so operated.

Procedure

6. Our original decision was to proceed in the conventional manner by inviting the public to send us memoranda expressing their views on constitutional reform. But the response led to a radical revision of our method of approach. It was clear that before expressing their views most people wanted to have precise information of the terms of the present Constitution and some awareness of possible alternatives which might be considered. So we decided to ask groups representing a wide cross-section of community interests to send delegates to discuss with us the procedures we should adopt in setting about our vitally important task. Lists of the groups whom we invited and of those who sent delegates are not out in Appendix A.

7. There was a remarkable unanimity among the groups as to the most desirable method of approach so that after our several discussions with them it was easy for us to resolve -

- i. to prepare and distribute a booklet setting out the terms of the present Constitution and suggesting possible changes with some of the arguments for and against each;
- ii hold meetings throughout Trinidad and Tobago within a reasonable period after the distribution of the booklet to meet the people, listen to what they might have

to say and discuss with them any difficulties or problems arising from their reading of the booklet;

- iii. to invite the public at that stage to send in their proposals for reform;
- iv. to meet thereafter in private session with groups or individuals who had sent in proposals in cases where we felt that such a meeting would help in clarifying the proposals; and finally
- v. to hold a national convention to which all persons who had sent in proposals as well as the general public would be invited to debate the shape which the new Constitution should take.

8. The preparation of the booklet proved a more difficult task than we had anticipated. The emphasis was on simplicity and readability, yet accuracy and breadth of coverage could not be sacrificed. It was completed after 29 meetings in the period August 17 to December 31, 1971 and was launched at a press conference on January 8, 1972 under the title "Thinking Things Through".

9. The booklet was very widely distributed through local government offices, post offices, schools, work places and overseas missions. Altogether, the number of copies distributed was approximately 80,000.

10. Unfortunately, it became impracticable to proceed to the next stage of holding public meetings, as had been planned, shortly after the distribution of the booklet. The country was then in a period of public emergency. We therefore decided that the planned public meetings should not be held at a time when citizens expressing their views could not feel assured of the full protection of the fundamental rights and freedoms declared in and by a Constitution which, at

least to some extent, had been virtually suspended. Accordingly, the round of meetings did not commence until July 5, 1972 after the period of public emergency had been brought to an end. A list of the dates and venues of these meetings is given at Appendix B.

11. The Commission divided into two groups to cover the country, Altogether 39 meetings were held at important centres throughout Trinidad and Tobago during the period July 5 to August 23, 1972. Further in response to invitations from nationals abroad, some of us travelled to Toronto, Montreal and Ottawa in Canada, and to New York City in the United States of America to discuss with the substantial number of our citizens there such issues as they wished to raise. Also, nationals resident in Washington D.C. approached one of our members, who was then an officer in our Embassy there, and passed on to us through him their representations on matters which were of concern to them. Other nationals too, resident in England, met with another of our members who was on a visit there and submitted their representations through him to us.

12. We received 100 memoranda - 68 from individuals and 32 from organisations and groups. A list of those submitting memoranda is given in Appendix C.

13. In the period from October 1972 to February 1973 we held 24 meetings to discuss in private session with various groups the contents of their memoranda. Also, we prepared certain documentation for the National Convention. This included Working Papers dealing with specific issues, namely fundamental rights and freedoms, citizenship, the ombudsman, financial accountability and proportional representation, and four model constitutions which attempted to set out in simple form what appeared to be the more obvious combinations of institutions that might be discussed.

14. We held a mini-convention in Scarborough, Tobago on March 10 and 11, 1973. Its purpose was to afford the people of Tobago an opportunity to debate issues of special concern to them. Also, we felt that problems of transport, an extended absence from Tobago and the cost of housing and subsistence in Trinidad might make it difficult for any but a very few from Tobago to attend the National Convention at Chaguaramas.

15. The National Convention was held at the Chaguaramas Convention Centre between March 30 and May 9, 1973. In sum, there were 22 sessions and taking part were the representatives of each of 47 organisations and groups as well as 28 individuals. A list of the participants is given in Appendix D.

16. To aid the Commission in its research the Government of India generously offered that the Chairman should visit that country as its guest. The offer was gratefully accepted, and two other members joined the Chairman in his researches there. The Government of India made available every facility that could be desired and the delegation was greatly assisted by its discussions with parliamentary and elections officials and with the distinguished editor of "India's Constitution In The Making" who was himself a prominent member of the Constituent Assembly responsible for drafting the Indian Constitution.

17. Those of us who visited Ottawa used the occasion to have discussions with senior parliamentary officials and academics who have made a study of the Canadian Senate, all of which we found to be quite helpful.

18. In the main, however, we considered that the area of primary relevance to our enquiry was and must be Trinidad and Tobago. Our major concern was and had to be with the composition of its people, its political culture, the problems arising from its existing

constitutional arrangements, its customs and its character. To these therefore we gave our principal attention.

19. Our Report follows.

I - INTRODUCTION

20. As this Report is being written the survival of constitutional, parliamentary politics is being challenged as never before in Trinidad and Tobago. Many believe that the institutionalised channels of constitutional politics no longer respond unless there is some dramatic gesture of confrontation such as a "sick out", a "go slow", a boycott or a march to Whitehall to see the Prime Minister. Some groups have even called on citizens to consider withholding the payment of taxes. Secondary school children have begun to adopt strategies of confrontation and non-negotiable demands. Others have carried this belief into even more extreme action by resorting to armed confrontation. The society has painfully to adjust itself to stories of shoot-outs and killings and woundings, of early morning searches and of widespread public fear of victimisation by one side or the other.

21. There is danger that we may become insensitized by exposure to the human tragedy in the situation and accept this state of affairs as part of our political culture. Violence breeds violence. Violence or the fear of it invariably tends to make the citizen more receptive to strong police and military procedures. As the process of conflict escalates, traditional civilian, legal and constitutional procedures are short circuited in favour of more "efficient" methods of law and order. Although all social change involves a measure of conflict, no democracy can long survive in the midst of unrestrained political violence.

22. One indication that more and more people have become or are becoming disenchanted with existing political processes is the fact that fewer of those entitled to vote are registering. For the 1966 general election there were 459,839 registered voters, but for the 1991 general election the number fell to 435,531, Fewer still have been exercising their franchise in either national or local elections. But nonparticipation does not necessarily mean complete

disenchantment with constitutional politics, nor does it indicate endorsement of the revolutionary approach. It may simply be a reflection of a dissatisfaction with the existing political establishment, and confusion and uncertainty about what options for meaningful change are open. We are convinced that a large majority of the people still believe in the possibility and viability of constitutional politics and that they would respond positively if new political alternatives became available. The anxiety with which our report and recommendations have been awaited is perhaps some evidence that a commitment to conventional politics still exists. It may well be that the very crisis which the country has gone through in the last three or four years has helped to create a new consciousness and an intense determination on the part of many to make constitutional politics a living reality.

23. We are aware however that constitutionalism will not work in Trinidad and Tobago unless a fundamental reorientation of the economic priorities of the country is undertaken. Democratic politics will not thrive unless productive jobs are found for those who are now unemployed and underemployed as well as those who will be pouring out of our expanded school systems in the near future.

The Present Constitution analysed

24. The Constitution under which Trinidad and Tobago achieved independence in 1962 was in all its essentials a written version of the constitutional arrangements evolved in the United Kingdom over many centuries. There were no indigenous systems of community government at the central level from which a national pattern could be developed. The laws which had been imposed were British; the system of education was British; the process of colonial tutelage through which we had passed had been aimed at preparing us to manage British institutions. The ultimate source of authority had been, till then, outside of the country

and the various groups within had to look there for help or protection if they felt that they were being unfairly treated. To a large extent these attitudes persisted though the constitutional arrangements changed.

25. Although the present Constitution was discussed at Queen's Hall for three days, there was never any examination of the basic issue as to whether or not it was suited to our needs. Some of the delegates did perceive that it could be operated so as to be quite authoritarian. Their criticisms were brushed aside. The prevailing attitude was that the representatives elected by the people to govern must be free to do so. Checks intended to delay the passing of laws dealing with fundamental constitutional issues were understandable, but restraints on the power of an elected government would be inherently undemocratic. The only proper safeguard was the right of the electorate to pass judgment at periodic elections.

26. The United Kingdom was generally regarded as a country in which the rights and freedoms of the individual and the democratic way of life as understood in the West were dearly cherished and effectively protected. There was a tendency to think that this was due solely to their institutions of Government. This led to the uncritical acceptance of the theory that a constitution which was good enough for the United Kingdom was good enough for Trinidad and Tobago. This point of view did not however take into account the differences which exist between the British political culture and that of Trinidad and Tobago.

27. In reality the Westminster political system has a propensity to become transformed into dictatorship then transplanted in societies without political cultures which support its operative conventions. The underlying principle of the Westminster system is that the party which controls the majority in Parliament following an election is invited to form the Government. The person who is leader of the majority party becomes Prime Minister and head of the

Cabinet. He chooses his Cabinet colleagues and junior ministers and he can dismiss them at will. He also allocates the portfolios for which they are responsible. Once Cabinet decides on a policy, it can easily be translated into law through the use of the party's majority in Parliament.

28. In the 18th and 19th centuries, governments were defeated in Parliament. Nowadays, party discipline rarely breaks down. The last occasion on which this happened in Britain was in 1956.

29. Under contemporary conditions the Executive in the Westminster model is so powerful that it has been referred to as a Cabinet dictatorship. Some observers even claim that it is not really the Cabinet, which is dominant, but the Prime Minister himself, assisted by his inner Cabinet, the Cabinet Secretariat and a few individuals who may not even have any formal responsibility in the system. The Prime Minister, it is noted, also has wide powers of appointment and dismissal. Further, he has the power to dissolve Parliament when he wishes, the power to appoint and staff Cabinet committees (here in fact a lot of key decisions are taken on behalf of the entire Cabinet), the power to determine who chairs the committee as well as which committee receives what matter for study. He also determines in large part the agenda for Cabinet meetings and his oral summation of Cabinet discussions determines to a large extent what policies are actually adopted on behalf of the Cabinet. As leader of the party in Parliament and in the country, the Prime Minister has at his disposal a powerful instrument of control and influence. Those who cross him or fail to support his policies consistently can hardly expect advancement. They may even be expelled from the party. This has in fact happened on quite a few occasions in British political history.

30. Looked at from this perspective there is some justification for referring to the British system as being Prime Ministerial government rather than parliamentary government.

Numerous scholarly accounts have been written about the decline of Parliament in Britain and the corresponding ascendancy of the Prime Minister. Parliament, it is said, has now become an anachronism, which, like the monarch, plays only a fitful and largely ceremonial role in the British system. One of its key functions, control of the public purse, is in large measure done perfunctorily since budgets are now too vast and complicated to be thoroughly scrutinised. Party discipline, loyalty and an instinct for survival also make it highly unlikely that a party, which has a majority in Parliament, will fail to support its team.

31. Despite the formal correctness of these observations, there are extremely important constraints, which limit the powers of the Prime Minister. A British Prime Minister always has to be sensitive to the fact that there exist in Britain a vigorous press, powerful interest groups and an alert public opinion. Freedom to criticise is an institutionalised part of the political process. There are things, which the Prime Minister knows he cannot get away with, and failure to recognise these limits has often led to disaster. The British Prime Minister is also continuously influenced by what his Cabinet colleagues think (they usually have some standing in the party), as well as by the sentiments of backbenchers on his own team which he is always careful to monitor through party whips. While there is a great deal of deference to the Prime Minister and to authority in general, the British public has a high degree of confidence in its capacity to influence policies and does so continuously either by the actions of individuals or more often through organised groups. There is also a large and vigorous academic community with a long tradition of political participation, as contributors to government policy or as critics of government. This participation is not held to be inconsistent with their professional status. Their stance is never regarded as either subservient or subversive.

32. The same cannot be said about Trinidad and Tobago, a society which has just emerged from the fetters of colonialism. Here democracy is still a very tender plant needing a great deal of care and nurture. If anything, the political culture can be characterised as being highly bureaucratic. There is no deeply entrenched tradition of political commitment and involvement on the part of the "better off" people in the society. That which existed during the colonial era at the national and local level has long since disappeared. Few people have bothered to seek information about or attempt to influence the outcome of public policy in a systematic and organized way. The public still very largely believe that policy-making was a matter for "them" (the Government) and not for "us" (the people). Those who are in a privileged position to know or to gather information and who themselves possess the ability or can assemble the skills to make pertinent and reasoned comment in support of or in disagreement with government policies have for the most part been silent or have preferred to comment or grumble in private. The few who made efforts to contribute to policy-making often found that their efforts were not seriously entertained.

33. The reasons for this political passivity are varied. Perhaps the most significant contributing factor is the tremendous patronage enjoyed by the State. And the scope is widening. We find that in 1971 the state employed directly 33.5 per cent of the total paid work force so that it is now unquestionably the largest employer in Trinidad and Tobago. This in effect means that there is abundant opportunity for political patronage. Further, each year sees some expansion of government activity in industrial, commercial and financial areas, in agri-business, in public utilities, in special works. The chairmen and members of the public corporations and the government representatives on the boards of companies in which the State has acquired an interest are all of them

directly appointed by the Prime Minister and his Cabinet. He appoints or nominates for appointment Ambassadors and High Commissioners, most of the members of the Senate, all public officers who are required to reside abroad for the proper discharge of their functions and the holders of such offices in the Ministry of External Affairs as he may from time to time designate. Further, it is in accordance with his advice or subject to his signifying that he has no objection that appointments are made to a number of offices.

The list is long and impressive.

Governor-General

Chief Justice

Chairmen and Members of the Service Commissions

Auditor-General

Permanent Secretary

Deputy Permanent Secretary

Head of a Department of Government

Deputy Head of any such Department

Chief Professional Adviser to a Ministry

Deputies to such Advisers

Director of Personnel Administration

Solicitor-General

Chief Parliamentary Counsel

Registrar-General

Crown Solicitor

Commissioner of Police/Deputy Commissioners of Police

34. The use of patronage to win over or silence critics is undoubtedly universal. But in a small society such as ours it can be terribly effective. The intelligent and ambitious most likely to launch a successful challenge to establishment practices can often be persuaded that cooperation and deference provide an easier path to follow.

35. Another reason for passivity has been the failure of the mass media to play a really vigorous role in the development of public opinion. This failure must of course be viewed in its relation to the intellectual, social and economic environment in which they have to function and to the kind of reception which a serious, resourceful and researching commentator may reasonably expect. Further, restrictive terms in their licences keep political controversy completely off television and radio, and two of the three daily newspapers are foreign-owned with all that that implies as regards the freedom and the assurance of freedom to be critical. Also, all the media are understandably sensitive about anything which may affect their income, so that they are sometimes hesitant (or, contrariwise, brash) in taking stands on issues affecting government, advertisers or particular group interests.

36. A third reason is the unwillingness of most people to oppose persons in positions of authority openly or to criticise policies publicly. One cause of this is the widespread network of friendships and associations among persons occupying strategic positions in any small society. This generates a reluctance to offend. There is also a disposition to treat everything with banter or to shrug it off as of no consequence. In small countries like ours there is no anonymity, so that it is made to appear difficult to detach the "who" of politics from the "why" and "how". Hence it is hardly surprising that most "letters to the editor" in the daily press and many commentaries on issues of the day are written under **noms-de-plume**. The tendency is strong to be polite to an opponent rather than to expose him to the public glare. Such

accommodation does have some advantage in that it helps to create an atmosphere of urbanity in political life, but the image of civility is false and conceals what is in, fact a masquerade. In the result, inefficiency and incompetence, hypocrisy and corruption, errors and deficiencies of policy are not rigorously exposed. Authority is merely laughed at, faults are glossed over, and the matter ends there. These attitudes must be changed if the society is to become efficient and mature. The constitutional procedures we are recommending are designed hopefully to promote a much-needed change to honesty and candour.

The Incidence of Race

37. Race is perhaps one of the most significant determinants of political behaviour in Trinidad and Tobago. In the main, the society comprises two ethnic groups - those of African and those of Indian descent. Together they make up 82.95% of the population. Some 14.17% are or think of themselves as "mixed". The rest, 2.88%, are for the most part of French, Spanish, British, Portuguese, Chinese, Lebanese and Syrian stock.

38. All the evidence indicates that the pattern of voting tends basically, though not invariably, to follow the racial, with those of African descent supporting the Peoples National Movement (PNM) and those of Indian descent supporting the Democratic Labour Party (DLP). At the 1961 general election the DLP won ten seats - all in areas where Indians comprised more than 50% of the PNM won twenty - two in Tobago where the population is almost exclusively African, ten in constituencies more than 50% African, five in areas where the African population was slightly larger than the Indian, and two in communities where the two groups were numerically almost equal. In one constituency only, Barataria, the PNM won where Indians were the majority group, its candidate being an Indian with more than a little influence.

39. The "race" vote however has not been as monolithic as the figures might suggest. The fact is that, while the major party support has come from the respective races as shown, religion and class have blurred the lines of party affiliation somewhat.

40. It should be observed that the ethnic influence in determining political loyalties is not unique to Trinidad and Tobago. To the contrary, it is a common feature. For instance, in Belgium, Flemings and Walloons tend to ally themselves to separate parties; in Canada, the British and French; in Malaysia, the Malays and Chinese; in South Africa, the Boers and English; and even in Britain there is a growing phenomenon to be seen in the Celtic vote.

41. Nevertheless, we do not think it impossible to develop a genuine national consciousness in a multiracial society. To achieve this, it is among other things imperative that each of the major ethnic groupings should feel confident that the constitutional and electoral system has not been devised to ensure the political dominance of the one group or the other. To the extent that any such fears and suspicions can be allayed, to that extent can genuine cooperation progress in the urgent tasks of developing a national consciousness and of raising the standard of living of all the country's citizens through the national and non-discriminatory use of its human and physical resources.

42. Another manifestation of race is the disillusionment with conventional politics exhibited by so many of our black youth. This is not confined to Trinidad and Tobago but is common to many parts of the world. To that extent therefore it may be regarded as in keeping with a trend. But it is much more than that. As in many another newly-independent Third World country, the grievance lies in the complaint that, while Independence has ousted white officialdom and appears to have brought with it the trappings of black control, economic dominance has not materially shifted. And the young people cannot wait. They are in a hurry. Their cry is against

the multinational corporations and the role played by metropolitan business interests, against the emergence of new and mainly non-black economic groupings, against the unemployment and under-employment of so many of their brothers and sisters, and against the littleness of the change in the day-to-day pattern of their ordinary lives. Their demand is for black dignity, black consciousness and black economic control.

43. Although the statistics show that Trinidad and Tobago has one of the highest **per capita** incomes in the Third World and that its distribution is much more equitable than in most Third World countries, the feeling is widespread that the gaps between rich and poor are much too wide. In the Manpower Income Report published by the Central Statistical Office in January 1973 we find that, while the **per capita** income for 1970 was TT 319368.00, the monthly median income of paid employees was TT \$170.50 for men, TT \$115.00 for women generally and TT \$85.50 for women outside the government sector. Also, official figures show 14% of the labour force as being unemployed, in the administrative and highly populated area of St. George it is shown as high as 17%, and it is thought that overall for school-leavers and others in the age group 15 to 25 it is not less than 40%.

44. The Black Power Movement gained rapid support between February and April 1970 when thousands marched in Port-of-Spain and other parts of the country in a show of solidarity. The ban Government imposed by proclaiming in April that a state of emergency existed was itself threatened by a mutiny in the Regiment on the very day of the **proclamation**. The evidence available publicly did not establish a connection between the dissident officers and the Movement, but the general impression is that there was.

45. In all the turmoil the police remained loyal to the Government. As the situation grew more difficult, the methods employed to maintain law and order understandably became

harsher. This in turn bred greater hostility towards policemen, particularly among the younger and more idealistic elements and the black and underprivileged poor. In the result, armed policemen have become a feature of life in Trinidad and Tobago - a disturbing departure from a sound tradition.

The Decline of Parliament

46. In the years immediately following the formation of a PNM Government in 1956 Parliament was a vigorous and lively institution. In it were heard many speeches which were founded on basic principle and which were well researched. It witnessed also many dramatic confrontations between government representatives and the Opposition. Its public galleries were often full, the press and radio reported the speeches verbatim and most knew who the members were and readily recognised them. Perhaps this was because party government involving a major hand-over of political and administrative control was something new. Everyone wanted to see how it would work and most people were anxious that it should. It did. But it did not take long before interest began to wane.

47. Some of the factors contributing to the decline of Parliament are universal in character, but others were local and specific. The controversy over the introduction of voting machines and the delimitation of constituency boundaries for the 1961 general elections was and has remained throughout the years very bitter. It found immediate expression in the refusal of the Opposition to participate in the proceedings of Parliament, hoping thereby to advertise and win support for their dissatisfaction with the new electoral procedures and their demand for electoral reform. Also, their new leader (officially the Leader of the Opposition) lived in London where he held the post of a lecturer and, with the leave of the Speaker under the Standing Orders, remained absent and abroad for the whole of the five-year parliamentary term

except for brief intermittent appearances usually at the time of the budget debate in December or early January. This led to the first split in the DLP and, later, to disputes and rivalries over its leadership. From the whole of these circumstances resulted a loss of interest in Parliament and disenchantment with its role as an institution of importance to the society.

48. The non-functioning of Parliament in its normally accepted role is evidenced also by the record of questions asked by the Opposition, entertained by the Speaker and answered by the Government in the House of Representatives. The yearly averages for the five-year term 1956/1961 were 54.6 questions asked, 40 entertained and 38.8 answered. The comparative figures for the years following, being for each of the years of the 1961/1966 and 1966/1971 terms and for the year 1972/1973 (there was no parliamentary opposition in the year 1971/1972) are given in Table 1 hereunder

Table 1

Year	<u>No.of Questions</u>	<u>No.Entertained</u>	<u>No. Answered</u>
1961-62	5	2	2
1962-63	23	19	19
1963-64	17	6	5
1964-65	19	12	12
1965-66	1	-	-
1966-67	10	1	1
1967-68	45	13	13
1968-69	16	7	4
1969-70	28	11	10
1970-71	34	7	3
1972-73	2	2	2

Source: Compiled by Constitution Commissions Staff from the records of Parliament.

It will be observed that, even when *there* was greater activity in questioning during the 1966/1971 term, the record of questions or answered was hardly encouraging entertained.

49. Further evidence of the non-functioning of Parliament in its normally accepted role is to be found in comparing with the total number of Bills introduced in Parliament the number which were rushed through all three stages on the same day they came before each House, in most instances with very little previous notice of the contents of the Bills, We give the record in Table 2 for each of the years 1967/1972 from information similarly compiled:

Table 2

Year	No.of Bills Private Bills	<u>No.of Bills</u> <u>rushed through</u>	No.of Bills <u>rushed trough</u>
1967	41	8	16
1968	43	11	19
1969	43	11	10
1970	48	10	16
1971	39	9	24
1972	37	18	20

50. The failure of the DLP Opposition for the reasons mentioned in paragraph 47 to perform as effectively as it ought and the non-functioning of Parliament in its normally accepted role as indicated in paragraphs 48 and 49 handicapped (if it did not wholly disable) the public in forming an intelligent judgment on the issues of the day and led to a progressive shifting of the active opposition to areas outside Parliament including the Trade Union Movement, the University, the left-wing groups, the idealistic or non-conventional youth and the more radical press. We were therefore not surprised to find an overwhelming weight of opinion at our meetings, in the memoranda we received and at the National Convention that the

Executive had grown too strong and Parliament too ineffective, so that a first essential was to find ways and means of redressing the balance.

51. Perhaps we should add here that, although there are peculiar circumstances making our problem appear to our people more acute, the executive arm of governments throughout the modern world has taken unto itself more than customary power at the expense of the legislative. That this is so has been made plain even in the United States of America where the separation of powers is constitutionally rigid. There, battle has been joined between the President and Congress to restore and underline the powers and privileges of Congress and to safeguard them against encroachment by the President. This illustrates the fact that no simple solution can be achieved simply by changing forms, but we are nonetheless convinced that a change of forms can help by providing a more favourable environment for the development in the society of different political attitudes. We do not accept the often, expressed view that the present Constitution is quite sound and that the fault lies in our failure to operate it properly. If we cannot operate it properly, then for us it is not sound. We are of the view that the Westminster model in its purest form as set out in our present Constitution is not suitable to the Trinidad and Tobago society.

52. It is in this social, political and economic context that we have set about our commission, and it is against this background that we recommend a new Constitution for Trinidad and Tobago.

II - THE GENERAL STRUCTURE AND ITS UNDERLYING PRINCIPLES

53. Before setting out in detail the specific recommendations we have made and the reasons in support, we shall sketch broadly the constitutional structure we propose. A grasp of this will make it easier to follow the specific recommendations in each chapter since each part is so organically related to every other that reference will sometimes be made in one chapter to institutions and procedures which will be fully discussed only in a later chapter.

54. In approaching the task of drafting this new Constitution we have at all times kept firmly in mind the nature of the society in which it was intended to operate. We have sought to discover the concept which people have of the society in which they live and their forecast of its probable course of development. This involved examination of the political and social history of the country and discussion in depth of recent developments. Chapter I sets out briefly some conclusions we have arrived at from this historical analysis.

55. In evaluating the complex social, political and economic structure of this country we consulted the available scholarly works. Among us were scholars who had been actively engaged in that very task before their appointment as Commissioners. We had discussions with representatives of groups over a wide spectrum of the society and with many individuals as well. We also relied upon our collective experience each of us having lived and worked in the society in important areas which brought us in close touch with so many of the problems which cry so urgently for solution.

56. In assessing what people told us at public and at private meetings and at the National Convention we operated from the basic premise that in societies like ours where considerations of class and race often make people suspicious of each other though superficially cordial, a

person may often say what he conceives he ought to say rather than what he really thinks. In the concrete suggestions made, in the questions asked and in the arguments advanced in support of positions we were able to discern the assumptions which the people made about the society and their concept of its future. These did not differ in essentials from the perceptions we had formed though inevitably in some areas we have differed in the choice of methods in achieving an agreed goal.

57. We propose that Trinidad and Tobago shall become a Republic with a President as Head of State and a Prime Minister as Head of Government. The role of the President will not be purely ceremonial. Power will be vested in him to appoint persons to certain offices of a national character. In some instances he will do so acting in his own discretion after consultation with the Prime Minister, the Leader of the Opposition and such other persons as he thinks fit. In others he will nominate a candidate who will be appointed only after approval by the National Assembly. There will be a Vice-President who will act for the President when the need arises.

58. We propose that Parliament shall consist of a single Chamber, to be called the National Assembly, presided over by the Vice-President as Speaker. For the time being it will consist of 72 members - twice the present number. Half of these will be elected as at present from the 36 constituencies into which the country is divided. The other half will be selected from lists put up by political parties contesting constituencies. This is a mixed system of electoral representation.

59. We propose that an Integrity Commission be set up to which members of Parliament will declare their assets shortly after taking their oaths of office and annually thereafter.

60. We propose significant changes in the Boundaries Commission. It will no longer be a permanent body. It will be appointed to carry out one delimitation and having done this will go out of office. The Chairman will be a neutral appointed by the President in his own discretion, but the other members will represent political interests.

61. It is proposed that the Elections Commission be replaced by an Elections Commissioner. He will be nominated by the President and appointed if approved by a three-fifths majority in the National Assembly. The Elections Commissioner will head a department which will have the same relationship to the general public service as the Auditor-General.

62. We have provided for standing Parliamentary Committees to which all Bills must be referred before being debated in the National Assembly unless that body itself by a two-thirds majority otherwise directs. The Committees will also be empowered to initiate inquiries into matters of policy or into the workings of governmental institutions in the same way as is now done by Commissions of Inquiry.

63. The Executive remains much as it is at present - a Prime Minister able to command a majority in the National Assembly presiding over a Cabinet selected by him and responsible to the Assembly. The office of Attorney-General will however be differently constituted. He will be a public officer, not a politician. He will be responsible for criminal prosecutions. He will also advise the President if called upon. The Auditor-General, the Elections Commissioner, the Chairman of the Boundaries Commission and the Ombudsman may likewise seek advice from him as an independent non-political legal expert. Additionally, there will be a Minister of Legal Affairs who will be a political appointee and member of the Cabinet with a Chief State Counsel as his principal technical officer. They will be responsible for the

normal day-to-day legal advice, which the Government may require, for the conduct of civil litigation on behalf of the state and for the drafting of Bills and other parliamentary instruments.

64. Provision has been made for an Ombudsman. He will be nominated by the President and appointed if approved by a three-fifths majority in the National Assembly. He will investigate complaints of misadministration in the public service, in local government and statutory authorities. He will report to the National Assembly through the Speaker.

65. The Service Commissions will perform substantially the role they now perform. We have proposed a reorganisation incorporating the Prison Service, the Fire Service and the Police Service under one Commission to be called the Protective Services Commission. An Appeal Board has been proposed to deal with appeals in disciplinary matters from the decisions of any Service Commission.

66. With a view to stricter financial accountability we propose to strengthen the authority of the Auditor-General by vesting in him control of his own staff and authorising him expressly in the Constitution to carry out efficiency audits also. These are carried out concurrently with the expenditure of funds and are intended to discover waste and inefficiency whereas regularity audits are conducted after the event.

67. We have recognised the importance of local government by providing for it in the Constitution itself. We have proposed that the system of voting in local government elections should be similar to that in general elections with two-thirds of the councillors being elected by the first-past-the-post system and one-third by the list system. There will be a Tobago Regional Council similar in form with the other county councils but with broader powers of advice in the planning process.

68. We have also been guided by certain principles in arriving at our decisions. We are satisfied that more effective government is possible only where; there is greater participation by the people in the processes of government. The tendency to think of the Government as "they" and the people as "we" must be corrected. It is an inevitable heritage of a period of colonialism when Government was an imposition from abroad, which nationally minded citizens could only wish to remove. Although this type of thinking has no place in an independent country, the fact is that since Independence the machinery of government has tended to reinforce it. The decision-making process has remained as shrouded in secrecy as it was before. Important decisions are taken on serious issues without the public being aware that these issues are even being discussed. We think that the processes of government need to be opened up so that the citizen can be made aware of what is taking place and that institutions should be set up enabling him to participate without undue difficulty,

69. We have also sought to stress the idea of national independence. Naturally enough, regional and international co-operation is necessary since no island can be a world. But it is important that Trinidad and Tobago should develop a sense of self-reliance and of self-confidence. While there should be no hesitation in seeking from all sources any ideas which can be of use in the economic, social and constitutional development of the country, it must be emphasised that final decisions must be made here and must be based on local needs. Wherever practicable, we have tried to have power shared among various institutions rather than concentrated in one. This follows from the principle of participation already mentioned. At the same time we have kept in the forefront of our deliberations the fact that there are practical limits to the diffusion of power. A government in office must have sufficient constitutional authority to carry out its policies.

70. We have accepted the importance of party politics in the operation of a democratic society and our proposals have been designed to strengthen the party system. We have sought to build checks and balances within the democratic process itself instead of relying on a nominated Senate as in the present Constitution. We have recognised that there is a certain distrust of the politician as a person capable of acting in the national interest. But we think that an electoral system designed to permit representation of all significant political interests will produce a legislative body the decisions of which should reflect the national interest. It is our view however that, in a small community such as this, rigid confrontation by opposing parties on all issues cannot be for the benefit of the society. Areas of consensus and compromise must be sought and expanded. Some of the procedures, which we have proposed, are geared towards this goal in particular the new committee system in the National Assembly.

71. We accept that the society is multiracial with two major racial groupings - those of African descent and those of Indian descent. As we have stated in the introductory chapter, the pattern has been that each of these groupings has supported a major political party. We think this is likely to continue in the foreseeable future. There will be competition as well between members of each group in all the varied spheres of activity in the community. Our proposals are aimed at devising a fair system of electoral representation, which will leave neither group with a sense of being at a disadvantage and which should encourage the growth of political groupings not obviously based on ethnic origin.

72. We have had full and widespread consultation with the people on the type of constitution they want, but we have not conceived our role as being merely that of ascertaining the majority view and casting it into proper shape. We thought we should be guided but not governed by what appeared to be the consensus of public opinion on any issue. As will be seen

in the course of this Report, we have not hesitated to disagree with a popularly supported view where an overriding principle appeared to be involved.

III - FUNDAMENTAL RIGHTS AND FREEDOMS

73. This chapter of the present Constitution was a subject of most anxious concern in the memoranda submitted to us as well as at our meetings throughout the country and at the National Convention. Two sections especially, namely sections 3 and 5, provoked the severest criticism.

74. Concern was aroused, particularly since 1970, because of the passing of laws abridging rights and freedoms, which had previously been enjoyed. Examples of such laws are the Sedition (Amendment) Act, No. 36 of 1971, the object of which was to update an earlier Sedition Ordinance, and the Summary Offences (Amendment) Act, No.1 of 1972, which made police permission a necessary prerequisite for holding a public meeting. The fear is strong that such abridgements will continue.

75. The two Acts followed an abortive attempt to introduce a Public Order Bill in 1970, It was withdrawn after the strongest public opposition to vesting in the Executive wide-ranging powers to deal with threats to law and order. The public refused to be persuaded that the severe sanctions proposed by the Bill would never be used against law-abiding citizens or that its object was to protect their rights and freedoms. They apprehended that once any such sanctions were made available there could be no guarantee that they would not be misused.

76. For the passing of the two Acts recourse was had to section 5 of the Constitution. This section provides that an Act of Parliament may expressly declare that it shall have effect notwithstanding that it abridges or infringes a fundamental right or freedom, so recognised and declared by the Constitution, provided that at the final voting thereon it is supported in each House by the votes of not less than three-fifths of all its members. The provision has been strongly criticised since an apparently unqualified right or freedom, which is declared to be

fundamental, should not normally be capable of any abridgement or infringement. In that sense, section 4 is exceptional and can be understood. It provides for the passing during a period of public emergency of Acts which may abridge or infringe the fundamental rights and freedoms but which are expressly declared to have effect during that period only. But emergency considerations do not apply when no state of emergency exists.

77. Yet section 5 has been thought necessary for enacting laws which at first sight do not appear to affect any fundamental right or freedom. An example of this is the National Insurance Act, No.35 of 1971, which provides for the compulsory deduction of contributions to the National Insurance Fund from the earnings of employed persons and is really a measure for social insurance. Because the deduction is compulsory it was thought prudent to pass the law under section 5 lest the point be taken that it infringed the right, expressly recognised and declared, of all persons to the enjoyment of their property.

The Rationale of the Existing Provisions

78. These problems have arisen because the Bar Association's view prevailed that the fundamental rights and freedoms should be briefly and simply stated. Objection was taken to the original draft of the present Constitution which set them out in much the same way as in the European Convention on Human Rights. So the Canadian Bill of Rights was adapted without fully appreciating the difficulties inherent in altering what was a general code of rules for interpreting statutes so as to become a positive affirmation of fundamental rights and freedoms.

79. In so doing, the present Constitution adopted an approach which reflects the thinking in the United Kingdom. There, no written Constitution exists and all individual rights have their roots in the common law. These rights may be defined as the area of permissible activity when

all the laws restricting the individual have been taken into account. Thus freedom of thought and expression has always existed in Trinidad and Tobago. But everyone knew without its being explicitly stated that this freedom was subject, among other restraints, to the law of libel and slander, to the Sedition Ordinance of 1920, to the laws against obscenity and blasphemy, to the prohibition against publishing reports of the proceedings at preliminary inquiries into indictable offences and to the power of government to ban the importation of literature which it considered subversive.

80. This result was achieved in our present Constitution by the expedient of section 3 which in a comprehensive provision made all the declared rights and freedoms subject to all the laws in force in Trinidad and Tobago at its commencement. Also, because there was from that time onwards to be a written Constitution guaranteeing those rights and freedoms from abridgement or infringement, provision had to be made for validating future laws which might appear in any respect whatever to be in breach of that guarantee. Hence section 5 with its safeguards both of an affirmative vote by a special majority and of a further condition that any Act passed there under might be struck down if "shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual". The effect was indeed to produce a brief and apparently simple statement of rights and freedoms. But the brevity and apparent simplicity were misleading. Many people were shocked to find out that rights and freedoms set out in absolute terms were subject to important limitations the extent of which were nowhere defined. This led some people to wonder, perhaps cynically, whether there was any meaning to these rights and freedoms at all.

81. We are convinced that it is wrong to set out rights and freedoms in absolute terms, defining them as fundamental, and then to provide that Parliament may pass laws expressly

declaring that they shall have effect notwithstanding those rights and freedoms. The concept may well be seriously questioned if Parliament finds it necessary or prudent to pass such laws with any frequency. Indeed, the position in our view is made worse when some of them, far from being restrictive, are plainly beneficial in that they make available social and economic advantages never before enjoyed. We think therefore that it is better to define the rights and freedoms not in absolute but in qualified terms so that everyone should know and understand that they are limited in scope. At the same time, the permitted qualifications should not extend beyond what is reasonably justifiable in a society having a proper respect for the rights and freedoms of the individual or during a period of emergency beyond what is reasonably justifiable for the purpose of dealing with the situation existing during that period.

The Content and Scope of the New Provisions

82. Accordingly we recommend that the new Constitution should adopt the pattern of the European Convention on Human Rights. In so doing, we reverse the decision taken in 1962 on the recommendation of the Bar Association and fall in line with all other Commonwealth Caribbean countries having a written constitution and with many others besides. Special provisions should be included to have effect during periods of public emergency. We shall refer to those later.

83. As can be seen from the draft of the new Constitution submitted with this Report, each right is broadly defined and then are set out heads of exceptions under which laws can be passed which will not be deemed to be an abridgement of the substantive right.

84. In the case of certain rights the heads of exceptions can be and have been made quite specific. These are the right to life, the right to personal liberty, the right to equal protection under the law, the right to protection from inhuman treatment, the right to protection from

slavery and forced labour and the right to protection from being deprived of one's property. This is because the law in these areas is highly developed and it is possible with accuracy to define permissible areas of limitation of the general right.

85. In other cases - the right of privacy, the right to freedom of thought and expression, the right to freedom of conscience and belief, the right to practise one's profession - defining precise areas of limitation is more difficult because circumstances are infinite and the law is still in the process of development. So a broad exception has had to be stated permitting legislation in the interests of defence, public safety, public order, public morality, public health or for the purpose of protecting the reputations, rights and freedoms of others.

Admittedly these are vague categories under which serious inroads can be attempted. To reduce the likelihood of abuse we recommend two checks -

- (i) that any law purporting to fit within any of these categories should be passed by a three-fifths majority;
- (ii) that any such law should be valid only if its provisions cannot be shown not to be reasonably justifiable in a society which has a proper respect for the rights and freedoms of the individual.

The latter requirement will permit a review by the courts even when the law has been able to clear the hurdle of the larger parliamentary majority.

86. We have not included in the draft any clause preserving existing legislation. Where an existing law abridges or infringes a fundamental right, its validity will depend on its falling within one or other of the permitted exceptions and also on its satisfying the test of what is reasonably justifiable in a society with a proper respect for the rights and freedoms of the

individual. It will not, if enacted before Independence, have had to be passed by a three-fifths majority; that requirement will only apply thereafter.

87. We are satisfied that the specific categories set out will include all areas of existing desirable legislation. The broad exception of public interest leaves room for dealing with any unusual situation, which may develop. We are confident that the capacity of any government to act has not been unduly circumscribed.

88. Further, because the formulation we have used has been so widely adopted, there will be a growing body of decided cases on its interpretation in various parts of the world which should be of help to our courts when dealing with their own problems. Cases dealing with the European Convention on Human Rights will also be useful since there are many points of similarity between the Convention and the proposed Declaration of Rights - the name we have suggested for the new chapter in our draft.

89. It will also be possible to challenge existing laws which may be thought to abridge or infringe the fundamental rights and freedoms as they have now been defined since there has been no wholesale adoption of the pre-Independence body of law. It seems only proper that citizens should be able to test such laws against the standards which the society has elected to adopt.

90. It is our hope that the language is simple enough to be understood by anyone. Now that exceptions have been set out, the reader will be alerted to areas where restrictions exist and will not be misled into thinking that the right is absolute.

The Right to Strike

91. Once the form had been decided upon, the question as to which rights should be included did not pose serious problems. We were asked to include the right to strike but have not done so.

The Court of Appeal

95. It could also be argued that if there is a right to work there must be a correlative duty to accept such work as is available. Most people would prefer to have a choice in this area and would not like to be compelled to take a job simply because it happens to be available.

96. The rights to social security and education depend on the resources available for use. And although the right to a living wage could more easily be made into law, unless the wage is fixed the right would lack meaning. Courts would not relish having to give decisions on an issue so clearly outside the ambit of the purely legal. What is needed is a Minimum Wage Law which can be easily amended specifying a minimum wage or providing a mechanism by which it can be calculated. Also, a radical change in the economic organisation of the society may give to all these problems a completely different dimension.

Directive Principles of State Policy

97. For these reasons we have not set out these social and economic rights as substantive rights which, if so set out, would mean that they are capable of being enforced in a court of law. We have set them out as Directive Principles of State Policy. These embody a solemn declaration setting out the goals, which the State aims at achieving by its day-to-day efforts. They provide a standard by which government activity can be judged.

98. To emphasize that this is by no means a one-sided arrangement we have included a statement of the obligations which we think the citizen owes to the community. These also would not be enforceable in any court of law but, together with the Directive Principles of State Policy,

they are designed to lay a proper foundation of reciprocal rights and obligations on which a just society can be built.

Freedom of the Press

99. We were urged not to include freedom of the press as a substantive right. The argument was that it was merely one aspect of freedom of thought and expression and needed no more protection than was afforded to any other. Setting it up as a specific right might create the impression that the press and the news media generally enjoyed a right in the area over and above that enjoyed by everyone else.

100. In our view, the argument underestimates the emotional and historical importance of the concept of freedom of the press in the development and preservation of all the values, which go into the framing of a Declaration of Rights. The deliberate omission of this freedom in the new Constitution might give the totally wrong impression that we are not particularly concerned that the press should remain free. However, to make it absolutely clear that the freedom of the press and other news media is not intended to confer upon them privileges wider than those conferred on anyone else we have included it as a part of the article declaring the right to freedom of expression. This, it should be observed, follows the precedent set in the European Convention on Human Rights. We have also made the freedom subject to regulation of a kind similar to that set out in the Newspapers Ordinance, Ch.30 No.8, which we consider reasonable.

Radio and Television

101. There were complaints that the Government's control of radio and television either through licensing arrangements or direct ownership gives it an effective monopoly over

these powerful media of communication. Opposition parties are not given free time in which to express their views nor are they allowed to buy time for that purpose.

102. We discussed this matter with senior officials of Radio 610, Trinidad Broadcasting Company Limited (Radio Trinidad) and Trinidad and Tobago Television Company Limited. They have no objection in principle to permitting political broadcasts and agree that regulations can be drawn up which would ensure fairness. But, in their view, the instruments under which they operate do not permit them any discretion in the matter.

103. Radio 610 is wholly state-owned and its officials are guided by the licence granted to its predecessor Radio Guardian, the terms of which are similar to those in the licence under which Radio Trinidad operates.

Clause 15(1) of this licence reads -

"The Company shall not in its programmes transmit either directly or indirectly any matter undermining any religious or political conviction or ridiculing or criticising any race, colour or creed".

While the intention behind this prohibition may be praiseworthy it is certainly expressed in language, which is far too wide. Any political broadcast would aim at undermining the political convictions of some group in the country since its purpose would be to make converts to its cause.

104. Clause 16(1) empowers the Minister -

"in the national interest to introduce preventive supervision of broadcasting transmissions which shall consist of prior examination of any programme".

And clause 16(4) empowers him in the national interest to -

"require the company to refrain from transmitting any matter which in his opinion should not be transmitted".

We are satisfied that these provisions constitute a substantial and unjustified infringement of the right of freedom of expression in that they unduly restrict the use of one of the most effective means of receiving and imparting ideas and information on political matters.

105. The position of the Television Company is no better. Clause 2 of the Heads of Agreement under which it operates provides as one of its undertakings that it will -

“preserve due impartiality in respect of matters relating to current public policy, and ensure that no matter is included in the programmes or the advertisements that is designed to serve the interests of any political party, provided that this shall not prevent the inclusion in the programmes of properly balanced discussions or debates where the persons taking part express opinions and put forward arguments of a political character".

Again this prohibits telecasts and advertisements by political parties.

106. The ban of course operates as well against the party, which forms the Government, but the appearance of equality is an illusion. The Government has free time for its use both on

radio and television. Some of this time is inevitably used to publicise its activities and achievements so that in effect the ban on political broadcasting does not affect the governing party in quite the same way.

107. We recommend that this ban on political broadcasts, telecasts and advertising should be removed and that a code should be drawn up to regulate this use of radio and television. The Jamaica Broadcasting Company which has been set up as an independent public corporation considers that it has an obligation to further the process of democracy by encouraging the use of radio and television to acquaint the electorate with the issues of an election campaign. This approach is absolutely sound and should be adopted as the official policy of any government if freedom of thought and expression is to be made fully effective. However, other than declaring the right to freedom of expression including the freedom of the press, we do not consider it appropriate to make any specific reference to this matter in the Constitution although we consider it of the utmost importance.

108. The Television Heads of Agreement provided for the formation of a Television Advisory Council to advise the Government and the Company on all matters affecting television but the Council has never been established. However, the licence to Radio Trinidad provided for the formation of a Broadcasting Programme Committee to consist of representatives of the Government and licensed radio broadcasting, wire broadcasting and television services operating in Trinidad and Tobago. Its powers which are set out in clause 14(3) of the licence were basically to co-ordinate programming so that normally there would be a choice of programmes as between one station and another, to encourage appropriate programmes for Sundays, official holidays and national days, to promote the cultural level of programmes and to satisfy as much as possible the desires of any cultural, religious or other recognized body.

109. We recommend that a body similar to the Broadcasting Programme Committee be set up. It should be composed of seven members, all appointed by the President in the following manner:

- 2 acting in his own discretion, one of whom shall be named as Chairman;
- 1 acting in accordance with the advice of the Prime Minister;
- 1 acting in accordance with the advice of the Speaker from the parties in the National Assembly not forming part of the Government; and
- 3 acting in accordance with the advice (as to one each) of the respective Boards of Directors of the two radio stations and the Television Company.

This body would exercise a regulatory function which would include drawing up guidelines for the media in fulfilling their public responsibility and supervising the manner in which these guidelines are implemented.

110. Returning to the subject of political broadcasts, we recommend that parties contesting elections should have free time allotted equally among them from nomination day to the eve of polling day. The definition of a political party will not be difficult if the mixed system of elections is adopted. Any party which has qualified to put up a list would have qualified for free time. Independents could apply for free time but the granting of it would be in the discretion of the regulatory body. Paid spot commercials should be permissible from nomination day also to the eve of polling day. Again, equal time should be available to each party. Outside of campaign time rules could provide for the setting aside of a particular period each week which would be available to parties wishing to purchase time. Regulations could provide for matters concerning the length of any programme and its content.

111. We would propose also that all political broadcasts should be pre-recorded so that they would be subject to scrutiny to ensure that -

- a) they contain no defamatory matter;
- b) the language is not offensive though of course it may be quite forceful; and
- c) they fit within the time prescribed.

These proposals should raise the level of community political awareness and participation and also ease the bitterness which opposition groups tend to feel because of being deprived of a hearing.

State of Emergency

112. We have recommended significant changes in the provisions relating to a public emergency. The role of Parliament in the process has been emphasised. Under the present Constitution the Governor-General is empowered to declare by proclamation that a state of emergency exists if he is satisfied that a public emergency has arisen as a result of the imminence of war or as a result of some national calamity or

"that action has been taken or is immediately threatened by any person of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life".

Any such proclamation that a state of emergency exists, unless previously revoked, remains in force for 30 days.

113. The practice followed over the course of the last ten years has been to recite in the proclamation the passage quoted above without in any way indicating even in general terms the

nature of the action taken or threatened, or whether the action had been already taken or was only immediately threatened, which led to the declaration that a state of emergency existed. Then the Prime Minister would usually speak to the nation on television and radio giving reasons for the action taken. That would be the end of the matter. We think this explanation should be the subject-matter of a debate in the National Assembly. Having regard to the size of Trinidad and Tobago, we do not envisage any difficulty in summoning the National Assembly and presenting before it an explanatory statement for its information.

114. We recommend therefore that within three days of his issuing a proclamation declaring that a state of emergency exists the President should submit to the National Assembly a statement of his reasons for so doing. We recommend that this proclamation should be effective for 15 days, and not 30 days as at present, and that the National Assembly be empowered to grant extensions by a simple majority for periods of up to three months each but not exceeding six months in all. Extensions beyond that limit would require a three-fifths majority. It is our view that any Government should within 6 1/2 months be able to deal with the circumstances that made it necessary to declare that a state of emergency existed. If the situation at the end of that period should still be difficult, then it should be obvious enough for the Government to win the support of other groups in the National Assembly in the event that it does not control a three-fifths majority.

115. None of these provisions would of course apply to a period of public emergency, which has come into being because Trinidad and Tobago is engaged in a war. In such circumstances the period of public emergency would last so long as the war lasted.

116. The present Constitution also provides for a period of public emergency to be brought into existence by a resolution passed by a two-thirds majority of all the members of each House

of Parliament declaring that democratic institutions are threatened by subversion. We see no reason to retain this provision especially in the light of the parliamentary control which we have prescribed for a period of public emergency declared by proclamation of the President.

Accordingly we have omitted it completely.

117. We think also that there should be changes in the Review Tribunal. Under the present Constitution, the Tribunal is empowered only to make recommendations which the Government is free to accept or reject. We recommend that the Tribunal's recommendations should be accepted as binding since detainees have been convicted of no offence and their detention should appear to be well-founded to warrant its continuance. It would appear too that the burden is on the person detained to satisfy the Tribunal that he ought not to be detained. We recommend that the burden should be shifted the other way. Unless the Government is able to satisfy the Review Tribunal within that time that a person should be detained, then he should be released after a period of two months. If, of course, the Tribunal makes a determination in his favour before then, he should be released forthwith.

118. We recommend further that the President should be required to appoint the Review Tribunal within 72 hours of the proclamation that a state of emergency exists. And the Tribunal must review the case of each person detained whether he applies for a review or not.

119. We recommend also that persons detained during a period of public emergency ought not to be detained in prisons and ought not to be subject to the same disciplinary codes as prisoners on remand or after conviction. While it may be necessary for the stability of the society that they should suffer loss of liberty without positive proof of guilt, it should always be kept steadily in mind that they have not in fact been proved guilty of any offence against the criminal law.

120. In the same spirit we would note that the Executive in the exercise of the power of search should at all times avoid any further invasion of the rights of privacy than is reasonably required. A search may be perfectly legal and yet may be clearly conducted in an oppressive manner. It would not appear possible to frame the right to search in such a way as to prevent its use as an instrument of oppression, but the very public interest which makes the right to search essential also demands that it should not be used oppressively.

121. No matter how perfectly any scheme for the protection of human rights and fundamental freedoms may be set out, in the final analysis its effectiveness depends on the strength and integrity of the courts and the willingness of citizens to challenge there any actions which they may consider to be an abridgement or infringement of their rights. One restricting factor very obviously is the expense of litigation. We recommend therefore that the courts should be empowered to make an order that the State should pay the costs of all parties in any case in which it is satisfied that an issue of constitutional importance was reasonably raised for decision.

IV - CITIZENSHIP

122. The main issue for decision under this head was whether or not citizens of Trinidad and Tobago should be permitted at the same time to be citizens of another country - that is, should there be dual citizenship? The architects of the present Constitution were firmly opposed to the idea and that was very much the thinking in the African countries which attained independence about that time. Any person who became a citizen of Trinidad and Tobago on August 1, 1962 and who could also claim citizenship, of another country was therefore required to renounce that other citizenship by August 31, 1964 or forfeit his citizenship of Trinidad and Tobago. The terminal date was subsequently extended to August 31, 1967. Minors were allowed a year after reaching the age of majority to renounce.

Consequences of Prohibiting Dual Citizenship

123. Many persons were not aware that they held a citizenship other than that of Trinidad and Tobago. An example will illustrate. A person born in Trinidad and Tobago of a father born in Grenada would, if born before Independence, be entitled to citizenship of Trinidad and Tobago because he was born here. He would also be entitled to citizenship of the United Kingdom and Colonies by descent from his father. The likelihood is that he would be completely unaware of that fact, yet if he failed to renounce his citizenship of the United Kingdom and Colonies by August 31, 1967 he would cease to be a citizen of Trinidad and Tobago after that date. The possibilities are that he might have no real connection with any country other than Trinidad and Tobago and might still consider himself a citizen.

124. In 1965 there was an amendment of the Constitution to alleviate this hardship. Persons who became citizens of Trinidad and Tobago on August 31, 1962 but retained their

citizenship of the United Kingdom and Colonies after that date and failed to renounce the latter citizenship within the specified time were absolved from the penalty of forfeiting their Trinidad and Tobago citizenship. They were thus permitted to keep both citizenships. The penalty continued however to apply to persons who, having become citizens of Trinidad and Tobago, failed to divest themselves of any second citizenship which they held or acquired other than citizenship of the United Kingdom and colonies.

125. Another difficulty arose after Guyana and Barbados became independent in 1966. Their Constitutions conferred citizenship by descent on persons born in wedlock of Guyanese or Barbadian fathers and citizenship by birth on persons born in Guyana or Barbados. This meant that a number of persons who were citizens of Trinidad and Tobago now became citizens of Guyana or Barbados as well, for a person might be born in Trinidad and Tobago of a father who was himself born in Guyana or Barbados or, vice versa, be born in Guyana or Barbados of a father born here. Such persons stood to lose their Trinidad and Tobago citizenship unless they renounced their newly acquired citizenship within the specified time. Again most persons were really unaware of this.

126. Another amendment of the Constitution in 1968 permitted such persons to retain their citizenship of Trinidad and Tobago as well as their citizenship of the other Commonwealth Caribbean country. But as enacted, the amendment was limited so as to apply only to persons who -

- (a) had acquired Trinidad and Tobago citizenship on August 31, 1962
and
- (b) Subsequently acquired citizenship of a Commonwealth
Caribbean country.

Accordingly, it does not apply to persons born after August 31, 1962 or to persons who, having become citizens of Jamaica on August 6, 1962 i the date of that country's independence, later acquired citizenship of Trinidad and Tobago on August 31, 1962.

Modification of the Law against Dual Citizenship

127. It is clear that the Constitution as amended recognises that dual citizenship should be permitted at least in some cases where serious hardship could result from insistence on the principle that a citizen of Trinidad and Tobago should be a citizen of no other country. In our view, the amendments do not carry the matter far enough and give rise to a number of anomalous and illogical distinctions. Accordingly we recommend that a citizen of Trinidad and Tobago who automatically acquires by birth, descent or marriage the citizenship of another country should not have to renounce that other citizenship in order to retain his citizenship of Trinidad and Tobago. We recommend also that this provision should be made retroactive to ensure that citizens of Trinidad and Tobago who lost their citizenship without voluntary act through the restrictive provisions of the present Constitution should have it restored.

128. Much more difficult is the problem of persons who voluntarily acquire the citizenship of some country other than Trinidad and Tobago. This is of vital interest to our many citizens abroad. Exact figures are not available but estimates place the number of citizens of Trinidad and Tobago in Canada and the United States of America as high as 100,000. The number of persons born in Trinidad and Tobago who are now living in the United Kingdom has been put at between 42,000 and 45,000. As already mentioned, members of the Commission obtained at first hand the views on citizenship of Trinidad and Tobago citizens in Toronto, Montreal, Ottawa, New York, Washington and London. Further, two members of the Trinidad and

Tobago Alliance in New York took the time and trouble to attend the National Convention at Chaguaramas where they put the case for full dual citizenship.

129. Their case was based on the fact that many of our citizens who go abroad do so not because they wish to abandon the country of their birth but because there are greater opportunities for economic and professional advancement in the United States of America, Canada and the United Kingdom. The Government of Trinidad and Tobago officially favours emigration. It helps to relieve unemployment and to ease the frustrations which build up when people realise that their aspirations cannot be achieved in the society as it is. Emigrants therefore feel that they should not be deprived of their citizenship if it becomes necessary for them to adopt the citizenship of the country where they live in order to take full advantage of the opportunities there. Increasingly as unemployment begins to plague even the developed countries, governments are insisting on citizenship as a qualification for entry into certain jobs or for promotion to others. In some cases our citizens have allowed promotion opportunities to pass by rather than give up their citizenship which carries with it the right to return and work, and to acquire land or make investments here.

130. Indeed throughout our discussions abroad the right to return and the right to acquire land stood out as vital interests which the emigrant sought to safeguard. Even though in fact very few of them did return there was understandable hesitation over abandoning the right to return by renouncing their citizenship of Trinidad and Tobago. The recommendation we have made is aimed at protecting these rights while not going all the way towards dual citizenship. We recognise and appreciate that emigrants do help by remitting money home, by contributing to the welfare of the people of Trinidad and Tobago in many and various ways and by acquiring skills which may aid the growth of the economy when occasionally they do return, but we are satisfied

that the full benefits of citizenship should not be retained by those who voluntarily, for whatever reason, adopt another citizenship abroad.

Resumption of Citizenship

131. We recommend therefore that a citizen of Trinidad and Tobago by birth or descent who voluntarily acquires the citizenship of another country (otherwise than by marriage) should still forfeit his citizenship of Trinidad and Tobago. But if such a citizen should decide at any time to resume his citizenship of Trinidad and Tobago he should be entitled as of right to do so, provided he renounces the citizenship of that other country and makes such declaration of his intentions concerning residence or employment as may be prescribed by law. He should not have to go through the process of naturalisation to re-acquire his Trinidad and Tobago citizenship. He should have the right by law to resume it. This seems to us amply to protect one of the interests which need protection - the right to return.

132. In any event many countries insist on renunciation of any other citizenship as a condition precedent for naturalisation. And a naturalised citizen of such a country, exercising a right to which he is entitled by virtue of his first citizenship, would lose the citizenship, which he has acquired by naturalisation. Hence, even if Trinidad and Tobago permitted dual citizenship, it could not in fact be fully enjoyed. Until fairly recently this was the position in the United States of America. Now however, as the result of a decision of the Supreme Court of that country, loss of U.S. citizenship in such circumstances would seem to be no longer automatic but to depend on proof of an intention to relinquish it. Nevertheless the requirement to renounce all other citizenship continues to apply as a pre-condition to the acquisition of U.S. citizenship by naturalisation. Canada too insists on renunciation on the acquisition of Canadian citizenship.

Concessions to Former Citizens

133. The other vital interest seeking protection is the right to buy land in Trinidad and Tobago and to invest in the shares of locally registered companies. If our recommendation is accepted, citizens of Trinidad and Tobago who voluntarily acquire citizenship of another country (other than by marriage) would be aliens within the meaning of the Aliens Landholding Ordinance as amended by the Aliens Landholding (Amendment) Act, *No. 11 of 1965*, so long as they hold that other citizenship. The present policy is that aliens are not given licences to acquire freehold land in Trinidad and Tobago. They may be granted a licence only to acquire a lease, usually for a term not exceeding 30 years. An emigrant *intending* to return to settle in Trinidad and Tobago quite probably and reasonably would wish to provide for this in advance by acquiring a home and perhaps investments here. We do not think, he should be hindered in so doing.

134. Accordingly, we recommend that the Ordinance be further amended to create a special class of aliens comprising former citizens of Trinidad and Tobago by birth or descent who have lost their citizenship by voluntarily acquiring citizenship of another country. and to grant them special rights. We propose that they should have the right, without obtaining a licence and without limit, to invest in the shares of local companies. They should also have the right to purchase freehold property up to a certain value. We would suggest 5150,000.00 as an appropriate limit at present, but this should be subject to revision from time to time. If a purchase would take the value of their holdings above that sum, then they should seek permission like any other alien. These proposals we are satisfied give ample protection to the other vital interest - the right to purchase property in Trinidad and Tobago against the possibility of an eventual return.

Aliens and Naturalisation

135. We recommend that an alien should not be granted citizenship of Trinidad and Tobago unless he renounces the citizenship of any other country which he may hold. This is consistent with our earlier decision not to permit our nationals by birth or descent to acquire another citizenship by naturalisation while still retaining our own.

Discrimination against Women

136. There are two areas in which the women of Trinidad and Tobago have suffered discrimination. First, in the case of children born in wedlock citizenship by descent is now transmitted only through the father. We see no good reason why this should be so and we recommend that the mother should also be capable of passing her citizenship on to her children. This may result in some children acquiring dual citizenship but, in practical terms, it would not very much matter since the predominating factor would ordinarily be where they are reared.

137. Secondly, the Constitution now provides that the wife of a citizen of Trinidad and Tobago who is not herself a citizen may by right, on application, be registered as a citizen provided she renounces any other citizenship she may hold. But the husband of a citizen of Trinidad and Tobago who is not himself a citizen enjoys no such right. He would have to qualify and apply for naturalisation which could be refused. This is discriminatory. It has been argued that adventurers seeking a swift method of acquiring citizenship of Trinidad and Tobago and the right which it carries to work and live here might contract a marriage with a citizen merely to achieve that end. The likelihood of this is insufficient to justify the discrimination. Accordingly we recommend that the husband of a citizen of Trinidad and Tobago who is not himself a citizen should be entitled to be registered as a citizen of this country provided he renounces his other citizenship.

V - THE HEAD OF STATE

Monarchy or Republic

138. There was almost unanimous agreement among those who spoke and wrote to us that the Monarchy with the British Sovereign as Head of State should be replaced by a Republic with an elected President as Head of State. All the political parties who came before us advocated this change, and so did the Chambers of Industry and Commerce, the Trade Unions, the Professional Groups and the women's Groups. We are ourselves convinced that the time has come for such a change. It is no more than an expression of the fact that independence must involve the creation of indigenous symbols of nationhood. Among young people in particular the British Sovereign has no symbolic meaning. The thrust since Independence has been towards the discovery of a new identity which involves leaving behind the colonial heritage of subjection, imitation and external dependence. The oath which the Governor-General now takes on assuming office brings the problem sharply into focus. He swears to be faithful and bear true allegiance to Her Majesty the Queen. To most ears this is anachronistic. His oath quite obviously should be faithfully to serve the people of Trinidad and Tobago and to defend and uphold its Constitution. We recommend therefore that Trinidad and Tobago should cease to be a Monarchy and should become a Republic with an elected President as Head of State.

139. It was clear from our consultations that the overwhelming majority of people now understand that a change to a republican system would not involve any change in the political culture. The old fears that republicanism was synonymous with licence without law, arbitrary action by state authorities without redress and change of government by revolution have

largely disappeared. It is now realised that France, India and the United States of America, to quote but three examples, are all republics which strive to preserve the values of a multiparty democracy and the rule of law. Neither the establishment of a republican system nor the retention of a monarchical form can of itself ensure that Trinidad and Tobago will preserve and further develop the values of a democratic society. The change should help to dramatise the fact that the people alone are responsible for their destiny and that the responsibility for the choices they make cannot be shifted elsewhere.

140. It must also be borne in mind that the change to the republican system need not mean the cutting off of all association with the United Kingdom recommend in keeping with the unanimous wish of all who addressed us that Trinidad and Tobago should remain within the Commonwealth. In this way we shall retain a symbolic link with the British Sovereign as Head of the Commonwealth. Commonwealth membership seems useful for a number of reasons. There are economic benefits from trading arrangements though these may decrease with the progressive integration of the United Kingdom in the European Economic Community and the integration of Trinidad and Tobago in the Caribbean Community. Also, every member of the Commonwealth has had a significant historical association with the United Kingdom which is reflected in its administrative and constitutional organisation. Membership thus affords an opportunity for an exchange of experience which must be of advantage in charting our own course. As well, the Commonwealth is a multiracial organisation largely composed of Third World countries. Membership presents an opportunity for concerted action in influencing the policies of developed members in a direction more beneficial to the developing countries. At the same time, there are no burdensome obligations attaching to membership.

The Office of President

141. Having decided that there should be a President as Head of State, the issue arose as to whether the President should be both Head of State and Head of Government as in the United States of America. There are powerful arguments for uniting the two offices. Most people would agree that a Head of State in Trinidad and Tobago is never as fully occupied as he might be, so that there would no doubt be substantial savings if the offices were combined. There are also advantages in combining the appearance with the reality of power, thus clearly identifying the seat of responsibility. Almost all the members of the Organisation of American States to which we belong have republican systems in which the President is Head of State and Head of Government. Trinidad and Tobago itself has had a long tradition of an all-powerful executive - the colonial Governor. Even today many educated and intelligent persons still think of taking their complaints to the Governor-General although, quite clearly under the existing Constitution, he cannot act in any significant area except in accordance with the advice of the Prime Minister.

142. Very few people however supported that point of view. The overwhelming majority advocated a largely ceremonial Head of State who would have some powers in the area of appointment to offices of a national character and be a symbol of national unity. The desire was to find a person above the clash of race and class and ideology which makes up politics. If the President were to be both Head of State and Head of Government he would have to be elected by all the people. There would have to be a political campaign in the course of which charges might be made which could cause such bitterness that the successful candidate, even if he won overwhelmingly, might very well be less effective as a symbol of national unity. There are also dangers in having a political personage as a national symbol. The events in the United

States of America centering around the Watergate affair illustrate this clearly. The office of President there has suffered loss of prestige by reason of the charges levelled against its holder.

143. We recommend therefore that there should be a President as Head of State and a separate Head of Government who shall be called the Prime Minister as he is now. The proposed arrangement will resemble generally the Governor-General/Prime Minister relationship with which we moved into independence. This should make the change easier to implement.

Election of the President

144. Once the two offices are being kept separate, it will not be necessary to elect the President by direct vote of the people since he will not be exercising general control of the government. Yet, very clearly, he should be a person highly regarded in the society and commanding widespread support.

145. One possible method of appointment was nomination by the Head of Government after consultation with the leaders of parties in the National Assembly not forming part of the Government. If consultation was genuine and a consensus reached, the successful candidate should in the normal course meet the criteria we have set for the President. But we rejected this method on two grounds. The experience of the past six years indicates that consultation does not really work. The concept is impossible to define. Procedures can be prescribed and followed to the letter while yet the process can be deprived of all meaning. Genuine consultation requires an attitude of mind which political opponents may find difficult to cultivate in the absence of a long tradition.

146, Another possibility would be to have the President elected by a simple majority in the National Assembly. Since the Head of Government would normally command a majority in that body, this method of election would for all practical purposes be tantamount to having the Head of State nominated by the Head of Government. This could very well weaken the President's effectiveness as a national symbol and lead to doubts as to his impartiality in his role as an authority appointing persons to offices of a national character.

147. Yet another possibility which seemed most attractive was that of having the President elected by a two-thirds majority of the National Assembly. We feel certain that under the electoral system we have proposed it is most unlikely (in the absence of a boycott or widespread election fraud) that any party would win two-thirds of all the seats. So a successful candidate would have to win the support of at least two groups in the Assembly which should be convincing demonstration both of the regard in which he is held and the breadth of his support. In effect, the leaders of groups in the Assembly would have to bargain to reach agreement and this would mean consultation. It would however be a different sort of consultation from that envisaged in the first suggestion since the opposition groups could block the process if they thought the majority party unreasonable. If we could assume overriding goodwill on the part of all the participants, this method would be most likely to produce the best candidate.

148. However, we could not dismiss the possibility that the government or the opposition could frustrate the process of election completely by either of them refusing to give way where it would be reasonable to do so. The dictates of political strategy may take precedence over the clear demands of national interest. It is of course possible to make such shortsightedness very expensive by placing a punitive sanction on failure to compromise. For instance, it could be

provided that in the event of the National Assembly failing to elect a President by a two-thirds majority it should be dissolved and new elections held. The likelihood that either government or opposition would wish to run such a risk seems very small, but it cannot be totally dismissed. Should it occur, the period of political turmoil which inevitably accompanies any election would be unacceptably prolonged. The people should not be asked to run that risk.

149. The remaining method was election by a college of electors other than the National Assembly. There is precedent for this in the Constitution of India. The President is elected by an electoral college composed of the elected members of the union Parliament and the Parliaments, of the States. A formula has been devised giving different weights to the votes of the several members so that in effect the vote cast by each is roughly proportionate to the number of people he notionally represents. We have no states in Trinidad and Tobago, but there are municipal and borough councils as well as county councils to which the people elect their representatives. The analogy cannot be pressed too far, but a meeting of the elected members of the National Assembly, the City and Borough Councils and the County Councils does comprise as completely as is possible under our system the representatives chosen by the people. If the President is elected by such a body he can then be said to have been elected, even though indirectly, by the people of Trinidad and Tobago. We have recommended, as will be discussed later, that elections including local government elections should be conducted under the mixed system of proportional representation. This would mean that party strength throughout Trinidad and Tobago should be more accurately reflected in this electoral college and that the controlling majority there should not be as foregone a conclusion as the government majority in the National Assembly.

150. Accordingly we recommend that the President be elected by an electoral college composed of the members of the National Assembly and the members of the City, Borough and County Councils sitting all together and voting by secret ballot.

151. We have considered the question of weighting the votes, as is done in India, on the basis of the number of electors they notionally represent. It might be argued that this is necessary because of the wide disparities that exist in some cases in the size of the electorate as between one ward and another. On the other hand we are concerned to avoid introducing any complex system of weighting that cannot be readily understood and applied. In any case, the absence of weighting as between councillors will tend to give an advantage to the local representatives of the less populous rural areas and we do not think this is a bad thing, having regard to the pre-eminence which urban areas customarily enjoy.

152. It seemed necessary to us however to establish some parity between the votes of all the members of the National Assembly and the votes of all the local government representatives. If our recommendations on proportional representation at the national and local government levels are implemented, there will be 72 members of Parliament and some 149 city, municipal and county councillors. To give each member of both groups the same vote will mean that the members of the National Assembly as a whole will have too little say in the choosing not only of the President, but of the Vice-President who after all is the person who will ordinarily preside as Speaker over their meetings. In order to maintain a proper balance between the two groups of elected representatives, we have devised and proposed the following simple formula. Each member of Parliament will have a number of votes equal to the total number of city, municipal and county councillors, and each city, municipal and county councillor will have a number of votes equal to the total number of members of Parliament. The result will be that the

total number of votes available to members of Parliament will be the same as the total number of votes available to councillors.

153. In order to encourage some effort at arriving at a consensus which should help significantly in strengthening the authority of the President, we recommend that he should be elected by a two-thirds majority of the electoral college. If no candidate achieves that majority, then eventually a simple majority must suffice. The procedure we recommend is as follows:

Where more than two candidates are nominated for the office and no candidate achieves a two-thirds majority on the first ballot, the candidate receiving the least number of votes shall be eliminated and further ballots held until the number of candidates is reduced to two or one candidate achieves the two-thirds majority before the list is so reduced. If upon the list being reduced to two neither candidate achieves a two-thirds majority on the first two ballots, then the candidate securing a simple majority on the third ballot will be declared elected as President.

The Office of Vice-President

154. We recommend that there should be a Vice-President. He shall act for the President when the latter is unable to perform the duties of that office but, as shall be discussed in the Chapter on Parliament, his principal function will be to preside over the National Assembly as its Speaker. We recommend that the Vice-President be elected at the same session of the Electoral College and in the same manner as the President. The fact that two offices are to

be filled at the same session should increase the likelihood of inter-party bargaining and consequently of reaching a consensus as to the candidates.

Qualifications for the Offices of President and Vice-President

155. Both the President and Vice-President should be citizens of Trinidad and Tobago of the age of 35 years or upwards. Both should have been ordinarily resident in Trinidad and Tobago for the period of 5 years immediately preceding their nomination for the office.

Nominations for the Offices of President and Vice-President

156. Nominations for election to those offices must be filed with the Clerk of the National Assembly at least 14 days before the date fixed for the election and each nomination must be signed by at least 12 members of the National Assembly. As will be discussed in the Chapter on Parliament, we have recommended an Assembly of 72 members so that theoretically there could be six candidates. In fact we think it unlikely that there would be more than three as in the normal course of events the Assembly would be composed of two major groups each of which could nominate a candidate. The number of members remaining over is not likely in combination to be able to nominate more than one other candidate.

Term of Office of the President and the Vice-President

157. We recommend that the President should hold office for five years and while in office should hold no other office of emolument either in the public sector or elsewhere. We considered whether or not he should be eligible for re-election. There is an advantage in providing compulsorily for the rotation of prestigious posts. It brings fresh minds to bear on old problems, permits useful changes of style in the performance

of functions and helps to spread more equitably the considerable privileges of high office. But since it is our hope that the President will be usually chosen by agreement among all major groups, we feel that a candidate who has carried out his duties with such distinction that the parties are again prepared to vote for him should not be prevented from continuing in office. There may be real difficulty in agreeing upon a successor. The duties are largely ceremonial and there is no need to fear a growing authoritarianism resulting from prolonged stay in office.

158. The Vice-President also should hold no office of emolument (other than that of Speaker of the National Assembly) in the public sector or elsewhere. Like the President, he should hold office for five years and be eligible for re-election. The same arguments which make it reasonable to allow this in the case of the President are applicable in the case of the Vice-President. He must not be a member of the National Assembly. If he is a member at the date of his election he must immediately resign.

Functions of the President

159. All executive authority shall be vested in the President to be exercised by him directly or through persons subordinate to him in accordance with the Constitution. The Supreme Command of the Defence Forces shall also be vested in him. The power to pardon and grant clemency which will be discussed in detail later will be exercised in his name. All bills passed by the National Assembly will require his assent before they become law. In this regard we recommend that his assent to Bills should not be completely automatic. We propose that he should have the right to refer a bill back once to the National Assembly for reconsideration stating his reasons for so doing. Should the National Assembly pass the measure after reconsideration then the President will be bound to give his assent. We do

not contemplate that this is a power which will be used at all frequently. The informal contacts between President and Prime Minister should be such as to ensure that the President's views are taken into account in arriving at all major decisions. Where, however, there is a disagreement on a matter about which the President feels deeply enough, it is our view that he should have this power of referral to alert the nation to the dangers of the proposed legislation as he sees it.

160. We recommend that the President should play his principal role in the appointment of persons to important offices of State. Acting in his own discretion after consultation with the Prime Minister, the Leader of the Opposition and such other persons and organisations as he thinks fit he will appoint -

- (i) the Chief Justice
- (ii) the Chairmen and members of the Service Commissions (iii) the Attorney-General
- (iv) the Chairman of the Boundaries Commission
- (v) the Chairman and one member of the Committee exercising a regulatory function in regard to Radio and Television.

It is hoped that this method of appointment will as far as is practicable remove these offices from the area of direct political patronage.

161. In the case of the Auditor-General, the Elections Commissioner and the Ombudsman, we recommend that the President acting again in his own discretion after consulting such persons as he thinks fit should nominate a candidate for the office and that the candidate should be appointed if approved by a three-fifths majority of all *the* members of the National

Assembly after scrutiny by the Appropriate Parliamentary Committee. These three officials can all be described as essentially parliamentary officials, so the National Assembly should have a significant voice in their appointment. There is the possibility of course that there may be deadlock over an appointment. The consequences of such a deadlock would not be as serious as that over the election of a President and Vice-President. The experience and qualifications which will obviously be needed for these posts must so reduce the number of possible appointees that agreement should be comparatively simple.

Removal from the Office of President

162. We thought it necessary to make provision for removing the President from office although it is expected that this eventuality will never arise. We recommend that he be removed if -

- (i) he wilfully violates any provision of the Constitution, or (ii) he behaves in such a way as to bring the office into contempt or ridicule, or
- (iii) he is unable by reason of physical or mental infirmity to perform the functions of his office.

163. The recommended procedure for his removal as set out in the attached draft constitution is designed basically to make it unlikely that the procedure will be set in motion unless there is *near* certainty of the likelihood of its succeeding.

Resignation from the Office of President

164. The President may resign by letter addressed to the National Assembly and delivered to the Clerk of the National Assembly. On his removal, resignation or death while in office, the Vice-President shall act as President until a new President is elected

which should be within three months of the removal, resignation or death of the outgoing President. A person so elected shall hold office for the unexpired portion of the term only, subject of course to re-election.

VI - PARLIAMENT

167. From our consultation with the people throughout the country it was clear that they are dissatisfied with the way that Parliament has worked since Independence. Their expectation that it would act as a check on the Executive has been disappointed. In a sense this expectation was misguided. As has already been shown in the Introduction, the Executive almost always controls Parliament in any system of government based on the Westminster model with first-past-the-post elections. It does so through the party majority and the tightness of party discipline.

168. This does not mean that Parliament must necessarily be ineffective. It still remains the place where all important issues of policy are intended to be discussed. Bills are expected to be debated there before becoming law. The resulting publicity can inform and arouse public opinion and supply the material on which to base a judgment as to the quality of the government. But the tendency has been to discourage discussion of serious matters of policy. Members have complained with justification that they have often received copies of bills so late that they could hardly be expected to make considered contributions to the debate. The tables set out in the Introduction establish how frequently Bills have been rushed through all their stages at a single sitting. All of this creates the impression that the whole procedure is regarded as no more than an inconvenient ritual.

169. The institution has also had an unhappy history. Trinidad and Tobago entered Independence with a Leader of the Opposition who spent most of his time in England on his teaching duties and little in Trinidad on his parliamentary responsibilities. But for the generosity of the Speaker in granting leave he would have forfeited his seat for non-

attendance at meetings. This could not but contribute to a loss of prestige by the Parliament. His absences led to a fragmentation of the Opposition which further reduced its effectiveness. From the opening session of the Parliament elected in 1966 until mid-1968 the Opposition remained silent although attending meetings with just sufficient frequency to avoid disqualification. This was their form of protest against the use of voting machines introduced for the general election in 1966. Correlatively, the Prime Minister's attendances during the period 1966-71 became less frequent. In a sense it could be said that nothing of importance was ever expected to happen which would make his presence vital. Members submitted 133 questions for answer during that period. Only 39 of these were entertained by the Speaker of which 35 were answered.

170. The boycott of the general election in 1971 which led to the PNM winning every seat seemed to be the final blow. But there was more to come. In June 1972 an opposition appeared in the form of two PNM members who had ceased to belong to the party. One of them hastily formed a new political party, the United Progressive Party (UPP), thus qualifying for appointment as Leader of the Opposition with all the powers belonging to the office including that of appointing four persons to the Senate and removing any or all of them at will. The Leader of the Opposition now sits in the House of Representatives leading himself as the only member of his party in the House, the other ex-PNM member having announced that he was sitting as an independent. If the intention had been deliberately to parody the British institution we had set out to copy, the result could hardly have been more successful.

171. We agree with the widespread demand that Parliament should be given a central role in the management of the affairs of Trinidad and Tobago. This is the basic principle which

has guided our recommendation. We accept the principle that the Government of the day must have the necessary majority in Parliament to implement its programme. But this is by no means inconsistent with devising procedures to ensure that backbenchers and opposition members have an opportunity publicly to play a greater role in the shaping of policy.

172. In dealing with the subject of Parliament we shall do so under the following heads -

- (1) Form and Composition
- (2) System of election
- (3) Method of voting
- (4) Qualifications for voting and for being elected
- (5) Integrity in Public office
- (6) Resignation and expulsion from party membership
- (7) Conduct of Elections
- (8) Conduct of business
- (9) Prorogation and Dissolution

Form and Composition

173. The present Constitution provides for a Parliament of two Houses - a wholly elected House of Representatives and a Senate of 24 members all appointed by the Governor-General as follows -

13 in accordance with the advice of the Prime Minister;

4 in accordance with the advice of the Leader of the Opposition; and

7 in accordance with the advice of the Prime Minister after the Prime Minister has consulted those religious, economic or social bodies or associations from which the Prime Minister considers that such Senators should be appointed.

174. As regards these seven Senators, the practice has been that the Prime Minister asks each of such groups as he thinks proper to submit to him two names from which he selects the persons whom he advises the Governor General to appoint. These seven Senators are usually referred to as "independent" since they are not bound by party loyalties and are free on all issues to exercise an independent judgment. Once all the government Senators are present and vote as the party expects, the Government is always assured of the simple majority in the Senate needed to pass ordinary legislation. But certain measures require a special majority in the Senate before they can be passed into law.

175. A bill which infringes the human rights and fundamental freedoms set out in section 1 of the Constitution must have the votes of three-fifths of all the members of the Senate to pass it into law. A bill amending an entrenched clause of the Constitution must have the votes of two-thirds of all the members of the Senate. Even if a government does control the prescribed majority in the House of Representatives to pass any such bill into law it can be blocked in the Senate unless in addition to all the government Senators at least two other Senators vote for it in the case of a bill infringing human rights and fundamental freedoms, or three in the case of a bill amending an entrenched clause of the Constitution. Assuming therefore that the opposition Senators were resisting any such measure, the votes of less than half of the independent Senators would be decisive on whether or not the measure would pass. The expectation no doubt was that, as citizens of wisdom and experience taking the broad viewpoint of national interest rather than the narrow approach of partisan

politics, they could be considered proper judges as to whether a significant change in a constitutional matter was desirable or not.

176. Throughout the history of the Senate there has been one occasion only - and that was while this report was being drafted - when the Senate failed to pass with little if any change all government measures laid before it. On that occasion four government Senators were absent so that the Government was in a minority. It may well be that in voting as they generally did the Senators were in fact exercising their independent judgment. But the prevailing view is that the Senate is a rubber stamp which has served no useful purpose whatever. Despite this, there was a feeling, equally widespread, that a differently constituted Senate might be effective. More people and groups favoured its retention in some altered form rather than its total abolition.

177. Trinidad and Tobago has had throughout most of its history a nominated system of government. Prior to 1925 no elected person sat in the Legislative Council. In that year seven elected members joined the Council, but they were a minority among the twelve senior officials and the six unofficials nominated by the Governor. The Governor was himself President of the Council with an original as well as a casting vote.

By 1946 the elected members were equal to the nominated members - nine of each, with three of the nominated members being officials and six unofficials - the Governor retaining his casting vote. Elected members achieved a majority in the Legislative Council only in 1950. *There is* therefore a strong tradition of government by nomination, a fear that the elected person will not be as educated or as intelligent as the nominated member and consequently will not be as capable of making decisions for the country.

178. When constitution reform was being considered in 1945-1946, Dr. Patrick Solomon put the case for a single Chamber fully elected on the basis of adult suffrage. His view was that the nominated system could not be justified on any ground whatever, but he was a minority of one. It is of significance however that neither the majority report nor the other minority report recommended the creation of a senate. The nominated members were simply to be a minority in a single Chamber. Whereas the tradition of the nominated member is deeply rooted, the idea that they should be transferred to a senate was not vigorously advocated by any important political figure until Dr. Eric Williams did so in 1955. Until then, radical thinking had worked towards the elimination of the nominated element from the single Chamber and towards its development into a fully elected body.

179. In his book on "The Unreformed Senate of Canada" Professor Mackay quotes a prominent English historian as saying that the bicameral system "owes its existence in different places to widely differing causes, the bicameral systems of the world have, in fact, little in common except the number two." Second Chambers can however perform necessary functions in certain systems of government. In federal states a second Chamber is perhaps the only institution in which the states forming the federation can have their interests represented as distinct from the interests of the people across the country which are represented in the other Chamber. This is the position for example in the United States of America where the equality of all the states is reflected in the fact that they each elect two senators to the Senate. In India and in the German Federal Republic the Senate is composed of members elected by the Legislatures of the states which form the Union. In countries like France; and Italy where the form of Government is not federal, there are nonetheless marked regional identities and loyalties and the second Chamber is structured

to represent these interests. It has never been suggested that there is need for the performance of any such function in Trinidad and Tobago and we are satisfied that a senate is not needed for any such purpose.

180. In 1955 Dr. Williams urged the creation of a second Chamber on three grounds which we shall now examine.

- (1) The nominated element would be removed from the elected Chamber while at the same time the interests which they represented would be assured of participation in the legislative process.

The situation today is very different from what it was in 1955. It may have been useful then to allay the fears of these interests, but times have moved on. The multinational corporations which control such of our resources as we do not, require no representatives in a senate to make their viewpoints understood in the corridors of power. To have them may well be an embarrassment. The interests themselves have changed. Government now has a majority holding in sugar. Its investment in commerce and industry is expanding and it has a significant stake in the oil industry. The type of representation envisaged in 1955 is now no longer relevant.

- (2) The nominated elements had made a useful contribution in the single Chamber and Trinidad and Tobago could continue to benefit from them, but this could best be done if they were placed in a second Chamber where they would be in a position to warn and comfort but not command.

While we do not deny the talent and ability of the type of person who is usually nominated, we are convinced that the electoral process has thrown up persons of no less talent and ability. As education spreads and the electorate becomes more sophisticated, voters realise

that intelligence and training are needed to cope with the complicated problems which constantly arise. In the electoral system we have recommended, parties will put up lists from which they will be able to select members to sit in the National Assembly in proportion to the number of votes cast for their candidates throughout the country. In this way persons can be elected to Parliament without having to go through a constituency battle. Capable people who do not care for the rough and tumble of a general election can still make their talents available in this way. While they will be subject to party discipline, they will be no worse off than Senators today whose appointments can be revoked for no cause stated.

- (3) The Senate could be given delaying powers which would be a necessary check and balance if, as was always possible, one party should sweep the polls and find itself without effective opposition in the elected House.

In fact the Senate devised in 1961 shortly before Independence and its modification in the present Constitution were so structured that, barring the absence of government Senators or a revolt among them, the Government would always have a majority where ordinary legislation was concerned. A check was only possible on basic constitutional issues and on issues concerning human rights and fundamental freedoms.

181. We see no justification for the creation of a nominated second Chamber as a check on a Chamber of elected representatives. The electoral system should be such that no party should be able to secure such an overwhelming majority in the elected Chamber that it can amend entrenched provisions unless it has won an equally overwhelming majority of the votes cast at the elections. This aspect of the matter will be discussed in more detail under the heading System of Election. With the present first-past-the-post system it is possible

for a party to win all the seats in an elected chamber by winning by a bare majority in each constituency. This might be less than 50% of the votes cast if there were more than two candidates in each constituency. In these circumstances it would seem iniquitous that such a party should be free to pass whatever laws it wished completely without check when in fact it did not represent 50% of the people. But the answer does not lie in providing a nominated second chamber as a check. It lies rather in reforming the electoral system to make it more truly representational and in building within the system adequate checks against the possibility of overwhelming power in the legislature which is not based on overwhelming support by the electorate as a whole. This is the basic argument of principle that we advance against a number of suggestions for a nominated senate with varying proportions of government senators, independent senators and opposition senators.

182. To meet the argument that the present Senate was a rubber stamp the more usual reconstruction envisaged a senate in which the government senators would be equal in number to the opposition senators and the independent senators. To ensure that the Government had no patent opportunity to influence the choice of independent senators by their groups and organisations these bodies would be allowed to advise the President directly as to who should be nominated. Under such an arrangement the Government would always need the vote of at least one independent senator to get any measure through the Parliament. This seems to us to be placing far too much power in the hands of persons who have received no mandate from the electorate and are unlikely to have ever put out a political manifesto. None of them would be accountable to any one group save the group which appointed him. Even so, the stance any of them adopts on any particular issue would not necessarily reflect the views of the group he has been selected to represent.

183. Some of the variants gave the government representatives one-third of the seats in the Senate and the opposition and independent senators combined two-thirds. Such a distribution would only aggravate a situation which we consider intolerable in principle. A nominated element should not be allowed to thwart the will of the elected representatives of the people. There will be need at all times for the people to look closely at what their representatives propose to do. As will be seen later, we provide for such an opportunity by recommending that all bills should be examined by a parliamentary committee before they are debated. The public will have the right to be heard in the course of that examination before the measure is actually passed. There are other objections also, based on practical considerations, which we shall discuss when analysing another proposal for a different form of senate.

184. To legitimise the role of the Senate as a check on the elected Chamber two groups suggested that its members should be elected. One suggestion was that senators should be elected on a county basis and that the candidates offering themselves for election should be members of no political party. The expectation no doubt is that a body will be created free of political partisanship and yet supported by popular mandate to pass judgment upon the measures of the other Chamber. The idea has the merit of novelty, but we are satisfied it is undesirable and unworkable. It is undesirable because party politics are essential for the efficient working of the type of democracy we propose and parties should not be kept out of any contest in which candidates are elected to serve in institutions performing purely political functions. It would be unworkable because whether or not candidates are members of political parties, once there is an election the parties would inevitably support one

candidate or the other. In the final analysis, such covert political assistance would be more dangerous than open partisanship.

185. The other proposal was for constituting a large senate consisting of perhaps 250 - 500 persons, all selected by groups and organisations and responsible to them. The groups and organisations would pay their senators and recall them if they considered that the senators did not adequately or faithfully represent their interests. This body would serve as the conscience of the nation. All bills would be debated for the first time, on the issue of the principles underlying them, at a joint session of the popularly elected Chamber and the Senate. If the Senate voted against the bill the Government could still press on and pass it into law if it wished, but it would have been alerted that it might be doing so against the weight of public opinion. The Senate would institutionalize the participation of groups in politics outside the normal channels of party activity. It would provide parliamentary cover for criticisms which otherwise might not be voiced for fear of victimization or of a possible action for defamation. This body would also be vested with certain powers unconnected with its role in the legislative process. These would include the making of appointments to certain offices and the regulation of the media.

186. Such a senate would not offend the basic principle we have propounded that persons not elected by the people should not have the power to block measures proposed by eluted representatives. It would have no power to block. It could merely warn.

187. In practical terms, however, it would be a cumbersome body difficult to set up and difficult to manage when set up. We were not given details as to how the groups which would have the right to elect representatives would be selected. Presumably this task would have to be the subject of a special study by some authority which would prescribe

guidelines and name the "founder members" so to speak. Thereafter the senate could perhaps regulate its membership in conformity with the guidelines so prescribed.

188. The proponents of the proposal conceded that if all the members of their senate attended regularly it would be a difficult body in which to conduct business. They expected that members would attend only when some measure particularly touching their own group interest was being discussed, If this were so, then the value of the institution as a guide to public opinion would be considerably reduced. It might voice nothing more than a narrow sectarian view geared to self-interest.

189. We were also very doubtful whether any representative of an organisation could speak for the organisation on issues outside of its special interest. Sportsmen, for example, may have a common view on the importance of providing money to help send representative teams abroad. They are likely however to have no view at all or be hopelessly split on the desirability of nationalizing banks in Trinidad and Tobago, if such a measure was proposed. Their spokesman could hardly be expected to put forward the sporting view on this issue.

190. The pattern in most organisations is that a few hardworking and interested persons keep on being elected from year to year by the very small proportion of persons who turn up at general meetings. Even hotly contested elections in trade unions hardly attract a 25% poll. To say that a representative of such a group so selected speaks for the group in any matter debated in a legislative assembly is not to face the reality of the society in which we live.

191. Later in this Chapter under the heading "Conduct of Business" we shall be discussing in detail the committee system which we recommend for the National Assembly.

Where legislation is proposed affecting any particular group, it would be competent for that group to appear and testify before the appropriate Committee of the National Assembly charged with examining the measure. Recent history has shown that where people are sufficiently aroused they have been able to stop a proposed measure even before it reaches Parliament. This was the case with the Public Order Bill. Where an institution like the parliamentary Committee is set up to receive and publicise and consider objections to measures it should be much simpler for groups to participate actively in the legislative process.

192. The proposed macro-Senate is novel but impractical. Its philosophical attraction lies in the concept of increased participation. We are satisfied that this desirable aim is more likely to be achieved by the Practical methods we have proposed. *Radical* groups such as NJAC and URO can hardly be expected to look upon a seat in the Senate as a proper platform for their views. We would be surprised if the concept of a second Chamber not popularly elected fitted into their ideology. On the other hand a system of elections which gave a genuine chance to such groups to win a seat in an elected assembly should be an incentive to participate. We shall mention this again in dealing with the system of elections we propose. In the same manner the public examination of bills by committees will provide an opportunity for pressure groups to make their impact felt on the legislative process in as direct a manner as the macro-Senate could.

193. Three other functions usually ascribed to second Chambers need to be considered.

- (1) They can play a useful role in the examination and revision of bills brought from the other Chamber.

The Senate here does to some extent perform this function. This was so particularly during the period when the Attorney-General sat in the Senate. But in our view this type of work can be done much better in committee before the bill is debated. Points of difficulty can be raised with the parliamentary draftsman and independent legal opinion may be sought, if needed.

- (2) They can be used to initiate measures of a comparatively non-controversial character which may pass the elected chamber more speedily if put in proper shape before reaching there.

The Senate here is often used as the place to initiate bills for incorporating various associations of a religious and charitable nature. When the Attorney-General sat in the Senate, bills which dealt largely with law reform were introduced there. Again, where the Minister charged with a particular subject sits in the Senate, bills on that subject have been introduced there. The fact is that our elected Chamber has not been overburdened with work and it matters little where a bill originates. In any event, if Committees are set up to deal with specific areas of legislation, it is expected that bills should be put in proper shape before they come up for debate in the National Assembly.

- (3) They provide a forum for full and frank discussion of large and important questions.

The fact is that the Senate has not been such a forum. With a properly functioning committee system it should be possible for committees to undertake in-depth consideration of matters of national interest to provide the basis for policy-making. This type of exercise should be far more useful to the society than a broad debate in an assembly with little power.

194. It seems to us that there are no considerations of democratic principle, of convenience or of tradition to justify the existence of a Senate, nominated or elected. The history of the Senate over the past twelve years has not been particularly distinguished. A few of the independent senators have made useful contributions but there is little doubt that these contributions would have been more effective had they been made in the House of Representatives.

195. Accordingly we recommend that the Senate should be abolished and that the legislature should consist of a single Chamber called the National Assembly. As all bills passed by the National Assembly will have to receive the President's assent, Parliament would consist of the President and the National Assembly.

System of Election

196. At the very centre of recent political agitation has been the demand for electoral reform. Among the political groups in opposition there was complete unanimity in the call for replacement of voting machines by ballot boxes, reduction of the voting age to 18 and proper delimitation of constituencies. There was also widespread support for replacing the present system of first-past-the-post elections with some form of proportional representation.

197. Under the present system the country is divided into constituencies each of which elects a member to represent it. Any number of candidates may be nominated to contest each constituency. The candidate securing the highest number of votes is declared the winner although where there are more than two candidates the successful candidate may, and indeed often does, poll fewer votes than the other candidates combined. This is the system to which we refer as first-past-the-post. It is the system used in Great Britain and

where Professor W.J.M. Mackenzie has said of it that it is justified by "history rather than logic". The same can accurately be said of it in Trinidad and Tobago since undoubtedly it is one of the inheritances of our colonial past.

198. Because it has always been part of the British political system there has not, until recently, been any serious consideration of its suitability for our conditions. At the outset it should be mentioned that most countries with constitutions working on the principle of a multiparty democracy do not use this system. The minority who use it consists of the United Kingdom and most of its former colonies and the United States of America.

199. The advantages of the first-past-the-post system are that voting and counting are simple. It improves the chances of a one-party parliamentary majority and favours a two-party system though it does not guarantee it. In Canada, for example, there are four major parties - the Conservatives, the Liberals, the New Democratic Party and the Social Credit Party. In Australia there are three - the Liberals, the Labour Party and the Country Party. The system certainly does not prevent the formation of a multiplicity of parties as the experience of Trinidad and Tobago amply illustrates.

200. It is as a system of democratic representation that it has its most serious faults. As has already been mentioned, where there are three or more candidates the winner may actually represent only a minority in the constituency. All the electors who voted against him could justifiably feel that they were not represented and that their votes had had no effect whatever on the result of the election. It is possible for a party to win all the seats in Parliament by winning a bare majority in each constituency and where more than two parties contest all constituencies this result is possible even without an overall majority of the votes cast. Such extreme cases it is true seldom happen, but that is a matter of chance -

a factor which should not be so vital in a matter as important as proper representation in a democracy. Even though the extreme cases do not often occur, there is a general tendency for the system to give the party winning the larger percentage of votes an even larger percentage of seats.

201. Table 3 sets out figures for general elections in Trinidad and Tobago and in Grenada.

Table 3

	Votes	% Votes	Seats	% Seats	Votes per
<u>Trinidad</u>					
1956 PNM	105,153	39	13	54.2	8,089
PDP	55,148	20	5	20.8	11,030
Butler	31,071	11	2	8.3	15,535
TLP-NDP	13,692	5	2	8.3	6,846
POPPG	14,019	5	0	0.0	-
+ Independents	40,523	15	2	8.3	
1961 PNM	190,003	57	20	66.7	9,500
DLP	138,910	41.7	10	33.3	13,891

+ Spoilt ballots accounted for 2.5% of the votes cast and the remaining 2.5% were divided among the Caribbean National Labour Party, the West Indian Independence Party and the Caribbean People's Democratic Party, which won no seats.

' The remaining 1.3% of the votes were cast for the African National Congress, the Butler Party and three Independents.

	Votes	% Votes	Seats	% Seats	Votes per
1966 PNM	158,573	52.4	24	66.7	6,608
DLP	102,792	34.0	12	33.3	8,566
Liberals	26,870	8.9	0	0.0	-
Workers and Farmers	10,484	3.46	0	0.0	-
<u>GRENADA</u>					
1971					
Grenada United Labour Party	20,005	58.56	11	84.6	1,819
Grenada National Party	14,155	41.44	2	15.4	7,077

202. The figures illustrate the trend mentioned above of giving the winning party an advantage in terms of seats in the Parliament compared with votes at the polls. Except for one instance in 1956, the winning party needed fewer votes per seat won than any other party. In three instances - the POPPG in 1956, and the Liberals and the Workers and Farmers in 1966 - a substantial number of votes failed to elect any candidate.

The element of chance is shown further by comparing the results of the POPPG and the TLP-NDP in 1956. The POPPG polled more votes but won no seats whereas the TLP-NDP won two seats. A party which concentrated support in one or two areas does better than a party with stronger overall support but more widely dispersed.

203. But the first-past-the-post system can also result in a party, which has won the majority of the votes finding itself in the role of opposition rather than of government. An example of this was the last St. Vincent general election where the figures were as follows

Table 4

	Votes	90' Votes	Seats	% Seats	Votes per Seat
St.Vincent Labour Party	16,108	50.43	6	46.15	2.685
People's Political Party	14,507	45.41	6	46.15	2.418
Independent	1,330	4.16	1	7.7	1.330

In that case the concentration of support for the independent in one seat secured it for him with about half the votes which earned a seat for the other parties. The independent later joined in a coalition with the People's Political Party and the result was that that coalition which together had won 15,837 votes and of which he became the political head was able to form the Government although the votes it received were fewer than the 16,108 votes cast for the St.Vincent Labour Party.

204. The experience of first-past-the-post in Britain is much the same. The table quoted below of election results from 1955 to 1970 is taken from give, particularly in underdeveloped countries. But, in our view and in the experience of many, coalitions are not inevitably weak. They are often the answer in moments of crisis when national survival requires national solidarity. Further, the fact that a Government has an overwhelming majority in Parliament does not ensure that it will provide strong government. If it does not in fact enjoy the support of a substantial majority of the people it may well create crisis conditions if it uses its parliamentary majority to push through policies not basically agreeable to them. Government and people can thus become alienated and the people may as a result resort to extra-constitutional methods of protest.

207. Having regard to our concern to find a system which would meet the twin needs of representation and efficiency, we recommend an electoral system in which the principles of proportional representation and the first-past-the-post system are mixed. It is similar in part to that now used in the Federal Republic of Germany and will work as follows -

- a) The National Assembly will consist of 72 members - twice the present number,
- b) Half of these will be elected as at present (with one significant difference mentioned in (c) below), Trinidad and Tobago being divided into 36 constituencies each electing a single member. This member is referred to in our draft Constitution as the "constituency member".
- c) Where only one candidate is properly nominated for a constituency he will not as at present be returned unopposed. A poll will still be held so that voters will have an opportunity by voting for him to vote for the party to which he belongs.
- d) The remaining 36 members will be elected by a list system of proportional representation and are referred to as "list members". The method of their election will be as follows -
 - i) Each party which *has* nominated candidates for election in one-third of the constituencies will be entitled to put up a list of candidates from *which* list members will be chosen.
 - ii) Candidates contesting constituencies will not be eligible to be included in a list.

- iii) Candidates will be placed in alphabetical order to make it clear that the order in which they may be selected by their party bears no relation to the order in which they appear in the list.
- iv) At the end of the poll for constituency candidates the thirty-six 'list' seats will be allotted to the parties on the basis, as near as possible, of the proportion which each party has got of the total number of votes cast for party candidates in all the constituencies.
- v) A party which fails to win one constituency seat or does not receive 5% of the votes cast in the election will not be entitled to an allocation of seats from the list and the votes cast in its favour will not be taken into account for any purpose.

208. Table 6 sets out what the distribution of seats would have been in Parliament in 1956, 1961 and 1966 had the system recommended above been in use. The detailed method of working out the proportionality of votes to seats from the lists is set out in Appendix L. No computers are needed, as the calculation is a relatively simple one. Also set out in that Appendix are detailed workings of what the results in 1961 and 1966 would have been on the system we have recommended.

Table 6

	Votes	Constituency	List	Total
1956 PNM	105,153	13	12	25
PDP	55,148	5	6	11
Butler	31,071	2	3	5
TLP-NDP	13,692	2	1	3
POPPG	14,019	-	2	2
Independents	40,523	2	0	2
1261 PNM	190,003	20	17	37
DLP	138,910	10	13	23
1966 PNM	158,573	24	20	44
DLP	102,792	12	13	25
Liberals	26,870	-	3	3
Workers & Farmers Part	10 484			-

209. The proposed system has a number of advantages -

- a) Through the constituency member it preserves a close link between the constituency and its representatives.
- b) The qualifying conditions that a party should win one constituency seat or obtain 5% of the votes should prevent the mushrooming of mini-parties not representing any recognisable interest. Such parties may be formed but it is unlikely that they will win seats or survive for very long.
- c) Every vote counts. Even if cast for a candidate who fails to win a constituency seat it will help boost his party's total number of votes and thus increase the number of list members it can select. There will be no point in writing off any constituency because it cannot be won. Similarly in safe seats a party will have to work towards securing as large a poll as possible to increase its total share of the vote. This should promote participation.

- d) As will be seen from Table 6 the under-representation of the smaller parties is partly corrected and, although the over representation of the major party is not entirely cancelled out, it is reduced. The POPPG would have secured representation in 1956 and the Liberals in 1966. The Workers and Farmers Party would have failed to qualify not having won a seat and not having obtained 5% of the votes cast.
- e) Because over-representation is not completely corrected, a party which wins an absolute majority of the votes cast will normally be assured of a working majority in the National Assembly.

Thus in 1966 PNM with 52.4% of the votes cast would have secured 61.1% of the seats in the National Assembly. Government without coalition would thus be possible but with a strengthened opposition.

210. It may of course be argued that introduction of the new system of voting will alter the pattern of voting so that elections of the past will offer no sure guide as to what elections of the future may be. The fact is however that other countries have changed over to varying systems of proportional representation while maintaining effective government and, as in the case of Northern Ireland, the system has been adopted as a means of reconciliation. In Lakeman and Lambert "Voting In Democracies"- 2nd edition 1959 pp. 157 - 199 the experience of a number of countries is reviewed. Even where the number of parties has increased after the introduction of proportional representation parliamentary representation has been shared among the major parties. There is no reason for thinking that the experience here will be otherwise. The change of the system can only marginally

affect their considerations, which the voter weighs in his mind before casting his vote.

What it does affect is the outcome of his choice as manifested in the results of the election.

211. It has been argued that the system of proportional representation will tend to reinforce patterns of racial voting. No reasons have been advanced why this should be so. It was under the first-past-the-post system that the two main ethnically based parties - PNM and DLP - emerged. The considerations which led to this division will remain unaffected by the introduction of proportional representation. It cannot be argued that the first-past-the-post system makes racial voting ineffective. The results of the 1958 Federal Elections and the 1961 and 1966 general elections would disprove this. It may well be that the DLP are convinced that the present system is geared to make racial voting effective for the PNM rather than for them. If proportional representation leads to removal of that fear then the society would certainly be the better for it. In any event the demographic picture will certainly change in time. A system which favours one group today may work against it in the near future. A fair system which favours neither group must certainly be the better course. Furthermore, our projection is that proportional representation may well help reduce racial voting. Electors who wish to cast their votes for smaller parties making their appeal on the basis of ideology alone may not be quite as bothered by the nagging feeling that they may be wasting their votes. Such parties would stand a much better chance of securing representation in the legislature *bar* obtaining 5% of the votes cast.

212. There is also a fear that proportional representation will lead to weak coalition governments. The first-past-the-post system is no guarantee against coalitions. There is a government in office now in Canada elected under a first-past-the-post system which does

not have a clear majority in Parliament and has to depend on the vote of another party to have its measures passed.

213. In his book "Democracy or Anarchy" (1941) F.A. Hermens argues that the rise of fascism in Italy and Germany between the two world wars was the result of proportional representation systems which led to weak coalition governments. The argument is simplistic. Many factors contributed, most important of all the economic dislocation resulting from the depression, in the thirties. The importance of this economic factor has become more obvious since world War.11 and is illustrated by events in the Federal Republic of. Germany. There where a mixed system of proportional representation has been in use for quite a long time, coalition governments have proved to be quite strong so much so that it is today one of the most prosperous countries in Europe.

214. Criticisms have been levelled against proportional representation as having been the cause of problems in Cyprus and Northern Ireland. In Cyprus there is communal voting, not proportional representation. Each community, Greek and Cypriot, votes for its own representatives. No one suggests this for this country. Northern Ireland has just had proportional representation introduced. The British who sponsored its introduction did so in the expectation that a fairer system of representation would help ease the bitter tensions which have so long existed between the Catholics and Protestants there. The signs are hopeful. A coalition government has been formed which allows a mainly Catholic party a share in the running of that country. No such bitter tensions exist between our major local groupings and the likelihood is that none will develop. A fairer system of representation should help to ensure that none will.

215. It is our view that expanding the National Assembly is essential if its vigor is to be increased. The domination of the elected chamber by the sheer weight of government members in it should be somewhat eased. The list members who are not burdened with the responsibility of looking after a constituency will be more readily available for other parliamentary duties. Political parties can use the list to elect to the National Assembly persons who can render good service but are hesitant to face the vicissitudes of a constituency election - the very type of person who, it is thought, would under the present system be nominated for a seat in the Senate. They will be more useful as members of the National Assembly where power really lies.

216. It is true that the mixed system does not completely eliminate the advantages to be gained by gerrymandering, as does the pure list system. But the advantage of maintaining the link between elector and constituency member is vital enough to compensate for this lack. It was clear during our meetings with the people that there was a real need for closer communication between the member and the people whom he was elected to represent.

Method of Voting

217. One of the most controversial issues when this Constitution Commission was first appointed was whether the voting should be by ballot box or voting machines. Ballot boxes had been in use up to 1960 but in mid - 1961 the Representation of the People Ordinance was passed to introduce the system of permanent personal registration and voting by machines. Both these innovations were strenuously opposed by the DLP, which was then the principal party in opposition.

218. We have no doubt that the system of permanent personal registration is considerably in advance of anything, which had existed before. If the system is operated correctly the

voter can be readily identified by his registration card, which carries his picture, thus making more difficult the impersonation which had been rife in previous elections. The staining of the voter's thumb has also helped in that regard. We recommend that both these procedures be retained.

219. Voting by machines is certainly more controversial. In 1961, the number of voters did not exceed 400,000, so it could not be argued that machines were needed to speed up the process because of the size of the electorate. The cost was high and the machines would not ordinarily be used more than twice in every five-year period, that is to say, for one general and one local government election.

220. The DLP argued that the machines had been introduced because they could be rigged without any serious risk of detection and because they placed its- supporters at a disadvantage since they were largely rural persons for whom the machines would be difficult to understand and handle.

221. The introduction of these expensive machines followed PNM defeats in the Federal Election and the local government election in 1959. The suspicion arose that if DLP could not be beaten at the polls, they had to be beaten by riggable machines. The result of the 1961 elections (*PNM 20 - DLP 10*) strengthened that suspicion. But it should be noted that as early as August 1956 PNM had advocated the use of voting machines and permanent personal registration. The question was the timing.

222. At the first elections held with machines, election petitions were presented by unsuccessful DLP candidates claiming that the results should be declared void because of failure of the machines. The evidence established that some machines had not operated as they should have done. In some cases, the total number of votes shown on the counter as

having been cast by all the voters did not correspond with the total of the votes cast for each of the several candidates.

223. In the course of the hearing of the petitions, the petitioners applied for an order to have the machines thoroughly inspected. This would have involved opening them up so that their mechanism would be laid bare and the causes of the errors identified accurately. This the court refused to allow. At the final hearing the court held by a majority that the errors proved were insufficient to justify declaring the results void. The dissenting judgment maintained the view that inspection of the machines should have been allowed to pinpoint the causes of error and that in the absence of such inspection the elections could not be held to have been properly conducted. This division of the court undoubtedly helped to sustain the doubts which opponents of voting machines entertained as to their accuracy, their reliability and the possibility of their being rigged.

224. Instances were cited to us as we toured the country, which sought to establish that the voting machines must in fact have been rigged. The evidence was unsatisfactory. The feeling of dissatisfaction may well have been eased had complaints been treated with sufficient seriousness.

225. We do not consider that the critical question is whether the voting machines were rigged or were riggable. As we have said, the evidence does not satisfy that they were rigged. But even if they were in fact a sound means of voting, the widespread genuine lack of faith in their reliability appears to us to be reason enough for a change.

226. Further, if our recommendation is accepted that the vote be given to the 18-year olds, many more machines will have to be purchased for use in the additional polling stations which must be set up to handle the larger electorate. This expense would not be

justified when it is so much simpler and cheaper to revert to a method of voting still widely used in almost all the western democracies and found to be effective there. Venezuela which had decided to switch to voting machines has recently changed its mind and decided to keep the ballot box. While it is true that the reason behind this change is not correctly linked to questions of efficiency or reliability, it is clear that the advantages of the machines are not so compelling as to outweigh all other considerations.

227. We recommend therefore that voting under the new Constitution should be by ballot box. The box should be strong, durable and light. Provision should be made for a seal and the box should be so constructed that -

- a) when locked and sealed before voting, nothing can be inserted into it except *through* the aperture. intended to receive the voter's ballot; and.
- b) after voting, that aperture also can be effectively sealed.

In the course of their visit to India the Chairman and other members of the Commission were *shown* the ballot box used there and they were given a sample, which they brought back with them. It seems to us to meet satisfactorily the specifications prescribed, but other types of boxes may serve equally well.

228. Questions arose as to whether or not the method of voting should be prescribed in the Constitution. One view was that it was not a matter of importance and that an amendment of the Representation of the People Ordinance was all that was needed. We think however that ever the years this issue has acquired or emotional a significance as to justify its being recognised in the Constitution. We therefore recommend that the provision should be placed there.

229. Frauds are possible with ballot boxes but they should be easier to detect and prevent. No false votes can be put into the box during the period of polling since the voter places his ballot in the box in the full view of all persons in the polling station. The possibility that ballot -boxes may be hijacked while being transported to the central electoral office also exists. To prevent the possible frustration of an election by this method we recommend that the practice be continued of taking and recording at each polling station a preliminary count of the votes immediately after the close of the poll. It should be conducted by the supervisor in charge of the polling station in the presence of the agents of the political parties and of the policeman detailed to provide security. If needed, limited though not selected members of the public could be invited also as witnesses to the count. The box should then be transported to the central office to be rechecked before the official results are announced. Since there would a-ve been a preliminary count by then, provision could be made to treat this as official if the ballot box was stolen while in transit.

230. Voting by ballot it is argued suffers from the disadvantage that many voters spoil their ballots by failing to make a proper mark. In the election held in 1956, over 6,000 votes amounting to 2.1% of all votes cast -mere rejected as spoilt. This is a significant number. In the course of their visit to India, members of the Commission were shown a rubber stamp, which is used in that country for marking the ballot. The stamp bears an emblem resembling a swastika with an arrow at the end of each arm pointing in an anti-clockwise direction. If the stamp is used when there is too much ink on it so that a reverse image appears on another part of the ballot paper, it is always easy to know positively where the original impression was made.

231. We recommend the use of a stamp with some appropriate device for marking ballot papers as a satisfactory method of reducing the likelihood of ballot papers being spoilt by unacceptable markings.

Qualifications for voting and for being elected.

232. We recommend that the voting age be reduced to 18. This is the legal age of majority fixed by the Age of Majority Act, No.28 of 1973

233. Since the introduction of adult suffrage the tradition here has been that a person becomes entitled both to vote and to be elected to Parliament upon reaching his majority. We see no reason to depart from this. Accordingly we recommend that the qualifying age for nomination as a member of the National Assembly be reduced to 18 years. Even independently of the passing of the 1973 Act we would have recommended this reduction, which was favoured by the great majority of persons who expressed their views to us.

234. We do not recommend any change in the qualifications as to residence but rather we recommend that there should be a clause in the Constitution prohibiting the passing of any law, which would remove residential qualifications. We are particularly opposed to citizens resident overseas voting in elections here. At our meeting in New York nationals were solidly of the view that there should be no overseas voting. We are of the same view.

Integrity in Public Office

235. One of the root causes of the growing lack of faith in the conventional political process is the widespread belief that corruption is rife among these who hold high political office. No proof has been forthcoming of any acts of corruption, but we agree that

suspicious have been not unreasonably aroused. Such suspicions should as far as possible be removed if public service is to be preserved as an honorable career for talented citizens.

236. The Jamaica Government has recently tackled this problem and we have found their law, the Parliament (Integrity of Members) Act 1973, very helpful in considering our own situation.

237. Our recommendations are as follows -

- (1) A Commission shall be established which shall be called the Parliamentary Integrity Commission.
- (2) It shall consist of a Chairman and three other members all appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and such other persons as he may wish to consult. Members should be persons of recognized ability and experience in financial or legal affairs.
- (3) Each member of the National Assembly shall within three months of taking his oath of office furnish to the Commission a statutory declaration of his assets, his liabilities and his income. Thereafter he shall file a similar declaration on December 31 in each year during any part of which he remains a member and at the end of twelve months from the date on which he ceases to be a member.
- (4) The declaration shall include the assets, liabilities and income of his wife and children under the age of 18 living with him as part of his household.

- (5) The Commission shall examine these declarations and may request from any member such further information as it may require. The Commission may also if it thinks fit make independent enquiries. It shall have power to summon witnesses and require the production of documents.
- (6) The Commission may also summon the member to produce further documents or to attend for the purpose of its enquiry. A member so required to attend shall have the right to be accompanied by a lawyer and an accountant.
- (7) Where the Commission is not satisfied with any aspect of a declaration the Commission shall report the matter to the Prime Minister, the Leader of the Opposition and the leaders of any other party represented in the National Assembly.
- (8) The leaders to whom such report is made may take such action as they think fit, including publication of the report. They may also authorise the furnishing of information to the Attorney General.
- (9) Provisions should be made to ensure the confidentiality of information supplied to the Commission and for the protection of persons publishing authorized reports of the Commission.
- (10) A member who without reasonable cause fails to furnish a declaration or to give information requested by the Commission or to attend an enquiry before the Commission or who knowingly makes a false statement in the

declaration or gives false information on an enquiry shall be guilty of an offence and in addition to any punishment prescribed by law shall be disqualified from being a member of the National Assembly for at least ten years.

Where the offence involves non-disclosure of the member's property, the court may in addition to any other punishment forfeit the property if it is situated in Trinidad and Tobago or if it is situated abroad order that an amount equal to the value of the property as assessed by the court be paid by the member to the Treasury.

238. It may be argued that these provisions could easily be evaded by having property put in the names of relatives other than spouses or infant children. If the existence of the law drives politicians to these subterfuges, they run the risk not only of being discovered but also of losing their property if those whom they trusted prove to be as corrupt as they.

239. There is also the possibility that the law may prevent honest men who jealously guard the privacy of their financial affairs from going into politics. Indeed, when a similar law was introduced in Jamaica, one Senator preferred to resign rather than to comply. Despite this possibility we are convinced that the overriding interest is the maintenance of complete frankness regarding the financial affairs of those who hold political office.

240. There is no doubt that the temptations which beset politicians today all over the world are powerful - especially in developing countries. There is no need to plunder the Treasury. Persons seeking concessions and favours are often ready to pay for them. The recommendations we have

made should assist in promoting confidence in the integrity of public life in Trinidad and Tobago.

Resignation or Expulsion from Party Membership

241. We also considered whether a member of the National Assembly should retain his seat if he resigns or is expelled from the political party, which sponsored his election. The debate on this issue stretches back to the beginnings of parliamentary democracy in Britain as we know it today. On the one hand it is contended that a member of Parliament is a representative chosen by his constituents to exercise his independent judgment on deciding issues as they arise. On the other hand it is contended that he is a delegate bound by *instructions* he has received and ought not to continue to hold office if he feels unable in conscience to carry out his instructions.

242. In the context of modern politics the odds are very heavy indeed against the party member who challenges his party on any issue which he considers vital and seeks the support of the electorate for his stand. The pressures are all in the direction of *conforming* to party discipline, which, while essential, can become so rigid as to have a completely deadening effect on the movement for change within a party. A compromise must be found between the needs of party discipline and the dangers of party persecution.

243. We decided that there was no need to make any distinction between the list member and the constituency member. In both cases we are convinced his success at the election is almost totally the result of party support. There is strong evidence in favour of that view -

In 1961 the member for Princes Town standing as a candidate for the DLP polled 7,986 votes or 65.79 of the votes cast. In 1966 the same member standing

as a candidate for the Workers and Farmers Party polled 530 votes or 5.569 of the votes cast.

In 1961 the member for Chaguanas standing as a candidate for the DLP polled 6,765 votes or 59.369 of the votes cast. In 1966 the same member standing for the Liberal Party polled 217 votes or a mere 2.529 of the votes cast.

However justifiable in terms of political principle the change of allegiance may have appeared to these two members they were quite unable to carry their *constituents* with them. Having changed their allegiance they had ceased to represent their constituents.

244. We therefore recommend that a list or constituency member who resigns from the party which sponsored his election *should* lose his seat immediately upon his resignation.

245. There may be cases in which a member may have a difference with his party which he may feel does not require his resignation. The party may however wish to expel him or force him to resign. In such circumstances it is our view that the country as a whole has an interest in ensuring that fair play is done between the member and the party since the member occupies an office of importance in the machinery of government. We recommend therefore that the Constitutional and Legal Affairs Committee could as soon as possible after it has been constituted draw up rules defining what misconduct on the part of a member in relation to matters of party discipline would be good ground for holding that he had ceased to behave as a member of his party. A party which felt that a member was in breach of these rules and was nonetheless refusing to resign could apply to a judge for an order that the member was in breach and should lose his seat. The issue would be determined by a bench of three High Court judges from whose judgment there would be no appeal.

246. It is our view that this procedure would protect a member from capricious expulsion from Parliament while at the same time enabling a party to deal with a member who has obviously ceased to support them though refusing to give up party membership.

247. Where a list member loses his seat as a result of these recommendations his party will name a successor from the list put up at election time. Where a constituency member loses his seat in this manner there will be a by-election within 90 days. The member will, of course, be entitled to contest the by-election if he so wishes.

CONDUCT OF ELECTIONS

The Boundaries Commission

248. At the pre-Independence Conference in London in 1962 the issue of a proper delimitation of constituencies was already a matter of controversy. Hence the Conference Report makes specific reference to the chairmanship of the Elections and Boundaries Commissions - Paragraph 59 reads:

"After hearing an important statement by the Premier of Trinidad and Tobago the Conference agreed that it was a matter of great importance to honour the convention whereby the Prime Minister consults the Leader of the Opposition on all appropriate occasions, in particular on all matters of national concern, including appointments to suitable offices of a national character - for example the chairmanship of the Elections and Boundaries Commissions"

249. The Chairman and members of the Boundaries Commission appointed immediately after independence were an agreed choice of the Government and the Opposition.

Subsequently the Opposition wished to effect a change. But when their term of office expired they were re-appointed without consultation and despite expressed dissent. Side were told that the Government took the stand that, while consultation was necessary on a first appointment, it was not required for the re-appointment of an incumbent. In the result, confidence in the work of the Boundaries Commission has steadily diminished.

250. We believe that most people are not sufficiently aware of the difficulties of the task of delimiting constituencies the result of which must almost inevitably displease one party or the other. It is essentially a political exercise in which various political parties, well aware of their own interests, bargain to gain the best they can for themselves. In the end they usually produce a compromise which each finds perhaps only barely acceptable.

251. In Barbados, in Jamaica and in the United Kingdom, the task is done by an ad hoc committee of the legislature presided over by the Speaker, his role being largely to promote attitudes which would lead to a reasonable solution. We are of the view that a modification of this method would be best suited to Trinidad and Tobago. We agree there is no need to have a permanent Boundaries Commission. Delimitation is an exercise which should be conducted once in an agreed period and when it is completed the body charged with doing it should go out of office; but while we recognise the need for a neutral chairman to smooth the process of arriving at a compromise we think that he should not be directly connected with political activity.

252. Accordingly, we recommend that there should be a Boundaries Commission of five persons - two appointed by the President after consultation with the Prime Minister two appointed by the President after consulting with the Leader of the Opposition and any other

opposition groups in the National Assembly, and one independent person appointed by the President who shall be the Chairman. The President will act in his own discretion in the appointment of the Chairman, but after consultation with the Prime Minister and the Leader of the Opposition.

253. This Commission would be appointed at the first sitting of each new Parliament and should be required to present its report within 18 months of its appointment. The report would be presented to the Speaker and would be subject to debate in the National Assembly. When approved with or without modification, it would be made effective by an order signed by the President and would come into force at the general election next ensuing. By-elections would be conducted on existing boundaries. The Commission would be empowered to call on technical officials in the Public Service, in for example the Department of Lands and Surveys, the Department of Statistics and such other Departments as it may wish, and on field officers of the District Councils for any assistance which they may need in the performance of their duties.

254. The instructions on the principles to be followed in delimiting boundaries set out in the Second Schedule to the present Constitution seem to us to be reasonable, so we recommend no change.

The Elections Commissioner

255. In the present Constitution the responsibility for elections rests with the Elections Commission which comprises a Chairman, and not less than two nor more than four other members, all of whom are appointed by the Governor-General acting in accordance with the advice of the Prime Minister. The same persons have been appointed to both the Boundaries and the Elections Commissions, the claim being that while doing the work of

delimitation they would have in mind the administrative arrangements needed for the actual conduct of the elections. Whatever the advantages may be the result of the identity of membership has been that the Elections Commission has suffered from the same loss of confidence in the quality of its work as the Boundaries Commission.

256. Complaints centre mainly in the area of registration. A spokesman for the DLP stated that registration officers visiting areas would either by negligence or design omit to register houses where supporters of the party live. Of course, provisional lists are published and it is open to each party to study them and take appropriate steps to correct any omissions. It is however so important to maintain the integrity of the process of conducting elections that we recommend that an agent of each party which has a national following should be entitled as of right to accompany the registration officers sent out by the department. These party agents should be paid by the State. The question whether a party qualifies for this facility should be one for decision by the authority charged with responsibility for the conduct of elections (at present the Elections Commission). In making its decisions the authority should have regard to, but should not be bound exclusively by, the results of previous elections. It should also take into account current party strength as evidenced by records of membership.

257. We recommend that the responsibility for the conduct of elections be placed in the hands of a full-time Elections Commissioner rather than an Elections Commission. The President should nominate a candidate for the post who would be appointed if approved by a three-fifths majority in the National Assembly. Parliamentary approval by a special majority designed to ensure some support by opposition elements seems to us important because the work of this official is so vital if confidence in the integrity of parliamentary elections is to be restored and strengthened. The Commissioner would hold office during good behaviour as

do judges and the Auditor-General and the method of his removal would be similar to that applicable to the Auditor-General. To assist him in his duties we recommend that there should be two Deputy Commissioners appointed by the President after consultation with the Elections Commissioner also, the Public Service Commission should consult with him before making appointments to or transfers from his staff.

258. It is our view that there are advantages in this system over that of part-time commissioners appointed for a period of five years, subject to renewal. The work of supervising the permanent registration of citizens and conducting elections is work of an administrative nature requiring constant attention and a department created for this purpose having the status and authority of the Auditor-General's department would be better fitted to carry it out.

CONDUCT OF BUSINESS

Presiding in the National assembly

259. We have recommended that the National Assembly sk~x3-1 be presided over by the Vice-President as Speaker. The method of his election and his qualifications for office have already been considered in Chapter IV. In so far as possible, the office should be shielded from political partisanship. He should have neither an original nor a casting vote because it would be most embarrassing for him and might well destroy his image of impartiality if he were called upon to decide a bitterly contested issue. In the event of a tie in voting in the Assembly while the Vice-President/Speaker is presiding the motion will be deemed to have been rejected. His term of office like that of the President should be five years so that they both go out of office together.

260. We recommend that there should be a Deputy Speaker elected by a simple majority from among members of the National Assembly. His election should take place at the first session of each Parliament and he will hold office for the life of that Parliament. He will preside during the temporary absence of the Speaker. While presiding he will have only a casting vote.

Parliamentary Committees

261. The purposes which Parliament serves appear to be fourfold -

- (1) to debate bills placed before it and either pass them into law with or without amendments or reject them;
- (2) to examine government policies and to seek to influence them;
- (3) to keep a watchful eye on the implementation of policy and the expenditure of public funds; and
- (4) to inform the public of government's policies and of the criticisms levelled at them.

The first three of these four functions can be more effectively carried out if the initial stages of investigation and collation of information are done by a committee of Parliament rather than by the entire body.

262. In March 1973 Malcolm Shaw (University of Exeter) and John Lees (University of Keele) presented a paper setting out conclusions drawn from a research project into the functioning of the committees of the Legislatures of nine countries. They ranked these countries in the order of the importance of the role played by the

committees in influencing the outcome of matters in the legislature or its output. Canada, Britain and India ranked in that order in front only of Japan and behind the United States of America, Italy, Chile, West Germany and the Philippines. The results seemed to support the view that in a Westminster-type system committees do not on the whole become powerful aids to parliamentary efficiency particularly where there is a dominant party in the Parliament which enforces tight party discipline. Recent Canadian experience shows however that where the committee system is properly structured the importance of its role can be increased in spite of these adverse factors. Thus the authors point out that Canada would have been ranked below Britain had the study been done before the Canadian reform which came into effect in 1968.

263. Committees already exist in the present Parliament. The best-known Standing Committee is the Public Accounts Committee that under Opposition chairmanship examines the public accounts on the basis of the Auditor General's report. Occasionally ad hoc Committees are appointed to study particular matters of policy - for example the Committee on reducing the age of majority. Committees investigate bills submitted for the incorporation of religious and charitable organizations before they come up for debate. The permanent Committees like the Public Accounts Committee are concerned more with matters of administration than of policy, while the Committees, which look into matters of policy, are set up for a particular purpose and are dissolved thereafter.

261. As regards legislation, bills are usually referred to a Committee of the whole house after the debate on the policy of the measure has been concluded at the second reading. There; is no attempt at specialisation and there is little likelihood of inducing the Government to make any significant concession after the public debate, All of this places

an emphasis on the confrontation aspect of parliamentary politics - Government and Opposition adopting combative stands in a mock battle the result of which is a foregone conclusion. Admittedly, this can play a part in attracting public interest to the processes of government but, particularly in a small country like this, our view is that solid progress is much more likely to be made by emphasising efficiency as a result of specialisation and finding areas of consensus in the search for national development. The committee system seems to offer a useful road to the attainment of these ends.

269. Accordingly we recommend that the importance of the committee system should be emphasised by enshrining it in the Constitution itself. The following Committees to deal with specific areas of policy and legislation should be mentioned -

- (1) Finance and Estimates
- (2) Public Accounts Committee (Ministries and Departments)
- (3) Public Accounts Committee (Statutory Authorities and
Nationally Controlled Companies)
- (4) External and Caribbean Affairs
- (5) Labour, Industry and Commerce
- (6) Agriculture
- (7) Constitutional and Legal Affairs
- (8) Education and Social Services

The National Assembly would also be empowered to set up any other Committee it may wish.

266. The Constitution should also prescribe that the membership of each committee should be no less than five and that members should be nominated by the Speaker after consultation

with the leaders of all parties represented in the National Assembly. Membership should as far as possible reflect the strength of the political parties in the National Assembly.

The Speaker will name a convenor for each Committee but once the Committee has been convened it will elect its own chairman. The Chairmen of the Public Accounts Committees must not be members of any party associated with the Government. Members should be named for the entire legislative term, the intention being that they should develop expertise in their particular field but, where circumstances make it necessary, the leaders of political parties should have the right to change their representatives. Ministers should not be members of Committees lest the Committees be subjected to the immediate dominance of a powerful government figure, but Parliamentary Secretaries will be eligible for membership. The Speaker will also be responsible for allocating such staff to Committees as seems to him necessary.

267. All bills after being laid on the table of the National Assembly should be immediately referred by the Speaker to the appropriate Committee for investigation and report. He will decide in each case, which is the appropriate Committee. The Committee would be entitled to call for public comments on the bill and to summon organisations and individuals capable in its opinion of giving pertinent evidence on any aspect of the bill. It would also have power to summon a Minister or public officer to give evidence on any issue in which their knowledge would be of assistance. Our expectation is that in the atmosphere of the Committee a spirit of co-operation would develop on the basis of interest and growing competence in a specialised field. Policy suggestions should stand a better chance of being calmly considered and accepted when the Government has not yet adopted a public stance, as it must do on the second reading.

268. In the case of important bills involving a significant change of policy the Government should prepare and issue a White Paper for public comment and submit it for consideration by the appropriate Committee before publication of the bill. Such a document would assist the Committee by making clear the Government's objectives and the reasons for pursuing them.

269. Where the appointee to an office has to be approved by Parliament the name of the candidate should be submitted to the appropriate Parliamentary Committee for approval before a vote is taken in the National Assembly. In the case of persons nominated by the President the matter should be dealt with by the Constitutional and Legal Affairs Committee. But in the case of Chairmen of Statutory Authorities and nationally controlled companies, whose appointments we also recommend should be subject to parliamentary approval but by a simple majority, the matter should be referred to the Committee on Labour, Industry and Commerce.

270. In each case Committees will decide whether hearings will be in public or private. We expect that when bills are being considered the committee stage will offer scope for full participation by all or any interested persons. Under the present arrangement when a bill is published for public comment, memoranda submitted by the public go to the Cabinet. The persons who have submitted them have no idea whether their comments have been duly considered. But if hearings take place before a Committee it would be possible for such persons to appear and support their point of view in person before the Committee - which always gives greater satisfaction and encourages greater participation. It should also serve to open up the processes of government and thus help build confidence in public institutions.

271. With regard to technical legal matters a Committee would be empowered to seek help from the parliamentary draftsman or retain independent counsel to advise where it thought fit. The likelihood of a measure slipping through in such a form as not to express accurately the intention desired should therefore be reduced. Our view is that a specialist committee should be able to discharge that function more competently than a second Chamber.

272. In the U.S.A. situations arise in which bills are often killed in committee so that they never go forward for debate in Congress. We would not wish this to happen here. Accordingly we recommend that Committees should report within thirty days on all legislation or other matters referred to them. If a further period is needed for proper consideration, then the Committee must ask for an extension of time from the National Assembly. If this is refused, the matter must be reported upon on the expiration of the thirty days. If not, the National Assembly may proceed to debate the bill without waiting further.

273. Committees would also be empowered to initiate investigations into areas of national concern where facts must be gathered and public opinion sounded to supply the bases for a proper formulation of policy. We envisage that matters now investigated by Commissions of Enquiry or made the subject of consultation could very well be investigated by appropriate Committees and reports prepared. Our legislators are not unduly burdened with work. There are not usually more than 48 sittings of the House of Representatives in a year and some of them are very brief. Time can be found to devote to parliamentary business of ea nature which should increase the influence and importance of

the National Assembly. Membership of the National Assembly should be regarded by parliamentarians as their principal occupation to which other vocations must be secondary.

274. In cases of urgency we recommend that Parliament should have power to debate a bill directly without having it referred to the appropriate committee. This is not the sort of decision which Government should be able to make with their help only of its supporters. As we have said, one of the key factors in reducing respect for Parliament is the frequent rushing through of measures in a matter of hours with members receiving their papers only shortly before. On occasion it has happened that the Senate has had to play its part as soon as the House of Representatives has duly passed the measure. Table 1 in the Introduction provides figures to support this criticism. We recommend that a two-thirds majority of all the members of the National Assembly be required to dispense with the reference of any bill to the appropriate Committee.

A New Parliament Building

275. Obviously adequate research and secretarial facilities must be provided for the Committees. They must have their own library and staff under the control of the Speaker to help them in the performance of their duties if these are to be properly performed. We think this will require the provision of a proper building for the National Assembly in part of which the National Archives could appropriately be lodged. The makeshift quarters Parliament now occupies do not do justice to its central role as the supreme legislative body. A proper building among other things will help in the slow process of restoring Parliament to its proper place.

Dissolution and Prorogation

276. Under the present Constitution, the Prime Minister may advise the Governor-General to dissolve Parliament and the Governor-General is obliged to act on his advice.

We recommend that there should be a change in this respect. It is possible that on occasion there will be coalition governments. In such a government one partner may disengage itself because of differences over some particular point of policy and may be willing to join with another party to form the administration. A Prime Minister who has lost majority support in this way should not necessarily have the power to demand an election.

277. Accordingly we recommend that the President should dissolve Parliament on the advice of the Prime Minister only if this advice is supported by a resolution of Parliament to that effect. If the Prime Minister desires a dissolution but cannot take the National Assembly along with him, then he would be free to resign. The President could then take steps to ascertain whether any other member of the National Assembly is likely to command the support of a majority and is willing to form the Government. In that event he would appoint him as Prime Minister. But if he is unable within a reasonable time to find any such person, then acting in his own discretion he would dissolve Parliament.

278. If the National Assembly passes a vote of no confidence in the Prime Minister, he must resign within seven days. The President would then seek another Prime Minister in the National Assembly if one can be found and, if none can be found, the President would then dissolve the House and set a date for fresh elections.

279. We do not recommend any change in the present provisions for summoning or proroguing Parliament. This would be done by the President acting in accordance with the advice of the Prime Minister.

280. The normal life of Parliament should continue to be five years and there should be power to extend its life when the country is at war for not more than, a year at a time, the total extended period not to exceed five years.

Conclusion

281. The changes we have recommended under this head are the most radical in terms of the present Constitution. Our aim has been to make the Parliament much more representative of the people and to create procedures which will cause it to be more responsive to the will of the people through its Committees. By altering the procedure for enacting legislation it is expected that the role of Parliament in this field will not be purely mechanical as it tends to be at present. Each part of the plan is dependent on every other part and together it constitutes an organically different approach to the functions of Parliament in our society.

VII - THE EXECUTIVE

282. We recommend the retention of an executive body named the Cabinet the members of which are chosen from and are responsible to Parliament. We recommend also that the Prime Minister should be chosen by the President. He should choose the member of the National Assembly who is the leader of the party having a majority in the Assembly, or where there is no undisputed leader in the Assembly of that party or no party with a clear majority, the person who in his judgment is most likely to be able to command the support of the majority of the members of the Assembly.

283. The Prime Minister, as now, will be empowered to choose his Ministers and to decide what departments they should administer. The Prime Minister will also be empowered to recommend to the President that any Minister be relieved of his office or be assigned to a different Ministry.

284. We considered and rejected the suggestion that a limit should be placed on the number of terms which any person may serve as Prime Minister. Essentially at any general election voters choose the party, which they wish to form the government. It seems to us unthinkable to impose any restrictions on the number of successive terms, which any party could win. Once that is conceded, it would seem to be wrong in principle to place a restriction on the party's choice of leadership. This could have a significant effect on their chances of winning the elections. Compelling them to change their leader may, in effect, reduce their chances of success. We do not think that any useful purpose can be served from a study of the experience of the United States of America and some Latin American countries where the choice of the President is essentially the choice of a person, not of a

governing party. In these systems the office of President stands by itself separate and apart from Congress, which may be controlled by a party other than that to which the President belongs.

285. We also considered and rejected the idea of allowing the Prime Minister to choose Ministers or Parliamentary Secretaries from outside Parliament, as in Guyana. The argument in favour of this is that it permits to be brought into the system technocrats whose expertise can be put to great advantage in the essentially technical problems of administration. With the proposed Parliament of 72 members however, sufficient talent should be available to form a strong administration. Political parties must understand that they should put up for election persons capable of running a government should they win. The lists can be used to *secure* the election to the Assembly of persons of known administrative or technical ability, who may not have the qualities which would prove attractive at the polls - the very sort of persons who are generally thought fit for appointment as senators. 286. We recommend that the office of Parliamentary Secretary be retained. With the increased emphasis placed on committee work in the Assembly Parliamentary Secretaries should be of considerable assistance in presenting the administration's view in the absence of the Minister.

Appointment to offices of a National Character and other offices

287. We propose a substantial reduction of the area of patronage at the disposal of the Prime Minister. The Chief Justice, the other members of the Judicial and Legal Service Commission, the Chairman and other members of the other Service Commissions, and the Chairman of the Boundaries Commission should all be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition instead of being

appointed, as now, in accordance with the advice of the Prime Minister. The Prime Minister will quite properly have influence but he will not have the final say. This modification of the powers of the Prime Minister is in line with the overwhelming majority of views expressed to us. The diffusion of power seems to us desirable as a matter of principle. We recommend accordingly.

288. We recommend that the Prime Minister should retain his right of veto in respect of appointments to the offices of Permanent Secretary, Deputy Permanent Secretary, Chief Technical Officer, Deputy Chief Technical Officer, Chief Parliamentary Counsel, Director of Personnel Administration, Solicitor General, Commissioner of Police and the Deputy Commissioners of Police. These officials are so directly concerned with the formulation of policy and the supervision of its implementation that they must be acceptable to the political chiefs with whom they must have a close working relationship. This does permit some measure of political influence in purely public service appointments but is necessary on purely practical grounds. We would mention that this recommendation of ours is in keeping with the views of the Public Service Association as expressed to us. However, in the cases of the Registrar-General and the Crown Solicitor we see no justification for the retention of the Prime Minister's veto. They are purely technical officers operating in a professional field where policy considerations are negligible. We recommend that appointment to these offices should cease to be subject to Prime Ministerial veto.

289. We are, of course, aware that when there is a change of government the incoming administration will have to work with officials who, to put the matter at its lowest, were considered acceptable to their predecessors. If the practical considerations which justify the veto were carried to their logical conclusion the new administration should have the right to

reject the incumbent and have a new appointment made. However, we do not so recommend. We think that in the majority of cases these senior public officers should prove capable of working with their new Ministers. Where there are serious difficulties administrative transfers can be arranged to solve them.

290. We recommend that the Prime Minister retain control over the appointment of the Government's principal representatives abroad. They should be appointed by the President acting in accordance with the advice of the Prime Minister. It was argued that these persons represented not only the Government but the country, so there should be consultation with the Leader of the Opposition before advice is tendered. We do not agree. Ambassadors, High Commissioners and other principal representatives abroad hold office for the purpose of advising the Government generally on matters of foreign policy and implementing policies which have been decided upon. They must be persons in whom the Government has ample confidence and this can best be ensured by placing the power of appointment in the hands of the Prime Minister. The corollary of this is that such persons should, when a new Prime Minister takes office, tender their resignations to him so that he may have a free hand either to re-appoint or to make new appointments.

Leader of the Opposition

291. Provision should be made for the office of Leader of the Opposition. It is our view that the electoral system recommended is so eminently just that once it is fairly operated citizens will want to cast their votes to secure representation in the National (assembly of the party of their choice. We do not contemplate therefore that the situation will ever arise where the Assembly will be made up entirely of members of the governing party. Nevertheless, it seems safer to

provide expressly in the Constitution that a vacancy in the office of Leader of the Opposition will not result in Parliament being improperly constituted. We so recommend.

Administration of the Law

292. Section 62 (1) of the Constitution gives the Attorney-General the power -

"in any case in which he considers it desirable so to do -

(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority."

Section 62 (3) provides that the powers conferred in (b) and (c) above shall be vested in him to the exclusion of any other person or authority.

Section 62 (4) states -

"In the exercise of powers conferred upon him by this section the Attorney General shall not be subject to the direction or control of any other person or authority."

293. However, the Attorney General is a member of the Cabinet, collectively responsible with them for all government actions and subject like any other Minister to being relieved of his portfolio by the Prime Minister. Instituting and discontinuing criminal proceedings may have serious political consequences, but the Attorney-General would be expected to have due regard to maintaining the integrity of the law by ensuring that its processes are set in train

with conspicuous impartiality. This may put an intolerable strain on the Attorney-General and tends in any event to leave his impartiality always open to question.

294. The Attorney-General is also the principal legal adviser to the Government. The relationship of client and lawyer is one which demands complete confidence. While the lawyer must necessarily maintain a certain objectivity if his advice is to be sound, he can and often does become involved in his client's cause. He seeks to find a way out of difficult, rather than hold an even balance. This may create problems when there is a duty also not to take advantage of that citizen who has laid his claim against the State. But in the final analysis, it is the courts that are the final arbiter of the citizen's rights and we consider therefore that the Government's claim to have a legal adviser of its choice in whom it can place implicit trust is valid.

295. We considered setting up the office of Director of Public Prosecutions and vesting in the holder of that office the power now vested in the Attorney General by section 62. However it seemed that the area in which independent non-political advice was necessary went far beyond that of criminal prosecution. In the performance of his functions the President may well need legal advice, so may the Chairmen of the Service Commissions and the Boundaries Commission, the Elections Commissioner, the Ombudsman, and the Auditor-General. There appeared to be the need for an official with functions more extensive than those of a Director of Public Prosecutions.

Minister of Legal Affairs

296. We recommend that there should be a Minister of Legal Affairs who will be a political appointee and member of Cabinet. He will be responsible for the normal day-to-day legal advice which the Government may require for the conduct of civil litigation on

behalf of the State and for the drafting of Bills and parliamentary instruments. The Crown proceedings Act will have to be amended so that the official to be sued in order to establish governmental liability will be the Minister of Legal Affairs instead of the Attorney-General as at present.

Solicitor-General

297. At the moment there is a Solicitor-General who is in fact the Chief Technical Officer in the Attorney General's Department. We recommend that he should be renamed Chief State Counsel and that he should be attached to the Ministry of Legal Affairs. The change of names takes into account the likelihood of fusion of the professions of solicitor and barrister in the near future when both terms will fall out of use.

Attorney-General

298. We recommend that there should be an Attorney-General to whom will be entrusted the duties and functions set out in section 62 of the present Constitution. He should also be the legal adviser to the President, the Vice-President, Service Commissions, the Boundaries Commission, the Elections Commissioner, the Ombudsman, the Auditor-General and such other officials of departments as Parliament may prescribe. He will be a public officer. To protect his independence we recommend that his emoluments and conditions of service including tenure should be the same as those of a judge of the Court of Appeal. He will control a staff of lawyers for assisting in the work of advising as to whether or not criminal proceedings should be instituted or discontinued, in drafting indictments and conducting prosecutions as well as in giving such other advice as he may be called upon to give.

299. It is our view that this division of offices should strengthen public confidence in the impartiality of the administration of the law in its executive aspects.

The Executive Power of Mercy

300. As has already been mentioned in the Chapter on the Head of State, we recommend that the power of mercy should be exercised by the President. He will act in accordance with the advice of a Minister designated by the Prime Minister. We propose two significant changes from the position as it now exists -

(1) Where it is proposed to exercise the power in cases other than capital cases the Minister should not tender his advice before having obtained through the Chief Justice a report from the judicial official who presided over the court which imposed the sentence. Such a report has always been required in capital cases and there seems to be no good reason why it should not be required in all cases. The freedom of the Executive to act is in no way restricted but there is the assurance that the views of the court have been considered.

(2) The Advisory Committee has been restructured to include persons appointed by the President acting in his own discretion. Since the power has to be exercised in his name it seems reasonable to permit him to name on the Committee persons in whom he has confidence.

The Advisory Committee should now consist of

(a) the Minister designated by the Prime Minister to advise the President.

This Minister would be the Chairman

(b) the Minister of Legal Affairs

(c) the Attorney-General

(d) two other members appointed by the President acting in his own discretion.

The Minister advising the President will as now retain the right not to accept the recommendation of the Advisory Committee.

VIII - LOCAL GOVERNMENT

301. In our consultation with the people at public and private meetings and from the memoranda received there was almost unanimous agreement on the need for greater decentralisation of government and for giving more power to local government authorities. Opinions were divided however as to whether or not these powers should be included in the Constitution. It is to be noted that the present Constitution makes no reference to local government.

302. It was our hope that, particularly at public meetings throughout the country and in private sessions, we would have had facts and arguments put to us by local government representatives and other persons reflecting directly or indirectly upon the power, authority and work of the local authorities, the aims and aspirations of individual authorities and the constitutional and administrative provisions necessary for properly carrying out local government functions. This was not to be. Members of municipal corporations and county councils and their officers did not accept our invitation to meet with us in private session to discuss necessary or desirable changes, and at public meetings, only one member of a county council spoke and then only to reply briefly to a point raised at a meeting by an ex-county councillor on an alleged discrepancy in the figures of the voting machines used at the election which he contested and won.

303. At public meetings and in private sessions we were able to discuss with persons who had previously served on municipal and county councils for a number of years, some of whom had been defeated at the last elections held in 1970. Unfortunately, the majority of the comments were directed at failures in the conduct of the day-to-day administration of the several councils and their inability adequately to satisfy the demands of the people in areas

such as environmental sanitation, maintenance of roads, recreation grounds, markets and the supply of truck borne water. We have perused the report of the "Committee appointed by Cabinet for the purpose of re-appraising the present system of local government in Trinidad and Tobago in the context of 'Independence'" (the Sinanan Report 1966) and note that suggestions were made therein for improvement of these areas of administration. Very few of the recommendations of that report have been implemented.

Brief History of Local Government

304 The earliest form of local government was the Cabildo, an institution established by the Spanish Government, for the area now included in the City of Port of Spain. It was a corporate body presided over by the Governor and it functioned as an ecclesiastical council, a parish vestry and a municipal corporation. It levied duties and taxes in Port of Spain, including the harbour, supervised the repair and scavenging of streets and markets, and was responsible for the police, prisons, health, sanitation and the registration and admission of medical doctors to practise their profession. This council, later to be known as the Port of Spain Town Council and finally as the Port of Spain City Council, had a chequered history. It was for many years a vibrant body, jealous of its authority and resisting any interference from the central government. The Corporation was a rating authority, assessed and collected rates for lands and buildings within the corporate area, won and distributed water, provided for disposal of sewerage and garbage, distributed electricity and received licence fees for certain vehicles registrable within the corporate arc.

305. The San Fernando Borough Council established in 1846 and the Arima Borough Council founded by Royal Charter in 1888 generally had the same powers as the Port of

Spain City Council in respect of the corporate areas of San Fernando and Arima. However they did not win water, but purchased it from the central government to re-distribute to their burgesses for which taxes were levied. There was no sewerage disposal unit in San Fernando or Arima. The San Fernando Borough Council generated and distributed electricity. Arima did neither.

306. In the counties local government administration developed out of a system of Wardenship - a replica of the French "Prefect". The warden or District Administrator was virtually the "Governor" of the County, co-ordinated all the services and was responsible to the central government for revenue collection, security, allocation of crown lands, roads and health. He submitted monthly administration reports to the Governor. In 1946 county councils were established as advisory bodies to advise the Warden in some of his administrative duties. Later in 1952, they were invested with executive powers, their principal functions being the maintenance of local roads and crown traces, sanitation under the Public Health and Malaria Abatement Ordinances, the maintenance and control of burial grounds, recreation grounds and markets and the emergency distribution of water in areas devoid of a pipe borne supply,

307. Throughout their history therefore local authorities had been Complementary to central government and, because of the smaller geographical area under their control, were expected to provide a more personalized service serving local needs and aspirations.

Economy of Administration

308. Throughout the world, because of economies of scale, there has been the tendency in recent years for the power and influence of central governments to increase at the expense of provincial or local authorities. Trinidad and Tobago has been no exception. We

live in an increasingly interdependent world in which the national effort must, if progress is to be made in a coherent and beneficial way, be given precedence over regional or community projects. At the same time it must not be forgotten that the region and the community are integral parts of the nation.

309. Trinidad and Tobago is forced to obtain loans for its capital works programmes. Many of these loans are made from international lending agencies. Since the loans are made to the central government or to large nationally controlled companies (as in the case of Caroni Ltd) there must be central government control and supervision as the loan agreements explicitly require this. The central government may allocate part of the funds for specific projects within a local government area, but it cannot abdicate its responsibility for control and supervision.

310. The result of all of this is a near complete dependence of the local authority on the will of the central government particularly for major development schemes. Works programmes even when initiated by the local authorities are planned in detail, financed and controlled by the ventral government. Local authorities have lost control over electricity, transport, water and sewerage, land utilisation and development and the sward of contracts for sums in excess of \$10,000, all of which are with some justification considered matters of national importance needing integrated planning, sound financial control and a uniform approach.

Party Politics

311. The control of local government authorities, especially in the municipal areas, is a prize on which parties are bound to cast covetous eyes. We have noted the dominance of the central party machinery over their representatives at local level. The election of the

Mayors and Deputy Mayors of Municipalities, Chairmen and Vice-Chairmen of County Councils and representatives of) their various committees has become a ritual predetermined by central party directive. This centralisation creates a genuine reluctance (in some instances fear may be a more appropriate word) at the municipal and county levels to take decisions even on matters within the particular body's competence.

Bureaucratic Control

312. Officials of local government authorities are increasingly being governed and controlled by central government machinery. The Chief Executive Officers and staff of County Councils all hold appointments within the Ministry of Local Government and, while serving their respective councils, are subject to discipline and control by and take their instructions from the Ministry. The qualifications and conditions of service of senior executive officers of the municipal corporations are laid down by the central government, and appointments must be ratified by the Governor-General acting on the advice of Cabinet. In all financial matters local authorities are bound by and must follow the financial regulations and instructions of the Ministry of Finance. Their budgets form part of the overall budget presented to Parliament by the Ministry of Finance and are therefore subject to scrutiny by central government officials.

313. From the above it will be seen that local government authorities have progressively become "departments" of central government, all this notwithstanding the fact that there has been no major change in their respective ordinances which pre-date Independence and which appear to give a measure of autonomy. Subsequent legislation, the constant lack of funds and dependence on the central government for resources render any independence on their part almost impossible.

The case against and for local government

314. Two of the recommendations made to us are worth mentioning. One was that local authorities had been emasculated and rendered so utterly dependent upon central government that they serve no purpose. The functions they perform are merely a duplication of the work of central government departments. The services carried out by local authorities should therefore be placed under the control of government departments with a more effective chain of command being passed down to the rural level and all the local authorities disbanded.

315. The other view advocated complete decentralisation and localisation of administrative and executive effort. To this end, the country should be divided into 25 corporate areas with a municipal council responsible for each serving a population of approximately 40,000 persons. Each area should be subdivided into villages or communities of about 1,000 persons. Representation on municipal councils would be through village or community groups and, except for those areas in which it was absolutely necessary to retain central government control, for example, security, immigration, income tax - which although assessed and collected by the central government should be redistributed to local authorities - other activities should be localised. Taxes, fees, licences and the profits from local enterprises would be collected by the local authorities and used by them to implement local programmes to serve local needs.

316. We have rejected both suggestions. In the former case, although we are unable to recommend a significant reversal of the current trend whereby central government has made severe inroads into areas of local government control, we feel that local authorities could provide an outlet for participation in grassroots politics and give to the local

representatives an opportunity to be intimately identified with the formulation of policies and the provision of amenities for their area and to administer for the needs of their people. It will also provide useful exercise in democratic participatory politics, which may be of service later at the national level.

317. We see no justification for the multiplication of local authorities as suggested in the second proposal. These authorities will be so small that their funds will be quite inadequate to provide and sustain the human and financial resources necessary properly to administer the areas entrusted to their control. Complete localisation of resources is impracticable. Among other reasons it tends to cause great disparities in the level of development and achievement in the several municipalities. Even if the per capita income of the several councils is equalised by a transfer of funds, the sum total required for levelling-up the poorer municipalities, to be met from central government revenues, will be substantial. At this stage of development the demand for scarce resources is so great that they should be applied more advantageously to nationally planned and controlled programmes.

Future of Local Government

318. However we believe that local government can and should play an effective role in administration in partnership with but subordinate to central government. The relationship should be founded on the principles that

- (a) local authorities are responsible bodies competent to discharge their own functions;
- (b) the controls necessary to secure the objectives of central government policy and proper administration should be concentrated at key points leaving as much as possible of the administrative details to the local authority; and

- (c) local government is an integral element of the democratic participatory process.

319. We recommend that a Committee/Commission should be appointed to review and update the recommendations of the Sinanan Report in the light of recent constitutional and administrative changes, inclusive of the amendments proposed in our Report. We especially commend for consideration by the Committee/Commission:

- (a) a more logical division of the country into local government areas especially as they relate to the boundaries of the municipal corporations of Port of Spain, San Fernando and Arima and the division of the County of St. George into two administrative areas;
- (b) the establishment of a formula for the allocation of revenue to local authorities on objective criteria such as a capitation grant weighted by other factors - for example whether rural or urban, industrial or agricultural areas, and supplemented by grants for specific purposes such as roads, health, education etc. The effect of fixing such a formula would be to allow the various authorities to have a reasonably accurate estimate of the grants to which they will be entitled annually and to control, if not eliminate, disparities in subventions now made to local authorities for political or other reasons;
- (c) local authorities should be given a greater degree of autonomy over the control of funds appropriated to them annually by the National Assembly in the Appropriation Act;
- (d) control over essentially local matters should continue to

be vested in local authorities, for example the upkeep, repair and scavenging of roads and drains, the development maintenance and upkeep of parks, playgrounds, recreation and burial grounds;

- (e) authority for the maintenance of school and some other public buildings, cleaning of beaches and prevention of erosion by the sea, erecting and maintaining jetties and providing facilities for fisheries.

Local Government Representation

320. Municipal councils consist of councillors elected by the burgesses by the first-past-the-post system of elections to represent the respective electoral districts. The councillors in turn elect from among the burgesses, a number of aldermen to membership of the council. If a councillor is subsequently elected as an alderman he must vacate his seat and a by-election is held to fill the vacant seat. County Councils also comprise elected representatives and two aldermen to each county council, selected by the county councillors. One of the two aldermen must be selected from the membership of Village or Community Councils within the county. So in both municipal and county councils there is a mixture of representatives selected at the polls and members selected by the councillors.

321. In the chapter on Parliament we recommended a mixed system of electoral representation for the election of members to the National Assembly. We also recommend that a mixed system of proportional representation should be used for electing representatives to local government authorities. One representative should be elected by the first-past-the-post system for each electoral district in the municipal or county council.

322. Within the time fixed for the nomination of candidates for election, each political party contesting the election should also submit a list of candidates for possible selection as list members to the respective local government councils. A number of list members equal to one half of the elected representatives on each council should be selected from the lists in the ratio of the number of votes won by the respective parties.

323. As in the case of the National Assembly, we feel that the mixed system of proportional representation will provide an opportunity to participate in local government to the type of person who may have a contribution to make to local government politics, but who would be loth to contest an election. This is the type of person from whom aldermen are often selected, and allows political parties to select persons of skill and particular disciplines to assist in local government administration.

Membership of Electoral College

324. In an earlier chapter we recommended that the President and Vice-President should be elected by an Electoral College composed of members of the National Assembly and of city, borough and county councils sitting in joint session. This is in support of our view that local government representatives, including members of the Tobago Regional Council referred to hereafter, are an integral element in the process of parliamentary democracy and as elected representatives of the people are as much entitled to select the Head of State, the symbol of national consciousness, as are members of the National Assembly.

TOBAGO

325. There was fairly unanimous agreement that because of its separation from Trinidad by water and the administrative, economic and psychological problems that flow from such

separation, special provisions should be made for Tobago. Our Chairman, in his remarks introducing the subject of Local Government at the National Convention, said in part about Tobago:

"I turn next to Tobago - which I think calls for special examination. I say so because both in Tobago and at this Convention we have had representations made to us based on the geographical and historical separation of Tobago from Trinidad. It may be claimed that Tobago is just across the way, less than 18 miles from Toco, closer to Port of Spain than either Cadres or Guayaguayare or Moruga, but the fact remains that it is a seagirt island, distinct and apart from Trinidad, with its own territorial waters and dependent in its association with anywhere outside Tobago upon sea and air communications.

"But that is not all. When, after a chequered history under the suzerainty at various times of the British, Dutch and French, Tobago became British finally in 1814, it was given again the old system of representative government which had been for some time past the system in vogue in other British Caribbean territories. Under that system it had its own bicameral legislature, and the control of its funds was in the hands of its elected Assembly. Unhappily, it was soon found that the Island was too small and too undeveloped to be administered as a separate entity, so in 1833 it was made for purposes of administration a part of the Windward Islands. Then in 1889, it was dissociated from the Windward Islands and was by Act of the Imperial Parliament linked with Trinidad as a single colony. The reason for this change was that the Island had fallen into a

period of severe depression and it was hoped that economies in the cost of its administration would ensue and that capital would flow from Trinidad to help in restoring its finances. These hopes did not materialise. So in 1899 Tobago was reduced to the status of a Ward of Trinidad, its revenue and governmental administration were merged in Trinidad's, it ceased to maintain its own statute book or to have any separate treasury, and thereafter it was governed from Port--of Spain. Worse, it lost its representative parliamentary institutions and had to be content with naked crown colony rule.

"Thus, until the advent of County Councils, Tobago had no representative organ to express the hopes and aspirations, the fears and apprehensions, or even the day-to-day actualities of its people. It was not even represented in the Legislative Council in Port of Spain since that Council was without an elected membership up to 1925.

"Another factor *which* needs to be taken into account is the difference in the make-up of the two peoples. Substantially, Tobago is a homogeneous society whereas Trinidad's is heterogeneous. The culture and customs of the Tobago people are in many respects fundamentally different from Trinidad's. There was a consequent lack of identity between the two societies.

"Then, let us look at the size and population of Tobago. In area it is 116 square miles, larger than Montserrat, the British Virgins, the Cayman Islands, and even St. Kitts-Nevisnguilla. It is only 17 square miles less than Grenada which aims at Independence in 1974. Its population is

approximately 40,000, less only than St. Kitts-Nevis-Anguilla of the places I have first mentioned. So the question is asked - why should it remain a satellite of Trinidad? Why should its imports and its exports have to go first to Trinidad and then to be transshipped? Not even the W.I. Shipping Service honours it with a single call in either direction whereas Montserrat with 32 square miles and less than 15,000 people has regular calls each way? Why should it no longer have a Deeds Registry or a Record Office where certificates of births, marriages and deaths can be obtained? These are some of the points, which have been and are being often made.

"It is not surprising then that the existing Constitution recognised the special position of Tobago. 'Whatever its electoral roll, it is prescribed that it must have at least two seats in the House of Representatives. This was a privilege and an exception from the rule that the voting strength of every constituency should be approximately equal."

326. It is clear that the Tobagonian is very different in temperament from the Trinidadian. There is a lack of understanding, probably psychologically based, that generates Tobagonian reactions, which strike the Trinidadian as being often unduly querulous. Not surprisingly, the Tobagonian sees things differently. He accepts that there is much government development expenditure in Tobago, but he sees it as expenditure very largely on tourist promotion projects, which do not affect him particularly. He is unimpressed by the argument that the W.I. Shipping Service caters for calls at one port only (hence only at the main port) of each of the contributing units and that, Trinidad and Tobago being together only one such unit, there cannot be calls at Scarborough as well as

at Port of Spain. He attributes the higher cost of living in Tobago to indifference by the Trinidadian to his welfare and prosperity. He is not content that F3a order to obtain certified documents such as certificates of the birth or marriage or death of persons born or married or dying in Tobago he must apply to an office in Trinidad where he must apply or send to collect them. In a word, he complains that Trinidad does not understand and has never understood Tobago.

327. This feeling of apartness has manifested itself in, among other ways, the getting together of what seems to be as yet a relatively small group of Tobagonian who advocate secession from Trinidad. At the miniconvention in Tobago they appeared to have qualified their demand in that they called then for the Constitution to provide for an option to Tobago to determine by referendum at some unspecified time or perhaps at any time in the future whether or not to secede from Trinidad. They explained that it was necessary first to examine thoroughly whether, as they claimed, government revenues derived from Tobago exceeded public expenditure there. This follows from their rejection of all assurances to the contrary. The question may therefore be reversed - what if Trinidad should resolve that the cost of unity is too great and opt to discard Tobago?

328. In our view, such questions are or should be neither decisive nor relevant. The problems and consequences of further fragmentation in the Caribbean are fundamentally far more important. Hence means should be sought to dispel doubts and reconcile differences. Accordingly, we do not and cannot recommend the inclusion in the Constitution of any provision pointing towards secession. Rather, our recommendations are and must be aimed at strengthening the national unity of Trinidad and Tobago.

Office of the Permanent Secretary

329. We are agreed that many of the complaints of the people of Tobago are justified. While there can be no doubt that special attention has been and continues to be paid to its physical development, much more needs to be done to improve the administrative processes and to vest greater executive authority in the officials resident there. The disparity in administration was brought into sharp focus by a comparison of the authority which was vested in the then Senior Executive (the Commissioner for Tobago Affairs) following the devastation of the Island by hurricane Flora in 1963, when it became necessary to plan and implement urgent rehabilitation and reconstruction programmes, with the present role of the incumbent Senior Executive (the Permanent Secretary in the Ministry for Tobago Affairs). It seems to us that broad guidelines should be charted within which many executive decisions can be made and administrative action taken in Tobago without the requirement to refer back to Trinidad for specific ad hoc authority. We therefore recommend the replacement of the Permanent Secretary in Tobago by a Commissioner for Tobago and that in any event the Senior Executive there should be vested with wider powers and greater authority than he now enjoys.

Communications

330. We recommend also that sea and air communications between Tobago and Trinidad and beyond should be considerably improved, that the steps to be taken for achieving this objective should be examined as soon as practicable and, in view of the circumstances now prevailing, that they be kept under close review until they can be implemented.

Public Institutions in Tobago

331. We are agreed that reform for Tobago should be centered around greater autonomy for public institutions without imposing detailed direction from appropriate departments in Trinidad. But we reject the suggestion made to us that Tobago should have its own mini-parliament, with power to pass legislation on purely local matters, and at the same time have representatives in the National Assembly. We see no need for a law-making agency for so small a community where enactments would in general be the same as for the entire unitary State. If it were admissible, a similar case could readily be made for several remote areas in Trinidad. Nor do we consider that sufficient grounds were put forward to support the suggestion that Scarborough be raised to the status of a municipality. The ceremonial trappings of a municipal council without any additional executive authority would merely add to administrative costs without improving efficiency.

332. We found merit in the claim that in several instances planning and the execution of programmes take an exceedingly long time because of the need to have plans for development programmes in Tobago examined and ratified (at times initiated) by counterpart ministries in Trinidad. The Tobago County Council, which derives its authority from the County Councils Ordinance, No.39 of 1952, is legally unable to act except in limited areas. This local authority could however be used as the nucleus of a more dynamic and authoritative body.

Tobago Regional Council

333. We recommend that the Tobago County Council should be abolished and replaced by a Tobago Regional Council, consisting of elected and selected (list) members, with partly executive and partly advisory functions. The Council should comprise fifteen

members elected by a mixed system of proportional representation. Ten members should be elected to represent one each of ten electoral districts on a first-past-the-post system of election. Five members should be selected from lists, posted before the elections by the several political parties to the election, on the basis of a ratio of the seats won by the respective parties.

334. As an executive authority the Regional Council should carry out those duties and functions now performed by the Tobago County Council and such other duties as may be prescribed for county councils. As an advisory body, the Council would advise the Minister charged with the responsibility for Tobago Affairs on, and make recommendations in connection with, development plans for implementation of programmes in Tobago.

335. In order to preserve the independence of its members and to avoid dominance of the Council by the appropriate Minister we recommend that the Council should elect its own Chairman. The Minister should not be a member of the Council, but would be empowered to attend meetings (or to be represented by his Senior Executive Officer) where he may take part in the debate, but shall have no vote.

336. We further recommend that provisions for the Tobago Regional Council should be included in the Constitution.

Registry of Deeds and Issue of Certificates of Birth etc.

336A. We were concerned to make some positive recommendation regarding the registration of deeds and other instruments affecting property in Tobago and requiring to be registered, and the issue of certificates of births, marriages and deaths occurring there. The matter calls for closer investigation than we were able to give it, but -

- (a) We do not anticipate any formidable difficulty in the way of issuing certificates of birth, marriage or death. Our understanding is that all the statistical information is recorded in the first instance in Tobago, remitted after a prescribed period to Trinidad where it is copied into the master register at the Registrar-General's Office and then returned to Tobago where it remains finally lodged. But all the functionaries who are authorised to issue certified copies (which are the only copies recognised for official, legal or other formal purposes) are in the Registrar-General's Office in Port-of-Spain, hence the imposition of going or sending for them from Tobago.
- (b) As regards deeds and other instruments requiring to be registered, their priority in effect depends upon their priority of registration. Normally all such instruments must be registered in the Deeds Registry in Port-of-Spain where the date and actual time of their registration are duly recorded. But the Tobago Deeds Ordinance, Ch.28 No.3, provides the facility that, if delivered to the Registrar-General's delegate in Tobago, he will record the date and actual time of their delivery to him as being the date and time of their registration. Our information however is that no public officer has been appointed to be the Registrar General's delegate in Tobago as contemplated by the Ordinance, although a functionary there apparently acts, without express authority, as if he had been duly delegated in that behalf.
- (c) This provision regarding a delegate suggests an answer to the problem of issuing certificates. He can be effectually appointed and then added to the

schedule of officers listed in the Schedule to the Evidence Ordinance, Ch.9 No.7 as being authorised to certify copies of entries in the Register of Births, Marriages and Deaths.

- (d) The answer to the problem of the registration of deeds and other *instruments* would be rather more difficult. However, in the Deeds Registry there are Hooks recording Tobago transactions exclusively. And in these days it is common to photocopy all kinds of documents so deeds can be photocopied; also, there are a number of other means of recording copies - microfilms for example. This suggests to us an avenue of inquiry for finding an appropriate solution.

Accordingly we recommend that the whole question should be investigated by a Committee specially appointed for that purpose. Such a Committee should be appointed as soon as practicable and its report requisitioned with despatch.

IX - THE JUDICIARY

337. Under this head no serious difference arose except in one respect. Everyone agreed, as we do, that the provisions of the present Constitution are generally speaking sound. We must have a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice and a Court of Appeal.

Jurisdiction of Judges

338. At present the Chief Justice is ex officio a judge of the High Court and the President of the Court of Appeal. No other judge is entitled to sit as such in both these courts. In England, from which our judicial system is largely borrowed, Justices of Appeal occasionally sit as judges of the High Court in order to relieve the congestion in the lists. Similarly, we think that, to achieve greater flexibility in that regard, the practice should be introduced here. Accordingly we recommend that, all Justices of Appeal should ex officio be judges of the High Court. This does not mean of course that they would normally do the work of a High Court judge, but only that they would have the jurisdiction to do so.

Appointment of Judges

339. We have already recommended in paragraph 160 that the Chief Justice should be appointed by the President acting in his own discretion after consultation with the Prime Minister, the Leader of the Opposition and such other persons as he may think fit. This would replace the present system whereby the Chief Justice is appointed by the Governor-General acting in accordance with the advice of the Prime Minister. It is hoped that the method of appointment via recommend will remove the office from what appears to be the direct patronage of a purely political officeholder.

340. As regards the other judges both of the Court of Appeal and of the High Court, we recommend that the Judicial and Legal Service Commission should continue as the appointing authority. But we think there should be some alteration in its composition. The Chief Justice should remain as its chairman, but we see no sufficient reason why the Chairman of the Public Service Commission should be a member *ex officio* or why another judge of the Supreme Court of Judicature should be as a matter of course. We agree that a former judge of the Court should be a member and think it would be of advantage to appoint one who has only fairly recently retired. The three other appointees should be in the discretion of the President after due consultation, and the secretary should continue to be, as at present, a senior officer in the Service Commissions Department fully acquainted with all relevant regulations and procedures.

Age of Retirement

341. Under the present Constitution Justices of Appeal must retire at the age of 65 and High Court judges at 62. We see no reason for the difference. The argument was that the work of the High Court is more strenuous physically, so that the retiring age should be lower. So far as we know, the argument has not prevailed elsewhere and, although we cannot call in aid the benefit of experience in Trinidad and Tobago, we see no reason why High Court judges cannot perform after the age of 62 as efficiently as their colleagues in the Court of Appeal. We recommend therefore that the retiring age for all judges should be 65 years.

Removal of Judges

342. We recommend the retention of the present provisions dealing with the disciplining of judges and their removal for misconduct but with one significant change. We

recommend that the report of the tribunal which has investigated charges against a judge should no longer be sent to the Privy Council for consideration but should be sent to the President who shall act on its recommendations. When it is, borne in mind that the tribunal investigating the charges will be made up of three persons all of whom are holding or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some Commonwealth country or a court having jurisdiction in appeals from any such court, there would seem to be no need for a further review of the matter by another tribunal outside the country.

Appeals to the Privy Council

343. We turn now to the question of appeals to Her Majesty in Council or, as it is more commonly called, to the Privy Council. These owed their origin to the historical right of the British subject to appeal for justice to the Sovereign. Appeals from the courts in Britain were referred to the Judicial Committee of the House of Lords and those from colonial courts to the Judicial Committee of the Privy Council. The question now is - should appeals from our courts continue to go to the Privy Council:

344. The overwhelming view of the organisations and individuals as represented to us is in favour of retaining such appeals. That too is what the lawyers want. ¹ie had hoped to ascertain the view of the judges, for which purpose among others we invited them to submit a memorandum to us and/or to provide us with the opportunity of discussion in private session. Unfortunately, or so we think, they declined the invitation.

345. In arriving at a conclusion on any issue arising for consideration, we agreed that we should be guided, but not governed, by what appeared to be the wish of the majority of the

people. Save for two women's groups and three individuals who advocated the abolition of appeals to the Privy Council, everyone who wrote or spoke on the subject was for retaining them. I have examined the reasons they put forward in support and find ourselves unable to accept them.

346. First, it was laid that we should continue as at present until a Caribbean Court of Appeal can be established. The proposal for establishing such a court has been discussed for years and the indications point, we think plainly, to its non-acceptance. The Jamaica Bar Association firmly rejected it and resolved to retain the right to appeal to the Privy Council until they feel sufficiently assured to vest final authority in their own Court of Appeal. Guyana has already abolished appeals to any external tribunal and will almost certainly refuse to go back on their tracks. It seems to us then that there is little hope of establishing a Caribbean Court of Appeal so long as our Caribbean territories remain politically separate.

347. Secondly, it was argued that in a country as small as ours there is always a grave danger that personalities and political or other pressures may influence judicial decision, even if only subconsciously, so that prudence demands the retention of a final appellate tribunal which cannot be so subjected. The record of the Court of Appeal since its institution on Independence hardly supports this apprehension. Of 45 appeals filed up to December 1973, 42 were dismissed; 2 are not yet determined; the 45th was a highly controversial and extremely technical matter on which opinions are still divided. In fairness however it should be added that in two of the 42 unsuccessful appeals the Privy Council disagreed with the Court of Appeal's interpretation of certain statutes but nevertheless arrived at the same final conclusions.

348. The record shows further that the Government has often been unsuccessful in important matters which have come before our courts, including issues relating to fundamental rights and points arising out of mutiny trials. No one has been able to mention a single case in which it is suggested that the, Court of Appeal has yielded to pressures of any kind, and we are very certain that no one can. Inevitably, some judges will show greater boldness and initiative than others, just as some are disposed to be more bound by precedent than others.

349. Thirdly, statements have been made implying that by abolishing appeals to the Privy Council we will cut ourselves off from the sources of development of the common law and the interpretation of statutes on many of which our own are modelled. Nothing can be further from fact. Report, of decisions of the courts in Britain will continue to be available r>s a guide. Just as reports of decisions from all other Commonwealth jurisdiction. Indeed, it is becoming increasingly accepted practice in every Commonwealth court to rely on the decisions of other such courts -- if not as binding precedents, at least for guidance - and likewise of U.S. Courts since the law they administer is based substantially on the common lava.

350. Also, the view now generally prevails that the common law, which is of dynamic growth, should be developed consistently with the philosophy That is why many Commonwealth countries rejected the proposal which was canvassed at the Third Commonwealth Law Conference in Sydney, Australia in 1965 for the establishment of a Commonwealth Court of Appeal to take the place of the House of Lords and the Privy Council and to serve as a final appellate tribunal for the hole Commonwealth. One of the arguments advanced then, but quite a successfully, was that all Commonwealth law, being

grounded in the Common law, would benefit from a common development under the aegis of the proposed Commonwealth Court of Appeal to which would be appointed Commonwealth judges of the highest eminence.

351. In fact, the development of law being rooted in the society in which it is to apply, we find that Australia, Canada and India, beginning with the English common law and legal system as we did, have developed their own doctrines and have not hesitated to differ from English judges of the highest authority when they were of the view that the decisions given by them were not correct. In time Australian decisions have been quoted in English courts as arguments for reviewing English precedents. This is the sort of future we should, envisage for our law. Already there is a decision of the Court of Appeal refusing to follow that of an English High Court judge on a like issue - and there was no appeal. Our history therefore supplies no reason for timidity. Our law however will not develop a local flavour so long as the final word rests with a court which can have no more than a superficial knowledge of our society.

352. Fourthly, it is said that because of the size of our population we may not be able to produce a sufficient number of competent lawyers to fill our needs in private practice, in the public service, as academics at the newly established Lava Faculty and Law School and on the Judicial Bench; also, that the tradition which exists in Britain of eminent lawyers moving from private practice to the Bench has not been followed significantly in Trinidad and Tobago. It is therefore contended that the quality of our appellate court will prove to be unpredictable, so that it would be wise to maintain our links with a tribunal the excellence of which can be depended upon and whose services are available free of cost to the State. We cannot help contrasting this timorousness and sense of insecurity with the urgency to be independent - to replace the monarchy with a republic, to control our economy, to seize what are described as "the

commanding heights" in our society, to be in authority in Church and State, to determine our own destiny and to ensure that decisions affecting the people of "Trinidad and Tobago are made, so far as it is at all possible, by the people of Trinidad and Tobago in Trinidad and Tobago.

353. Further, the recent establishment in our University of a Faculty of Law and by the Council of Legal Education in the West Indies of a professional School of Law will most certainly help in upgrading and maintaining the already high standards which our courts have set. Errors of judgment will sometimes occur:: that is a human characteristic which is common to the courts in every country as it is in everyday life. But we can be sure that the psychological constraints which it is claimed that the right to appeal to the Privy Council provides will be more than compensated for by the critical academic analysis to which future judgments will undoubtedly be subjected and which is in all jurisdictions a most important factor in maintaining the administration of the law at the highest level.

354. Besides, it seems incongruous that we should want to become a republic and yet look to a monarchical institution for justice from our courts. India, Pakistan, Nigeria, Ghana and Guyana are among other republics which, while remaining in the Commonwealth, have disallowed any further appeals to the Privy Council. And, although retaining the British monarchy, Canada and (in respect of matters originating in its High Court its federal court) Australia have likewise disallowed them. Again we would ask - why the timidity in Trinidad and Tobago?

355. Finally, the argument based on the absence of cost to the country in relation to the services provided for it by the Privy Council brings us back again to the general demands

for independence and leads us to wonder whether independence becomes meaningless when we are offered dependence without charge.

356. Apart from the above, it should always be borne in mind that the bulk of cases which come before our courts are within the jurisdiction of magistrates and that, unless it grants special leave on the ground that a point of great public importance is in issue, the Privy Council will not entertain any appeal originating from a magistrate's decision. The decision of our Court of Appeal is otherwise in such cases final. Only one such case has gone to the Privy Council since Independence. The special leave of the Privy Council has also to be obtained to appeal in matters heard at the criminal assizes and in most instances such leave has been sought on convictions for murder as a last desperate hope of escaping the sentence of death. Of the 27 criminal matters in which leave to appeal was sought 17 were on convictions for murder, 5 were mutiny appeals which are unusual and the remaining 5 were for other offences. Civil appeals for the whole of the 10-year period following Independence totalled 18 and when it is considered that the average number disposed of by the Court of Appeal was as high as 85 a year, it will be appreciated what a very few civil matters originating in the High Court go on appeal from the Court of Appeal. It appears to us that our solution must lie, not in the retention of a relatively rarely used right of appeal to a foreign tribunal, but in the willingness of more lawyers of competence and integrity to make themselves available for service on the Bench and in the maintenance of a proper system of selection for such service.

357. Giving every consideration to the arguments advanced by the lawyers and giving full weight to the strength of public opinion on the question, we nonetheless recommend

that appeals to the Privy Council, whether by right or by leave, be discontinued and the facility to proceed on appeal from our Court of Appeal be abolished for the future.

X - OMBUDSMAN

358. There was overwhelming support from all sections of the public for the creation of the office of Ombudsman. The arguments in support indicated that there was some misunderstanding of the nature and scope of that official's authority - at least in relation to the models which exist to date. Many people seemed to think of him as a general inquisitor whose job it would be to investigate wrong of any kind and to look into any alleged grievance whether arising within the public administration or in the private sector or whether falling within the scope of misadministration or not. Some people seemed to think of the Ombudsman as an alternative to the Courts supplementing and in some cases supervising and correcting their work. It is necessary to understand the limitations of the office to prevent the sense of disillusionment which might prevail if the new office does not achieve all that was hoped of it.

359. It is now generally known that the office originated in Sweden where the constitutional position is that Ministers are not responsible for the day-to-day administration of their departments. They issue regulations and give general directions which are carried out by civil servants who can be called to account. The civil ombudsman in Sweden is an official appointed by the Parliament to ensure that the civil service works according to the prescribed rules and that any acts of misadministration are corrected. The administrative processes of decision-making are quite open. - In Trinidad and Tobago as in the United Kingdom Ministers are directly responsible to Parliament for the administration of their Departments. We have not recommended any change in this arrangement.

360. This difference in constitutional structure between Sweden and Trinidad and Tobago has to be taken into account in structuring the office here. We have also developed a tradition of hyper-secrecy in decision making. The assumption is that officials will not give honest opinions except when protected in this way. Usually reasons for decisions are not given. This makes administrative decision-making quite unpredictable. This will make the functioning of the office of Ombudsman more difficult but we are satisfied that it can perform a useful function and we recommend that it be constituted.

Powers of the Ombudsman

361. The Ombudsman must be vested with substantial powers since he must be effective if he is to win the confidence of the people. He should be empowered to investigate all complaints alleging unjust treatment resulting from administrative action taken by a government department or local or statutory authority. We do not recommend that he be empowered, for the time being at least, to deal with complaints which involve the Police or the Defence Force. Investigation of the Police and Defence Force may involve matters of security. When experience has been gained in the functioning of the office, its scope may be broadened to include this area or a special Ombudsman may be appointed for these Forces.

362. We do not recommend that the Ombudsman should be empowered to question a Minister or Parliamentary Secretary. But if in the course of his investigation it should appear that the action complained of may have resulted from a policy decision at ministerial level, he should be entitled to call for the advice tendered to the Minister by his public service advisers before the decision was taken. Where the Minister accepted and

acted upon the recommendations of his advisers, they can be questioned by the Ombudsman. But where the Minister did not accept their advice or acted without advice, his responsibility would be made plain and the Ombudsman would so report. This procedure preserves the basic principle of ministerial responsibility to Parliament. The Ombudsman would not intervene between the Minister and Parliament.

363. The view was put forward that the Ombudsman should be empowered to investigate general allegations of corruption. We do not so recommend. Each complaint should be of a specific injustice to a person or group of persons arising from misadministration, that is to say from errors due to faulty or perverse judgment or omissions or negligence in the discharge of official duties. In the course of his investigation the Ombudsman may find proof or evidence tending to prove that corruption was the cause.

In any such case, in addition to recommending measures to remedy the injustice he would report his *findings* on corruption to the relevant authorities for continuation of the investigation and such action as may be appropriate. We would also be able to follow up the matter to ensure that it was not allowed to lapse.

The Office of Ombudsman

364. There was considerable discussion over the form, which the office should take. Many argued for a commission of three ombudsmen rather than single Ombudsman. There is precedent for this in Tanzania where a similar institution called the Permanent Commission of Enquiry is made up of a Chairman and two members. The reasons which led to that decision in Tanzania do not apply here - mainly the size of the country (366,000 square miles); the relatively scattered population (13,000,000) and the

traditional African preference for placing judicial and quasi-judicial functions in a council rather than in the hands of an individual. Basically the argument in Trinidad and Tobago was that a multi-racial society needs a multi-racial institution if that institution is to succeed. Some complaints may involve charges of racial bias in administrative decisions and complainants may harbour nagging doubts about the rapacity of the Ombudsman to decide impartially if he should happen to belong to the same racial group as the complainant or the person complained against. We do not accept this approach.

365. Experience has shown that the society has been able to produce men of unquestioned integrity and proven impartiality. We do not think that it has ceased to do so. We confidently expect that an individual can be found who is obviously capable of filling the office. We are agreed that this country will not achieve real harmony unless the difficulties in the path of that goal are recognized and positive measures taken to deal with them. It is, for example, quite sensible to seek to achieve a reasonable balance in the overall distribution of offices in the State so that no racial group can legitimately complain of discrimination. It is quite a different matter to structure an institution on the explicit assumption that no citizen of Trinidad and Tobago can exclude race as a factor in the decision-making process.

366. Even if a 3-man commission were set up there would still be the possibility that it could be dominated by a strong chairman. There would be the problem of majority decisions. Should any member of the Commission be free to disclose his dissent? If he was allowed to do so, the institution might be seriously weakened in the early days when its reputation is being slowly built up. The diffusion of responsibility resulting from the fact that there was a Commission of three persons would not necessarily make for strength and

independence. There is an equal likelihood that decisions may be made to accommodate the weakest of the three.

367. There may be a question as to the volume of work because of the number of complaints. But this can be solved by recruiting adequate staff. Wherever the institution has been successfully transplanted its growth has resulted largely from the personality, energy and good sense of the first holder of the office. New Zealand and Tanzania are examples of this. We recommend therefore that there should be one Ombudsman.

Qualification for holding the Office

368. There has been a tendency to think that a legal qualification would be an advantage to the holder. This need not be so. Expertise in administrative matters would be perhaps even more important since legal advice can always be sought. The Ombudsman should be a person of known independence, proven integrity and persuasive ability whose reputation will lend prestige to the office in its formative days.

Appointment to the Office

369. The Ombudsman is historically an officer of Parliament. To emphasize this connection we recommend that he should be nominated for appointment by the President and appointed after approval by a three-fifths majority vote in the National Assembly. We recommend a three-fifths majority because a simple majority may make him appear to be the Government's nominee. There is the possibility that the Government of the day may, by persisting in maintaining a deadlock, block the appointment of an obviously suitable candidate who it is feared will fill the office too well. This is an issue on which public

opinion can make itself felt, and our expectation is that such a problem will not last long if it does arise. The method seems superior in principle to placing the power in the hands of the Executive after consultation with the Opposition. The parliamentary source of the authority of the office should always be stressed.

Term of Office

370. We recommend that the Ombudsman should hold office for 5 years and should be eligible for re-appointment. We envisage that the appointee will normally be a person who has had a successful career and earned a reputation in some other field so that there will be no need to make the office a career appointment as in the public service. His emoluments should be the same as for a Justice of Appeal and should be charged on the Consolidated Fund.

Removal from Office

371. Provision for the removal of the Ombudsman should be the same as for removing the Auditor-General. There should be a resolution in the National Assembly calling for an investigation of the charges made against him. The charges must be set out in sufficient detail and the resolution passed by a two-thirds majority of the members of the National Assembly. The President after consultation with the Chief Justice would then appoint a tribunal of three persons one of whom must be a judge of the Court of Appeal who shall be named as Chairman. The tribunal will recommend to the President whether the Ombudsman should be removed or not, and the President must act on that recommendation. Once the resolution for an investigation has been passed by the National Assembly the President must suspend the Ombudsman. During the absence of the Ombudsman from office for any cause the President after consultation with the Prime Minister and the Leader of the Opposition should appoint someone to act until his return or replacement.

Investigations by Ombudsman

372. Normally the Ombudsman would act only upon a complaint made to him. This should be in writing and signed to establish good faith. But complaints could be made directly to his office where they could be reduced to writing. Illiterates could have their complaints written for them and witnessed by a person who can write and is able to identify the complainant. The Ombudsman should be free however to initiate an investigation where facts come to his notice which seem to merit this course.

373. We recommend that the role of the Ombudsman should be purely investigatory. He should not hold formal hearings. Once it became clear that disciplinary charges might have to be laid against any official the Ombudsman should forward the result of his investigations to the appropriate Service Commission or other authority so that the prescribed procedures for disciplinary matters could be followed. Remedial action to cure the injustice which led to the complaint should be pursued independently. Since we do not contemplate that the Ombudsman will ever hold formal enquiries in the nature of a hearing, we do not recommend that any person whose complaint or decision is being investigated should be represented by counsel.

374. If the Ombudsman should decide not to investigate a complaint because it is a matter outside his jurisdiction, he should inform the complainant as soon as practicable of both his decision and his reasons for so deciding. If he has conducted an investigation and finds the complaint unjustified or such as for any reason to call for no redress, he should likewise as soon as practicable inform the complainant of both his decision and his reasons for so deciding. But if on his investigation he finds the complaint justified and that it calls

for some action by way of redress, he should take the following steps or such of them as may be necessary -

- (a) bring the matter to the attention of the Permanent Secretary or other Head in the Department out of which the complaint arose and propose to him such form of redress as he may recommend; in default of a satisfactory conclusion,
- (b) report the matter to the Minister in charge of the Department for such intervention as may be recommended; in default of a satisfactory conclusion,
- (c) report the matter to the Prime Minister for his intervention; and in default of a satisfactory conclusion, (d) report the matter to the National Assembly through the Speaker.

In any such case, the Ombudsman should inform the complainant that he is giving active attention to his complaint and, in the event of no redress being granted upon reference as far up as to the Prime Minister, he should notify the complainant of his intention to report the matter to the National Assembly.

375. We considered whether a fee should be payable for filing a complaint with the Ombudsman. It seemed to be a useful method of deterring frivolous complaints if it were not fixed so high as to create hardships for the genuinely poor. On balance, however, we do not think a fee is justified. The citizen must be encouraged to feel that the institution has been created to deal with his legitimate complaints and is ready- to do this without let

or hindrance. It may result initially that there will be many unfounded complaints but, as experience has shown the limits of the Ombudsman's powers will in time be understood so that the number of complaints will become manageable.

376. We recommend that the Ombudsman make an annual report of his activities to Parliament but if he should at any time think it necessary, he should be entitled to submit a special report. All reports will be submitted through the Speaker.

Staff

377. Subject to the National Assembly approving the number and grades of his staff and the emoluments payable to each, we recommend that the Ombudsman be given full control over their appointment and discipline. Regulations should prescribe disciplinary procedures. This is important as the Ombudsman's staff must assist him in his investigations. If they remain within the jurisdiction of the public service, they may not develop that sense of independence of it which will be required for objective examination of decisions by public officers. The Ombudsman should be free however to recruit any of his staff from the public service if he should so decide, but any officer so recruited should be taken on secondment subject to the approval of the Public Service Commission.

378. We recommend that the creation of the office of Ombudsman, the method of his appointment, the terms of his tenure of office, the provisions for his removal and the general scope of his powers should be set out in the Constitution. The other matters should be provided for by statute. Indeed before our appointment to this Commission the Government had published for public comment a draft Ombudsman Bill but, at our request, refrained from taking any further step with regard to it until we had reported. We would accordingly propose that this Bill be redrafted to give effect to our recommendations.

XI - SERVICE COMMISSIONS

379. The importance of the public service in the effective management of Trinidad and Tobago cannot be overestimated. Much of the information required for the formulation of policy has to be collected and organised by public officers for presentation to the political decision-makers and the method of presentation can influence the decision. When policy is once decided upon, its implementation depends largely on the skill and dedication of public officers. They are therefore very much a part of government.

380. In the period pre-dating full internal self-government, total identification of the public officer with the political administration produced no contradictions because the political administration never changed except in so far as one Governor replaced another. And to many the role of the Governor as the local fountain-head of political authority was never very obvious. He appeared to be merely another public servant. Through his senior subordinates he was responsible for the management of the public service, ensuring that it was from his point of view an efficient instrument for carrying out the policies which he had been instructed to carry out. His role in that respect was never regarded as interference with the public service.

381. With full internal self-government, and subsequently independence, complications were inevitable. The political administration could now be subject to sudden change. The opposition critic of one day could be the government Minister of the next. Yet, if the administration was to be a success, the public officer had to be responsive to the policy demands of whatever government might be in power and show equal skill and dedication in their implementation. Understandably the political administrators would wish to have some

say in the management of a machine the proper operation of which was important for their success. Any attempt to do this might very well savour either of victimisation or of favoritisms.

382. The solution to this problem adopted in the present Constitution was to create independent Service Commissions to which was entrusted the power to appoint, transfer, promote and discipline persons in the public service. This was intended to insulate public officers from direct political influence. Thus protected, they would be free to serve any political administration with equal dedication. This structure appears to have worked well and we recommend that it should be continued. We accept also that the political authorities have a legitimate need to exert some influence on the management of the public service to ensure that it is efficient and responsive. For this reason we recommend the retention of the Prime Minister's veto over appointments to certain top posts in the service. These have been set out in the chapter on the Executive.

The Commissions and their Jurisdiction

383. We discussed the workings of the Service Commissions with their Chairmen and members. They suggested certain administrative modifications which seem to us sound. We recommend therefore that the Police Service Commission be renamed the Protective Services Commission and that the Fire Service and Prison Service which now fall under the jurisdiction of the Public Service Commission be transferred to that Commission. These three services - Police, Fire and Prisons - are subject to special regulations not applicable to the rest of the public service and we agree that they can conveniently and logically be placed under the jurisdiction of one Commission.

384. At the moment four posts which are subject to the Prime Minister's veto fall under the jurisdiction of the Judicial and Legal Service Commission - those of Solicitor-General, Chief Parliamentary Counsel, Registrar-General and Crown Solicitor. We have already recommended that the power of veto over the posts of Crown Solicitor and Registrar-General should be removed. We recommend that appointment to the other two posts should be removed from the jurisdiction of the Judicial and Legal Service Commission and be vested in the Public Service Commission. The functions of the Judicial and Legal Service Commission as the body appointing Judges and magistrates demand that its total independence of the Executive should stand out. This, it seems to us, can best be achieved by relieving it of making appointments to offices, which require consultation with the Prime Minister. The Public Service Commission already appoints lawyers to some posts in the public service, for example the Legal Secretary to the Minister of Legal Affairs and the legal advisers in certain Ministries. It can, if it wishes, consult with the Judicial and Legal Service Commission before making these appointments.

385. Save for these modifications we recommend that the Public Service Commission should remain unchanged as should the Teaching Service Commission. We have dealt with the Judicial and Legal Service Commission in the chapter on the Judiciary.

A Health Service Commission

386. A case was advanced for the creation of a Health Service Commission with jurisdiction over medical, paramedical and technical staff in the Health Service. It was argued that the appointment, transfer and disciplining of these officers would be better and more expeditiously dealt with by a separate Service Commission with one or more of its members having special qualifications in health and cognate matters.

387. We are opposed to the proliferation of Service Commissions unless compelling reasons of administrative efficiency or convenience make this necessary. The fact that the Judiciary is not within the ambit of the public service is the real justification for the establishment of a Judicial and Legal Service Commission. And, as has already been pointed out, the Protective Services Commission is recommended to replace the Police Service Commission and to be invested with authority over officers all of whom serve under special disciplinary codes and whose promotion and discipline may be affected by considerations somewhat different from the rest of the public service. As regards the Teaching Service Commission, entrusted with a jurisdiction over a body of persons approximately twice the number of those in the health Service, its establishment was intended to lighten the work-load of the Public Service Commission, an objective which would be carried further by detaching the Fire and Prison Services from that Commission and transferring them under the Protective Services Commission. We see no need to carry it even further.

388. Nor can we accept the proposition that the holding of technical qualifications in a common field is sufficient to justify hiving off a portion of the public service and vesting responsibility for it in a separate Commission. Otherwise it would be difficult to resist like demands by other professional or technical personnel in, for example, engineering, land surveying or agriculture.

389. For these reasons we do not recommend the establishment of a Health Service Commission.

Membership of Service Commissions

390. We recommend that each Service Commission should consist of a Chairman and four other members. All should be appointed by the President acting in his own discretion after consulting with the Prime Minister, Leader of the Opposition and any other persons he may think fit. None of these appointments should be subject to parliamentary approval since they are to act independently of the National Assembly and of politics.

391. We noted that there has been some duplication in the membership of the Service Commissions. And the present Constitution itself provides that the Chairman of the Public Service Commission shall be a member of the Judicial and Legal Service Commission and that he or his Deputy shall be the Chairman of the Police Service Commission. We have already said there is no sufficient reason why the Chairman of the Public Service Commission must be a member of the Judicial and Legal Service Commission, and we recommend here that neither he nor his Deputy should ex officio be the Chairman or a member of the Protective Services Commission. We recognise the force of the argument that some duplication in membership, especially at that level, contributes to greater uniformity of interpretation and approach. But we are satisfied that it increases unduly the work-load of any such member and that uniformity can be achieved by an efficient use of the permanent secretariat of the Service Commissions Department. So we recommend further that as a general rule no person should be appointed to more than one Commission.

Service Commissions Appeal Board

392. The present Constitution does not provide for appeals from disciplinary action taken by any of the Service Commissions. This omission should be corrected as indeed the Public Service Commission itself attempted to do.

393. By regulations promulgated by the Public Service Commission in October 1966 a Review Board was set up to which appeals in disciplinary matters could be referred. But since the Constitution vested the disciplinary power in the Commission itself, the Review Board can act in an advisory capacity only. This means that the Commission is free to accept its advice in whole or in part or to reject it altogether. This is wrong.

394. Accordingly we recommend that the Constitution provide for a Public Service Appeal Board to which public officers may appeal from decisions of any of the Service Commissions imposing a penalty as a result of disciplinary proceedings brought against them. The Board should have jurisdiction also to entertain appeals from decisions of the appropriate Service Commission approving the withholding, suspension or reduction of a public officer's superannuation benefits.

395. The Review Board as set up at present consists of a Chairman and eight other members and may sit, if necessary, in one or more divisions. From the statistics showing the number of appeals referred to the Board to date it would seem that a single division of the recommended Appeal Board would suffice at present it may well be that in course of time need will arise for it to be enlarged so as to sit in two or more divisions simultaneously but, to begin with, we recommend just one division and that the Board should consist of a Chairman and two other members. We recommend further that the Chairman should be a judge of the Supreme Court since appeals may be lodged as well by

the most senior as by the most junior grades of officers. The Chairman should be appointed by the President after consultation with the Chief Justice, and the two other members should also be appointed by him but in his own discretion after consulting such persons as he may wish; one of these two should be a retired public officer.

The Public Service and Politics

396. We discussed a possible review of the regulations governing the participation of public officers in politics. Public officers now have the right to join political parties. They can take part in party group activities and attend as delegates at national conventions. They are not supposed to campaign publicly or engage in activities involving identification with any party at public functions. But the size of the community and the multiplicity of inter-relationships are such that the ban on public identification seldom helps to conceal political affiliations. Besides, the fact that overt participation is not officially permitted helps to create a suspicion that such an affiliation exists when in fact it does not.

397. The idea of a complete ban on political activity by the public officer seems to us unacceptable. It would be far too drastic a curtailment of his fundamental rights when regard is had to the comparatively minor role most public officers play in important policy decisions or in supervising policy implementation. We considered recommending that the system be opened up completely and that public political activity be permitted for all public officers save the comparatively small group directly concerned with the formulation of policy and the supervision of its overall implementation. The Public Service Association through its officers did not favour such a change. Since they were the persons directly involved we decided that the matter should be left for the time being as it is. The area is one which seems to us to call for detailed study.

398. We recommend however that teachers should be allowed to take active part in politics and to stand for office. In Jamaica they are granted leave to contest elections and, if successful, are allowed further leave if this is necessary for the performance of their political duties. There is a need to broaden the area of recruitment for participation in politics. The public service and the teaching service employ over 27,000 persons most of whom are persons of above average education. They are expanding; areas of employment. Politics could be improved by the involvement of these persons.

399. We believe that the requirements of official secrecy and civil service anonymity should be relaxed somewhat to allow civil servants to explain to the public, to members of Parliament and to the Ombudsman what sort of advice they tendered to their Ministers. We note for example that Sweden has not found it necessary to insist on the same amount of secrecy that characterises the Westminster model political system.

400. In this connection we note that the Fulton Committee 1966-68 which investigated the operation of the British Civil Service made similar recommendations with respect to secrecy in the administrative process. We agree with that Committee when it noted that

"277. We think that the administrative process is surrounded by too much secrecy. The public interest would be better served if there were a greater amount of openness. The increasingly wide range of problems handled by government, and their far-reaching effects upon the community as a whole, demand the widest possible consultation with its different parts and interests. We believe that such consultation is not only necessary in itself but will also improve the quality of the ultimate decisions and increase the general understanding of their purpose.

278. *We welcome the trend in recent years towards wider and more open consultation before decisions are taken; and we welcome, too, the increasing provision of the detailed information on which decisions are made. Both should be carried much further; it is healthy for a democracy increasingly to press to be consulted and informed. There are still too many occasions where information is unnecessarily withheld and consultation merely perfunctory. Since government decisions affect all of us in so many aspects of our lives, consultation should be as wide as possible and should form part of the normal processes of decision-making. It is an abuse of consultation when it is turned into a belated attempt to prepare the ground for decisions that have in reality been taken already.*

279. *We recognise that there must always be an element of secrecy (not simply on grounds of national security) in administration and policy-making. At the formative stages of policy-making, civil servants no less than Ministers should be able to discuss and disagree among themselves about possible courses of action, without danger of their individual views becoming a matter of public knowledge; it is difficult to see how on any other basis there can be mutual trust between colleagues and proper critical discussion of different hypotheses. But the material, and some of the analyses, on which these policy discussions are going forward, fall into a different category; unless there are overriding considerations to the contrary (e.g. on grounds of national security, the confidential nature of information supplied by individual firms, or to prevent improper financial gain), there would be positive advantages all round if such information were made available to the public at the, formative stage of policy-making."*

401. It is also worth noting that the Committee drew attention to the Swedish system. In Sweden there is open consultation on issues before policies are determined. Files and documents concerning public issues are made available unless they are declared to contain material which should be kept confidential in the interest of military and economic security, good international relations and crime detection. Documents are also classified if it is necessary to protect the privacy and good name of individuals or to maintain public morality and decency. Although these exceptions are made, the burden of proof is on the authorities to indicate why the documents are not open to public scrutiny. One of the Swedish Ombudsmen is specially charged with ensuring that documents of general interest are made available to the public.

402. Openness may inhibit frankness and cause decision-makers to be cautious. But, if publicity is a worrying factor to those who are inclined to recommend things that are known to be unwise, it would also give support to others who believe that what they are urging is right and proper. Those who accept public responsibility must know that their acts and decisions must be open to public scrutiny.

XII - FINANCE

403. The basic aim of the provisions in the present Constitution relating to finance is to ensure that public funds are spent only with parliamentary authority and in conformity with the procedures prescribed by law for the expenditure of such funds. These procedures are set out in the Exchequer and Audit Ordinance, No.20 of 1959, and in the *Financial* Regulations made and directions given by the Minister thereunder.

This aim is sought to be achieved by directing that -

- (i) all public revenues and other moneys howsoever raised shall be paid into a single fund called the Consolidated Fund unless Parliament specifically directs that they be paid into some other fund;
- (ii) no moneys shall be withdrawn from the Consolidated Fund (except sums charged on it by the Constitution or other Act of Parliament) or from any specially created fund without the authority of an Act of Parliament; no such withdrawals shall be made except in the manner prescribed by law; and
- (iv) an Auditor-General shall be charged with the duty of auditing all public accounts and reporting annually to the Minister of *Finance* who must in due course submit the report to Parliament.

The Consolidated Fund

404. The Constitution also requires the Minister of Finance to prepare and present to the House of Representatives before or not later than 30 days after the commencement of the financial year estimates of the revenues and expenditure for that year: This is normally referred to as the budget.

After considering the budget, Parliament passes an Appropriation Act authorising the issue from the Consolidated Fund of the sums required to meet the estimated expenditure. If in the course of a year it is found that the amount appropriated for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no amount had been appropriated or that expenditure has been incurred for any purpose in excess of the amount appropriated or without any appropriation having been made for that purpose, a supplementary estimate showing the sums required or spent must be laid before the House and a supplementary Appropriation Act passed to authorise the expenditure from the Consolidated Fund. Ideally, therefore, there should never be any expenditure of public funds without parliamentary authority in most cases before, and only occasionally and then within a short time in the same year after, it has been incurred. In practice however this cannot always be so.

The Contingencies Fund

405. The Constitution therefore empowers Parliament to set up a Contingencies Fund from which the Minister of Finance is authorised to make advances if he is satisfied that there has arisen -

"an urgent and unforeseen need for expenditure for which
no other provision exists".

In that event, supplementary estimates must be prepared and presented to Parliament and a supplementary Appropriation Act passed as soon as possible afterwards replacing the sums so advanced from the Contingencies Fund. This allows both for the flexibility necessary in managing the proper expenditure of public funds and for the *maintenance* of adequate parliamentary control.

406. If this mechanism to provide flexibility is not to be manipulated to circumvent the system of parliamentary control, it is essential that the *Contingencies* Fund be used only where expenditure is both urgent and unforeseen. Where, for example, an unforeseen situation arises but the expenditure is not so urgent that it cannot be deferred pending a supplementary appropriation, resort should not be had to the Contingencies Fund. Or where, though both unforeseen and urgent when it arises, it is clear that the situation will call for continuing expenditure., the immediate requirement may be met by an advance from the Contingencies Fund, but the replacement of the advance and the continuing commitment should, as the Constitution requires, be made as soon as possible the subject of a supplementary appropriation. Instances have been brought to our notice when these requirements have not been duly observed, one of them being the payment of substantial increases which by agreement with the Public Service Association in 1971 were to be effective retrospectively for a period of 6 months. The expenditure was met from various sources including the Contingencies Fund, without prior parliamentary approval and was only much later covered by supplementary appropriation. In our view, this was contrary to the intent of the Constitution. Also, once money has been spent, public debate becomes of little value in restraining possible extravagance.

407. We would have liked to tighten the system so that it would not be easy for a government to live within the existing constitutional and legislative provisions and yet defeat the very purposes they seek to achieve. This was not altogether possible as it would involve an undue sacrifice of the flexibility required for proper financial management.

408. Accordingly we recommend that the existing procedures outlined above should be retained with but one amendment. When an advance has been made from the Contingencies Fund, a supplementary appropriation bill for its replacement from the Consolidated Fund should be laid before Parliament not later than three months after the advance has been made. If for any reason more time is necessary, the National Assembly should be informed of the delay and a resolution sought approving an extension of time. The National Assembly would thus be given an opportunity very shortly after the event to judge whether or not in the words of the *Constitution* the need for the advance was indeed "urgent and unforeseen" and whether or not in the words of the Exchequer and Audit Ordinance the expenditure could not "without injury to the public interest be postponed pending parliamentary provision. In our view, the only effective check upon government spending is the certain knowledge that any misuse of the power which it must be given for carrying on the business of the State will be exposed.

The Exchequer and Audit Ordinance

409. The Exchequer and Audit Ordinance which dates back before Independence should be revised to fit the provisions of the new Constitution and remove discrepancies. Two such discrepancies may be noted.

410. First, the Ordinance contemplates that a period of as long as four months may elapse after the commencement of the financial year before the passing of an Appropriation Act making budgetary provision for that year, hence it authorises the Minister of Finance with the approval of a resolution of the Legislature to issue warrants, pending the approval of the budget, for withdrawing funds to meet necessary services during that period. On the other hand, the Constitution provides that the Minister of Finance must present his budget

before or not later than 30 days after the commencement of the financial year. In that context, Parliament was empowered to pass a law authorising the Minister to issue warrants, pending the approval of the budget, to meet the expenditure on necessary services for the 30-day period, but no such law has yet been passed.

411. Secondly, the Constitution provides that withdrawals may be made from the Contingencies Fund to meet "urgent and unforeseen" expenditure whereas the Ordinance authorises withdrawal from that Fund if the proposed expenditure cannot "without injury to the public interest be postponed" until Parliament makes adequate provision. Both these prerequisites should be prescribed in the new Constitution.

AUDITOR-GENERAL

Powers

412. As has already been mentioned, the Auditor-General is charged with the duty of auditing all the public accounts of Trinidad and Tobago. His office is created by the Constitution and his powers broadly set out in it. We recommend that this arrangement be maintained and that additionally Parliament should be empowered to make laws providing for the better performance by the Auditor-General of his duties.

413. In his discussions with us we were much impressed with the possibilities of a system of efficiency audits in ensuring more productive expenditure of public funds. The normal regularity audit which the Auditor-General carries out is intended merely to ensure that the prescribed procedures have been followed in the collection and expenditure of money. An efficiency audit is concerned with checking whether value is being obtained for money while it is being spent. Authority for such an audit can, we think, be implied from

the Exchequer and Audit Ordinance which provides that the Auditor-General shall satisfy himself that "expenditure ... has been incurred with due regard to the avoidance of waste and extravagance". We recommend that this power be stated explicitly and included in the Constitution.

414. A regularity audit in the very nature of things must come so long after the event as to be of little use in correcting wasteful or extravagant expenditure. It can serve at best merely to dramatise the event or as a warning for the future and possibly for the punishment of those involved. But an efficiency audit is contemporaneous with the collection and expenditure of revenue. While carrying it out the Auditor-General can trace expenditure from the day funds are committed to the day they are paid out, and he can examine the terms and conditions of contracts from the time of their award and ensure that their requirements are duly honoured. With the present low productivity on government works the implementation of such an audit scheme must have a highly beneficial effect.

415. We therefore recommend that the new Constitution make express provision for the conduct of efficiency audits by the Auditor-General.

416. We recommend further that for the more efficient performance of his duties the Auditor-General be given some measure of control over the appointment and transfer of officers on his staff and accordingly that the Public Service Commission should make appointments to or transfers from his staff only after consultation with him.

Terms and Conditions

417. The Auditor-General is now appointed by the Governor-General acting in accordance with the advice of the Prime Minister. His independence of the Executive is sought to be assured by providing that he should not be dismissed except for cause properly established after due enquiry. Essentially, he is an official who is responsible to Parliament. Hence his report must be laid before Parliament although under the present Constitution he must submit it to the Minister of Finance who will transmit it to Parliament.

418. In order to emphasise the Auditor-Generals responsibility to Parliament we recommend, first, a change in the method of his appointment. He should be nominated by the President and appointed after approval by a three-fifths majority of the National Assembly. The procedure for his removal from office should be exactly the same as that outlined in the chapter on the Ombudsman for the removal of the ombudsman. We recommend further that an Act be passed setting out the terms and conditions of his service and such of his powers as are not set out in the Constitution. This should be part of the process of revising and updating the Exchequer and Audit Ordinance to which we have already referred. And thirdly, as will be seen later, we recommend that he should submit his reports to the National Assembly himself.

The Public Accounts Committee

419. This Committee is not mentioned in the present Constitution, but it is one of the Committee of Parliament which has always operated with great regularity. The Auditor-General and the members of his staff work closely with this Committee in examining such portions of the Auditor General annual report which are thought worthy of closer examination.

420. Under the present law the Treasury must complete and submit to the Auditor-General by April 30 in each year the annual accounts for the previous year. The Auditor-General must complete his audit of the accounts and report by July 31. Since independence, these deadlines have been met except for one year. As was have said, the Auditor-General now submits his report to the Minister of Finance who must cause it to be laid before the House of Representatives within 30 days. Having been so laid, it is then sent to the Public Accounts Committee for investigation. But no time limit has been set by which the Committee must report to Parliament.

421. Except for the Auditor-General's report on the accounts for the year 1971, on which the public Accounts Committee reported in 4 months after receiving it in 1972, the pattern has been for the Committee to spend nearly two years investigating before reporting back. The result is that the irregularities on which they comment are by then nearly three years old. Perhaps for that reason the Committee's reports have only rarely been debated. The time-lag tends to make discussion a futile exercise. Other than the occasional headline: in the press (*which* may not be totally accurate) the public is not made aware, as it should be, of any improper use of funds or of any corrupt practices so that the weight of public opinion can be brought to bear on those responsible.

422. With the emphasis we have placed on Committee work in the National Assembly we anticipate a far more vigorous approach by the Public Accounts Committee in the performance of its functions. We recommend that there should be two Public Accounts Committees - one to examine the Auditor General's report on Ministries and Departments, and the other to examine his report on Statutory Authorities and nationally controlled companies. To emphasise the responsibility of the Auditor-General to Parliament, we

recommend that he should submit his report directly to the Speaker, with a copy to the Minister of Finance, instead of the existing arrangement of submitting the report to the Minister of *Finance* and requiring him to forward it to the House within 30 days. It is true that strictures may be passed upon the financial management of affairs and it could be argued that the Minister might want time to prepare answers before the document is made public. But the fact is that Treasury officials would have been made aware of areas where criticism was likely.

423. Once the report on Ministries and Departments is with the Speaker Standing Orders should make provision for the following time-table -

- (i) The Speaker should cause the report to be laid within 15 days before the National Assembly, if it is in session, and direct that the Public Accounts Committee should commence its investigation immediately. If the National Assembly is not in session, the Speaker should transmit the report directly to the Committee through its Chairman with a similar direction.
- (ii) Public Accounts Committee should submit its comments on the report to the National Assembly not later than November 30 of the same year.
- (iii) The Speaker should lay the report and comments before the National Assembly for debate as early as possible but not later than December 15. If this time-table is followed, the National Assembly should have before it the comments of the Public Accounts Committee on the accounts of the year immediately preceding while it is *considering* the estimates for the following

year. This should help them to assess more competently the expenditures proposed.

- (iv) If the Public Accounts Committee is unable to complete examination of the Auditor-General's report by November 30, the Chairman should so report to the National Assembly and may seek an extension of time.
- (v) The National Assembly may by resolution passed by a simple majority either grant an extension of not more than one month or proceed to debate the Auditor-General report itself. In the event of this being debated before the Public Accounts Committee has completed its investigation, the Public Accounts Committee may continue its inquiry into any matter not yet debated.

424. Statutory Authorities and nationally controlled companies have problems peculiar to themselves. The Auditor-General now audits the accounts of most but not all the Statutory Authorities. Each Statutory Authority is now required by law to submit its accounts to the relevant Minister. Where the Auditor-General is himself the auditor of the Authority, his audit would have been carried out before the submission of the accounts to the Minister and this report should accompany the accounts. The Minister should be required to lay the accounts and the Auditor-Generals report before the National Assembly within 30 days. The Public Accounts Committee would then begin its investigation following as near as possible the time-table set out in dealing with Ministries and Departments.

425. In the case of nationally controlled companies and Statutory Authorities the accounts of which are audited by private auditors, the Minister who receives the accounts

should pass them on with the auditor's report to the Auditor-General for his scrutiny and comment. The Auditor General should be empowered to call for books, documents, or other data which he thinks necessary to clear up any issue which seems to him to call for examination. The Minister should then lay before the National Assembly the accounts, the auditors report and the Auditor-Generals comments. These can then be the subject matter of investigation by the Public Accounts Committee (Statutory Authorities and Nationally Controlled Companies). In cases where the financial year of nationally controlled companies does not coincide with the government financial year consideration might be given to changing the company's year so as to make them coincide.

Participation in Business

426. All over the developing world, and Trinidad and Tobago is no exception, governments have been participating more widely in business enterprises. It is part of the process of attempting to gain control of the economy and the trend is likely to become more marked. Management of these businesses often necessitates government guarantees for substantial debts which would be a serious burden upon the public if Government were called upon to pay. Not infrequently, there are heavy losses in operations which Government subsidises in one way or another. In terms of social values and national independence the price may well be acceptable, but the decision as to whether or not it should be paid should be made only after consultation with the people through their elected representatives in the National Assembly.

427. We recommend therefore that in every instance, before Government completes its negotiations for participation in an enterprise, it should cause a statement to be laid in the National Assembly giving full details of the transaction to be entered into. Even where the

matter is highly confidential, agreement can be reached subject to approval by the National Assembly. When that has been obtained the formal contract can then be signed. In the context of today, parliamentary control of expenditure would be considerably reduced if Governments are permitted without consultation, still less without authority, to purchase business undertakings and incur serious liabilities in keeping them afloat.

428. We have already recommended that the accounts of nationally controlled companies should be laid before the National Assembly. We would recommend also that the appropriate Minister should report annually to the National Assembly on the past business activities of such companies and their intentions and prospects. This report should be in the nature of the annual report of the board of directors of a public company. Since the people through the Government are the owners of these companies, they should be informed of their activities through the National Assembly where their elected representatives sit.

XIII - AMENDING THE CONSTITUTION

429. Section 38 of the present Constitution provides for its alteration. Briefly, it may be said that certain of its provisions are regarded as ordinary enactments which Parliament may alter by a simple majority vote in each House; others as entrenched and cannot be altered unless at the final voting in each House the alteration is supported by the votes of not less than two-thirds of all its members; and yet others as deeply entrenched and require for their alteration support by the votes of not less than three-quarters of all the members of the House of Representatives and two-thirds of all the members of the Senate. So, since the new Constitution will involve the alteration of all three kinds of the existing provisions, it may be concluded that its introduction will need to be supported by the votes of not less than 27 members in the House of Representatives and 16 members in the Senate.

430. The rationale would seem to be that in a multiracial society such as ours there is always likely to be, quite understandably, some measure of anxiety that the basically agreed constitutional structure may at some time be radically changed by a narrow majority. Hence care should be taken to require a broad consensus before any important alteration can be effected. This may lead to a certain rigidity in the constitutional system, but that is by no means an unreasonable price for maintaining public confidence or mutual trust. We recommend therefore that the concept of entrenchment and deep entrenchment of provisions should be retained.

431. There were suggestions that any proposal for altering the Constitution should be subject to a referendum. We disagree. In our view, a referendum is not a particularly accurate method of determining the state of public opinion on issues of constitutional reform. Inevitably questions on a referendum must be framed so that a yes/no answer will

become possible. But in so many cases where the issues are difficult such a clear-cut answer is seldom accurate. Often there is a desire to add a qualification which the form of the referendum does not allow. Further, under a system of party politics it is quite probable that many an answer given will not be an answer on the merits to the question asked, but will merely reflect loyalty to what is known to be the party's view lest the defeat of the party on the issue submitted should result in consequences too undesirable to be permitted. Accordingly, we reject the idea of a referendum as a final prerequisite for amending the Constitution.

432. Generally, then, we recommend that the following be deeply entrenched, that is to say

- (a) the whole of the chapter relating to fundamental rights;
- (b) the provisions establishing the offices of President and Vice-President and prescribing the tenure of and the conditions to be satisfied for removal from those offices;
- (c) the provisions establishing Parliament and the National Assembly, empowering Parliament to make laws, directing the holding of annual sessions of the National Assembly and prescribing the qualification of voters at general elections;
- (d) the provisions for establishing the Supreme Court and the offices of Chief Justice, Justices of Appeal and High Court Judges, and prescribing the authority to appoint to, the tenure of and the conditions to be satisfied for removal from those offices;

- (e) the provisions establishing the office of Auditor-General and prescribing authority to appoint to, the functions and the tenure of and the conditions to be satisfied for removal from that office;
- (f) the interpretation article insofar as it affects the interpretation of deeply or other entrenched provisions; and
- (g) for amending the Constitution.

Also, that the following be entrenched, that is to say provisions

- i. conferring the right of citizenship on persons by reason of their birth or descent, granting the right on application to any person married to a citizen (subject however to such conditions as may be prescribed) and prohibiting any citizen by birth or descent from being deprived of that right;
- ii prescribing the qualifications for election to the offices of President and Vice-President and the conditions attaching to the holding of those offices;
- iii setting up the procedures for the election of the President and the Vice President, establishing an electoral college for the purposes of such elections, and for filling any vacancy occurring in those offices;
- iv prescribing the powers and immunities of the President including his powers of appointment to special offices;
- v. for determining the number of elected members of the National Assembly, for the functioning of the Vice-President as its Speaker, for the vacating by a member of his seat in the National Assembly upon

- his ceasing to be a member of the political party on whose nomination he was elected, for the declaration of assets and for the immunities of members;
- vi requiring the President's assent to Bills passed by the National Assembly and giving him a power of referral;
 - vii regulating the introduction of Bills and other business in the National Assembly, establishing Standing Committees and prescribing their functions;
 - viii regarding the prorogation and dissolution of the National Assembly and the extension of its life in the event of war;
 - ix prescribing the times for holding elections and by-elections, for electing and for the system of electing constituency and list members (save insofar as the same may relate to the listing of candidates for list seats in the alphabetical order of their surnames), for voting by ballot and for making preliminary counts at the close of the poll at each polling station;
 - x constituting a Boundaries Commission for reviewing the number and boundaries of constituencies and prescribing for the Commission to give effect to the rules set out in the Second Schedule;
 - xi establishing the offices of Elections Commissioner and Attorney-General and prescribing the functions of, the authority to appoint to and the conditions to be satisfied for removal from those offices;

- xii establishing the office of the Leader of the Opposition;
- xiii constituting an Advisory Committee to advise on the exercise of the powers of pardon and mercy;
- xiv establishing the office of Ombudsman., prescribing the functions of, the authority to appoint to, the tenure of and the conditions to be satisfied for removal from that office, charging his salary and allowances on the Consolidated Fund and providing for appointments to his staff;
- xv establishing the several Service Commissions and the ^Ke Service Appeal Board, the composition, qualification. and tenure of office of their members, the conditions to be satisfied for their removal from office and the functions and jurisdiction of the Commissions and the Board;
- xvi establishing the Tobago Regional Council and prescribing its powers and functions;
- xvii constituting a Consolidated and. a Contingencies Fund authorising issues and withdrawals and the conditions affecting issues and withdrawals therefrom;
- xviii for the payment of pensions from the Consolidated Fund; and
- xix regarding reports by the Auditor-General on the annual accounts and on any matter arising from the same.

433. We recommend that the deeply entrenched provisions should not be capable of amendment unless supported by the votes of not less than three-quarters of all the members

of the National Assembly, that the other entrenched provisions should require the support for their amendment of the votes of not less than two-thirds of all the members, but that all other provisions should be amendable by a simple majority.

XIV - TRANSITIONAL PROVISIONS

434. It is not possible to bring into operation every provision of the new Constitution from the moment it is introduced. For instance, Parliament will need to be dissolved and a general election held for the National Assembly. The Governor-General will have to give way to the President, and the Speaker to the Vice-President, both of whom must be elected. A Boundaries Commission and an Elections Commissioner must be appointed, which cannot be done until the Assembly meets to vote on the President's recommendations for filling the offices. Plainly, therefore, it is essential to make some transitional provisions and to introduce them as part of the new Constitution.

435. Accordingly we recommend that -

- (a) the present Governor-General should assume the office of President immediately after the adoption of the new Constitution;
- (b) the Prime Minister and his Cabinet should continue in office and function as the Executive pending a general election, but Parliament should be dissolved immediately on assent being given to the new Constitution and its proclamation as such;
- (c) a general election should follow as soon as practicable, but in any event not later than 60 days after the commencement of the new Constitution, and a National Assembly elected under the mixed electoral system;
- (d) following on the general election, the President should appoint a Prime Minister who will in turn select a Cabinet;
- (e) for the time being the National Assembly should elect a Deputy Speaker who should act as Speaker until a Vice-President has been elected;

- (f) within three months of the convening of the National Assembly steps should be taken to constitute an electoral college of members of the National Assembly and local government and municipal councillors then holding office so that the college may elect a President and a Vice-President, At that stage the new Constitution would have become fully operative;
- (g) the existing Boundaries and Elections Commission should continue in office until 30 days after the election of the new President and then be dissolved to be replaced by the new institution as proposed;
- (h) the Service Commissions should continue to operate as at present constituted for 60 days after the election of the new President, by which time new appointments should be made;
- (i) as from the commencement of the new Constitution, the existing Supreme Court and the Chief Justice and other judges of that Court holding office under the present Constitution should continue respectively to be the Supreme Court and to hold Office (with the same salaries and allowances) as the Chief Justice and other judges of that Court under the new Constitution, but it will first be necessary for the Chief Justice and other judges to take and subscribe the Oath of Office prescribed by the new Constitution.
- (j) all pending proceedings either on appeal or by way of application for leave to appeal to the Privy Council for any decision of the Court of Appeal under the present Constitution should continue after the commencement of the new Constitution as they would have done but for its coming into force, and

any judgment or order of the privy Council in any such proceedings or on any appeal from the Court of Appeal given but not satisfied before the commencement of the new Constitution should be enforceable if it were a judgment or order of the Court of Appeal established thereunder;

- (k) as from the commencement of the new Constitution, the Auditor General should continue to hold office (with the same salary and allowances) under the new Constitution as under the present Constitution;
- (l) every public officer holding; or acting in a public office under the present Constitution immediately before the commencement of the new Constitution should as from its commencement continue to hold or act in the like office as if he had been appointed thereto in accordance with, its provisions;
- (m) the Attorney-General should be appointed immediately after the appointment of the Prime Minister under the new Constitution so that the functions of the Attorney-General and the Minister of Legal Affairs may be effectively separated. At that time there should be a Leader of the Opposition whom the President will be able to consult, as well as the Prime Minister, before making the appointment. But the Crown Proceedings Act should be amended beforehand substituting the Minister of Legal Affairs as the official to sue and be sued on behalf of the Government;
- (n) the Integrity Commission should not be appointed until the new elected President has assumed office, but the appointments should be made within 30 days thereafter. This will enable the Commission to receive in due time the declarations required to be made by members of the National Assembly.

XV - SUMMARY OF RECOMMENDATIONS

436. Our recommendations are many and cover a wide range. We propose measures which we believe will materially contribute to a revival of parliamentary democracy in Trinidad and Tobago, provide for meaningful participation in constitutional parliamentary politics and establish the institutional framework within which government and opposition parties alike can play an active role in conducting the business of the State. We have also sought to safeguard the rights and freedoms of the individual and to provide avenues through which he can make his voice heard or seek redress for any infringement of his rights.

437. We set out below our principal recommendations in summary form. But this summary should not be regarded as exhaustive or as a substitute for the text of our Report where our recommendations are given in detail.

Summary of recommendations

Fundamental rights and freedoms

1. The Constitution should adopt the pattern of the European Convention on Human Rights. Special provisions should be included to have effect during periods of public emergency (para. 82).
2. The Constitution should not preserve whatever legislation may exist. Where an existing law abridges or infringes a fundamental right, its validity will depend on its falling within one or other of the permitted exceptions and also on its satisfying the test of what is reasonably justifiable in a society with a proper respect for the rights and freedoms of the individual (para. 86).

3. Social and economic "rights" should not be set out as substantive rights but, to the extent to which they are mentioned in the Constitution, as directive principles of state policy (para. 97)
4. Correlatively, the Constitution should state what are reciprocally the fundamental duties of citizens (para. 98).
5. The freedom of the press should be expressly mentioned as a substantive right and a part of the right to freedom of expression (para. 100).
6. The ban on the use of radio and television for political purposes should be lifted and a code of regulations should be drawn up to regulate this use (paras. 107, 110 and 111).
7. A body similar to the Broadcasting Programme Committee (referred to in the licence issued to Trinidad Broadcasting Company Limited) should be set up to exercise a regulatory function over and to draw up guidelines for the media other than the press, and to supervise the manner in which they are implemented (para. 109).
8. Within three days of the issue of a proclamation declaring that a state of emergency exists the President should submit to the National Assembly a statement of his reasons for its issue. The proclamation should be effective for 15 days, and the National Assembly should be empowered to grant extensions by a simple majority for periods of up to three months at a time but not exceeding 6 months altogether. Extensions beyond an aggregate of 6 months should require a three-fifths majority vote of the National Assembly (para. 114).

9. The onus of satisfying the Review Tribunal that a person ought to be detained under Emergency Powers Regulations should be on the State. If the State is unable to satisfy the Review Tribunal as to the need for the detention of a detainee within a period of two months from the date of the commencement of his detention, the detainee should be set free (para. 117).
10. Within 72 hours of the issue of a proclamation that a state of emergency exists a Review Tribunal should be appointed to review the case of each person detained, whether the detainee applies for the review or not. The decision of the Review Tribunal should be final and binding (paras. 117 and 118).
11. Persons detained during a period of emergency ought not to be kept in prisons or be subject to the same disciplinary codes as prisoners on remand or after conviction (para. 119).
12. The courts should be empowered to make an order that the State pay the costs of all parties in any case in which it is satisfied that an issue of constitutional importance was reasonably raised for decision (para. 121).

Citizenship

13. A citizen of Trinidad and Tobago by birth or descent who voluntarily acquires the citizenship of another country (otherwise than by marriage) should forfeit his citizenship of this country. If such a citizen should later decide to resume his citizenship he should be entitled to do so, provided he renounces the other citizenship he acquired and makes a declaration of his intention concerning residence and employment as may be prescribed by law (para. 131)

14. The Aliens Landholding Ordinance should be further amended to provide for a special class of aliens comprising former citizens of Trinidad and Tobago by birth or descent who, having lost their citizenship by voluntarily acquiring the citizenship of another country, wish to acquire property in Trinidad and Tobago as a precondition to returning to settle here (para. 134).
15. An alien should not be granted citizenship of this country unless he renounces the citizenship of any other country which he may hold (para. 135).
16. A mother should be capable of passing her citizenship on to her children (para. 136).
17. The husband of a citizen of Trinidad and Tobago who is not himself a citizen should be entitled upon application to be registered as a citizen provided he renounces his other citizenship (para. 137).

Head of State

18. Trinidad and Tobago should become a Republic within the Commonwealth with an elected President as Head of State and a Prime Minister as Head of Government (paras. 138, 140 and 143).
19. The President should be elected by an electoral college consisting of the members of the National Assembly and of the City, Borough and County Councils sitting together. He should be elected by a two-thirds majority of the college, but if no candidate finally achieves that majority, he should eventually be elected by a simple majority (paras. 150 to 153).

20. There should be a Vice-President elected at the same session and in the same manner as the President. The Vice-President should act for the President when the latter is unable to perform the duties of his office. The Vice-President should also preside over the National Assembly as Speaker (para. 154).
21. The President and Vice-President should be citizens of Trinidad and Tobago, aged 35 years or upwards, and should have been ordinarily resident in Trinidad and Tobago for a period of at least 5 years immediately preceding their nomination for either office. Nominations to these offices should be signed by at least 12 members of the National Assembly and filed with the Clerk of the Assembly not less than 14 days before the date fixed for the election (pars. 155 and 156).
22. The President and Vice-President should hold office for 5 years and be eligible for re-election. While holding their respective offices *neither* the President nor the Vice-President should hold any other office of emolument save for the Vice-President as Speaker (pars. 157 and 158).
23. The Vice-President should not be a member of the National Assembly (para. 158).
24. All Bills passed by the National Assembly should require the President's assent before becoming law. His assent should not be automatic. He should be given the right to refer back a Bill once to the Assembly for reconsideration (para 159).
25. The President should play a principal role in the appointment of persons to important offices of State. Sore offices he will fill, acting, in his own discretion after consultation with the Prime Minister, the Leader of the Opposition and such other persons and organisations as he thinks fit. In respect of others acting in his own discretion, he should nominate a candidate whose appointment would be

subject to approval by a three-fifths majority of all the members of the National Assembly (pars. 160, 161 and 418).

26. The President (and likewise the Vice-President) should be removable from office if he wilfully violates any provision of the Constitution, or behaves in such a manner as would bring the office into contempt or ridicule or if by reason of physical or mental infirmity he is unable to perform the functions of his office, or he may resign. In the event of his removal, resignation or death an election should be held within three months to fill the vacant office for the unexpired portion of the term (paras. 162, 164 and 165).
27. The President should not be answerable to any court for the manner in which he exercises his powers or performs his duties as President. No criminal proceedings may be brought or continued against him except with the prior approval of the Attorney General, nor should process for his arrest or imprisonment be issued by any court while he holds the office. But subject to previous notice being served on him asking for settlement, he may be sued in civil proceedings. The Vice-President should enjoy similar immunity while acting in the office of President (para. 166).

Parliament

28. The Senate should be abolished and the legislature consist of a single Chamber called the National Assembly (para. 195).
29. The first-past-the-post system of elections should be replaced by an electoral system in which the principles of proportional representation and the first-past-the-post system are mixed (para. 207)

30. The National Assembly should consist of 72 members, of whom 36 (referred to as constituency members) should be elected under the first-past-the-post system to represent one of each of 36 constituencies into which the country should be divided; and the remaining 36 members (referred to as list members) should be selected from lists put up by the political parties contesting the election in the proportion of the number of votes polled by each party (para. 207).
31. For the election of the list members -
- (a) to qualify it to put up a list, a party should nominate candidates in at least one-third of the constituencies (para. 207);
 - (b) the vote for a candidate as a constituency member should count also as a vote for his party: hence, although only one candidate may be nominated for a constituency a poll should still be held so that the votes cast for him may count as votes for his party (para. 207);
 - (c) if a party fails to win at least one constituency seat or to receive at least 5% of the votes cast in a general election, it will not be entitled to an allocation of seats from the list and the votes cast in its favour will not be taken into account for any purpose (para.207);
 - (d) a candidate for a constituency seat should not be eligible to have his name included in a list from which list seats may be allocated (para. 207).
32. The system of permanent personal registration and the staining of a voter's finger after he has cast his vote should be retained (para. 218).

33. The ballot box should be used for voting at elections. The Constitution should prescribe this method for voting (paras.227 and 228).
34. A preliminary count of the votes cast at each polling station should be taken and recorded immediately following the close of the poll. The counting and recording of the votes cast for each candidate should be done in the presence of their agents and other independent witnesses, and the record should be signed by the Supervisor in charge of the polling station and the witnesses verifying the count (para. 229).
35. In the event of a ballot box with the ballots being lost or destroyed before its return to the central electoral office, the duly signed and verified record of the preliminary count of the votes cast in that box should be regarded as the official count of the votes for that polling station (para. 229).
36. A rubber stamp with an appropriate device for marking ballot papers should be used as a means of minimising the incidence of spoilt votes (para. 231).
37. The voting age and the qualifying age for membership of the National Assembly should in each case be reduced to 18 years (paras. 232 and 233).
38. The present qualifications as to residence for persons eligible to vote at elections should be retained, and the Constitution should expressly prohibit the passing of any law which would remove the residential qualification for voting (para. 234).
39. The Constitution should make provision for a Parliamentary Integrity Commission, to which each member of the National 'assembly will be required to submit a declaration. of the assets, liabilities and income of himself and. of his wife and children under the age of 18 years living with him as part of his household. The

- declaration should be made within three months of taking the oath of office as a member of the Assembly, at the end of each succeeding year thereafter and not more than twelve months after ceasing to be a member of the National Assembly, and provision should be made to ensure its confidentiality (para. 237).
40. Disciplinary action or legal proceedings may be taken against any member who defaults in making a declaration as prescribed (para. 237).
 41. A list or constituency member who re-signs from the party which sponsored his *election* should lose his seat immediately upon resignation (para.244).
 42. The same result should follow if a member is fairly expelled. To ensure such fairness, rules should be prescribed defining what matters of party discipline would be good ground for such expulsion and the issue whether any such expulsion is well founded may be determined by the court (para. 245).
 43. A list member who loses his seat by resignation or expulsion should be replaced by his party nominating another from its election list. And where a constituency member so loses his seat, a by-election to fill the vacancy should be held within 90 days (para. 247).
 44. There is no need for a permanent Boundaries Commission. One should be set up at the first sitting of each new Parliament and should consist of five persons - an independent Chairman appointed by the President in his own discretion after consultation with the Prime Minister and the Leader of the Opposition', two members appointed by the President after consultation with the Prime Minister; and two members appointed by the President after consultation with the Leader of the Opposition and any other opposition groups in the National Assembly (paras. 251, 252 and 253)•
 45. Each Boundaries Commission should be required to present its report to the Speaker within 18 months of its appointment. Its report should then be presented to the

- National Assembly for debate and when approved, with or without modification, would be made effective by an order signed by the President. It would come into force for the next ensuing general election (para. 253).
46. An agent of each political party which has a national following should be entitled to accompany the registration officers appointed to conduct the enumeration of voters. These party agents should be paid by the State (para. 256).
 47. The Elections Commission should be replaced by a full-time Elections Commissioner in whom should be vested responsibility for the conduct of elections. he should be assisted by two Deputy Elections Commissioners (para. 257).
 48. The Elections Commissioner should be nominated by the President and his appointment made subject to approval by a three-fifths majority vote of the members of the National Assembly (para. 257).
 49. The Vice-President should preside over the National Assembly as Speaker. He should have neither an original nor a casting vote. Any motion voted upon when the Vice-President is presiding which results in a tie should be deemed to be rejected (para. 259).
 50. There should be a Deputy Speaker elected from among members of the National Assembly, who would preside over the Assembly in the absence of the Speaker. While presiding as Speaker, the Deputy Speaker should have only a casting vote (para. 260).
 51. There should be Standing Committees of the National Assembly charged with the responsibility of investigating and reporting on all bills presented to the

Assembly, scrutinising and advising upon the nomination of persons for appointment to certain offices of State and initiating inquiries into other matters of national concern. Each Committee shall comprise not less than five members. Each committee should choose its own chairman, but in the case of the Public Accounts Committees the chairman must be a member of a party in opposition to the Government. No Minister should be a member of any committee. (paras.; 265 to 273).

52. Committees will in each case decide whether hearings will be in public or private. They should have the power to summon Ministers, Parliamentary Secretaries, public officers and other persons to assist them in their deliberations and to give evidence. Full participation should be allowed to the public who are interested (paras. 267 and 270).
53. The requirement that all bills should be sent to the appropriate Committee for investigation and report prior to being debated in the National Assembly may be waived on approval by a three-fifths majority of the members of the National Assembly (para. 274).
54. A proper building with an adequate library, sufficient space for housing the National Archives and providing accommodation for research and secretarial staff to service the several committees of the Assembly should be acquired early for occupation by the National Assembly (para. 275).
55. The National Assembly should not be dissolved on the advice of the Prime Minister unless it is supported by a resolution of the National Assembly. Failing such support, the Prime Minister would be free to resign and the President should

then ascertain whether any other member is likely to command the support of the majority of the members of the Assembly and is willing to form a government. If such a person can be found he should be invited to form a new government. If not, the Assembly should be dissolved by the President, acting in his own discretion, and new elections held (paras. 276 and 277).

56. If a vote of no confidence in the Prime Minister is passed by the National Assembly he should resign within 7 days and, if a successor Prime Minister cannot be found from among members of the Assembly, it should be dissolved (para. 278).
57. The normal life of Parliament should be five year⁴, but this period may be extended if the country is at war (para. 280).

The Executive

58. The Cabinet should be retained as the executive body, its members being chosen from and being responsible to Parliament (para.282).
59. The Prime Minister should be chosen by the *President* and should be the member of the National Assembly who is the leader of the party having a majority in the Assembly or, where there is no undisputed leader in the Assembly of that party or no party with a clear majority, the person who in the judgment of the President is most likely to be able to command the support of the majority of the members of the Assembly (para. 282).
60. Ministers should be *chosen* by the Prime Minister from members of the National Assembly (paras.283 and 285).

61. No limit should be placed on the number of terms any person may serve as Prime Minister (para. 284).
62. The office of Parliamentary Secretary should be retained, the holders of which must be members of the National assembly (paras. 285 and 286).
63. The Chief Justice and other members of the Judicial and Legal Service Commission, the Chairmen and other members of the other Service Commissions and the Chairman of the Boundaries Commission should all be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition (para. 287).
64. The Prime Minister should retain the right of veto over appointments to certain senior offices in the public service the holders of which are directly *concerned* with the formulation of policy and the supervision of its *implementation* (paras. 288 and 382).
65. When there is a change of *government* the new administration should not have the right to reject incumbent officers who should prove capable of working with the new Ministers. Should serious difficulties arise, administrative transfers should be arranged (para. 289).
66. The Prime Minister should retain control over the appointment of Government's principal representatives abroad. So, they should be appointed by the President acting on the advice of the Prime Minister (para. 290).
67. The Constitution should provide for the office of Leader of the Opposition and express provision should be made that a vacancy in that office would not result in Parliament being improperly constituted (para. 291).

68. There should be a Minister of Legal Affairs who would be a political appointee and member of the Cabinet (para. 296).
69. The office of Solicitor-General should be renamed Chief State Counsel (para. 297).
70. The Office of Attorney General should be retained but his powers and duties considerably varied. He should be a public officer whose independence should be secured and who should undertake the functions specially assigned by the present Constitution to the Attorney-General without being subject to any direction or control, and also be the legal adviser to the holders of offices of a national character (para. 298).
71. The power of mercy, to pardon and grant clemency, should be exercised by the President in accordance with the advice of the Minister designated by the Prime Minister (para. 300).
72. The Minister should obtain the advice of an Advisory Committee, consisting of five persons with himself as Chairman, but he should not be bound by that advice in tendering his advice to the President (para. 300).

Local Government

73. Local government authorities should be retained. A Committee/ Commission should be appointed to review and update the recommendations of the Sinanan Committee Report (paras. 318 and 319).
74. A mixed system of proportional representation should be used for electing representatives to local authorities. Two-thirds of the membership of each council should be elected by the first-past-the post system and one-third selected from

- lists in the ratio of the number of votes won by the respective political parties (paras. 322 and 323)
75. The Constitution should not make any provision for the break-up of the union between Trinidad and Tobago whether now or, at the option of either of the Islands, at any time in the future (para. 328)
76. The office of Permanent Secretary in Tobago should be renamed Commissioner for Tobago Affairs and the holder of the office vested with wider powers and greater authority (para. 329)
77. Sea and air communications between Trinidad and Tobago and beyond should be considerably improved (para. 330).
78. The Tobago County Council should be replaced by a Tobago Regional Council with partly executive authority and partly advisory functions (paras. 333 and 334).
79. The Tobago Regional Council should comprise fifteen members; elected by a mixed system of proportional representation - ten members by first-past-the-post elections and five list members (para. 333)
80. The Minister charged with the portfolio of Tobago Affairs should not be a member of the Regional Council but should be empowered to attend meetings or to be represented by his Senior Executive Officer. He may take part in the debate but should have no vote (para. 335).
81. Provisions for the Tobago Regional Council should be included in the Constitution (para. 336).

82. A Committee should be appointed to investigate and report urgently on the practicability of establishing a Registry in Tobago to keep and maintain records of all deeds and other instruments affecting property in Tobago and requiring to be registered, and of authorising a functionary in Tobago to authenticate and Certify copies of entries of births, marriages and deaths occurring it Tobago (para. 336A).

The Judiciary

83. All Justices of Appeal should be ex officio judges of the High Court (para. 338).
84. The Judicial and Legal Service Commission should continue to be the appointing authority for all judges (other than the Chief Justice) of the Court of Appeal and the High Court (para. 340).
85. The Judicial and Legal Service Commission should consist of tire Chief Justice, as Chairman, and four other members appointed by the President, at least one of whom should be a former judge of the Supreme Court of Judicature, and three other persons appointed by the President in his own discretion after consulting with the Prime Minister, the Leader of the Opposition and any other persons he may think fit. The Secretary to the Commission should be a senior officer in the Service Commissions Department (paras.34C and 390).
86. The retiring age for all judges should be 65 years (para. 341).
87. The present provisions for the disciplining of judges and their removal for misconduct should be retained except that the report of the investigating tribunal should be sent to the President who should act on its recommendations (para. 342).

88. Appeals to the Privy Council, whether by right or by leave, should be discontinued and the facility to proceed on appeal from our Court of Appeal should be abolished (para. 357).

The Ombudsman

89. Provision should be made in the Constitution for the creation of the office of Ombudsman (para. 358).
90. The Ombudsman should be empowered to investigate complaints alleging unjust treatment resulting from administrative action taken by a government department or by a local or statutory authority. He should not, for the time being at least, be empowered to deal with complaints which involve the Police Service or the Defence Force (para. 361).
91. The Ombudsman should not be empowered to question a Minister or a Parliamentary Secretary. He should however be entitled to call for and see the advice tendered to the Minister by his public service advisers before the decision was taken. The public service advisers may be questioned by the Ombudsman (para. 362).
92. The Ombudsman should not be empowered to investigate general allegations of corruption. If during the course of an investigation he finds proof of or evidence tending to prove that corruption was the cause, he should report his findings on corruption to the relevant authority for such further investigation and action as may be appropriate. He should also follow up the matter to ensure that it was not allowed to lapse without due cause. (para.363)
93. There should be one Ombudsman (para. 367).

94. The Ombudsman should be a person of known independence, proven integrity and persuasive ability (para. 368)
95. The Ombudsman should be nominated for appointment by the President and appointed after approval by a three-fifths majority vote of all the members of the National Assembly (para. 369).
96. The Ombudsman should hold office for 5 years and should be eligible for re-appointment. His emoluments should be the same as for a Justice of Appeal and should be a charge on the Consolidated Fund (para. 370).
97. In order to remove the Ombudsman from office a resolution should be moved in and adopted by a two-thirds majority of all the members of the National Assembly calling for an investigation of the charges against him. A tribunal appointed by the President, after consultation with the Chief Justice, should then investigate the charges and report to the President, who must act in accordance with its recommendation (para. 371)
98. The Ombudsman should act upon a complaint made to him in writing and signed by the complainant. Provision should however be made for accommodating complainants who are illiterate and unable to write (para. 372).
99. The Ombudsman should also be free to initiate an investigation where facts come to his notice which merit such a course (para. 372).
100. The Ombudsman's role should be purely investigatory. He should not hold formal hearings. No person whose complaint or decision is being investigated should be represented by counsel (para. 373).

101. If the Ombudsman decides not to investigate a complaint or having, investigated a complaint finds that it is unjustified or calls for no redress, he should as soon as practicable inform the complainant of his decision and the reasons therefore (para. 374).
102. If on the investigation of a complaint the Ombudsman finds that the complaint is justified and calls for action by way of redress, he should take steps such as are prescribed to ensure early remedial action. He should in the meantime inform the complainant that he is giving attention to his complaint (para. 374).
103. No fee should be paid for filing a complaint with the Ombudsman (para. 375).
104. The Ombudsman should make an annual report of his activities to Parliament but, if he should at any time think it necessary, he should be entitled to submit a special report. all reports are to be submitted through the Speaker (para. 376).
105. Subject to the National Assembly approving the number and grades of his staff and the emoluments payable to each member, the Ombudsman should be given full control over their appointment and discipline. Regulations should prescribe disciplinary procedures (para. 377).
106. The Ombudsman should be free to recruit staff from the public service but such officers should be on secondment with the approval of the Public Service Commission (para. 377)
107. The method of appointment, terms of tenure, provisions for removal and general scope of the powers of the Ombudsman should be set out in the Constitution.

Other matters pertaining to his office should be provided for by statute (para. 378).

Service Commissions

108. The Police Service Commission should be renamed the Protective Services Commission and given jurisdiction over the Police, Fire and Prison Services (para. 383).
109. Appointment to the posts of Solicitor-General and Chief Parliamentary Counsel should be made by the Public Service Commission (para. 384).
110. The functions and authorities of the Public Service and the Teaching Service Commissions should remain unchanged (para. 385).
111. Each Service Commission should consist of a Chairman and four other members appointed by the President acting in his own discretion after consultation with the Prime Minister, the Leader of the Opposition and such other persons as he may think fit (para. 390).
112. The requirement that the Chairman or Deputy Chairman of any Service Commission should be a member of another Service Commission should cease. As a general rule no person should be appointed to more than one commission. (para. 391).
113. A Public Service Appeal Board should be appointed to which public officers may appeal from the decision of any of the Service Commissions imposing a penalty as a result of disciplinary proceedings brought against an officer, or from the appropriate authority approving the withholding, suspension or reduction of an officer's superannuation benefits (para. 394).

114. The Appeal Board should consist of a Chairman and two other members appointed by the President - in the case of the Chairman, after consultation with the Chief Justice; and in the case of the other two members, in his own discretion. The Chairman should be ,a judge of the Supreme Court and one of the other two members a retired public officer (paraa. 395).
115. The participation of public officers in public political activity should not be permitted for the time being, but the question should be made the subject of further and detailed study (pares. 397).
116. Teachers should be allowed to take an active part in politics and stand for office (para. 398).
117. The requirements of official secrecy and the anonymity of the public service should be relaxed to permit officers to explain the advice given by them for policy-forming and decision-making (pares. 399 - 402).

Finance

118. No advance should be made from the Contingencies Fund unless it is for expenditure that is both urgent and unforeseen. And when an advance is made, a supplementary appropriation bill,, for its replacement from the Consolidated Fund should be laid before the National assembly within three months or, if more time is required, an extension should be sought by a resolution in the assembly (para. 408).
119. The Exchequer and Audit Ordinance should be revised to be conformable with the Constitution (pares. 410 and 411).
120. The Constitution should empower the Auditor General explicitly to conduct efficiency audits (paras. 413 and 415).

121. Before making appointments to or transfers from the Auditor General's staff the Public Service Commission should consult with him (para. 416).
122. The Auditor-General's report should be submitted annually to the National Assembly through the Speaker, a copy being sent at the same time to the Minister of Finance (para. 422).
123. There should be two Public Accounts Committees - one to examine the Auditor-General's report or. Ministries and Departments, and the other to examine his report on Statutory Authorities and nationally controlled companies (para. 422).
124. The time-table for dealing with the Auditor-General's reports by Public accounts Committees and before the National Assembly should be clearly stated in the Standing Orders of the Assembly (pars.423, 424 and 425).
125. In every instance before Government completes its negotiations for participating in private enterprise it should cause a statement to be laid before the Assembly giving full details of the transaction to be entered into (para. 427).
126. The appropriate Minister should report annually to the National Assembly on the business activities of nationally controlled companies, their intentions and prospects (para. 428).

Amending the Constitution

127. The concept of deeply entrenched and entrenched provisions in the Constitution should be retained (para. 431).

Transitional provisions

128. The transitional provisions for implementing the new Constitution should include the following

- (a) the present Governor-General should assume the office of President immediately after the adoption of the new Constitution;
- (b) the present Legislature would be dissolved as soon as the new Constitution is proclaimed, but the Prime Minister and his Cabinet should continue in office pending the result of a general election under the new Constitution;
- (c) the general election should be held within 60 days after the commencement of the new Constitution;
- (d) within three months of the convening of the National Assembly steps should be taken to constitute an Electoral College and the Electoral College should proceed at once to elect a President and a Vice-President;
- (e) appointments should be made to officers of a national character and of the Chairman and members of the Services Commissions as soon as practicable after the election of the new President;
- (f) the Chief Justice and other judges of the Supreme Court, the Auditor-General and all public officers holding or acting in a public office should continue in their respective offices under the new Constitution subject, in the case of the Chief Justice and other judges, to their taking the prescribed Oath of Allegiance;
- (g) the Attorney-General should be appointed immediately after the appointment of the Prime Minister and the Leader of the Opposition under the new Constitution;
- (h) the first appointments to the Integrity Commission should be made by the elected President within 30 days after the election (para. 435)

XVI- ACKNOWLEDGMENTS

438. We must now express our thanks to all who have helped us by submitting their views in memoranda, in private discussion at our invitation and at public meetings. All have been of great assistance. And although in the result we may have disagreed with much that was pressed upon us, we gave everything that was written and said our most anxious consideration. Everyone can be assured that our thinking was made clearer, so that we were assisted to arrive at what we firmly believe to be right conclusions.

439. We welcomed the contributions by nationals and former nationals abroad and were impressed by the earnestness which was so evident in the making of them. We are deeply grateful. Particularly, we would record our appreciation of the Trinidad and Tobago Alliance of New York State for following up their representations in New York by sending two of their members to participate for two days at the National Convention on the subject of citizenship which was of special concern to them.

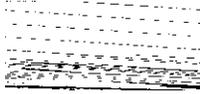
440. We are grateful to all the mass media - the press, radio and television. They gave our work admirable coverage and kept us well informed. Television was especially helpful in offering us its facilities for an exciting rapport with its viewers many of whom made known to us their reactions and responses.

441. The Government Printer and his staff produced publicity material and working papers at very short notice. The officers of the Community Development Division and Education Department saw to our comfort, whether at community centres or school buildings even in the remotest parts of the country where we held public meetings, generally at night. We are deeply appreciative of and thank them for their co-operation.

442. We were fortunate to have had an excellent and devoted staff - Mr. Lennox Wattle, Assistant Secretary; Miss Gloria Holder, Research Assistant; Mr. Godfrey Edwards; Mesdames Norma Dardaine, Betty Lee and Cynthia Woodley and the Misses Gloria Rochford and Lucille Williams, Stenographers and Typists. Their service was always of a very high order. They travelled with us both near and far, were on duty often for long hours and were at all times most zealous and efficient. Happily, too, their good cheer was never lacking.

443. By a fortuitous circumstance, as we approached the end of our exercise, Mr. F.O.C. Harris, a Legal Adviser on the staff of the United Nations with wide experience in several countries, was in this country on another assignment. The Organization agreed to make his services available to the Commission to assist us in the preparation of the Constitutional Instruments. We are grateful to the United Nations and to Mr. Harris for his invaluable assistance and technical advice.

444. No one should think us invidious for specially mentioning our Secretary, Mr. Cecil Dolly. To him we owe a debt of gratitude, which we can never fully pay. He organized, he researched, he compiled, he kept us fully informed, he gave without stint from his vast store of knowledge and experience, and his advice was as thoroughly thought out as it was essentially sound. More, he did it all with unobtrusive simplicity, never projecting himself and being concerned only with advancing the work we were commissioned to do. Most heartily we thank him and applaud his public spirit.



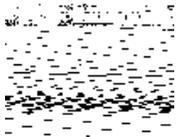
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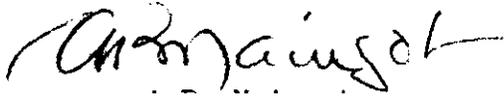


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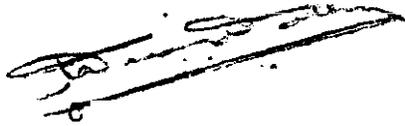


A.P. Maingot



* S. V. Ryan

(1) M. G. Sinanan



Haig Dolly Secretary

January 11, 1974.

"This Report is signed subject to my reservations annexed. (1) Did not sign this Report.

RESERVATIONS BY REGINALD DUMAS

1. Webster's Dictionary defines the word "constitution" as, inter alia "the way in which a government, state, society, etc. is organised" and as "the system of fundamental laws and principles of a government, state, society, corporation, etc., written or unwritten." It would appear logical to deduce from these definitions that before one can arrive at a coherent organisation of the particular entity involved and before one can elaborate a meaningful system of fundamental laws and principles. one must undertake a comprehensive examination and analysis of the entity (existing or intended) in the light of factors such as need; relevance to the framework in which it is proposed the entity should function; possible constraints, and so on.

2. A constitution is a human document, whatever the legal niceties in which it is cloaked. "It must," as Rexford Guy Tugwell puts it in his book 'Model for a new Constitution, "define citizens' relation; with each other and with their collective associations..... It should *establish* the devices needed for living together - for self-government" (page 13). And how can one properly define such relations and establish such devices without, as a first step, a searching and critical review of the society to which these arrangements are to be applied? And having taken that step, should not one then consider what directions one wishes to tread, what ought to be done, what can be done ,. all this in order that, ore may make a judgment as to the nature of the organization within which one is to live or of the fundamental laws and principles by which one is to be governed or guided?

3. If, as I suggest, such an organic process should take place in the framing of a constitution, then the thrust of the Constitution Commission's work over the last two years

and a half has to an extent been misdirected, It has been, alas, an outstanding characteristic of Trinidad and Tobago society (and of Trinidad society to a much more marked degree than of Tobago society) that we tend too often to seek the easy way. We have intelligence, we have many abilities, sometimes we even, have enthusiasm, but we largely lack a willingness to plunge beyond superficiality and, having plunged, to probe the depths of intellect and experience I will no doubt be told that this is not peculiar to Trinidad and Tobago society (the easy answer again); and some may say that if the population does show such traits as I have described it is because of the numbing hand of an autocratic and insensitive oligarchy. For the moment, I will only state my view that, faced with this matter of constitution reform with the high road of far reaching possibilities, we nearly all of us - Commission, groups, individuals embarked on and, apart from a few fitful deviations, firmly followed the middle road of endeavour, operating -within constricting parameters of perception which we seemed almost perversely to have delineated for ourselves. We had apparently forgotten 1970; or, if we had not, our interpretation of events that year had shifted from the frantic to the nearly casual. We said we were discontented, but we focused our energies not so much on the crucial causes of 1970 and on a cruel examination of the totality of the society as on individual issues - important, to be sure, but only details within the larger framework - which in essence had to do with electoral reform: voting machine versus ballot box, lowering or rot of the voting; and proportional representation versus first-past-the-post?

I. Vidiya Naipaul is much more brutal. In his article on 'Power?' in his book 'The Overcrowded Barracoon and other articles' he says: "The small islands of the Caribbean will remain islands, impoverished and unskilled, ringed as now by a cordon sanitaire, their people not needed anywhere. They may get less

innocent or less corrupt politicians; they will not get less helpless ones. The island blacks will continue to be dependent on the books, films and goods of others; in this important way they will continue to be the half-made societies of a dependent people, the Third World's third world. They will forever consume; they will never create. They are without material resources; they will never develop the higher skills. Identity depends in the end on achievement; and achievement here cannot but be small. Again and again the protest leader will appear and the millennium will seem about to come." (p. 250)

2. Figures of the first 20 public meetings of the Commission held in both Trinidad and Tobago show that the issue that elicited the most comment was whether or not the ballot box should be brought back (71 interventions, of which only 7 favoured the retention of the voting machines). Next was the issue of the lowering of the voting age (43 for lowering, 2 against) and after that the question of voting methods (27 in favour of some form of proportional representation, b against). It can of course be argued that the matter of proportional representation goes beyond the confines of electoral reform all these matters are, or can be, essential elements of societal change: but should we not have wondered first whether we wanted change (and almost all of us said we did) and then, if so, what kind? Should we not have overhauled instead of tinkered?

4. But there were those whose vision penetrated to the larger horizon.. The Guild of Graduates was one such group: on April 2, 1973, a representative of the Guild told the National Convention that "(the) first thing we would like to remind ourselves about is that constitutions are made for human societies and because of this, we have to discover the nature of societies, the environment within which societies exist, and then we will ask ourselves about the nature of society of Trinidad and Tobago and then briefly the nature of the constitution and finally the nature of the constitution that is most appropriate for Trinidad and Tobago"; the Union of Revolutionary Organisations (??RO) was another; the Tapia House Group was a third. Indeed, I can do no better than quote from Tapia Booklet

No. 1 'Democracy or Oligarchy?') in which Dr. C.U. Gocking puts the case with admirable clarity and precision:

"The constitution question is clearly much more than one of mechanics and legal provision. It is primarily and basically political in nature. In the circumstances we expect the Commission's Report to provide:

- a clear and concise statement of the criteria which should govern democratic constitution-making in the modern world.
- a description and an analysis of the Society of Trinidad and Tobago in terms of the political, social and economic forces at work in it, their operation and their interplay,. This is indispensable if the exercise is, to be something more than an exercise in abstractions; for these forces will determine the extent to which the criteria described above will, or will not, be translated into living fact in the life of the, country. The PNM's perspectives for the Now Society' was able to do a job of wider scope in 42 pages.

"A constitution does not work in a vacuum; and those who read and study the Report will wish to be provided with such basic information as would help them to assess the society's potential for fully operative democratic self-government. They will therefore expect the Commission to identify and assess the social forces, which are working to promote or impede and thwart democratic values, Then, and only then, will the provisions of any new constitution that may be proposed become

intelligible and seen as providing a framework within which democracy can grow and flourish

- a careful analysis of the existing constitution as it as worked under the conditions actually existing in our society and how far it has succeeded or has failed, to meet the demands of it.
- recommendations for a constitutional framework and constitutional mechanisms which can contain - so far as such devices can - or impose restraint on those political, social and economic forces which would, if left to themselves, undermine democratic freedom and deprive thousands of equality of opportunity and a career open to the talents and, finally,
- recommendations for changes, if and where necessary, in the constitutional framework and new mechanisms with a view to improving the chances of a fuller and juster life for all."

5. I do not underestimate the difficulties of such an approach. To do an even reasonably thorough job might have involved months, perhaps years of research, of preparation of studies, of discussions. It might have been objected that such foundation-laying would be too academic, too careful, too cumbersome and would play into the hands of those who, for narrow political reasons, might desire precisely the delays that would thereby be involved. It might have been argued that the population was not so intellectually endowed as to be able to view the society as a whole instead of in fragments and that the Commissioners, wise men all, could and should put together the shattered Humpty Dumpty of the country's thoughts. It might have been suggested that, finally, whether one employed

(as the Commission did) the inductive method of ascertaining the people's wishes or the deductive method (as I am convinced should have been at least attempted in a positive way) the result might well have been the same. But there is no doubt in my mind that the latter method would at the very minimum have reduced the margin of error and helped us to understand a little better the dynamics of our society.

6. What matters fundamental to our society could the Commission and the public have exhaustively discussed? I will mention only two: race and citizen participation.

Race

7. Race is one of those subjects about which people everywhere tend to become embarrassed, moralistic or emotional. In Trinidad and Tobago we have known, and continue to know, these sentiments, accentuated by the unusual ethnic (and religious) composition of our population. We say variously that we are multiracial (by which we often mean that we are non-racial, that "all ah we is one", but this we are not - we are a gaggle of ethnic groups and races, two larger than the rest, living side by side with some crossing of the sexual lines and, at certain upper economic levels, a fair crossing of the social. Ask the average Afro-citizen how many Indo-citizen friends he has (and vice versa) and a startling picture is etched); that one or other of the two major ethnic agglomerations is untrustworthy, finagling, shiftless, deviously ambitious, given to discriminatory practices, etc; that, like Krishna Bahadoorsingh ('Trinidad Electoral Politics - the persistence of the race factor'), "race is the main determinant of voting behaviour in Trinidad" (page 75) but that other factors operate to diminish its importance in the future and that "C.L.R. James asserted that he was told that apart from election periods³ the Indians and the Negroes may grumble at one another, as people always do, but there is no basic antagonism between them" (page 76); that, like Lloyd Best ('Race and class in the February

Revolution', Tapia, October 28, 1973), "Black Power and the new national movement demolished at the end of the 1960s" the "racist PNM-DLP regime which (had been dominating) the political stage" (page 6); that race should, not matter - we were all equal in the sight of the Lord, by whatever name called; that in Naipablian hyperbole (op. tit), "(the) opposition union (in St. Kitts) is called WAM, the opposition political party PAY. WAM and PAM: it is part of the deadly comic-strip humour of Negro politics." (Page 220, emphasis mine).

8. I do not pretend to know the answers to our manifest dilemma. I do not by any means believe that we are confronted by a racial crisis, but I have noticed, and it gravely disturbs me, that there is a growing polarisation, at any rate in the urban areas, along ethnic lines. The Indo-citizen now

3. *There are some Afro-citizens who may add cricket Test matches to election periods, especially when India is playing against the West Indies and Cavaskar refuses to get out.*

complains more openly than before that if he does not receive preferment - a Government scholarship, say or a promotion - this denotes racism on the part of the Afro-citizen who still largely manipulates the levers of Public Service and political influence; he says that he too is a citizen of Trinidad and Tobago, a first-class citizen, and now that he suspects that there is at least numerical parity of the two major minority ethnic groups in the country, he stresses that he is all the more determined to obtain his rights. The Afro-citizen, less secure now in the conviction that he is the true creole, the true Trinidadian or Tobagonian and that the rest of the population is Indian, Chinese, Syrian (even if born in Beirut), half-Chinee (guess which the other half is), honky and so on, sees himself harried by what he

perceives to be the dedication, the over sensitivity, the increasing aggressiveness - in business, in the professions and now, horrible dictum, in the Public Service bureaucracy 5_ and the lack of racial subtlety of the Indo-citizen; he reacts often by having feelings of guilt about his attitude towards the Indo-citizen or of resentment, and the one not infrequently engenders or exacerbates the other. The Euro-citizen continues to think concerned thoughts about Black Power. The Sino-citizen has adopted so low a stance that it is left to an Indo-citizen business conglomerate to propagandize, no doubt for commercial reasons, the fact of Double Ten. The Syro-Lebano-citizen is felt (and I hope I do not do him a disservice) to reflect more on the state of profits and the State of Israel than on the condition of Trinidad and Tobago.

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4. *For one view of the place of the Indo-citizen in Trinidad and Tobago society, see 'East Indians and the present crisis by John La Guerre, Brinsley Samaroo and George Sammy (November 1973).*
5. *The example is also frequently cited of radio programmes of Indian music. My own investigation, based on daily programmes published in the Express and the Trinidad Guardian during the week of September 16 to 22 (a period taken at random), showed that there were on Radio Trinidad and NBS Radio, 17 programmes of Indian music and 3 of culture identified with India. There were no listed programmes of African music or culture.*

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9. These are broad brush assertions, obviously, and the total canvas is more detailed and nuanced (there is, for example, the question of religious affiliations cutting across, and influencing, racial patterns), but I do feel that they are a reasonably accurate depiction of general ideas and anxieties and that the matter is of

sufficiently serious national importance for it to be, and to have been during the Commission's public deliberations, faced squarely and honestly.

Citizen participation

10. The issue of citizen participation was like the issue of race dealt with usually by implication only, and yet it is surely one of the matters at the core of our current unhappiness. The ironies of our situation are plentiful: the enthusiasm of many of us several years ago and our readiness to have someone else think for us who appeared to know what to think (the easy way out again) led, in conjunction with other factors, almost inevitably to the accretion of power by some; the accretion of power led to undeniably brilliant successes and advances, especially in domestic policy, but also to unfortunate shortfalls in achievement⁶, including in particular the beginnings and growth of psychological alienation and of concentration on individual and local issues - such *concentration* was then. berated as anti-national; alienation, aloofness and attacks led to an orgy of spectacular misunderstandings and complaints, with all sides quick to indulge in one of our favourite national pastimes - destructive criticism -and to rising disenchantment; disenchantment led in large part to 1970⁷ I realized in May of that year how altered Trinidad and Tobago society might be becoming when a woman, a so-called

6. *The scope and nature of the shortfalls were all the more easy to grasp because of the superb enlightenment received by the population over the course of the several previous years - another irony.*

7. *To my mind, there was an excellent opportunity after the 1970 events for a renaissance - the opportunity withered, and the subsequent feeling of let down was all the more anguished. Disenchantment became more widespread and bitter.*

French creole, a citizen by birth of Trinidad and Tobago, assured me that she supported fully the basic principle (power to the dispossessed, who were mainly black and brown) for which the NJAC said it stood; "970 accelerated (it did not set in motion, as many people believe) the process of *Government* participation, often a 51% holding, in economic and financial ventures; it was not realized by many, and still has not been, that Government participation, even at the level of 51% can only be the first step on the treacherous road to national control and management of the economy, including the Himalayan heights of natural resources, banking, sugar etc.; this non-realization, together with other factors, has impelled at least some young men and women implacably to oppose the present societal framework - what is further ironic (and in 1973 astonishing and cause for alarm) is that so many persons of goodwill in Trinidad and Tobago appear to find it difficult to understand (I do not say agree with) the phenomenon of NUFF.

11. The ironies continued, a recent peak being the Prime Minister's extraordinary statement of September 23, 1973 to the P.N.M. Annual Convention and a population at once confused, cynical, apathetic, bitter, fearful, inward-looking but at the same time searching outward again for a Leader; yet a population seemingly ripe, if approached in the proper way, for a genuine polylogue. Can we not hope that out of such a meetings, a continual meeting, of minds - and the emphasis here must be on class and attitudes rather than on race - will emerge (not today or tomorrow, I know a sense, and an action programme to be implemented, of national belonging, of national self-confidence, of national self-reliance, of nationhood indeed? ⁸ When citizens will, in Tugwell's words (op. cit., pp. 99-100), in addition to expecting "protection from government ⁸", think of and put into practice their

"duties..... to *government*" and country? I am persuaded that the fertile ground for such an intellectual and spiritual sowing is there: my conversations with citizen... men and women

8. *Because, strictly speaking, we are not yet a nation; we are only a State. And in a state.*

9. *Another irony: in Trinidad and Tobago citizens came to depend on Government for an amazing range of things; then to resent the Government for such dependence and to seek protection from it, while apparently not appreciating that the Government had, in what it considered the best interest of the citizens, merely expanded the power which a large proportion of the citizens had themselves entrusted to it, or at least not tried seriously to prevent it from acquiring.*

in the street, assure me that this is so; even the businessmen, not always distinguished for their delicacy of sociological touch, seem at least some of them) to recognise it. Thus the representative of the South Trinidad Chamber of Industry and Commerce addressed the National Convention on March 30, 1973, in the following terms:

"There is another rather important objective that is achieved by this system we suggest (of an Upper House and of joint meetings of Upper and Lower houses) and that is in connection with the development of public opinion. In this way we would have created a channel of expression for the development of public opinion... but there is also another bonus and that is we are now presenting to the whole community an image of national participation."

12. Like my comments on race, what I have said on citizen participation is by no means complete. I have attempted to give, and I hope I have succeeded in so doing, the broad outline of what I see at the kernel of our discontent. Again, I do not have the answers, but I do know - and I agree entirely with the recent words of our Governor-General - that no constitution by itself

is going to solve the problems of Trinidad and Tobago. That can begin to happen only when all segments of the community bring to bear their views on the society in frank and free discussion and wrestle out a path to walk. It is in this context that I regret to have, on two vital issues, to part company with my brothers of the Constitution Commission.

10. *There are of course immediate day-to-day scourges like the high and rising cost of food, but these I see as to some extent part of the larger difficulty.*

Upper House

13. The first issue is the matter of an Upper House. The large majority of persons and groups who wrote memoranda to the Commission or who appeared before it upheld the idea of an Upper House, whether called Senate or Council of Citizens or Permanent Conference of Citizens. This is not to say that the Commission had therefore to recommend an Upper House - at the opening session of the National Convention on March 30, 1973, the Commission Chairman, with the full prior consent of all the other Commission members, had publicly stated that "insofar as may be necessary, either because we consider that a particular view is not workable or that it is not consistent with the other matters which are going to be brought into the Constitution, or for whatever good or sufficient reason, we may have in some instances to reject the majority view on a particular point" - but in this instance it is my firm opinion that the majority view was correct.

14. The majority view had many facets; many suggestions and proposals, which I do not intend to detail here, were put forward as to the type of Upper House that Trinidad and Tobago could have. Those who opposed an Upper House employed in general the following arguments:

- (a) the present Senate is a failure, therefore there should be no on in the new Constitution for an Upper House (I do not follow the logic of this reasoning, but I state it less). The present Senate, the argument develops,
 - (i) has no power;
 - (ii) wastes time;
 - (iii) coots the taxpayer nearly 200,000 per year, a remendous waste of money;
 - (iv) is "a source of irritation to the population";
- (b) Senators, to quote one person who wrote a memorandum to the Commission, "do not really represent the electorate or even the public at large. They owe their appointments and retain appointments at the absolute will of their political masters - - the Prime Minister or the Leader of the Opposition " .
- (c) finally, one cannot in any case these days find too many (if any) independent-minded Senators because of the insidious infiltration of governmental influence everywhere – the "safeguard" as one Opposition party leader put it, "is in party politics(and) in the electoral process."

15. I have no great quarrel with the bulk of the strictures levelled at the present Senate, but to attach full blame to that body for its near impotence is really not fair. The Senate is operating - if that is the word - under several constraints imposed from outside. While these

constraints do not in theory totally castrate it, the practical effect is and must be (if one takes the trouble to take as impartial a look as possible;) an almost complete loss of virility. It seems to me therefore that in this matter of Upper House or no Upper House one should first consider whether, in the current and reasonably foreseeable circumstances of our country, an Upper House is necessary and, if so, how it should be constituted.

16. I spoke earlier of alienation, disenchantment, cynicism ect. in contemporary Trinidad and Tobago society. So far as I can see, these apply especially to the political process. In the 1971 General Elections, after a spirited PNM campaign, only a small percentage of the electorate went to the polls. The major Opposition parties naturally saw this event as a massive response to their election boycott call and have since continued to trumpet this apparent victory. They give the impression that a sweeping triumph at the next General Elections is inevitable following electoral reforms of a technical nature (particularly the replacement of the voting machine system by the ballot box system) and that once the PATH is removed from power all sweetness and light and benefits will flow to the people of Trinidad and Tobago. My own soundings do not suggest to me that the truth is as simple as that.

17. I agree that there are many people in the country who are sick and tired of the PNM Government - some of the most disillusioned (for reasons that are not always noble) are persons who once unquestioningly, even jingoistically, supported the PNM and all its works. I agree further that there are many people who think that a substantial part of the answer to our problems as a State is the re-introduction of the ballot box system which, we hear, will certainly restore, now and in the future, a great measure of confidence in the leadership of the country and also that there are many who feel that

once the voting machine (which it is said, can be and has been rigged by the ruling party) is replaced by the ballot box (which presumably cannot be stuffed) a twofold purpose will be achieved resuscitation of confidence and the setting aside of the PNM, which latter event will further enhance confidence.

18. But I have not discovered that the turn away from the PNM and the prospect of the ballot box have been paralleled by a swing towards the existing Opposition parties and Groupings. To bewilder the public further, one party has split in two, and we now have a situation in which a citizen recently resident abroad has, at the behest of an apparently large number of other citizens, returned to lead a party, an entirely new entity which, so far as I can make out, is hoped to be able to cut across the lines of existing parties and groupings.

19. Further, there is a number of groups which for some time now have declined to participate in what they consider the absurdities and injustices of the conventional political process - NJAC, for instance, or NUFF or Tapia or OWTU. Their ideologies, and the expression thereof, may be judged quasi-radical or brilliant or frightening or confused or confusing or downright silly; university professors and lecturers may write learned analytical dissertations about this or that aspect of their philosophies; but in the end all this is surely not the point. The point is that these groups have come to the conclusion, for reasons which have been well-documented and publicized and which it is therefore not necessary for me to repeat, that full justice is not being done to the people of Trinidad and Tobago and that if full justice is not only to be done but also seen to be done, there must be a revolutionizing (11) of the country - they are convinced that you cannot repair or patch the present system: you must get a new one. And I have found quite a few individuals,

steeped in middle-class respectability, who share these views intellectually even if they are reluctant to accept them emotionally because they feel - no doubt rightly - that implementation would adversely affect their own self-interest.

20. What therefore are we to do? We are now a population that is largely unhappy with, and in some cases positively rejects, the political process as represented by the existing traditional parties. What of the minority that professes itself implacably opposed to the present process? Is the unhappy majority merely to draw up a new formula (one of the main elements of which is presumably the matching of a new and untainted Leader with a new and untainted Party) and blithely consign the minority (whose opinions,

11 Not necessarily by bloodshed

ironically, it shares to a not insignificant intellectual extent) to the venomous and impatient limbo we so often reserve for those who dare to hold views contrary to ours, especially when we suspect these views may be correct? How will the minority likely react? And is that same majority not likely, in keeping with our behavioural patterns over the years, to start within a relatively short space of time to dismantle precisely what it had so feverishly erected? In what way will this ameliorate the political process and entrench the principle of national participation to which so many of us claim we are committed?

21. There is no doubt in my mind that at the present stage of Trinidad and Tobago's development we need more than ever to involve the people of the country, not merely the better-known interest groups, in the running and the life and the work of the country. By this I do not mean to suggest that there is to be collective judgment, a referendum, a sort of

Caribbean, *landsgemeinde* on every issue to be decided: there will of course continue to be a ruling party for perhaps, under the proposals of my brother Commissioners, ruling parties) and a Cabinet, which latter will continue to be the supreme executive organ of government. What I am suggesting is the active involvement, or at least the widened opportunity therefor, of the average man and woman in the affairs of the country to which, after all, he and she belong. One way to do this could be through public seminars and conferences in various parts of the country; another could be through appropriately strengthened municipal and local government bodies, yet another could be through an Upper House. (12)

22. If, as I believe, the people of Trinidad and Tobago are, in general, dissatisfied with and cynical about the present political process; 13 if, as I also believe, there are in the society groups which have turned their

12 *These methods can, to my mind, help create the national self-confidence and sense of nationhood to which I referred earlier; they can help create national self-reliance and the psychological independence that we now so conspicuously lack.*

13. *It is clear that the present Government, by establishing the Constitution Commission, recognized the dissatisfaction. And the Prime Minister's recent decision to stay in office after all, while applauded in many quarters, has without a doubt deepened cynicism in others.*

backs on the process and which cannot be ignored, both because of the fervour of their ranks and because of the sympathy they command outside their membership; if, as I suspect, a slight modification of the process will do no more than temporarily galvanize

public interest; if, as I also suspect, there are men and women of all walks and classes of life who wish to play a constructive role in the drama of nation-building and who, for one reason or another, do not belong, and/or do not choose to belong, to any political party or grouping or other major interest group; if, as I further suspect, the innovation of Parliamentary committees will not have the impact that is expected of it; if we truly want national participation; then we must, it seems to me, have an Upper House.

23. Such a House will naturally have to differ radically in concept and composition from the present Senate. I see nothing wrong in having representatives of the Government and the Opposition in it; but these representatives, taken together, must form a numerical minority. As for the rest, the majority, I incline to certain proposals of the Tapia House Group: there must be "plenty of ordinary people" (Tapia pamphlet No. 5 page 1) - from Youth and Student Groups; Municipal, District and Village Councils; the University etc. - who "must be selected by the groups they represent (which) must be able to change them any time they like" and which must also pay them. I do not, on the other hand, subscribe to Tapia's view, however much I may sympathize with it, that this House must be a "big mace Senate". I commend the fidelity to the democratic principle inherent in this suggestion, but one has also to be practical: a Senate of 250 to 500 people, which is what Tapia is talking about, promises to be a creature that will surely be crushed along the Tapian Way to participatory Nirvana.

24. The members of this Upper House (and I do not see their number comfortably exceeding 50) should be rotated at two-year intervals. It may be objected that this period is, for a number of reasons, too short,

14 *And it is no good saying that if they are to contribute to the political (and by extension, the economic, social and cultural) life of the country they must be forced to join political parties or groupings. We have to maximize our resources to the appropriate extent, we have no choice, and we cannot read people out of the picture because they do not do what some of us think they should - in the long run we succeed only in injuring ourselves by such a course of action.*

and the objection may have validity; I am merely aiming at the fairly rapid spread of participation. And the House must have power broader than that of the present Senate to initiate legislation; to supervise (if not necessarily to make) appointments to posts of a national character; to examine, both alone and in conjunction with the Lower House, measures proposed in the latter, etc.

25. It may be argued that there is no guarantee that the population, including the disaffected groups, will accept such a House or any Upper House at all 15. Of course there is no guarantee; but is the present system of elections and nominations to Parliament any more appealing? Will the system recommended by my brother Commissioners, with its continued emphasis on party affiliation, be more likely to succeed in the present and foreseeable mood of the country?

26. Lastly, there is the argument that there should be no Upper House because one cannot, given the contemporary seeping of governmental power through the bedrock of the country, find many (if any) independent-minded persons who could make up a viable and vigorous Senate. I certainly agree that the spread of governmental authority and influence has been extensive (though it is a fairly common phenomenon throughout the world, not only in Trinidad and Tobago and in the developing

countries) but I cannot agree that people's minds have been so subverted, that people depend so much, directly and indirectly, on the Government for their livelihood, that we are now practically a country of political robots and zombies. Many of the memoranda sent to and public statements made before the Constitution Commission do not correspond in any way with this assessment. But more than this, one thing puzzles me. If the *influence* of government is as irresistible and oppressive as it is alleged to be, is there any reason why it should not also affect members of Opposition political parties? And, if so, will the "safeguard" really be "in party politics (and) in the electoral process....."?

Proportional Representation

27. It is contended by many of the proponents of proportional representation that the list members of the recommended mixed system are an excellent replacement for a Senate, in

15 *But see the second sentence of paragraph 13*

that these members, who do not have to face the hustings (but must belong to a political party), can be chosen for their expertise in or familiarity with this field or that and can thus bring to Parliament the same range of experience as, and perhaps a wider range than, the nominated Senators. Strictly speaking therefore, if a Senate, especially a reconstituted Senate, is to be retained there is or may be no need for the list arrangement. But we must go beyond this.

28. At the National Convention many speakers expounded on the virtues of proportional representation, and it would be only fair to set out their views. Proportional representation was said to be able to

- (a) minimize gerrymandering;
- (b) encourage and stabilize party politics and affiliations and "disperse disunity";
- (c) reduce the number of political parties;
- (d) "bring more bread for us";
- (e) break down or minimize racialism in politics;
- (f) eliminate the possibility of one-party rule;
- (g) secure a more just Parliamentary representation of the people; and
- (h) foster participatory politics.

It was also stressed that proportional representation was not communal representation; that it no more gave rise to coalition governments than the first-past-the-post system, and that in any case coalition governments were not necessarily weak; and that, as mentioned above, it would allow into Parliament persons of expertise and 'technical know-how' who were unwilling to plunge into the bramble and nettle thickets of election campaigning.

29. These views - some of them seemingly expressions of hope rather than the fruit of disciplined analysis - were all put forward with conviction. I shall look at a few only:

(a) Reduction in the number of political parties

One speaker argued that this was 'the West Indian experience' - he had been speaking of Guyana.

For the first elections held under the proportional representation system on December '], 1964 in then British Guiana, seven political parties nominated candidates - the People's Progressive Party (PPP), the People's National Congress (PNC), the United Force (UF), the Justice Party, the Guyana United Muslim Party, the United Labour Front and the Peace, Equality and Prosperity Party. The PPP, PNC, and UF together secured over 980 of the votes cast. In the July 1973 elections in Guyana there were five parties involved - the PPP, PNC, UF, the Guyana Liberator Party (GLP) and the People's Democratic Movement (PDM). The OF and the GLP formed a coalition.

I am not sure that one can draw firm conclusions from the above data. It is true that there was, over the period of 8y₂ years from one election to the other, a reduction of two in the number of parties facing the polls (and the Guyana United Muslim Party still exists); but it is also true that the GLP and the PDM were new parties.

The Guyanese system of proportional representation is much different from that which is being recommended for Trinidad and Tobago by my brother Commissioners. In Surinam, which has a mixed system of first-past-the-post and proportional representation (of

the 39 seats in Parliament, 27 and 12 respectively), there is a multitude of parties. In the elections of November 19, 1973 only five, however, won seats. Four of them - the National Surinam Party (NPS), the Party of the National Republic (PNR), the Progressive People's Party of Surinam (PSV) and the Indonesian Party (KTPI) had, prior to the elections, formed themselves into a grouping called the National Party Combination (NP%). This grouping won 22 of the 39 seats (NPS 13, PNR 4, PSV 3, KTPI 2), the remaining 17 being won by the Vatan Hitkarie Party (VHP). The Progressive National Party (PNP) of outgoing Prime Minister Jules Sedney (who did not seek re-election) lost the seven seats it had held in the previous Parliament, when it was in coalition with the VHP. It would appear that the largest single party in terms of number of seats obtained (VHP) will form the opposition, but this is not yet clear at the time of writing. The Surinam mixed system, it should be pointed out, is somewhat different from the one recommended by my brother Commissioners. For one thing, there is no uniformity in the number of members elected from constituencies - Paramaribo, for instance, elects ten members. It should also be noted that Surinam, which in 1969 had a population estimated at between 395,000 and 405,000, had, for the November 1973 elections, a registered voters' list of 182,071.

There is, I am afraid, no evidence from the Surinam experience that proportional representation causes a reduction in the

number of parties, or at least such a reduction as would lead to a greater measure of political stability. Insofar as the November 1973 elections are concerned, it is not even certain at the time of writing that the parties comprising the NPK had, in advance of the elections, elaborated a common programme of action.

(b) Coalition governments

It may well be that coalition governments are no more likely to occur under proportional representation than under the first-past-the-post system, but that is not necessarily a weighty argument in their favour. Sir Arthur Lewis ('Politics in West Africa') is one of those who feel that coalitions are excellent devices since each partner in the coalition can keep a watchful eye on the others, thereby preventing, or at least helping to curb, any excesses that any of the others (or any combination thereof) say be planning or executing. This may indeed be so, but there is surely the danger that, in the promotion of checks and balances, one may lose sight of the need for effective government. I agree that some coalition governments have worked well - better, in fact, than many governments elected on the first-past-the-post system. But quite often these coalition governments have been formed in times of grave existing or threatening national crisis or emergency such as war. I have doubts as to how purposeful, in periods of normalcy or relative normalcy, is the leadership that coalition governments give or can give, especially in developing

societies as plural as ours. And I fear that, under the proportional representation system, coalition governments will be more likely.

(c) Minimization of racialism

Few things would please me more than this, and I wish I could share the confidence of those who expressed this view. I am not sure that reasoned arguments as to why they felt this way were always advanced, but this is not to deny their sincerity.

(d) Better Parliamentary representation

This point was usually stated only and not pursued in depth. However, the eloquent analysis of my brother Commissioners more than compensates for any lacunae in the National Convention debate.

30. In the context of the fullest possible citizen participation, I am much impressed by the arguments of my brother Commissioners, and by the concerns voiced by those who spoke at the National Convention, on the subject of better and juster Parliamentary representation of voters and political parties. I appreciate the mathematical advantages of the system recommended by my brother Commissioners, but, while not opposing it in principle, find myself reluctant to accept it not only because I am recommending a Senate of a certain kind, not only because of the doubts expressed at (a) and (b) of paragraph 29 above but also for other reasons.

31. Firstly, our well-pronounced fissiparous tendencies, and not only in politics, make it possible that parties will be formed without due deliberation, only in the hope and expectation that with the proportional representation system they will each secure at least one seat in Parliament. At the National Convention on March 30, one speaker said:

"There is no shortage of political parties in this country and therefore people with a contribution to make can find one to suit their choice, or if there is none to suit their choice they can form one."

How right he has proven to be - but is this really in the best interest of Trinidad and Tobago?

32. Secondly, it is said - and I earlier referred to this - that the list members will be persons who have expertise, who will be specialists and who wish to avoid the rough-and-tumble of campaigning. These members will therefore be a kind of political gentility possessing a deep reservoir of knowledge and can take the place of the present Senate. I would on this point merely refer back to something I said earlier in this statement, namely that in my view the people of Trinidad and Tobago are largely disenchanted with the present traditional political parties. If this is so, I do not immediately see why confidence will be reposed in the list members to a greater degree than in the constituency members, seeing that the former will in any case have to be members of all or some of the same political parties. They will presumably be subject to the party whip in the same way as the constituency members, and will therefore be likely to operate within the same restricted ideological and disciplinary political framework. Will this further participatory democracy?

33. Thirdly, I have a suspicion that in this matter of proportional representation there is more than a small racial motivation involved. I have noticed that its most ardent proselytizers are of Indian origin; conversely, its severest critics are of African or at any rate non-Indian origin. And I do not speak of politicians only. Now this dichotomy may

be purely coincidental, but I see that the Tapia representative, speaking to the National Convention, on April 3, said that:

"I believe.... that the Indian community has been left out of the political system for the entire fifteen years, and I believe that much of the drive, if we are honest, behind this proportional representation, is a drive to let them in for what is their right"

If race is a substantial factor, as I suspect, in the question of proportional representation, then I am all the more convinced that, as I indicated earlier in this statement, it is a matter that we should have confronted squarely in our deliberations. And two other considerations occur to me. First, if race is indeed a topic of looming importance in the context of proportional representation, will the introduction of the latter in fact, or be likely to, reduce the incidence of racial voting? Second, if, as one speaker at the National Convention on April 2 said, proportional representation will allow ethnic minorities to be represented in Parliament (and the Surinam experience is relevant here), may we not one day find ourselves in the same dilemma as the leadership of the U.S. Democratic Party which, after the well-meant McGovern reforms on equitable representation at the upper reaches of the party, realized itself face-to-face with what it perceived to be a problem of representation by what amounted to a quota system.

34. Fourthly, I have a further suspicion that many of those who advocated the mixed system did so essentially because to them it presented itself as an easy compromise between what were seen as the diametrically opposed stands on the matter of proportional representation taken by the Government and some of the major Opposition parties. One speaker, addressing the National Convention on March 30, had this to say:

"We are not going to give you too much detail on the proportional representation system because, as you know better than me, there are so many types of this system, and from what you have already said, we feel if you decide to recommend that type of Parliament in your report that you are even better equipped than us to choose the correct proportional representation to recommend".

Now it is flattering to have so much faith placed in one, but, to me, it is a cause for concern that such a statement could be made, because it betrays a lack of familiarity with a vital concept that is nonetheless being accepted. And it makes me wonder if the easy way out has not once again been taken.

35. Briefly to sum up, let me say that I do not oppose the principle of proportional representation. I feel however that I have too many reservations about its application to Trinidad and Tobago society for me to accept it at this stage - I feel I want to study it more. There are other recommendations made by my brother Commissioners and/or me - differently structured Elections and Boundaries Commissions, differently structured Senate, Parliamentary Committee system etc. - which, if fully implemented, would in my view tend both to assure the fullest possible citizen participation and serve to calm the fears of those who have considered themselves discriminated against. Too strict an insistence on the details of what we consider democracy may be counter-productive: we may find that in the name of citizen participation and of democracy we have frustrated the working of democracy.

36. One last word. It would be a nice irony if one day (perhaps in the not too distant future) the roles are reversed, and those who most loudly clamour now for proportional representation find, for one reason or another, that it is no longer necessary to do so while those who spurn it now then seek its introduction.

Other Dissolution

37. There are two other specific points to *which I* should like to submit reservations. The first, which is to be found in the chapter on Parliament, relates to the dissolution of Parliament. The recommendation of my brother Commissioners is that the President should dissolve Parliament on the advice of the Prime Minister only if this advice is supported by a resolution of Parliament to that effect. I do not object to this as a general principle, but I do not agree that the restriction on the Prime Minister should be made so absolute. Occasions may arise when the national interest demands a dissolution which, however, cannot be effectuated because it is blocked by a fractious Parliament.

Political activity

38. The second point is to be found in the chapter on Service Commissions, where there is a recommendation that teachers be allowed to stand for office. I cannot agree with this. I feel strongly that teachers should be on the same footing as public servants.



..... J. R. P. Dumas

RESERVATIONS BY SOLOMON LUTCHMAN

While agreeing with most of the recommendations contained in the general Report of the Commission, I find myself unable to subscribe to some of the specific proposals advanced, and beg your leave to submit my comments and counter-proposals in these areas.

2. My disagreement on major points was indicated at the time of substantive discussions, but there was no opportunity to do so in respect of sections drafted after the discussions, and on decisions varied during the period of drafting.
3. My divergence from the views of my fellow-commissioners is not meant to indicate any lack of appreciation of the untiring and devoted dedication with which they approached and discharged the Commission's task. It is merely that they depart from some bases, which I did not share and our conclusions on these points must thus, of necessity be divergent. Their serious proposals merit every respect, but I would hope that my comments may also be worthy of some consideration.
4. This humble submission is not a critical analysis of the report as any such attempt would be a grave injustice to those who have toiled so long and continuously in a manner that I, due to circumstances beyond my control and theirs, could not equal.
5. While I might have wished, occasionally, to phrase some statements differently and vary some details, it may be assumed that I am in basic agreement with the proposals and recommendations to which I have not made specific reference.

6. The sections on which I propose to comment are the following:
 1. Introduction
 2. Fundamental Rights
 3. The Head of State (Election)
 4. Parliament
 5. The Judicature (appeal to Judicial Committee of the Privy Council)
 6. Public Service - Political Rights of Public Servants.

Introduction

7. I wish to dissociate myself from the analysis in the Chapter titled "Introduction."

8. The so-called "revolutionary" movement although it has existed in nearly all countries at different times, and still exists in very many countries at this time is a new and jolting experience for the people of Trinidad and Tobago. There is accordingly an overwhelming temptation to analyse all events and formulate all policies in relation to this "new" phenomenon. All, even those who purport to support it, regard it as undesirable, a cancer on the society. The apologists, for their own purposes, would regard the cancer as a sign of illness in the body, and would kill the body so that the cancer will disappear. Others, more clinically correct, perhaps, would cut out the cancer entirely and completely, to preserve the body intact and unchanged.

9. The more balanced and accurate view is to regard it as a growth that can be cured by treatment of the growth, a change in bodily habits, and the use of appropriate remedies.

10. What is unacceptable is the illusion that new clothes will either hide the growth, or somehow having hidden it, that it will be re-absorbed into the body through cosmetic measures.

11. A new constitution, or any new set of clothes, cannot solve the ills of any society unless there is a fundamental change of attitudes in the people for whom it is designed and the persons who must operate it.

12. Extreme views of the attempt to produce a new constitution have bordered on the ludicrous - it is advanced on the one hand that the new constitution will solve all political and other problems; on the other that it will solve nothing, and is a waste of time.

13. The fact is that no constitution can be better than the society it serves or can work better than is willed by the operators. A constitution should encourage the collective effort of the society and be the vehicle whereby the collective social effort is encouraged and realised, not frustrated and perverted. Even where a constitution is defective, collective social effort and public awareness can modify its operation, and even where it is good, public apathy and perverse practices can frustrate the best political machinery.

14. No constitution can change people, but political experience can educate those same people as to the mistakes that they, very often at the prompting of egocentric leaders in moments of lunacy, have made. The people are always, in the long run, wiser than their leaders, and the democratic system should provide continuous and succeeding opportunities for the good sense of the people to correct past mistakes and prevail.

15. The basic requirement of a constitution is, therefore, that it should give opportunity for the expression of the people's good sense, fitful and gradual as such expression may be;

that it should prevent mistakes from being self-perpetuating; that it should prevent leaders from realising their natural wish for self-perpetuation; and, most important, that it should provide opportunities for accesses of good sense to correct down-grading and retrogressive tendencies.

16. Thus, temporary intoxication with economic and political theories, occasional emotional excesses on racial, religious, or age grounds, administrative and bureaucratic extremes, witch-hunting and blind nationalism, rigid law enforcement and sporadic defiance of society, should all be no more than sunbursts that ultimately subside back into the main mass. Occasional distortions are a part of the dynamism of every society; the system must be flexible enough to accommodate, even to generate, them, but without permitting the distortions to become permanent or encouraging them to distort the main body of which they are only an off-shoot. Water may be the most precious commodity in the desert, but not on that account should its price be permanently above that of gold.

17. To utilise their collective experience, people must be given tools with which they are familiar and rules with which they are familiar. The changes must be clearly those demanded only so that they are in fact improvements on the familiar - otherwise experience is valueless, and a new series of experiments and experimentation must take place before any use can be made of the new tools, however good they might intrinsically be.

18. Modern science, the basic of man's conquest of nature, is based on a series of rules discovered gradually and proved by experimentation. The greatest scientist would be worse than helpless if things fell up or fire was cold.

19. The political experience of the people of Trinidad and Tobago has been of gradual development nurtured over the years; to change the bases for the sake of change would be to nullify that experience and start anew a search for rules, bases, and relationships.
20. Innovation is often sought for its own sake as an expression of independence and the shedding of old ties and existing ideas is regarded as essential to the realisation of full independence.
21. Thus, the fact that the origin of something is external, and especially British, is regarded as alone more than enough reason to discard it. The Commonwealth, the Organisation of American States, the United Nations Organisation, are all "they", not "we". The colonial mentality, so long accustomed to ideas from "them", is unable to appreciate that independence means participating on a free and equal basis. We waste our energies tilting with windmills until we have seen the enemy and realise that "they are us."
22. Whatever the source of our experience it becomes part of us by our having lived it, and to cut out our guts to rid ourselves of the nutrition that has come from "foreign" sources is neither healthy nor sane.
23. This self-deprecation leads us to seek to replace what has become ours by anything that is different, so we roam the world of ideas looking for something that is the most unlike what we have - and, by travelling too far east we return to the west and import some other external ideology or system, the only merit of which is that it is a monster that will not thrive on the soil of our experience.
24. Nation-building requires pride and self-confidence, virtues that cannot be imposed but must come from within. Only a great people can have a great constitution, and no

heaven-sent philosopher-king can raise a mass of timid, inept, listless subjects to achievement or dignity.

The Declaration of Rights

25. I have studied the comparative merits of stating Fundamental Rights briefly and simply as is done in the present constitution, and of attempting to define each right, as recommended in the report, following each with heads of exceptions under *which* laws can be passed which will not be deemed to be an abridgment of the substantive right.

26. We might divide rights for the purpose of the present examination into two classes - fundamental and social.

27. Among the former would fall the right to life, the right to personal liberty, the right to equal protection under the law, the right to protection from inhuman treatment, the right to protection from being deprived of one's property. As the report states, the law is highly developed in these areas, and the exceptions and modifications are well established.

I see no merit in attempting to summarise these exceptions and modifications when they are fully contained in the existing body of laws and precedents, a fact recognised by Section 3 of the present constitution. No summary, however carefully prepared, can be a substitute for what is fully stated, and in the case of a subject like Rights must be so vastly inferior and incomplete as to be dangerously misleading.

28. Among social rights, I would include the right of privacy, the right to freedom of thought and expression, the right to freedom of conscience and belief, the right to practise one's profession.

29. The Report admits that this is a vague category because circumstances are infinite and the law is still in the process of development. The solution sought in the Report is, having constructed a wall to protect these rights, to proceed to open gates in the wall, one of which, capable of being widened at will, is large enough to allow an army to pass - permitting legislation "in the interests of defence, public safety, public order, public morality, public health, or for the purpose of protecting the reputations, rights and freedoms of others."

30. The decision as to whether any of these wide interests justify a law is a political one, and the review power of the judiciary may be minor because of the lack of development of the law.

31. While retaining the judicial review, there should be no invitation to pass new laws by indicating the gates through which to pass, since the acceptability of any law is in the context of all political considerations at any given time, and not its justification under any technical criteria.

32. With respect to fundamental rights, I consider the formulation in the present constitution acceptable, as it contains the basic safeguards:

- (1) existing laws as the framework for the enjoyment of rights;
- (2) the requirement of a special majority to pass legislation;
- (3) an alerting of the public that fundamental rights are to be affected;
- (4) judicial review on the basis of what is justifiable in a society which has a proper respect for the rights and freedoms of the individual.

33. I do not consider that the present rights should be in any way abridged or diluted, and any tampering with the present list is bound to arouse suspicion. Thus, to eliminate

freedom of the Press on the ground that it is included under Freedom of Expression is hardly sustainable. To abridge anything that already exists must be for a sounder reason than that it is repetitious.

Head of State

34. While accepting the recommendations in the Report on this topic, I am unable to agree that an electoral college as constituted should be the body for electing the President and Vice-President. Persons who are elected to handle local affairs would have an equal voice on national issues as those elected specifically on a national basis.

35. There might be some possibility of justifying this recommendation although I doubt it, if there could be some argument for introducing persons elected on this local basis into decisions on national issues, not only on the election of the President but also on who is to preside in the National assembly - people from outside are to decide on who will preside over a body to which they do not belong.

36. The election of the President and Vice-President should ideally be on the basis of consensus by negotiation between the major national parties, but an electoral college as proposed can only complicate such negotiation, if the President of the Local Government Association becomes as important as the Prime Minister, and the "Leader of the Opposition" in the Local Government Association as influential as the Leader of the Opposition. Either the National Leaders will dominate the local councillors in which event there is no need for the presence of the latter, or the situation will be intolerable and the confusion indescribable. Although these local "outsiders" are to have so great a voice in the election of the President and Vice-President, it is not suggested that they have any participation in the processes for removal of the persons whom they have

elected - the smaller number, the members of the Assembly, initiate and decide on removal.

37. The electoral college proposed is an invention with no existence except as an invention for a purpose which is not its concern.

38. I propose, instead, that the election of the President and VicePresident be the responsibility of a joint sitting of the House of Representatives and the Senate or of the Assembly alone, if contrary to the experience and desire of the people, the Senate were to be abolished.

Parliament

39. I regret that I am unable to support the recommendation that the second house be abolished and that there be a single chamber elected on the basis of a mixed form of proportional representation.

40. Most countries appreciate the value of a second house where a calmer look can be taken at legislation without the complete rigidity of party discipline.

41. If the Senate in Trinidad and Tobago has not been as effective as it should it is because the Government has an automatic majority so that there has been no need to convince non-government Senators or pay heed to their declarations. If this automatic majority is removed, the Senate would be in a position to play the traditional role of a Second Chamber, and make its contribution to the processes of Government.

The Mixed System

42. The party lists from which half the members of the single house would be drawn is nothing more than a nominated system, except that the proposal would place these nominees in the same chamber as those who have faced the electorate.

43. Since the list is to be presented at election time the criterion for inclusion would be neither ability nor impartiality, but political activism and party loyalty.

44. Placing the nominees in the single chamber would make them rigidly subject to party discipline so that any contribution they can make to debate will be stifled. They would be back-benchers of the worst kind whipped into line and into silence by the government's necessity to maintain its majority on all matters.

45. Nominees would hold their seats not on the basis of endorsement by the electorate but at the pleasure of the party leader. Half the members of the house will thus have no status and no base on which to exercise independence of thought or speech.

46. The mixed system appears to have all the evils of the nominated system without any of the advantages.

The Effect on Parties

47. The requirement that parties put up at least twelve candidates to qualify for the privilege of putting up a list is likely to create a multiplicity of candidates. Most of the minor parties would only be interested in their lists and, having to put up twelve, they will almost certainly put up more so as to scrape every vote that can be added to their national total.

48. The result will be that every group that thinks it can get 5% of the total vote will be putting up at least twelve candidates. Groups will tend to be loyal as it will be their method of getting spokesmen in Parliament. With the sophistication of the Trinidad and Tobago voter for pretending to support a candidate or group when questioned, many groups with no realistic chance of winning even one seat will aim to secure its 5% nationwide, but to do this they must put up at least twelve candidates.

49. Elections will thus not be between a government party and an alternative government party but between a multiplicity of candidates each attempting to scramble for every possible vote wherever it may be.

50. Both groups and parties may, and probably will, learn in time the futility of dividing the vote, and in time a likely development will be to return to a two-party system. This will have the effect of denying a voice to minorities which is what the system is designed to encourage. Worse yet, there will be no incentive for society in a constituency to coalesce and produce its best candidate regardless of race or persuasion since no votes are will none the less vote goes to swell party divisions is encouraged. The good faith of even those who cross racial lines will be in doubt and, true or not, a person's political persuasion might then come to be judged on the basis of his race lost, the group in a hopeless minority in a constituency vote loyally for its party in the knowledge that each the national total. Since one of the major factors in race, voting along racial lines will be strongly

51. What is instead required is a system that forces minority groups to co-operate in major parties so that the very policies of parties will be modified to attract the widest support. Parties will have to take due account of the racial composition of a constituency and of the country and present individual candidates and a slate that can attract wide

support. Even if the successful candidates of a single party are thus not as multiracial a collection as would be ideal, both parties will be encouraged, even forced, to be multi-racial, with the consequent benefits to party decisions and policies.

52. If the minority groups are represented in Parliament, this representation will be a waste of time in a parliament where the Government has a majority; or it will give excessive, at times even decisive, influence to members who represent only a small portion of the electorate in a delicately balanced situation.

53. It is because I think that these minority groups should have a voice and an opportunity to influence legislation that I recommend the continuation of the Senate.

The Senate

54. If the parties are to nominate, then their nominees should be in the Second House, the Senate, to use the name familiar in Trinidad and Tobago.

55. The Senate should be so constituted that the Government does not have an automatic majority and would have to work at *convincing* other members to support its measures.

56. I believe that the *Senate* should be smaller than the First House, and recommend that it should have a membership of thirty.

57. Of these, one-fifth (1/5) or six, should be nominated by the President in his own discretion after consultation with the groups and interests that he *considers* should have representation.

58. The remaining 24 should be named by the President on the advice of the Party Leaders in the First House, each Leader nominating a number proportional to the number of total votes his party has secured in the national poll.

59. A party could still control the Senate if it polled two-thirds of the total votes cast in an election, but such a party must be considered to have secured an adequate mandate from the electorate.

60. It is more likely, however, that no party will poll two-thirds of the total votes and that the Government will have to secure the votes of other Senators to carry through its measures.

60. The Senate should, in any case, only have delaying power for two months, except in respect of money bills, where they should have no power at all, except to censure. This ensures that they do not frustrate the policies of the elected representatives, but can offer a cooling-off period for public opinion to mobilise and express itself for the guidance of the elected house when it reconsiders the matter.

Committees

61. I support the committee system recommended in the main report but consider that they should be joint Committees of the First House and the Senate. This will ensure cooperation between the Chambers and ensure that major differences are discussed calmly and constructively in a forum other than the more rigid, formal sittings of the Houses.

Presiding in the Senate

62. The Senate should have a President elected by a Joint sitting of both Houses at the same sitting in which the President and Vice-President are elected, and the rules of election

should be the same as for those two offices. In the event that the joint sitting is unable to agree on the election of President of the Senate, the matter should be referred to the Senate alone for decision by simple majority.

Joint Sitings

63. Provision should be made for joint sittings of both houses for formal purposes, for election and removal of the President, Vice-President and President of the Senate and for such other matters as may require joint action.

Appointment of Ministers from the Senate

64. It is desirable that the Government should have Ministers in the Senate, and the number appointed to the Cabinet from that House should be in the discretion of the Prime Minister. The Government would thus have spokesmen for the meaningful debates in a revitalised Senate and would be able to draw upon the talents of its able nominees.

Judiciary (Appeal to Privy-Council)

65. I regret my inability to agree that appeals to the Judicial Committee of the Privy Council should be abolished.

66. The confidence expressed in the report in the ability and sufficiency of local Judges of the highest calibre is shared by many people, but the weight of public opinion is in favour of continuing the present system.

67. The arguments in favour of the retention are summarised in the report, and do not appear to be answered by the rebuttals advanced.

68. The Commission has been anxious in all its discussions to stress the importance of public confidence in the institutional system, and it is certain that the abolition of the right

of Appeal to the Privy Council would not only fail to evoke public confidence, but may indeed invite suspicion and mistrust.

69. Abolition of this right is indicated to be a trapping of independence, as it removes an external link. Yet the report recommends that we should attach ourselves to a West Indian Court of Appeal should one be established. Surely this is a recommendation to slide up from the bottom of the see-saw.

70. The view that removal of external links is an essential trapping of independence is a myth. Almost daily, independent countries devise new external instruments in addition to the many already existing to which they voluntarily submit themselves, not as a limitation of their independence but more often to protect and realise the fullness of that independence. The distinction between an external link imposed and one voluntarily assumed must always be the most important consideration in a discussion of independence - it is only an independent country that can truly assume external links by its own act.

71. The good record of the Court of Appeal and the integrity of its members is not in question and advancing this record appears to be an attempt to stifle those who would seek to retain the right of appeal to the Privy Council by implying somehow that it is an attack on individual Judges. In at least some of the cases Privy Council decisions have in fact bolstered public confidence in the present judiciary.

72. But the public do not believe that we shall always have the same judges nor that circumstances and pressures may not vary; some know, and many sense, that courts can be subverted, and there are many precedents for just such a course by an executive that finds the judiciary a stumbling block. Packing the court, influencing appointments, dangling

rewards, are the stock-in-trade for such subversion. The courts in the largest countries are not immune from this danger, which is progressively greater the smaller the society.

73. In a period of change it is better to retain institutions in which the people have faith, for where there is no good reason for change and the people clamour against it, to effect that change, even from the highest motives, is to invite suspicion, foment mistrust, and sow doubt and fear.

74. Where elsewhere in the proposed Constitution, there has been an attempt to produce checks and balances on other arms of Government the Report attempts, contrary to public opinion, to remove a check and balance already existing on one arm of Government.

75. I accordingly recommend that the right of appeal to the Judicial Committee of the Privy Council be retained.

Public Service - Political Rights of Public Servants

76. Civil Servants and Teachers should be free to indulge in political activities. In a country like Trinidad and Tobago a great part of the talent is in the Civil Service and the Teaching Profession, and to stifle them politically is to rob the country of a good portion of the ability available.

77. Civil Servants, in particular, have practical experience of government and are better able to make a useful contribution than the theoretical and other irresponsible ones made by university professors and inexperienced professional people. Several civil servants and teachers do in fact indulge in political activity, and the right should be extended to all.

78. Civil Servants in "delicate" positions may not wish to participate in politics, but the decision must be theirs, not one imposed upon them. A civil servant's political activities

would be taken into account by the Public Service Commission when the question of appointment or promotion to a policy-making or senior executive position arose.

79. Civil Servants or Teachers should be permitted to retire from the service if they wish to become candidates for election, or if they are appointed as Ministers. Persons who retire to become candidates or Ministers should not be reabsorbed into the Service although they may be eligible for appointments on contract or on a temporary basis.

A handwritten signature in black ink, appearing to read 'S. S. Lutchman', with a stylized flourish at the end.

S. S. Lutchman

RESERVATIONS BY J. HAMILTON MAURICE

A - Declaration of Assets

1. The compulsory declaration of assets is not based on any general or specific democratic principle. It is undemocratic and very discriminatory and so I am against.
2. It offends the democratic concept of the equality and dignity of man.
3. It violates the fundamental right of one's right to privacy for himself and his family.
4. It shows no respect for the honour of the House and the integrity of its members. On the very ground of their personal dignity and integrity members may refuse to comply, and quite rightly .I think.

B - Dissolution of Parliament and Elections

5. Fair and free elections call for fair and equal conditions.
6. When Parliament is dissolved, all seats become vacant, including those of the Executive. Yet the Executive remain in office and retain all their powers and privileges, which may be used, at official expense, with considerable advantage over the other candidates in campaigning for themselves and all the election candidates of their own party. This and other obvious advantages make the campaigning unfair and the conditions unequal and the democratic principle of the equality of opportunity is lost.
7. We are providing a Constitution for a parliamentary democracy and the accountability, especially financial accountability, of the Executive to Parliament is the very essence of this type of government. So it is correct to say that with no Parliament

there is no accountable Executive, which is what parliamentary democracy is about. So no Parliament, no Executive.

8. I beg then to recommend that with the dissolution of Parliament, the Executive should also go out of office and the country administered by a Council of State, comprising the President, the Vice-President and the Head of the Public Service.

9. The President-in-Council should be granted certain prerogatives -

- (a) To issue decrees subject to confirmation by the new Parliament.
- (b) To control the Consolidated Fund.
- (c) To recall the old Parliament should some grave crisis arise.

10. The period of dissolution need not be more than 45 days.

C - System of Elections

11. I agree with the single-vote mixed system of first-past-the-post and proportional representation, but I differ from the main recommendation in the method of application.

12. Under first-past-the-post the total number of votes cast for a party registers and reflects the will and support of the electorate or people for each party and so the seats gained by a party should be in proportion to the votes cast. That is, the percentage of votes cast should determine the proportional distribution of seats among all parties in the House, for this is what democracy is about.

13. Yet it happens under first-past-the-post that the total seats gained may not be in proportion to the votes cast and there is then in the results a distortion of the will of the people.

14. Although first-past-the-post has certain obvious advantages, yet in order to adjust this distortion in the results and so give a truer picture or reflection of the will of the people in the distribution of seats in the House, the mixed system of first-past-the-post and proportional representation based on a single vote is recommended and should be applied as follows

- i) The total number of seats to be filled should be divided equally under first-past-the-post and proportional representation. Voting under first-past-the-post first takes place and the total votes cast and seats won are counted.
- ii) In a House of 72 seats, 36 will be filled under first-past-the-post and 36 under proportional representation. The results in the first-past-the-post voting may give Party A 40 per cent of the votes but only 30 per cent of the seats (11 seats roughly). And in the case of Party B, 50 per cent of the votes cast may give as many as 60 per cent of the seats (21 seats roughly).
- iii) In this example the distortion is quite great for a difference of 10 per cent of the voting. And here is where the principle of proportional representation is applied in order to adjust the distortion. And to do this we use the very percentage of votes cast under first-past-the-post. Party A is therefore entitled to 40 per cent of the seats in the House in the proportional distribution of the seats. That is, Party A is entitled to 40 per cent of $72 = 29$ seats. But Party A has already won 11 seats under first-past-the-post, so Party A gets 18 seats of the proportional representation 36 to make up the 29 seats and so adjust the distortion. Party B with 50 per cent of the votes is entitled to 50 per cent of $72 = 36$ seats. But Party B has already won 21 seats

under first-past-the-post, so Party B gets 15 seats of the proportional representation 36, to make up the 36 seats and so adjust the distortion. And similarly in the case of other parties.

15. The single vote merges first-past-the-post with proportional representation and re-enforces party voting. With the principle of adjustment it also tends to eliminate racial voting.

16. I do not agree that parties should be compelled to post and publish in advance a list of the names of the candidates to be selected under proportional representation. This imposes an unnecessary strain or burden on parties to draw up a list when only two or three on the list may be eligible for selection.

17. The advance publication can also embarrass candidates and even put them to ridicule when the results under first-past-the-post are disappointing. And it deprives parties of the right to relate their selections under proportional representation to the results under first-past-the-post. Advance publication of the list should be optional and left to the party's discretion.

D - Local Government

18. A fundamental concept of parliamentary democracy rests on a central and a local parliamentary system. In other words on a central government with a parliament and a local government with its municipal and county councils. Without local government the political system in a parliamentary democracy cannot be regarded as completely democratic and the Constitution should indicate this fact or principle.

19. Local government should be considered an arm of government in which local *councils* should be made local authorities in the full sense of the word, *in* certain matters,, and so given limited executive powers in such matters, which can be clearly defined in keeping with a certain uniform standard to be observed by all councils. In the case of Tobago, however, there should be a wider definition of the authority and the operation of the Council. But such details need not be stated in the Constitution.

20. By the services they can render, local councils give the people the opportunity to participate in solving their own local problems. Participation at the local level may be even more real than at the national level. It is not just a matter of voting, for local councils can be used as effective instruments for enlisting the active cooperation of the people in dealing with certain social weaknesses and environmental infections in an effort to rid the country of such evils.

21. Without local government there is the danger of excessive centralisation and the tendency to treat the art of governing as a political process for the exercise of power from the centre, with the result that the attitude to local interests and local people, shown by bureaucrats from the centre, can be both ignorant and indifferent.

22. On the other hand, decentralisation, through local councils with some authority shows respect for local interests and in this way recognises the capacity of local people to deal with their problems.

23. The existing areas of local government should be re-examined with a view to making certain changes. Among others, I suggest -

- (a) the division of St. George into two Councils;

- (b) the division of Caroni into two Councils, with Couva and Chaguanas as centres;
- (c) the re-shaping of the counties of Victoria and St.Patrick;
- (d) the raising of Tunapuna to the status of a municipality, to include St.Augustine, Valsayn and the University area;
- (e) the extension of the Borough of Arima.

Care should be taken to see that the local area unit is neither too small nor too large for administrative purposes.

E - Prime Minister's Veto

24. I am against the Prime Minister's Veto over certain or any appointments in the Public Service, for I think it can affect adversely the morale of the Service and the efficiency of the Administration.

25. The Public Service should be regarded as a neutral, permanent and protected Service. And all those who make it their career should do so with a sense of national duty and loyalty and with an objective responsibility free from political patronage and interference. All appointments should therefore be in the hands of an independent Public Service Commission.

26. On the other hand, the Prime Minister should be free to choose the members of the Diplomatic Service as well as his technical and professional specialists to advise him, choosing, if he cares, both categories from among members of the Public Service or outside.

E - Election of President and Vice-President

27. It was unanimously decided to pre-empt the election of the first President of the Republic, when in Article 41 it was recommended that the present Governor-General should assume the office, of President immediately after the adoption of the new Constitution.

28. I also agree that at the very first sitting as the Parliament of the Republic, the National assembly, after the usual oath-taking, should elect the Deputy Speaker, who will act as Speaker until the Vice-President is elected.

29. But I am -1gainst the recommendation of Articles 42 and 43 that the Deputy Speaker shall be responsible for the holding of elections for President and Vice-President and shall preside as Chairman over the proceedings of the Electoral College, which consists of Members of Parliament and Councillors.

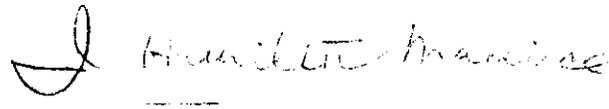
30. I consider it most irregular that the Deputy Speaker as such, in view of the nature and manner of his own election, who is also an interested party, should at any time conduct and preside over any election of the Electoral College, especially when there is provision for the appointment of an Elections Commission.

31. Accordingly, I beg to recommend -

- (i) that at this very first sitting of the National Assembly, the nomination of the Elections Commissioner be submitted to it for appointment and action taken immediately in accordance with Article 148;
- (ii) that from the date of his appointment the Commission be responsible for the conduct of elections;

- (iii) that he arrange at once for the holding of local elections prior to the date for the election of the Vice-President; (iv) that immediately after the local elections he should establish the Electoral College and proceed without delay with the election of the President and the Vice-President.

J. Hamilton Maurice

A handwritten signature in cursive script that reads "J. Hamilton Maurice". The signature is written in black ink on a white background. Below the signature, there is a short horizontal line.

RESERVATIONS BY DR. SELWYN RYAN

Although agreeing with most of the recommendations of my colleagues on the Commission there are two with which I strongly disagree.

2. In the section of the Constitution concerned with fundamental rights, provision is made for the Executive to declare and maintain a state of emergency for six and one half months by a simple majority in the National Assembly. One view was that there should be no limit at all. The majority however felt that a limit of six and one half months should be imposed. If the condition persisted beyond that time, then a three-fifths majority would be required to maintain the state of emergency.

3. My own view is that the three-fifths majority should be required for any extension beyond three and one half months. This period of time should normally be sufficient (in most cases it would be much more than is really necessary) for a Government to cope with a crisis. If the crisis persists, the Government ought to be able to persuade at least eight additional members of the Assembly to go along with it. Should it not achieve this level of consensus, it would seem that there is prima facie evidence that the emergency is not genuinely national but one which provides advantages to the ruling party.

4. It has been suggested that this provision is much too restrictive. I disagree. If the ruling party felt sufficiently convinced of the necessity to keep the emergency in force, it could let the emergency lapse and reintroduce it using the same formula. It would however require a great deal more courage and daring on the part of a government to proceed in this way than to ask for a simple extension.

5. The view was expressed that conservative governments were not the only ones which might have need to make use of emergency provisions. Radical governments might also need a long period of time in which to cope with difficulties, which might arise if they attempted to make structural reforms in the society. In my view this is equally unsatisfactory. Although radical structural reforms are needed, I am not convinced that they should come by way of unilateral imposition during periods of emergency. In any event, the real threat to law and order in the Caribbean in the foreseeable future will come not from subversives and "guerillas" on the left but from rightwing elements-from "gorillas" as they are so graphically described in Latin America. To say this however is not to endorse the present attempt to resort to guerrilla strategies or to agree with the view that conventional politics is no longer relevant in Trinidad and Tobago.

6. Although my brother commissioners considered it to be outside their terms of reference to comment on the restrictive legislation passed since 1970, I myself believe that much of it is needlessly restrictive and should be reconsidered together with the Commission's Report.

Ombudsman

7. My second reservation relates to the rations for the Ombudsman whom I would much rather prefer to call the Commissioner for Justice since some citizens may have difficulty with the imported phrase.

8. In dealing with the office of Ombudsman in the context of Trinidad and Tobago one has to face very squarely the fact of race. The Commission was well aware of this fact throughout its deliberations, but in some cases minimised its true significance. Few serious observers would disagree with the assertion that race has inhibited the free flow

of opinion on matters of social and economic importance. Until recently, criticisms of the ruling party by Indians were seen as being racially motivated and for this reason not taken seriously. On the other hand, criticisms which came from Africans or people of mixed racial ancestry were often regarded as treasonable. The stakes of politics were seen as being too high to admit of openness and genuine party competition. When parties lose power in Britain, Canada, the United States or Jamaica, to cite a few examples, most people assume that the essentials of public policy will remain basically the same. There is a widespread belief that the new incumbents will respect the rules of the political game and will not alter it to the systematic disadvantage of other contending parties and social forces.

9. In Trinidad and Tobago there is still a widely held feeling that the rules of the administrative and political process are often manipulated for purely partisan advantage. There is also a pervasive belief among peoples of African descent and mixed elements that the state apparatus properly belongs to them and that Indians, as a group must never be allowed to achieve political power. There is the fear that if this were allowed to happen, economic and political power would become fused in the same hands, with all this is assumed to mean for the economic well being of the non-Indian population. The belief that Indians will use political power to alter the dominant position which peoples of African and mixed heritage now enjoy in the public sector appears to be of greater concern than the economic dominance, which foreign and local whites now enjoy. This belief is perhaps one of the most powerful factors, which affects the style of political and administrative behaviour in Trinidad and Tobago. Many *Indians* in fact appear to have internalised and accepted the view that they will never be allowed to control the apparatus of government. These beliefs

in part explain why many people are unwilling to contemplate the prospect of having parties alternate in controlling the state apparatus as has happened in Jamaica. To change a party is to run the risk of changing a race.

10. If these assertions are true as I believe them to be, it follows that I cannot share the optimism of my colleagues that men can easily be found to fill such a sensitive post who would be equally acceptable to both Indians and Africans. If any are found, they are unlikely to remain acceptable for very long. This is an unpleasant truth, but it has to be faced. To be effective, an Ombudsman must be able to command the trust and respect of public servants. He has to work with them, not against them. The public sector at the present time is for the most part staffed by people of African descent. It is quite unlikely that an Ombudsman of Indian ancestry will be very effective in dealing with the public service as presently constituted. Many public servants and ministers would be tempted to see him as an "outsider" who was seeking to embarrass "them" for partisan advantage. If an Ombudsman of African ancestry is chosen, the chances are that Indians will not have the necessary confidence in his independence and impartiality. He will become typed whatever he does, and respect for the office will decline among them.

11. One well understands and appreciates the argument that it is dangerous to institutionalise race. The fact however is that we are not a non-racial society as we sometimes like to pretend. Race is the central fact of our political culture. We are perhaps only a bit more polite and sophisticated than others in expressing our racism. For the most part we whisper our fears and grievances rather than shout them from the rooftops. We do the latter mainly at election time.

12. Given this fact, I endorse the recommendation made by the Joint Standing Committee of Justice Trinidad and the Bar Association for a collective Ombudsman of at least three persons with a rotating chairmanship. In this way some representation could be given to the major groups of which our society is composed. Symbolic representation is often just as important as effective ration. At times it is even more so.

13. A plural Ombudsman is vitally necessary for other reasons. The area of state activity in the society has widened dramatically and will continue to do so. Large areas of the economy and society are run by ministers and bureaucrats, and backbenchers in Parliament are unable to do much to gain redress for aggrieved citizens even if they ere so minded. There are also few administrative tribunals to which appeals could be made. The Commissioners could not help but notice in their trips around the country that people regarded them as a sort of travelling Grievance Commission. Many persons particularly in remoter areas like Cadres, Matelot, Rio Claro and Blanchisseuse had lost faith in the traditional mechanisms of politics and believed that the Commission could do something to soften the asperities of their daily lives. They had lost touch with their parliamentary and local government representatives and seemed bewildered by the forces at work around them.

14. The need then is not only for a revitalised parliamentary system and more grassroots participation as indispensable as these are. These need to be supported by structures, which will help to kindle the confidence of citizens in the administrative process. One way to achieve this would be to widen the scope of the office of Ombudsman to include areas like consumer grievances, irregular activities on the part of

members of the protective services and certain aspects of the administration of justice in the courts.

15. To reduce the temptation for persons of one race to go to an Ombudsman of a similar race, one could assign specific responsibilities to each Ombudsman even while maintaining the notion of collective responsibility. Sweden, which began with a single parliamentary Ombudsman, now has three, all of whom supervise specially demarcated areas. There are also two deputy ombudsmen and a number of others operating on an unofficial basis. Britain, which began in 1967 with a single commissioner, is also planning to institute commissioners for the Health Service, Local Government, and the police. In the last mentioned sphere, the commissioner would intervene only when an initial review by the police itself is considered unsatisfactory. Some such police review system is clearly needed in Trinidad. Swedish Ombudsmen also have jurisdiction over the police, the armed services and public prosecutors.

16. Having a larger body would make it possible for more grievances to be heard and processed. It would also allow ombudsmen to travel to outlying areas such as Tobago and Cedros more frequently. It would also allow them to exercise more initiative in investigating the operational techniques of departments which are often in large part to blame for maladministration and consequent hardship to the public. It is also possible that a collective body could better withstand the corrosive social and political pressures that are certain to be brought to bear on the institution if it appears to be doing its job effectively.

17. We badly need a cheap and efficient mechanism for coping with the many frustrations now suffered by the little man because of the inefficiency and bungling of the bureaucracy - no answers to letters or applications, delay in making decisions, insufficient information about the

reasons for decisions, poor service from public utilities and so on. It is true that the institution in countries like Sweden and Britain began in a limited way and then expanded. But this strategy was followed for historical and political reasons rather than from any desire to "run the machinery in" as has been asserted. These countries have now found that given the expectations of their citizens that they must have ready instruments to secure redress from bureaucratic abuse and negligence - a single officer is no longer adequate. It is hardly surprising that the ombudsman idea has spread so dramatically in the last few years and that even universities, armies, and many private corporations have adopted the idea.

Appendix A

**Organisations invited to attend private meetings to discuss the procedure to be
adopted by the commission**

- + African National Congress Democratic Action
- # Congress Democratic Labour Party
- Democratic Liberation Party + Liberal Party
- + National Joint Action Committee
- People's National Movement
- # Tapia House Group
- # United National Independence Party
- Businessmen's Association
- Employers' Consultative
- Association Federation of Chambers of Industry and Commerce
- Junior Chambers of Trinidad and Tobago
- South Trinidad Chamber of Industry and Commerce
- Tobago Chamber of Commerce
- Trinidad Chamber of Commerce
- + Oilfield Workers' Trade Union
- School Teachers' Association of Trinidad and Tobago
- Trinidad and Tobago Labour Congress
- Trinidad and Tobago Teachers Union
- + United Labour Front

Bar Association of Trinidad and Tobago

Business and Professional Women's Club

Coterie of Social Workers

Federation of Women's Institutions

Guild of Undergraduates of the U.W.I. - St. Augustine

Lions Club of Port-of-Spain

Medical Board of Trinidad and Tobago

* National Youth Congress

Soroptimist Club

Trinidad Medical Association

Trinidad and Tobago Law Society

Trinidad and Tobago League of Women Voters

Victoria League

Women's Corona Society

* Accepted invitation but delegates found it inconvenient to attend at the time fixed.

Did not accept the invitation.

+ No reply received.

Appendix B

Dates	Venues of Public Meetings
July 5 1972	Arima Town Hall
July 6 1972	Penal Community Centre
July 10 1972	Digeo Martin Government Secondary School
“	Chaguanas County Council Hall
July 12 1972	Rio Claro Community Centre
“	South Port-of-Spain Community Centre
July 13 1972	San Juan Girls Government School
“	Mayaro Government School
July 17 1972	Princes Town Community Centre
	Tunapuna Community Centre
July 19 1972	Holy Faith Convent, Couva
“	Carenage Community Centre
July 21 1972	Scarborough County Council Hall
July 22 1972	Mt. St.George Methodist School
“	Plymouth A.C. School
“	Bon Accord Government School
July 23 1972	Mason Hall Community Centre
“	Roxborough Government Secondary School
“	Charlotteville Community Centre

Dates	Venues of Public Meetings
July 26 1972	Beaumont Hill, Pointe-a-Pierre Civic Centre
July 27 1972	Maraval Community Centre
“	Point Fortin Civic Centre
July 30 1972	Toco Community Centre
July 31 1972	Sangre Grande Community Centre
“	California Civic Centre
August 2 1972	Pleasantville Community Centre
August 3 1972	Cedros Anglican Church School
“	La Brea Community Centre
“	Fyzabad Community Centre
“	Curepe C.M. School
August 9 1972	Naparima Bowl, San Fernando
August 10 1972	Tabaquite Community Centre
August 14 1972	St. Ann's Chinese- Association Hall
“	Rancho auemado Community Centre
August 15 1972	St. James A.C. School
August 16 1972	Siparia Community Centre
“	Marabella Community Centre
August 17 1972	Port-of-Spain Town Hall
August 23 1972	Barrackpore O.W.T.U. Hall
March 10 1973	MINI - CONVENTION
March 11 1973	SCARBOROUGH, TOBAGO

Dates	Venues of Public Meetings
March 30 1973 to May 9 1973	NATIONAL CONVENTION CENTER CHAGUARAMAS

Appendix C**Individuals and Organisations from whom memoranda,
statements letters were received by the Commission****Individuals**

1. Mr. Kenrick Adolphe
2. Mr. Albert Alkins
3. Anonymous
4. Anonymous
5. Anonymous
6. Anonymous (Diplomatic Officer - Overseas Mission)
7. Mr. Vincent H. Arneaud
8. Mr. D.D. Ash
9. The Auditor General
10. Mr. Earl Augustus
11. Mr. Frank Balbosa
12. Mr. Hugh J. Baird - New York, U.S.A.
13. Mr. J.F. Belle
14. Mr. Ian Bertrand
15. Mr. F.A.M. Brunton
16. Mr. Anderson D. Burkett
17. Mr. Neville Butler - New York,
18. Mr. Rev. Edward O.H. Buxo

19. Mr. Samuel E. Cartey
20. Mr. Carlton Cato
21. Mr. Edward Charles
22. Mr. Charles Clarke
23. Mr. Frank Clarke
24. Mr. S. Cremona-Simmons
25. Mr. Marcus V.G. Culliens
26. Mr. C.J. Gumming-Bart, London
27. Mr. Rufus Debi
28. Mr. Rufus de Bourg
29. Mr. William C. Dindial
30. 30. Mr. Anthony Dummett (2)
31. Mr. Terrence W. Farrell
32. Mr. Evans Francois
33. Mr. Neville Gibbes (2)
34. Mr. Albert (Abbey) O. Harris (4)
35. Mr. H. Hudson-Phillips
36. Mr. John D. Humphrey
37. Mr. McDonald Jackson
38. Mr, A.M. Khan
39. Mr. Lloyd Knight
40. Mr. Chicker Guinness Lalla
41. Mr. J. O'Neil Lewis (2)

42. Mr. Clyde Lopez
43. Mr. Samlal Maharaj
44. Mr. S. K. R. Maharaj - Geneva, Switzerland
45. Mr. Eric O. Maillard
46. Mr. Bernard Martinez
47. Mrs. Joyce Matadeen
48. Mrs. Liles Milne
49. Mr. Nikola Mitchell
50. Mr. Carlton R. Ottley
51. Mr. Aaron Phillip
52. Mr. Desmonde Pitt & Ors. - Montreal, Canada
53. Mr. Rampersad Ramcharan
54. Mr. Nanan Ramdeen
55. Mr. Ramdharie Ramnanan
56. Mr. Barnabas J. Ramon-Fortune
57. Mr. Bernard Raymond
58. Mr. Julien N. Richards
59. Mr. Farrell Roberts
60. Mr. W. Roberts
61. Rev. Fr. Garfield Rochard
62. Mr. Pollard Sagram
63. Mr. Fyzie Suliman
64. Mr. Egbert E. Newton Taylor

65. Mr. George M. Taylor (2)
66. Mr. Earnest A. Tracey - Ottawa, Canada
67. Mrs. Eugenia Whitwell
68. Mr. Aubrey George Williams.

ORGANISATIONS

69. Alfours Committee
70. Chatham Food Co-operative Group
71. Democratic Labour Party (Jamadar Faction) (a)
72. Democratic Labour Party (b)
73. Elections and Boundaries Commission
74. Group of Christian Clergymen
75. Group of Four Lawyers
76. Incorporated Law Society of Trinidad and Tobago
77. Indian National Congress of Trinidad and Tobago
78. Joint Standing Committee of Justice Trinidad and the Bar Association
79. Journalists Association of Trinidad and Tobago
80. Junior Chamber of Trinidad and Tobago
81. Land Surveyors Association of Trinidad and Tobago
82. Mother Latchmee Ashram
83. National Executive of the Young Socialists of Trinidad and Tobago
84. People's National Movement
85. People's Popular Party
86. Public Services Association of Trinidad and Tobago

87. Public service association of Trinidad and Tobago
88. Scroptimist Club of Port of Spain
89. Scroptimist Club of San Fernando
90. Tapia House Group
91. Tobago Conservative Party
92. Ttrinjac Social and Community Planners – New York, U.S.A.
93. Trinidad and Tobago Association – Toronto, Canada
94. Trinidad and Tobago Association in the United Kingdom – London Branch
95. Trinidad and Tobago Federation of Chambers of Industry and Commerce
96. Trinidad and Tobago Labour Congress
97. Trinidad and Tobago Medical Association
98. Trinidad and Tobago Ratepayers Services and Commodity Consumers Association
99. Union of Revolutionary Organisations
100. United Progressive Party
 - (a) Memorandum was received before reported split in the party
 - (b) Memorandum was received before the dissolution of the and its subsequent merger with the Democratic Labour Party.

Appendix D**Organisations represented at and Individuals who attended the National****Convention, Chaguaramas from March 30 to May 9, 1973.****Organisations**

Association of Chartered Secretaries and Administrators

Association of Professional Engineers

Agricultural Co-operative Society of Trinidad and Tobago

Business and Professional Women's Club

Carenage Youth Movement

Corona Women's Society

Coterie of Social Workers

Credit Union League of Trinidad and Tobago

Democratic Labour Party (Jamadar Group)

Democratic Labour Party (Lequay Group)

Employers' Consultative Association

Federation of Women's Institutes

Group of Christian Clergymen

Group of Four Lawyers

Guild of Graduates

Housewives Association of Trinidad and Tobago

Incorporated Law Society of Trinidad and Tobago

Inter-Religious Organisation

Joint Standing Committee of Justice Trinidad and the Bar Association

Journalists Association of Trinidad and Tobago

Junior Chamber of Trinidad and Tobago

Land Surveyors Association of Trinidad and Tobago

League of Women Voters

Mausica Teachers Training College

National Executive of the Young Socialists of Trinidad and Tobago

National Youth Council of Trinidad and Tobago

Pan Trinbago

People's National Movement

Public Services Association of Trinidad and Tobago

Seamen and Waterfront Workers Trade Union

School Teacher Association of Trinidad and Tobago

Mr. Evans Francois

Mr. Albert (Abbey)

Mr. John Humphrey

Mr. C. Manswell

Mr. Nikola Mitchell

Mrs. Lilas Milne

Mr. Carlton R. Ottley

Mr. Ramdharie Ramnanan

Mr. Rampersad Ramcharan

Rev. Fr. Garfield Rochard

Mr. Fyzie Suliman

Mr. Vincent Taylor

Mr. Aubrey George Williams

APPENDIX E

Method of working out the proportionality of seats to votes under the proposed system of mixed proportional representation based on election results for 1961 and 1966

The election figures for the year 1961 tabulated below are the simplest and will be used as the first illustration to show the method of working.

	PNM	DLP	ANC	IND	BP
VOTES	190,003	138,910	11,634	1,502	1,314
CONSTITUENCY SEATS	20	10	0	0	0

The PNM would have won 20 constituency seats and the DLP 10. As the elected House then numbered 30 the seats to be allocated from the lists would also have been 30.

Total number of votes cast was 333,363. Deduct from this number the votes cast for the ANC (African National Congress) and BP (Butler Party) which would fail to qualify for allocation of seats from the list because they failed to obtain 5% of the votes and failed to win a constituency seat. Deduct also the votes cast for Independents.

Total votes cast		333,363
less ANC	1,634	
BUTLER	1,314	
IND	<u>1,502</u>	<u>4,450</u>
		328,913

Divide the number of votes (328,913) by 30, the number of seats to be allocated. The quotient would be 10,964 to the nearest digit. This would be the number of votes which would entitle each party to a seat. This number would then be divided into the total number of valid votes cast for the PNM 190,003, and the DLP 138,910.

The resulting answer in the case of the PNM would be 17 with a remainder of 3,615, and in the case of the DLP 12 with a remainder of 7,342.

The PNM would be entitled to 37 seats (20 + 17), the DLP to 22 seats (10 + 12). The total number of seats would then be 59, one short of the 60 to be allocated. This would go to the DLP whose remainder 7342 is greater than that of the PNM 3,615. The final allocation would be PNM 37 and DLP. 23.

The figures in the 1966 elections were as follows -

	PNM	DLP	Liberals	Workers and Farmers	Butler	Independents and Others
VOTES	158,573		26,870	10,484	704	2079
CONSTITUENCY SEATS	24	12 102,792	0	0	0	0

Total number of votes cast was 302,402. Since the Workers and Farmers Party and the Butler Party and other parties failed to win a constituency seat or to obtain 590 of the votes cast at the election they would not qualify for list seats. The votes cast for these parties and for the Independents would be deducted from the total votes cast leaving a balance of 288.417.

This figure when divided by 36 produces a quotient of 8012 the number of votes required for allocation of one seat from the lists.

The PNM total of 158,573 votes when divided by the quotient of 8012 entitles that party to 19 seats with a remainder of 6345.

The DLP total of 102,792 votes when divided by the same number entitles that party to 12 seats with a remainder of 6,848.

The Liberals total of 26,870 when divided by the quotient entitles that party to 3 seats with a remainder of 2,834.

PNM would thus be entitled to	24 + 19	43 seats
DLP to	12 + 12	24 seats
Liberals to	0 + 3	3 seats
Total		70

Two seats would remain unallocated and these would go to DLP and PNM, which have the largest remainders resulting in a final allocation as follows -

PNM	24	+	20	=	44
DLP	12	+	13	=	25
Liberals	0	+	3	=	
					<u>72</u>