

**A GUIDE TO THE CONSTITUTION OF TRINIDAD  
AND TOBAGO**

**by**

**The Trinidad and Tobago Humanist Association**

PREFACE

The Trinidad and Tobago Humanist Association ([www.humanist.org.tt](http://www.humanist.org.tt)) is an organisation founded to promote the principle of rational and ethical thought and action, and devoted to meeting challenges on the basis of common humanity.

The nation of Trinidad and Tobago has for some time been in a state of political crisis, characterised by ethnic tensions and by an increasing lack of confidence, on the part of the population, in the institutions of State.

Many people and groups see the prospect of a lessening of tensions, and the beginnings of a return to social harmony and economic progress, in Constitutional reform.

In response to these pressures, the present government has appointed a commission to review the constitution, and the work of that commission is now open for public comment in a series of open meetings.

Response to the official draft has been sporadic but largely negative. The best informed commentators have unanimously seen in it an increase in the power of the Executive, although excessive executive power without adequate checks and balances was said to be the major problem of the existing Constitution. Some human rights organisations have detected in it the beginning of severe erosion of fundamental rights. In addition, other groups, including one newly-formed national political party, have prepared their own drafts, and suggestions for reform of particular aspects have been bandied about for some years.

All these proposals, however, are subject to the accusation of catering to the desires of particular groups. This is natural

and not to be condemned. Politics is, precisely, the process of conciliation of diverse interests. Such conciliation, however, can only be successful if it takes place within a universally, or near-universally, accepted structure of national institutions. In Trinidad and Tobago this universal acceptance is lacking. Moreover, the situation is complicated, perhaps more than in other countries of our level of prosperity, by a certain lack of knowledge on the part of a large proportion of the population, which makes it difficult for people to achieve a reasonable grasp of the constitutional picture as a whole. This situation is not improved by a lack of effective teaching of civics in schools.

Many of the concepts that have been bandied about by politicians and the media, such as "executive presidency" and "separation of powers", are understood only superficially, if at all, and their function in any larger Constitutional picture is never fully ventilated. They have therefore often been used to arouse alarm, or to promote prejudice, rather than to enlighten. The term "executive president", for example, has no meaning in itself other than indicating that the President is the head of the executive and perhaps also the Head of State. It says nothing about the powers of such a president, which must be determined by other specific provisions and by any countervailing powers possessed by other institutions, chiefly the legislature and the courts. It has been frequently hinted that an executive president of Trinidad and Tobago should not be as powerful as the President of the United States of America: but a glance at the Constitution of the United States will show that it confers no powers on the President at all, and the most superficial study of US political history will show the extent to which the president's actions are continually constrained by the powers of the legislature and the judiciary. At the time of writing, the difficulties faced by President Barack Obama in his attempts to reform health care are a case in point.

The Trinidad and Tobago Humanist Association is fully aware that there are no overnight solutions or magic documents. We also believe that the key to the situation is not the form of the Constitution but the process of involvement of the population in an honest and well-informed national effort to achieve acceptable compromise among conflicting interests. In this regard we consider the youth of the country to be of paramount importance, and that the process of raising informed civic awareness must begin with them.

We have therefore developed a document entitled "A Guide to the Constitution of Trinidad and Tobago", which will be serialised in the Express, beginning today. Its purpose is to provide the public with the information and intellectual stimulus necessary for fruitful and honest participation in national constitutional dialogue and effective involvement in civic life. The document seeks to achieve this by:

- Describing in plain language the provisions of the present Constitution of Trinidad and Tobago, as well as other features of the political, administrative and social organisation of the State.
- Explaining in clear language the general and specific concepts that underlie this and other Constitutions, with brief notes on their history and their operation in the political structure of other countries.
- Covering as objectively as possible, but without specific reference to them, the Constitutional implications of the political controversies that have bedevilled the country in recent years, such as the head of State/ head of Government and executive/judiciary conflicts, the role of the Senate, Tobago autonomy, etc., etc.

The technique we have adopted for this purpose is to provide, in addition to the explanations and historical notes mentioned above, a series of suggested questions concerning real and theoretical political organisation. We consider that these are the types of questions that anyone must ask himself/herself in order to participate usefully in the national Constitutional debate.

The format contemplated is to group the explanations, notes and questions under headings that refer to the corresponding sections of the Constitution. The "Guide" will therefore be most usefully read in conjunction with a copy of the Constitution.

It is important to note that:

1. The document aims at complete political neutrality and objectivity. It makes no proposals for the reform of the Constitution or any part of it, nor does it refer to any proposals made by other groups or institutions. It does not even attempt to answer the questions posed within itself, which indeed, as the document makes clear, have no absolute answers.
2. The effect of the document will, we hope, be to furnish readers with some of the factual and intellectual tools necessary to enable them to understand and participate in the immediate and on-going processes of nation-building.

## **1. Introduction**

In Trinidad and Tobago, the Constitution, which is the set of rules under which we agree to live and interact with our fellow citizens and the State, is a subject that has always been characterised by false or inadequate information, sloganeering, and too often by deliberate mystification of the public by those

in office. And yet there is no area in which calm and reasoned consideration based on accurate information, and tolerant discussion in a climate of mutual respect, *is* more important to the formation of the citizen. The alternative is permanent discord fuelled by ignorance and fanaticism.

The rich and complex question of how a society should govern itself has exercised the minds of the greatest thinkers for thousands of years. Even the basic principles which we now take for granted, such as the rule of law and the equality of all citizens, were not always accepted, and even when they were, social and political reality often diverged radically from the ideals enshrined in the fundamental law. In the Greek city states, only free men were regarded as having rights: women and slaves were officially considered inferior. The Constitution of the United States was the first to declare that all people were equal; but slavery remained legal for many years after the Constitution was adopted.

In mathematics and the physical sciences, and even the social sciences, the need for objective experimentation and rigorous demonstration is accepted. What characterises these disciplines is that the material is independent of, and can be insulated from, the desires and prejudices of the researcher. Ends and means can be kept separate. Nation-building is different. It is part of practical politics, and in politics the ends you wish to achieve and the means by which you achieve those ends tend to merge. For instance, it is an accepted principle of local government (city councils, regional corporations, etc.) that participation is more important than efficiency: it is often better for people to feel that they have an influence on the delivery of services than to be passive recipients of services, however efficient. Ideally, constitutions are created by people, and not only do the sometimes conflicting desires of people colour the process, but their satisfaction is the objective of the process.

Although politics is pragmatic, the study of civics must be a rational process. No principle, however entrenched, should be accepted without being subjected to dispassionate analysis. Established systems must be analysed on the evidence of their effectiveness, and compared on that basis with others. The experiences of other societies, present and past, must be factored into the process. Practical experimentation is rarely possible; but thought experiments (given a, b and c, what would happen if...?) are perfectly feasible. Some of the questions in this Guide are cast in the form of just such thought experiments.

Above all, thinking about the Constitution must be based on an objective knowledge of ourselves, our society and our history.

Good citizens are thinking citizens, and the habit of applying rational thought to all aspects of existence must be acquired in youth. Humanists believe it is a crime to deny people, and especially young people, the possibility of acquiring that habit, and to substitute for the encouragement of free thought the inculcation of superstition and psychological terror through unexamined slogans and myths.

Below is a series of comments and questions on the Constitution of Trinidad and Tobago, set out according to the sections of the Constitution to which they refer. Where necessary, the sections themselves are quoted verbatim.

The comments are objective explanations of the meaning of passages that are in difficult legal language, and, where relevant, NOTES on the background to particular principles.

There is no attempt to impose any opinion or point of view.

The questions, the most important element in a text designed to stimulate the spirit of inquiry and analysis, are divided into two types. There are "level one" questions, relating to the constitutional document itself and its application in Trinidad and Tobago. These questions are followed by a series of broader ("level two") questions that follow from the former and extend to human existence and the cosmos as a whole.

The text may also be used in schools, or by study groups, in any number of ways. The questions can form the basis of class discussions or mini-research projects; or they may be used as essay subjects, fleshed out with such additional information or reading as teachers or students may supply.

## **PREAMBLE**

### **NOTES**

Whereas the People... The Constitution of a republic is considered to be affirmed by the people, though it is usually drafted by or at the wish of some assembly supposedly representing the people. Some constitutions, such as those of the United States and France, and many in Latin America, were drafted and promulgated in revolutionary circumstances. Others were the result of peaceful transition from one form of government (e.g. colonialism) to another (i.e. sovereignty). In our case, the transition was twofold: first from a colony to an independent State with the Queen of England as Head of State, and then to a Republic.

The two earliest Republics in the modern world were the United States and France.

The supremacy of God...endowed by their Creator... The expression "endowed by their Creator" is taken from the United States Declaration of Independence, which reads in part:

*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights...*

In France, the 1789 *Declaration of the Rights of Man and the Citizen* is made

*...in the presence and under the auspices of the Supreme Being...*

But neither the French nor the United States Constitution mentions God or a Supreme Being. In Latin America, four nations, Bolivia, Cuba, Mexico and Uruguay, make no reference to God in their constitutions. All the others invoke a "supreme being" in one form or another.

## **CHAPTER 1 - FUNDAMENTAL RIGHTS**

...fundamental human rights and freedoms... The concept of fundamental human rights is enshrined in two modern documents: the Universal Declaration of Human Rights adopted by the United Nations in 1948, and the American Declaration of the Rights and Duties of Man, adopted by the Organization of American States in the same year (in this title "American" refers to all the nations of the Western Hemisphere, not the United States alone). All member states of these organisations have bound themselves to guarantee these rights and freedoms to their citizens.

### **Level 1 questions**

1. Was the Constitution of Trinidad and Tobago proclaimed by the people of Trinidad and Tobago? If not, by whom?
2. How can an entire people decide on a constitution?
3. What is the definition of a republic?
4. What is the definition of a democratic society? Is republicanism necessary to democracy? Can a republic be non-democratic?
5. Do you agree that "the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good"? Think of some of the ways in which this can be ensured.
6. Do all citizens of this country acknowledge the "supremacy of God" and consider that their rights and freedoms derive from a "Creator"?
7. Can a constitution guarantee rights and freedoms without reference to "God", a "supreme being" or a "Creator"?

8. If so, what, if any, is the value of these references in a Constitution?
9. What are "moral and spiritual values"? Are they different from "the rule of law"?

### **Level 2 questions**

1. Can you define the terms "God", "Supreme Being", "Creator", "Creation", "spiritual"?
2. Do you believe there is any need for a Constitution to refer to such concepts, and if so, why?
3. Can freedom be absolute in a society, and if not, what are the minimum limitations on it?
4. Are there any other principles that should be affirmed in the preamble?
5. What is the difference between "State" and "government"?
6. Why should we obey the law?
7. Can laws and constitutional provisions be unjust, and who decides whether they are or not?
8. Are we free to opt out of constitutional obligations, and if so, what should the consequences be?
9. Can you define "right" and "wrong"?

## **THE BILL OF RIGHTS**

**Here each right enumerated in the Constitution will be quoted in full below, followed by questions relevant to it**

### **HUMAN RIGHTS AND FREEDOMS**

#### **PART I**

#### *Rights enshrined*

Recognition and  
Declaration of  
rights and  
freedoms

**4.** It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely—

### **Level 1 questions**

1. What is your definition of discrimination? Is it the same as persecution? As insult? As contempt? Do *mauvais langue* and *picong* constitute discrimination?
2. Besides discrimination by reason of race, origin, colour, religion and sex, are there other types of discrimination that should be forbidden by the Bill of Rights?
3. Do you know of any situations where discrimination is practised in violation of the Bill of Rights?

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law

**Level 1 questions**

1. Is capital punishment a human rights issue?
2. What limits, if any, should there be on property rights?
3. Should squatters have rights?

(b) the right of the individual to equality before the law and the protection of the law;

**Level 1 questions**

1. Do you think rich people and poor people, prominent people and obscure people, are equal before the law in practice? If not, why not?

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions

**Level 1 questions**

1. Do public authorities (Government departments, civil service, police, Customs, etc.) treat everyone equally?

(e) the right to join political parties and to express political views;

**Level 1 questions**

1. Is there any restriction on the expression of political views in Trinidad and Tobago?
2. Are laws against sedition a violation of the right to express political views?
3. Is incitement to racial or religious hatred a legitimate exercise of freedom of expression?

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward

**Level 1 questions**

1. Do parents in Trinidad and Tobago have a choice of schools for their children?

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

**Level 1 questions**

1. Does this clause guarantee the right to have no religious belief at all?
2. Should this right be specifically stated? If so, why?

(i) freedom of thought and expression;

**Level 1 questions**

1. Are film censorship or anti-pornography or obscenity laws compatible with the right to freedom of expression?

(j) freedom of association and assembly;

**Level 1 question**

Does freedom of assembly exist in Trinidad and Tobago? If not, what are the restrictions on it?

(k) freedom of the press.

**Level 1 questions**

1. It has been said that the press or other media can be censored indirectly (e.g. by being deprived of newsprint or equipment, by denial of work permits to journalists, or by pressures from advertisers). Do you know of any instances of this?
2. If so, how could this be prevented in the Bill of Rights?
3. Do the media ever censor themselves?
4. Do the media have a responsibility to reflect all views in the society?
5. Should the Constitution require the media to be fair, responsible and impartial? (The Venezuelan Constitution, for example, states that the public has a right to "timely, truthful and impartial" information).
6. Can terms such as "fair" "responsible" and "impartial" be defined in such a way as to avoid them being used by the authorities as a pretext for muzzling the media?

**NOTES**

All republican constitutions explicitly guarantee rights to their citizens. As mentioned above, this guarantee is reinforced by treaty obligations imposed on the States concerned by their adherence to international human rights treaties and organisations. Two of these treaties are the International Covenant on Civil and Political Rights, and the American Convention on Human Rights. The treaties have created judicial bodies to which citizens may appeal if they consider their States have violated their rights, and if the judicial bodies concerned are satisfied that the States' internal means of redress are insufficient or have been exhausted. Examples of such organs are The Council of Europe, the European Court of Human Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

However, there are many cases in which rights and freedoms are specifically limited by laws, and these abridgements are the subject of controversy in many countries. For example, freedom of speech and the press may be abridged by laws against libel, slander, incitement to violence and religious hatred; freedom of assembly may be abridged by laws requiring police or other permission for marches and demonstrations; capital and corporal punishment are considered by many to be violations of the right to freedom from cruel and degrading punishment. Even laws making education compulsory might be considered to abridge the right of parents to custodianship of their children (there are certain religious sects in other countries that deny education to all children, or to female children).

#### **CHAPTER 1, PARTS 2, 3 AND 4 - EXCEPTIONS**

Constitutions also sometimes contain provisions allowing rights to be limited by specific legislation and in specific circumstances, supposedly for the good of the society as a whole.

The first clause of the Trinidad and Tobago Constitution that permits rights to be abridged is the reference in Section 5 to Section 54, which will be dealt with below. First, though, let us look at the relevant clauses of Parts 3 and 4 of Chapter I.

#### **NOTES**

Part 3 empowers the President to declare a State of Emergency, and Parliament to ratify, extend or revoke it by a simple majority. Extension beyond six months requires a majority of three-fifths of both Houses. During a State of Emergency Parliament may pass laws, by a simple majority, to abridge any or all of the rights and freedoms enumerated in the Constitution.

States of Emergency have been declared on five occasions since Independence. The first was declared in Caroni in 1965 because of strikes in the sugar industry, and extended to Baratavia in order to place Mr. CLR James under house arrest; the second was declared in 1970 following labour unrest and a military mutiny, and renewed in 1971; the fourth in 1990 during the uprising by the Jamaat al Muslimeen; and the fifth in 1995, when the Speaker of the House of Representatives refused to step down after being named in a fraud case. The Prime Minister also claimed that the Speaker was conspiring with the Opposition to suspend Government Members of Parliament. A limited State of Emergency was declared around the Speaker's residence and she was placed under house arrest.

Part 4 enables Parliament to pass at any time (i.e. even without the declaration of a State of Emergency) laws that abridge rights and freedoms, provided they are passed by a majority of three-fifths of the membership of both Houses.

Such laws shall have effect unless they are "shown not to be justifiable in a society that has a proper respect for the rights and freedoms of the individual". "Shown" presumably means declared by a court of law, which in turn means that a person who believes himself injured by the law may seek redress on the grounds that the law was not justifiable on the above terms.

This point should be borne in mind when the role of the courts in relation to Parliament is being considered further on in this Guide.

Section 54 sets out the procedure for altering the Constitution. This section allows many of the rights and freedoms guaranteed by the Constitution to be permanently abridged by means of laws passed by a majority of two-thirds of both Houses. Some of these rights and freedoms are:

- All those enumerated in the Bill of Rights
- Provisions against arbitrary detention
- Provisions against cruel or unusual punishment
- Right to be informed of reasons for detention
- Right to legal representation
- Right to a prompt trial
- Habeas Corpus (the right of an arrested person to be brought before a court and released if no charge is laid against him)
- Protection against self-incrimination
- Right to a fair hearing
- The presumption of innocence
- The right to an interpreter if a defendant does not understand English
- The procedures for declaration of a State of Emergency
- The special majority provision in Section 13. This means that by special majority the Parliament may abolish the special majority rule.

The question of simple and special majorities as a means of altering or overriding provisions of the Constitution should be borne in mind later on when we consider the structure, composition and functioning of Parliament.

With regard to the curtailment of constitutional rights and freedoms, it may be useful to note that in signing the UN International Covenant on Civil and Political Rights, Trinidad and Tobago entered eight reservations (areas in which it refuses to be bound by the Convention). It reserved the right to limit freedoms by law under States of Emergency as described above; the right to limit freedom to leave the country by means of Tax Exit Certificates (the certificates, but not the reservation to the Covenant, were later abolished); and the right to limit freedom of assembly.

In 1998 Trinidad and Tobago "denounced" (withdrew from) the American Convention on Human Rights and the Optional Protocol to the UN Covenant on Civil and Political Rights, in order to prevent persons under sentence of death from appealing to the Commissions set up under the two treaties, and thus enable their execution to take place sooner. Trinidad and Tobago immediately re-acceded to the Optional Protocol, with the reservation that death penalty appeals could not be heard by the Commission. The Commission refused to accept this reservation and Trinidad and Tobago withdrew from the Protocol for the second time in 2000.

Trinidad and Tobago's action was condemned by many Member States of the Covenant, including Denmark, France, Germany, Holland, Ireland, Italy, Norway, Spain and Sweden.

## **Level 2 Questions**

1. Besides those enumerated in the Bill of Rights, are there any other rights or freedoms that should be guaranteed by a Constitution?
2. Are all of the rights and freedoms guaranteed by the Constitution enjoyed by everyone in Trinidad and Tobago? If not, which ones are not enjoyed, why, and by whom?
3. Is it too easy or too difficult for a government (NB pay attention to the distinction between Government and Parliament) to abridge constitutionally guaranteed rights and freedoms?
4. Apart from war or natural disaster, what kinds of circumstances or events justify the declaration of a State of Emergency?
5. Should international organisations or courts be able to compel sovereign states to enforce their decisions? If so, how would they do so? If not, what purpose do they serve?
6. Can some rights and freedoms conflict with others, and if so how can the conflict be resolved?

7. How can a State be forced to uphold the rights guaranteed in its Constitution?
8. Do you believe that human beings have inherent rights?
9. If so, do they derive from a Creator?
10. If so, what is the evidence?
11. If not, whence do rights derive?
12. Are all societies inherently unequal, or can equal rights for all citizens be achieved in practice as well as on paper?
13. Do animals have inherent rights? If so, what are they and whence do they derive? Should they be included in a Constitution?

## **CHAPTERS 3, 4, 5 and 8**

### **The Legislature and the Executive**

The Constitution of Trinidad and Tobago can be understood, studied or criticised only by considering the operations and functions of the legislature (Senate and House of Representatives) and the executive (President, Prime Minister, Cabinet and Civil Service) in relation to each other.

### **NOTES**

The Legislature (known in different countries by various names, such as Parliament, Congress, National Assembly, etc. etc.) makes the laws. The Executive (Prime Minister and Cabinet), which in different countries is linked in different ways, or not linked at all, to the Legislature, governs the country through various agencies (civil service, police, armed forces). All citizens, the government, and the State itself are subject to the law, and violations of, or disputes about, the law are resolved by the Judiciary (the law courts). Compliance with the law, which includes the Constitution and all decisions of the courts, is in turn enforced, and court sentences put into effect, by the executive, through various agencies such as social services, police and prisons.

Membership of a legislature may be by election or partly by election and partly by appointment. Appointment in turn may be at the discretion of the executive (President or Prime Minister) or by virtue of the office or status of the appointee (mayor of a city, former President, etc. etc.).

In this country, election to the House of Representatives is by universal suffrage (one adult, one vote) in a "first-past-the-post" system. This means that each voter votes for one of the candidates in the voter's constituency, and the candidate with the most votes is elected for that constituency. In some other republics (for example, Guyana) one of a number of systems of Proportional Representation is used. In one such system parties or other groups put up lists ("slates") of candidates, for each constituency or for the entire country, with the names of the candidates in order of preference. The party receives seats in the legislature according to the proportion of the national vote received by the party. Parties receiving a stipulated minimum number of votes are given at least one seat in the legislature. In some republics (e.g. Italy), the legislature is elected partly by first-past-the-post and partly by proportional representation.

Some Constitutions include a procedure known as a referendum, by which important questions are voted on directly by the citizens. This procedure may be compulsory for some issues or optional for all issues. In some cases a referendum is held if a certain number of citizens petition for it. There may also be a minimum percentage of turnout required for a referendum result to be valid, regardless of the proportions of voters supporting or opposing the proposition.

In some republics the three "arms" of government, legislature, executive and judiciary, are specifically said to be separate and to have equal powers, the power of each limiting the power of the other two. In the United States and countries with similar constitutions, the legislature must approve cabinet appointments by the President; the President may veto (cancel) laws passed by the legislature; the legislature may overturn the President's

veto if it can muster a determined number of votes for the purpose; and the courts, apart from making law by their decisions, may declare laws invalid or unconstitutional. To complete the circle, the President makes appointments to the highest court, and these appointments must be confirmed by the legislature. This system of "checks and balances" is usually called "separation of powers". (In Trinidad and Tobago, "separation of powers" has been said to exist because the judiciary is not under the control of the Executive. But this should be more properly called "independence of the Judiciary", not "separation of powers", because Parliament and Executive are not independent of each other).

As a general rule, in republics of this type the President is the chief executive, and usually also the Head of State; he/she is elected directly by the people\* and separately from the Legislature; and neither he/she nor the cabinet is part of the legislature.

*\*In the United States the President is technically elected by a College of Electors, whose votes go to the different candidates according to the number of popular votes received by the candidates.*

Although a Republic and no longer a monarchy, Trinidad and Tobago follows to a great extent the British constitutional pattern (though Britain does not in fact have a written constitution) with the executive being derived from Parliament, and the President replacing the Queen.

There are, however, crucial differences both in form and function between the British system and ours, and these differences have been the subject of much contention.

The controversies that have arisen have basically been concerned with the powers of the Executive in relation to Parliament, and to a lesser extent of the Executive in relation to the Judiciary. There have also been accusations of political bias on the part of the President, to the extent that the Leader of the Parliamentary opposition has described successive Presidents as "tools" of the ruling party.

The basic power of Parliament is to pass, modify or reject proposals for legislation (Bills). The "lower" house of Parliament is the House of Representatives, which is fully elected by the people. The "upper" house, the Senate, is fully nominated, with the government having the right to nominate a majority of its members, and to dismiss and replace them at will.

Bills become law if both houses pass them, but if the Senate fails to pass a Bill for two successive sessions, it becomes law anyway.

The Constitution states that the executive authority is vested in the President, but this is largely a fiction (just as the powers of the Queen of England are largely fictional). The "general direction and control of the government" is "vested collectively" in a Cabinet. All important acts of the President must be carried out "in accordance with the advice" of the Cabinet or of the Prime Minister (see Sections 78 (2), 79 (1), 80, 82). The cases in which the President may act on his/her own initiative, or is required to act only "after consultation" with the Prime Minister and the Leader of the Opposition, are as set out in Sections 80 and 83. Nevertheless, there have been recent occasions when the president's interpretation of his powers gave rise to conflict between the President and the Prime Minister.

Furthermore, the members of the Cabinet are appointed, and may be dismissed at any time, by the Prime Minister. The Ministers who make up the Cabinet may be drawn either from the House of Representatives or the Senate, and they may take part in the proceedings of the House of which they are not a member (though they cannot vote in it).

It is noteworthy that the Constitution stipulates that the President shall appoint as Prime Minister the leader in the House of Representatives of the Party supported by the majority of its members, and only if there is no such party, the person who is supported by the majority of members of the House.

Parties also appear as Constitutional entities in Section 49A of the Constitution, which requires a person leaving the party as a candidate of which he/she was elected to leave Parliament. The Act which gave rise to this section was known as the "Crossing the Floor Act". There were various attempts to invoke this, all of which failed for various reasons. On the latest occasion, the reason was that the Standing Orders (the Parliamentary procedure) for enforcement of the Act had not been issued, and this has still not been done.

### **How Parliament does its work**

#### **NOTES**

The Senate is presided over by a President elected by the Senators from among their number. The House of Representatives is presided over by a Speaker, elected by members of the House from among their number or from outside the House.

The President of the Senate and the Speaker of the House of Representatives are responsible for the conduct of the proceedings in their respective assemblies.

Neither the Speaker nor the President of the Senate may vote unless the votes of the other members are equally divided, in which case he or she has a casting vote. By tradition, this vote is supposed to be exercised in favour of the status quo (i.e. against any innovation that is being proposed).

One stage in the passage of a Bill into an Act is the "Committee Stage", in which the House of Representatives or the Senate resolves itself into a "committee of the whole" to consider a Bill clause by clause, and adopt or reject proposals for amendment. Another Committee of the whole House is the Finance Committee, which considers Bills for supplementary financial appropriations. The Finance Committee is chaired by the Minister of Finance, and its meetings are not open to the public.

In addition to the Public Accounts and Public Accounts (Enterprises) Committees mentioned above, Parliament is required (Section 66A of the Constitution) to appoint Joint Select Committees to inquire into and report to Parliament on the working of government Ministries, Municipal Corporations, Statutory Authorities, State Enterprises and Service Commissions.

These committees are appointed for the life of a parliament. There are also committees appointed each session (Sessional Select Committees). These are the Privileges and Regulations Committee, the Standing Orders Committee, and the House Committee. They are concerned with the running of Parliament.

Apart from this, each House, or both together, may create committees composed of a limited number of members ("select committees") to consider and report on particular Bills. But there are no permanent committees to which Bills on particular subjects (e.g. education, agriculture, health, foreign relations) are automatically referred.

In many countries the signature of international treaties must be ratified by the legislature. When the Trinidad and Tobago government signs treaties, Parliament must often amend domestic legislation to give effect to the treaties. For example, adherence to the International Labour Organisation required changes in our labour laws. But the Constitution does not specify any role for Parliament in the conclusion of the treaties themselves.

## **Finance**

### **NOTES**

Bills having to do with finance (taxation, borrowing, expenditure) must be introduced in Parliament only with the approval of the Cabinet. This means that individual MPs cannot

introduce, on their own initiative, Bills dealing with these subjects.

The Minister of Finance is required to present a budget (estimates of national revenue and expenditure) before the beginning of every financial year. The budget is passed by Parliament in the form of an Appropriations Act.

All revenue raised by this means must be placed in a Consolidated Fund, and cannot be used for purposes not stated in the Appropriations Act. Any other expenditure must come from other funds established by law for specific purposes.

The public accounts of Trinidad and Tobago, including the accounts of all State enterprises, must be audited (checked) yearly by the Auditor General. The reports of the Auditor General are reviewed by two Committees of Parliament, The Public Accounts Committee and the Public Accounts (Enterprises) Committee. The former is chaired by the Leader of the Opposition, the latter by a Senator chosen on the advice of the Leader of the Opposition.

### **Level 1 questions**

1. Study the workings of the British Government, in particular the relations between Parliament and Executive (two good sources are the booklets "Parliament" and "The British System of Government" in the "Aspects of Britain" series published by The Stationery Office, London). Do you see any important differences between the British system and ours, especially as regards the roles and interaction of Parliament and Executive?
2. If so, why do you consider them important?
3. What is the value of a two-chamber Parliament?
4. Why do you think the Constitution permits the election of a Speaker from outside the House of Representatives? Has this happened? Is it desirable?
5. What criteria do you think an Upper House should fulfil?
6. Does our Senate meet those criteria? If not, why not?
7. Should the government have an automatic majority in the Senate?
8. Even if the head of the Executive has the right to appoint Senators, should he/she have the right to fire them?
9. What interests and/or institutions, if any, should be automatically represented in the Senate?
10. Does our House of Representatives have the structure and composition necessary to enable it to legislate effectively?
11. If not, what improvements would you suggest?

12. Should voters in a constituency have the right to recall their representative in the House of Representatives and/or the Senate if they are displeased with his performance? Should this also apply to a President if he/she is directly elected? (The Venezuelan constitution, for example, provides for the President to be "recalled" in the middle of his/her term by a referendum).
13. What is the definition of a political party?
14. Should members of the House of Representatives who leave their political party be required to resign?
15. Should political parties be mentioned in a Constitution at all?
16. Have there been any cases since Independence of MPs leaving their party after being elected? What happened in those cases?
17. Should Ministers be drawn from the Senate?
18. Should Ministers have the right to participate in the proceedings of the House of which they are not a member?
19. Even if the Prime Minister has the right to appoint Senators, should he have the right to fire them?
20. Should the Senate's right to delay passage of legislation be reduced? Extended? Made absolute?
21. What is meant by the statement that government is "vested collectively" in the Cabinet?
22. Given that the Cabinet is appointed by the Prime Minister; that executive decisions are taken "on the advice of the Prime Minister"; and that the only specific function given to the Cabinet by the Constitution is that of approving the introduction of financial legislation to Parliament (Section 63(2), does the Cabinet have any real existence except as a committee to advise the Prime Minister?
23. If not, is there any need for it to be mentioned in the Constitution?
24. What control, if any, should Parliament have over the Executive? Does our Parliament have any such control, in theory or in practice? If not, why not?
25. Should the President have more executive power?
26. Should the President be directly elected by the people?
27. If so, should there also be a Prime Minister? How should executive power be shared between them?
28. Should there be one Chief Executive, directly elected (a so-called "Executive President")? If so, what changes in the Cabinet and Parliament would follow from this?
29. Is "separation of powers" necessary? Why? Does it exist in this country? Is it in fact possible at all?
30. Should Parliament have powers other than the power to pass laws? If so, what powers?
31. What drawbacks, if any, does a first-past-the-post electoral system have?
32. Would some system of proportional representation be fairer and/or more effective as a means of election of

- members of the House of Representatives, if so, which system?
33. In what way would such a system be better/worse?
  34. Should the upper house of the legislature be partially/fully elected? How would this change its functions and/or effectiveness?
  35. Should individual members of Parliament, or groups of members, have the right to propose financial legislation without the prior approval of the Cabinet?
  36. Should there be permanent committees of the House of Representatives and/or the Senate and/or both to which Bills on particular subjects (e.g. education, agriculture) would automatically be referred? What should these subjects be?
  37. What powers should these committees have? How would they be composed and selected?
  38. Do you think the Constitution of Trinidad and Tobago should contain provisions for referenda? To what kinds of questions should referenda apply?
  39. Should the Constitution require international treaties to be ratified by Parliament?

### **Level 2 questions**

1. Are periodic general elections sufficient to ensure effective government while restraining abuse of power?
2. If not, what other provisions and/or conditions are essential for this purpose?
3. What conditions in society, if any, would make proportional representation a fairer system of election to the legislature?
4. What relationship, if any, should there be between politics and the administration of justice?
5. If such a relationship is necessary, how can it be assured and maintained while preserving democracy and justice?
6. Can you imagine other kinds of electoral systems? What would their advantages and disadvantages be?
7. Is it possible for a President who is not the chief executive to be politically impartial?
8. Even if the answer to (7) above is yes, how useful is a President who is not the chief executive?

## **CHAPTERS 6 AND 7**

### **The Legal Authorities**

#### **NOTES**

The Constitution seeks to ensure the independence of the Judiciary by various means, including prohibiting the abolition of judges' posts or reduction of their salaries. The Chief Justice is appointed by the President after consultation with the

Prime Minister and the Leader of the Opposition, but may only be removed by Parliament for very grave causes and after a complicated procedure. All other judges are appointed by the President on the advice of the Judicial and Legal Service Commission.

However, the Prime Minister has a veto over certain senior legal appointments (section 111 (2)).

The lower courts (Magistrates' Courts) are not mentioned in the Constitution, but magistrates are also appointed by the Judicial and Legal Service Commission (directly, not by the President on the Commission's advice). Some magistrates' courts deal with specific types of case (family courts, juvenile courts, traffic courts).

Decisions of the High Court may be appealed to the Court of Appeal, and from there in certain cases (section 109) to the Judicial Committee of the Privy Council.

The Judicial Committee is a tribunal composed of judges who are members of the British House of Lords. It functions as a final court of appeal for countries of the British Commonwealth that have agreed to accept its jurisdiction, including republican ones like Trinidad and Tobago.

Many appeals to the Privy Council from this country concern alleged infringements of Constitutional rights by the State. Many arise from constitutional motions made by persons condemned to death, in the attempt to overturn the sentence or delay execution until the expiry of the period in which the Judicial Committee has ruled execution may take place.

### **Level 1 questions**

1. Does the Constitution provide adequate safeguards for the independence of the Judiciary?
2. If not, what changes should be made to ensure it?
3. What are the advantages/disadvantages of having the Judicial Committee of the Privy Council as a final court of appeal for Trinidad and Tobago?
4. What arguments have been put forward, and by whom, in favour of or against the retention of the Privy Council as the final court of appeal for Trinidad and Tobago?
5. What are the alternative possibilities (local court of final appeal; Caribbean Court of Appeal; none at all)?

### **Level 2 questions**

1. What means, other than formal courts of justice, might be introduced to speed up justice and bring it closer to the people, while maintaining public confidence in it? Bear

- in mind, when considering this, the guarantees provided by this and other Constitutions (fair and prompt trial, presumption of innocence, legal representation, etc).
2. Some countries, including T&T in the past, have used informal tribunals. Do these dispense justice effectively and fairly? If they are desirable, what kinds of cases should they hear, and what penalties should they be able to impose?

### **Local Government**

In many countries the closest contact of the citizen with the State is not with the central government, but with local government - the city, borough and regional administrations - which provide everyday services such as water and electricity, local road maintenance, sanitation, sport and recreation facilities, and even health, education and policing.

In Trinidad and Tobago, partly because of our colonial history and partly because of the size of the territory, some of these services are centrally provided. Water and sewerage are administered by the Water and Sewerage Authority (WASA), a statutory body, under the Ministry of Public Utilities; the Police Force (except for the City Police, who have limited powers) and the education system are run by the Ministries of National Security and Education respectively. Community health services are provided by the Ministry of Health through the Regional Health Authorities.

Local Government by its very nature is an important part of our community and national life. It pre-dates not only the Constitution but the existence of the State itself, going back as it does to the days of the Spanish occupation. It is therefore not governed by the Constitution. It has its pre-independence roots in the 1957 Local Government Ordinance, and in its present form it is based on the Municipal Corporations Act of 1990, amended in 1992. This Act specifies the administrative divisions of the country, the powers and duties of the local authorities, and their sources of revenue.

Local government bodies (city and borough councils and regional corporations) derive their revenue partly from taxes on property (rates) but overwhelmingly (97%) from Central Government grants. One of the Cabinet Ministers in the Central Government is always responsible for local government. This Minister has a say in the allocation of grants to the local authorities by the Ministry of Finance.

The members of each local council are elected every three years by the adult citizens of the administrative area it covers (city, borough, region). The elected councillors choose a number of Aldermen from a pool of prominent citizens of the region, and the councillors and aldermen together elect the leader of the council, who in a city or borough is known as the Mayor, and in a regional corporation as the Chairperson.

The Act requires each council to have committees for finance, personnel, public health and infrastructure. The Mayor or Chairperson may form an Executive Committee and/or any other committees the Council may deem necessary.

The permanent professional employees of the councils (the Civil Service of local government) must include a Chief Executive, a Secretary, an Engineer and a Medical Officer of Health. Professional employees are appointed by a central Statutory Authorities Services Commission and paid directly by the central government. The local authorities appoint only temporary employees.

The councils have statutory responsibility for:

- Street management
- Markets
- Abattoirs
- Recreation areas
- Cemeteries and crematoria

They have discretionary responsibility for:

- Libraries
- Nurseries and child care centres
- Homes for the elderly
- The physical environment (parks, monuments, etc.)
- Bus and taxi shelters
- Trade fairs and events

Fifty percent of the budgets of local government bodies is spent on personnel.

One very important and visible function to which local councils devote their resources is sanitation (garbage disposal and street cleaning). They do this either with their own equipment and workers or through contracts with private companies.

An example of a discretionary responsibility declined by local government bodies was the implementation of the Dangerous Dogs Act. Under this Act pit-bulls and other dangerous dogs were to be strictly controlled, and the controls were supposed to be implemented by the local councils. The councils, however, declined, on the grounds of lack of resources.

The link between local government authorities and the central government is the Minister of Local Government, under whose portfolio the Unemployment Relief Programme (URP) formerly fell. It is now under the Ministry of Works. Many of the part-time employment programmes in the local government areas are financed from the URP.

Successive governments have committed themselves in principle to decentralisation (giving local authorities control over a wider range of national affairs).

### **Level 1 questions**

1. Should the boundaries, powers, revenue, etc. of local government be specified by the Constitution, or, as now, by statute?
2. What principles should be used in determining the size and boundaries of local government entities?
3. Are the number and boundaries of the present local government entities satisfactory? If not, what changes might be made?
4. Should more of the powers of the central government (e.g. education, health, police) be devolved upon local government bodies?
5. Regardless of the answer to (4) above, should local government bodies have more and/or more independent sources of revenue?
6. Should there be any change in the system of election of local authority members? Of their chief executives?
7. Should the local authorities be represented as of right (i.e. other than by a Minister of Local Government) in the central legislature, and if so, how?

### **Level 2 questions**

1. Is the small size of a country an advantage or a disadvantage in the organisation of local government? (Barbados, for example, abolished local government entirely).
2. Should there be more levels of local government (e.g. community, village)? What kinds of powers, functions and revenues could each level have?

3. Overall, how might a system of government (central, local, community, etc.) be organised to ensure the greatest participation of citizens in government and the greatest efficiency in the identification and satisfaction of their needs?
4. Compare countries with more and less centralisation. Which have been more efficient in providing goods and services?

### **The Tobago House of Assembly**

#### **NOTES**

In part because of its history and its geographical separateness from Trinidad, Tobago was accorded a small measure of self-government in 1980 by the Tobago House of Assembly Act. This Act was repealed by the 1996 THA Act. The 1996 Act provides for an Assembly of sixteen persons, with an Executive Council headed by a Chief Secretary. Of the sixteen persons, twelve (called "Assemblymen") are elected by universal adult suffrage, and four (called "Councillors") are appointed, three by the Chief Secretary and the fourth by the Leader of the Minority in the Assembly.

Following the passage of the 1996 Act, the existence of the Assembly, unlike the case of the Local Government bodies in Trinidad, was recognised in the Constitution (Chapter 11A). The Act purports to strengthen self-government in Tobago by assigning to the Assembly responsibility for the following areas as they apply to Tobago:

1. Finance, that is to say, the collection of revenue and the meeting of expenditure incurred in the carrying out of the functions of the Assembly;
2. State Lands;
3. Land and marine parks;
4. Museums, archives, historical sites and historical buildings;
5. Public buildings and the maintenance of the residences of the President and the Prime Minister;
6. Tourism;
7. Sports;
8. Culture and the Arts;
9. Community Development;

10. Co-operatives;
11. Agriculture;
12. Fisheries;
13. Food Production
14. Forestry;
15. Town and Country Planning;
16. Infrastructure, including air and sea transportation, wharves and airports and public utilities;
17. Telecommunications;
18. Highway and Roads;
19. Industrial Development;
20. The Environment;
21. Customs and Excise;
22. Licensing;
23. Health Services;
24. Library Services;
25. Education including Curriculum;
26. Social Welfare;
27. Marketing;
28. Valuations;
29. Postal services and collection of revenue therefrom;
30. Statistics and Information;
31. Housing;
32. Plant and Animal Quarantine;
33. Such other matters as the President may, by Order, assign to the Assembly.

The Assembly has no legislative powers, so its authority over these subjects is administrative and not political. It may, however, propose and adopt Bills on the above areas. After debate, such Bills may, with the agreement of the Cabinet, be presented to Parliament. If adopted by Parliament, they are known as Assembly laws.

The Assembly's scope is also limited by the fact that the national legislation giving control over these subjects to the central government has not been amended to take account of the THA Act. One consequence of this is that the THA's funds come from the same sources as those of any other local government body, namely grants and transfers from the central government. Revenue from such sources as income tax, company tax and customs duties is still collected by the central Ministry of Finance.

One area of uncertainty in Tobago's constitutional arrangements is the relationship between the functions of the representatives of Tobago electoral constituencies in Parliament and those of representatives of overlapping constituencies in the House of Assembly. Another is the role of the central government Minister responsible for Tobago Affairs, who at the moment of writing is the Prime Minister himself.

From time to time over the years there has been talk of secession (Tobago becoming a separate nation), though this idea has never had wide support. The argument is based on the premise that an independent Tobago would have control over the wealth derived from what would then be its territorial waters and continental shelf (oil, gas and fisheries).

There is, however, strong and growing sentiment for meaningful autonomy, and for entrenching in the Constitution a mutually agreed framework for such autonomy.

### **Level 1 questions**

1. In what way, if any, does geographical separateness justify self-government for Tobago?
2. Are there any other factors differentiating Tobago from Trinidad that might be a reason for Tobagonian autonomy?
3. If self-government is desirable, to what degree and in what areas should it apply in order to be advantageous to the country as a whole?

### **Level 2 questions**

1. In recent decades there has been an increase in demands for regional autonomy, and even in some cases secession, in many parts of the world. Many of these demands have given

rise to armed conflict. What do you think are the issues that could fuel such demands?

2. Do you think that regions where there is majority support for autonomy should always be granted self-government/autonomy/independence as a matter of course?

## **The Public Service**

Employees in the state sector - the public service - comprise those working in the open public service e.g. ministries, essential services and public utilities (appointed by the Public Service Commission); those employed by Statutory Authorities e.g. Library Services and Meteorological Services (appointed by the Statutory Authorities Service Commission); and special State agencies, e.g. First Citizens Bank. There are, therefore, many people with whom citizens come into contact on a daily basis who are part of the Public Service.

Appointments, promotions and discipline in the civil service and the police are the responsibility of the above Service Commissions and the Police Service Commission respectively. The members of these Commissions are appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. There are, however, important exceptions to the powers of the Commissions. Permanent Secretaries (administrative heads of Ministries), Ambassadors and all overseas mission staff are appointed by the Prime Minister. The Prime Minister also has a veto over appointments to a number of other senior appointments, including that of the Commissioner of Police.

### **Level 1 questions**

1. Does the Executive have too much/enough/not enough control over the Public Service and the Police Service?
2. Are regulations the only factor that determines the actual operation of the Public Service?
3. Are there any special obligations that public servants have which employees in private enterprise do not?
4. Are there any special restrictions that apply to public servants which do not apply to employees in private enterprise?
5. Apart from the Minister, should any members of the staff of a Ministry/Department be appointed politically? If

so, which members? By whom should they be appointed? Should the appointment, though political, be subject to some other form of control or approval?

## **Level 2 questions**

1. Is there any conflict between the duty of a public service to carry out the policies of the government in office and its duty to provide fair, impartial and efficient service to the public?
2. If so, what are the best arrangements (recruitment, training, appointment, salaries, discipline, dismissal, pensions, etc.) for ensuring the necessary balance between these functions while maintaining the confidence of the public?
3. Imagine a country in which there are no public servants. What would be the effect of this on the provision of certain types of services? Would this be desirable?
4. Should citizens be required to spend some part of their working life in the public service? What kinds of effects would this have?
5. Efficiency and continuity in the delivery of public services is said to be ensured by independence of the civil service from political control. At the same time, the civil service must implement the policies of the government of the day. How can these two requirements be reconciled?

## **Civil society**

Regardless of the number of official levels of administration a country may have, it cannot respond adequately to the needs of the citizens unless the citizens organise themselves to satisfy their own needs, either by their own efforts or by appealing to or putting pressure on the authorities, or simply by raising the awareness of their fellow-citizens on specific issues (the Trinidad and Tobago Humanist Association is an organisation of this kind).

The term "civil society" refers to that level of organisation in a society that is independent of the official processes of government. Civil society organisations are political parties, professional associations, chambers of commerce and industry, trade unions, women's groups, student associations, churches, charitable and volunteer organisations, sports associations, and many others.

Another name applied to some groups of this kind is "Non-Governmental Organisations (NGOs)". Because of their very diversity, NGOs have been defined in various ways. One definition of an NGO, proposed by the World Bank, is

*a non-profit making, voluntary, service-oriented/development oriented organization, either for the benefit of members (a grassroots organization) or of other members of the population*

Other characteristics of NGOs are that they are voluntary, self-financing and self-governing. Some, like trade unions and political parties, may, although independent, have direct influence on government. Others may be huge and have international ramifications, like the Red Cross; or they may comprise just two or three persons at village level. Many NGOs operate as part of national or international networks, and many have achieved participation in official national and international conferences in their subject areas, where their input is regarded as essential.

Although, by definition, civil society organisations do not figure in the national Constitution, they are an essential part of the constitution (i.e. the fabric) of a democratic society.

### **Level 1 questions**

1. Make a list of your personal areas of involvement in society (young/retired man/woman, student, sportsperson, artist, vacation worker, country/village/city resident, etc. etc.) What kind of civil society organisation/NGO do you think would be of benefit to you in each of these areas?
2. Do you know of any? Are you a member of it/them?
3. If an organisation that would promote your interests does not exist, how would you go about forming one?

### **Level 2 questions**

1. Should civil society organisations seek State funding? If so, how would they maintain their independence?
2. Should civil society organisations have official representation in legislative assemblies (Parliament, local government bodies)? If so, how should they be chosen?
3. What laws, if any, should govern the existence of civil society organisations (registration, taxation, auditing, etc.)?
4. Should practitioners of a profession which does not require specific legal qualifications (e.g. journalism, broadcasting, performing arts) be required by law to be members of a professional association in order to practise their profession?

### **CONCLUSION**

Needless to say, none of the questions in this text has a definitive answer. Nevertheless, the process of nation-building

is the process of seeking empirical, if provisional, answers to as many of them as possible. It is essential that citizens, and particularly youth, be intellectually equipped for the task.

The Trinidad and Tobago Humanist Association hopes that your work with this text has made you better equipped to reach intelligent decisions about how our country should be organised, and less likely to be deceived by propaganda and special pleading.

Civics doesn't begin and end with the reading of this or any text. Reading is desirable, and published material on constitutional matters is limitless. But citizenship is an active process. One of the rights our Constitution guarantees is the right to participate in public life. You should exercise this right to the full. The Trinidad and Tobago Humanist Association hopes that this Guide will help you to do so.