

TURKS AND CAICOS ISLANDS CONSTITUTION COMMITTEE
CONSTITUTIONAL PROPOSALS FOR CONSIDERATION
October 2019

CONSTITUTIONAL REFERENCE	RECOMMENDATIONS FOR CONSIDERATION	COMMENTS
FUNDAMENTAL RIGHTS	<p>Whether a right to trial by a jury of our peers should be enshrined in the Constitution as a Fundamental Right? (section 6 of the 2011 Constitution)</p> <p>Our Proposal: We propose that a person charged with a criminal offence should have a right to trial by a jury of his peers or the option to elect to trial by judge alone.</p> <p>We propose the return to trial by jury as a fundamental right with the defendant having an option to elect to trial by judge alone.</p>	
EXECUTIVE	<p>Whether decisions in Cabinet should be taken by majority vote or by consensus? If the answer is by majority vote, whether the Deputy Governor and the Attorney General should be voting members of the Cabinet? (section</p> <p>Our Proposal:</p>	

	<p>We propose that decisions of Cabinet are to be taken by a majority of the Members present and voting.</p> <p>We propose that once a decision is taken in Cabinet, if a Member of the Cabinet cannot or will not defend it, or if he or she should speak outside of the Cabinet against it, he or she should resign his/her office.</p> <p>We propose that the Deputy Governor and the Attorney General should be non-voting members of the Cabinet.</p>	
	<p>Whether the Attorney General should be a political appointee, meaning appointed by the Government in political power?</p> <p>Our Proposal: We propose that the Attorney General, as the legal advisor to the Government should be a politically appointed person who comes and goes with the Government of the day. He or she would, as is currently the case, be a Member of the House of Assembly, elected or appointed, with the same rights and responsibilities as is currently the case. The establishment of an independent Director of Public Prosecutions in the Constitution Order 2011 bolsters our view on this point.</p>	

	<p>We propose that the Attorney General be appointed by the Governor acting in accordance with the advice of the Premier.</p>	
	<p>Whether the provisions in the 2006 Constitution requiring the Governor to act on the advice of or in accordance with the advice of another person should be reinstated.</p> <p>Our Proposal: We propose that there should be a return to the provisions of the Constitution Order 2006, and there be a replacement of the provisions which require the Governor to act after “consultation with” in the Constitution with provisions which require action on the “advice of” or “in accordance with the advice of” as relates to the non-reserved powers of the Governor.</p>	
	<p>Whether the post of Cabinet Secretary should be returned to the Constitution and strengthened?</p> <p>Our Proposal: We propose that the post of Cabinet Secretary should be returned to the Constitution and strengthened.</p>	

	<p>We propose that the Cabinet Secretary be responsible to set the agenda of Cabinet (following guidelines established by the Governor and the Premier from time to time), coordinate papers coming to Cabinet and Minutes issued by Cabinet, superintending the execution of Cabinet Decisions by Permanent Secretaries, and reporting to the Cabinet once Minutes have been actioned.</p> <p>We propose that the Cabinet Secretary should be a senior public officer served by a Secretariat.</p> <p>We propose that the Cabinet Secretary should have the right to summon public officers to attend Meetings of the Cabinet, when instructed to do so by the Governor, the Premier or the Cabinet generally.</p>	
LEGISLATURE	<p>Whether the qualifications to be elected as a member of the House of Assembly should be revised? (section 46 of the 2011 Constitution)</p> <p>Our Proposal: We propose that, in addition to the other prescribed qualification in section 46(a) of the Constitution, in order for someone to be able to stand for election to the House of Assembly, he or she should be:</p>	

	<ul style="list-style-type: none"> i. a “natural born” Turks and Caicos Islander ii. a registered Elector; and iii. a resident of the islands for the 3 years ending with the Nomination Day; <p>We propose that a person will be a “natural born” Turks and Caicos Islander if he or she had the status of Turks and Caicos Islander at the time of his birth (by birth or by descent).</p> <p>We propose that absences from the Islands to serve in Her Majesty’s Armed Forces would not be counted against a person seeking to establish the proposed 3 years residence requirement.</p>	
	<p>Whether a person should be disqualified from standing for election to the House of Assembly if they are a citizen of another country by their own application as adults? (section 49 of the 2011 Constitution).</p> <p>Our Proposal: We propose that section 49(1)(c) of the Constitution should only apply to persons who, on becoming adults, apply to become citizens of another country.</p>	
	<p>Whether a finding against a Member of the House of Assembly should result in that</p>	

	<p>Member vacating his or her seat? (section 51 of the 2011 Constitution).</p> <p>Our Proposal: We propose that another process for a Member of the House of Assembly to vacate his/her seat in the House of Assembly where there is an adverse finding against him/her because in our view the current references to the Integrity Commission and the Speaker do not provide sufficient safeguards.</p> <p>We propose that an adverse finding by the Integrity Commission against a Member of the House of Assembly should be referred to the Chief Justice of the Supreme Court to make a ruling on the finding of the Integrity Commission; thereafter the Speaker should be required to declare the seat vacant should the Chief Justice's findings be adverse to the Member.</p>	
	<p>Whether the Speaker of the House of Assembly should have a casting vote under section 68(1) of the Constitution</p> <p>Our Proposal: We propose that the Speaker, if he is an Elected Member of the House of Assembly, should have and be required to exercise a casting vote. If, however, the Speaker is an</p>	

	<p>Appointed Member of the House of Assembly, he or she should not have a casting vote, and in any case where there is a tie, the Speaker should declare the motion under consideration defeated.</p>	
	<p>Whether Appointed members of the House of Assembly should be retained and if so, should the formulation under 2006 Constitution be restored? (section 47 of the 2011 Constitution)</p> <p>Our Proposal: We propose that this provision be removed altogether so that all members of the House of Assembly are elected.</p> <p>In the alternative: We propose that we return to the provisions in the Constitution Order 2006 on the appointment of Members of the House of Assembly as follows:</p> <ol style="list-style-type: none"> i. One (1) Member appointed by the Governor in his discretion; ii. Two (2) Members appointed by the Governor in accordance with the Premier's advice; and iii. One (1) Member appointed by the Governor in accordance with the Opposition's advice. 	

	<p>Whether there should be a fixed Parliamentary term? Whether the parliamentary term should be increased from 4 years to 5 years? (section 57(3) of the 2011 Constitution)</p> <p>Our Proposal: We propose that there should be a fixed date for general elections in the islands.</p> <p>We propose that the parliamentary term be increased to 5 years.</p>	
ELECTORAL BOUNDARY COMMISSION	<p>Whether the appointment of the Electoral District Boundary Commission should be revised to return to the 2006? (section 60 of the 2011 Constitution)</p> <p>Our Proposal: We propose that we return to the provisions in the Constitution Order 2006 on the appointment of an Electoral District Boundary Commission as follows:</p> <ul style="list-style-type: none"> i. The Governor appoints the Chairman, in his discretion; ii. The Governor appoints one (1) Member, in accordance with the advice of the Premier, and iii. The Governor appoints one (1) Member, in accordance with the 	

	<p>advice of the Leader of the Opposition.</p> <p>We propose that the Chairman should be someone who holds (or has held) high Judicial or Legal Office. High Judicial Office is the office of judge or justice of appeal. High Legal Office includes, the office of Attorney General and his/her Deputy, the Director of Public Prosecutions (or like post) and his/her Deputy and Queen's Counsel.</p> <p>We propose that the Chairman should be a qualified attorney in in the Turks and Caicos Islands, any part of the Commonwealth Caribbean or the United Kingdom. The other Members must be registered as Electors in the Islands on the date of appointment.</p>	
JUDICIARY	<p>Whether the qualification for appointment to the Judicial Service Commission should be expanded? (section 86 of the 2011 Constitution)</p> <p>Our Proposal: We propose expanding the pool of persons qualified for appointment to the Judicial Services Commission to include the President of the Bar Council and persons who hold or who have held high legal office as well as high judicial office.</p>	

	<p>We propose that at least one (1) Member of the JSC should be a Turks and Caicos Islander.</p> <p>In the alternative: We propose that:</p> <ol style="list-style-type: none"> 1. That the JSC be chaired by a Turks and Caicos Islander who is a non lawyer and who has been recommended for appointment by the Premier and the Leader of the Opposition jointly. 2. The additional members should include the President of the Bar Council and a person appointed by the Governor, in his discretion, who has held High Judicial Office in the TCI or in some other part of the Commonwealth. 3. The Chief Justice nor any of the sitting members of the TCI Bench should be eligible for appointment. 	
	<p>Whether the Labour Tribunal should be included as part of the judiciary?</p> <p>Our Proposal: We propose that the Labour Tribunal should be subsumed into the Judicial administration under Part V of the Constitution.</p>	
<p>INSTITUTIONS PROTECTING GOOD GOVERNANCE</p>	<p>Whether the Institutions Protecting Good Governance should produce annual reports</p>	

	<p>to the House of Assembly? (section 97 of the 2011 Constitution)</p> <p>Our Proposal: We propose that the Institutions Protecting Good Governance should be required to file a report every year of their activities and finances over the preceding year to the Governor, who should be required to cause same to be laid on the Table of the House of Assembly.</p>	
REFERENDA	<p>Whether there should be a constitutional provision for Referenda on issues of national importance?</p> <p>Our Proposal: We propose that there should be provision made in the Constitution for referenda on issues on issues of national importance as the Government might from time to time deem appropriate and constitutional reform.</p>	
CROWN LAND	<p>Whether there should be a constitutional provision that portfolio responsibility for Crown Land should lie with a Minister?</p> <p>Our Proposal: We propose that portfolio responsibility for Crown land should be codified in the Constitution as within the remit of a Minister, and subsidiary legislation can follow in an</p>	

	Ordinance (section 36 of the 2011 Constitution).	
OTHER	<p>Whether a new provision should be inserted to allow constitutional motions to be made where there is infringement of the Constitution in addition to breaches of fundamental rights?</p> <p>Our Proposal: We propose the inclusion of a provision to allow for greater use of constitutional motions where there is an infringement of the Constitution that goes beyond the fundamental rights to allow parties to bring motions against each other that are not committed by the State.</p>	