



**OPINION: THE CONSTITUTION (AMENDMENT)  
(TOBAGO SELF-GOVERNMENT) BILL, 2020**

June 28<sup>th</sup>, 2021  
Heliconia Foundation for Young Professionals

## CONTENTS

	Page
<b>ACKNOWLEDGEMENTS</b>	2
<b>TABLE OF REFERENCED MATERIAL</b>	3
<b>OPINION</b>	4
<b>Introduction</b>	4
<b>Legislative framework -The Statutory and Constitutional underpinnings</b>	4-5
<b>Issues- Internal Self Governance</b>	5-6
<b>Historical Background</b>	6-8
<b>Concept of Self-Determination</b>	8-9
<b>Other Jurisdictions</b>	9-13
-Africa	
-Germany	
-Scotland	
-Saint Kitts and Nevis	
-New Zealand and the Cook Islands	
<b>What the Present Bill Proposes</b>	13-17
<b>Our Position</b>	17-18
<b>APPENDIX</b>	

## ACKNOWLEDGEMENTS

We wish to acknowledge the work of the dedicated members of the legal and communications committee for their outstanding delivery of this legal opinion. This is a welcomed and necessary addition to the national debate on internal self-governance for the island of Tobago.

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## **TABLE OF REFERENCED MATERIAL**

*(Hyperlinked)*

1. The Constitution (Amendment)(Tobago Self-Government) Bill 2020
2. House of Representative Debates- Monday 25th November, 1996
3. Tobago House of Assembly Act
4. Internal Self-Determination in International Law: A Critical Third-World Perspective by Kalana SENARATNE
5. Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations by James Summers (source provided, no virtual links found)
6. African Charter on Human Rights and People's Rights
7. Written Statement of the Federal Republic of Germany April 2009
8. Institute for Government: Scottish Parliament Article
9. 20 years of devolution and Scotland's parliament: First Minister's speech
10. Constitution of Saint Kitts and Nevis
11. [Nevis Island Administration](#)
12. Uncharted Waters: Has the Cook Islands Become Eligible for Membership in the United Nations
13. The Attorney General et Al v Joseph and Boyce [2006] CCJ 3 AJ
14. The State of Mauritius v Khoiratty [2006] UKPC 13
15. The Missing Link between Self-Determination and Democracy: The Case of East Timor by Hua Fan

## OPINION

### Introduction

1. The Heliconia Foundation for Young Professionals (**HFYP**) is a think-tank of young professionals whose vision is to establish a strong network of young progressive thinkers committed to the advancement of the Republic of Trinidad and Tobago both locally and internationally. We are guided by four pillars of development or the four Ps, Policy, Politics, People and Philanthropy. Our membership is comprised of over 600 Trinbagonians between the ages of 20- 40 years of age.
2. In keeping with our mandate of policy and politics, we have been instructed by our members to give the Foundations Opinion on **THE CONSTITUTION (AMENDMENT) (TOBAGO SELF-GOVERNMENT) BILL, 2020** (“the Bill”) which is scheduled to be debated in the Parliament of the Republic of Trinidad and Tobago on Monday the 28th day of June 2021 and also on Tuesday the 29th day of June 2021
3. The Executive of **HFYP** has charged the Legal Affairs Committee and the Communications Committee to spearhead this research to advise the nation of the Foundation’s position in this regard.
4. The **HFYP** hopes to assist in a meaningful national discourse to ensure the best future for the Republic of Trinidad and Tobago. What we intend to do with this position paper is to give some historical and comparative context which we believe will assist meaningfully in this debate for internal self-governance of Tobago.

### Legislative framework -The Statutory and Constitutional underpinnings

5. The Bill proposes to amend the Constitution of the Republic of Trinidad and Tobago to enhance the legislative and executive powers of the Tobago House of Assembly in order to promote the internal self-government of Tobago. The Bill would alter Sections 1 A, 3, 5, 5, 13, , 53, 54, 75, 75 A, 75 B, 75 C, 80, 81A, 110, 120, 121 of the Constitution and

would therefore require a special majority of three-fourths of all members of the House of Representatives and a two-thirds majority in the Senate.<sup>1</sup>

### **Issues- Internal Self Governance**

6. The Hon. A.N.R. Robinson as he then was may have said it best when in the House of Representatives on Monday, November 25, 1996, where he stated the following:

*“But it is of the utmost importance may I say, Mr. Speaker, that the people of Tobago be assured that submissions which are made to them are agreed on. It is important that the sense of insecurity which has developed over the years after Independence, by reason of the precarious nature of their representation at national level, where it can be that Tobago is represented only by two Members in the House of Representatives and by no other form of representation either at Cabinet level or in the Senate, and consequently the interests of the small island, which constitutes a vulnerable majority, can be overlooked or over-ridden. By reason of the experience of the precarious nature of that situation the demand has grown in Tobago for a change in the constitutional arrangements which would afford the residents in that island, whether Trinidadians or Tobagonians—and in this regard Trinidadians and Tobagonians are referred to as residents of the island—a voice in matters of critical importance to the country as a whole, and of particular importance to the residents of that island when those matters are being discussed and debated in the Senate.*

*I do not think and it is generally agreed, Mr. Speaker, and I can understand how insecure the people of a small isolated island can feel when, not only have they no control over the affairs of that isle, not only are they isolated by sea from the rest of the world and all the instruments of access and departure are controlled from outside; how insecure they can feel that at any moment in time, not only their very livelihood but their lives can be in jeopardy in situations where they have not only*

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<sup>1</sup> <http://www.ttparliament.org/legislations/b2020h13g.pdf> pg 5

*no control but no voice whatever. One only has to look around, not only at the rest of the world, but the rest of the region to see and to understand that there is no island in the world the size of Tobago or anything near it which is in a similar situation, or which indeed will accept the situation in which Tobago exists in relation to these constitutional and legislative arrangements.”<sup>2</sup> (emphasis added)*

7. In short, the HFYP holds this opinion as self-evident, and it is hoped that some progress is made in the status of Tobago.

### **Historical Background**

8. The Tobago House of Assembly (THA) is an autonomous legislative and executive body. **Historically the THA is in fact one the oldest political institutions that was established in the year 1768 with the mandate to “make better provisions for the administration of Tobago and for matters therein”.**
9. Representatives at that time were not elected but selected by the Governor of the colony of Trinidad and Tobago. With the focus being on the ruling class, only plantation owners were appointed as representatives. In 1925 this was changed, and Tobago’s representatives were elected by residents of the island of Tobago.
10. The present incarnation of the Tobago House of Assembly was created by Act 37 of 1980 and the first elected Chairman of the Assembly was non-other than Arthur Napoleon Raymond Robinson. The Act was subsequently amended by Act 40 of 1996 to change the title of Chairman to Chief Secretary.
11. The Tobago House of Assembly consists of two arms, the Legislature, which comprises the elected officials, and the Executive Council. The Legislature is headed by the Presiding Officer who presides over policy debates and policy formulation.

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<sup>2</sup> Hansard <http://www.ttparliament.org/hansards/hh19961125.pdf>

12. The Executive Council is headed by the Chief Secretary and is responsible for the day-to-day affairs of the island, carrying out its tasks through Divisions. The jurisdiction of the Assembly, which is the responsibility of the various Divisions, is outlined in the Fifth Schedule of the THA Act 40 of 1996.<sup>3</sup>
13. The Assembly does not have law making power or executive authority. The Central Government has ultimate say on policy development and implementation in Tobago. This has led to the call for internal self-government for Tobago, thereby giving full control to Tobago over their affairs in a federal-type system.
14. The discussion of internal self-government for Tobago continued when the current incarnation of the Tobago House of Assembly was established by Act 37 of 1980, as it did not involve meaningful consultation with residents of Tobago. In the year 1996, the Honourable A.N.R. Robinson as he then was stated the following in his address to parliament in 1996:

*“The purpose of the Bill is well known and is also agreed to if not wholly, certainly substantially. The purpose of it is to entrench into the Constitution the existence of a Tobago House of Assembly with powers and functions to be prescribed by law, and in the process of doing so, to entrench an Executive Council which shall form part of the Assembly, a Tobago House of Assembly Fund and the power of the Assembly to make notes.*

*It is important that the sense of insecurity which has developed over the years after Independence, by reason of the precarious nature of their representation at national level, where it can be that Tobago is represented only by two Members in the House of Representatives and by no other form of representation either at*

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<sup>3</sup> Tobago House of Assembly Act [https://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/25.03.pdf](https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/25.03.pdf) pg 32



*Cabinet level or in the Senate, and consequently the interests of the small island, which constitutes a vulnerable majority, can be overlooked or over-ridden.”<sup>4</sup>*

15. The democratic governance within both Trinidad and Tobago affirms that the power of governance lies in our citizens’ control; the issue which has been raised most recently by the deadlock of the THA elections of the 25 of January 2021 has brought to the fore matters which have been brewing since before the proclamation of the 1980 Act. How do we resolve these matters effectively considering the long-standing issue of autonomy?

### **Concept of Self-Determination**

16. Kalana Senaratne suggest in her paper, “Internal Self-Determination in International Law: A Critical Third-World Perspective”<sup>5</sup> that self-determination allows freedoms of people to choose their forms of political, economic, social, and cultural destiny.

17. In our particular instance, as is highlighted in the position paper of Parliament, it is not that Tobago is culturally different from Trinidad, but their specific internal issues would be better served by a body representative of Tobagonians.

18. It is known that since the 1960s decolonization has pushed many states into Independence. Trinidad and Tobago achieved Republican status in the year 1976.

19. Senaratne in her paper suggests that there are two distinct dimensions of self-determination. As the Netherlands pointed out:

*“[The] idea of self-determination was a complex of ideas rather than a single concept. Thus, the principle of internal self-determination, or self-determination on the national level, should be distinguished from that of external self-determination, or self-determination on the international level. The former was the right of a nation, already constituted as a State, to choose its form of government and to determine the*

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<sup>4</sup> Hansard <http://www.ttparliament.org/hansards/hh19961125.pdf>

<sup>5</sup> Internal Self-Determination in International Law: A Critical Third-World Perspective” <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/internal-self-determination-in-international-law-a-critical-thirdworld-perspective/D50802D44C5C534376496283B78D220B>

*policy it meant to pursue. The latter was the right of a group which considered itself a nation to form a State of its own.*”<sup>6</sup>

20. Senaratne proposes that **“internal self-determination came to be perceived as a right to democratic governance applicable to peoples within states.** It was an “ongoing right” which was always applicable to people. It was to be distinguished from the right to external self-determination, i.e., the right to independence.”

### **Other Jurisdictions**

21. To assist in our analysis, we have looked at several regions to see how issues of self-determination have been dealt with.

### **Africa**

22. A primary example of regions which have dealt with this substantive issue of self-determination is Africa. Africa has been plagued by matters of post-colonial rule. In 1981, the African Charter on Human Rights recognised the importance of liberation of Africa from all forms of colonialism and discrimination. The achievement of such has been portrayed as a state obligation with both negative and positive dimensions to it. One of the things specifically highlighted in Article 20(1) is the existence of peoples within independent states who have a right to self-determination enabling them to freely pursue their political and other freedoms.<sup>7</sup>

### **Germany**

23. Germany as the economic powerhouse of Europe has described self-determination as an internal and external exercise. Internal self-determination means enjoying a degree of autonomy inside a larger entity, not leaving it altogether but, as a rule, deciding issues of local relevance on a local level. External self-determination means the right of a group

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<sup>6</sup> SUMMERS, James, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations* (Leiden/Boston: Martinus Nijhoff, 2007) at 188

<sup>7</sup> See for instance: the *African Charter on Human and Peoples' Rights*, 27 June 1981 (entered into force 21 October 1986), online: UNHCR (<http://www.unhcr.org/refworld/type,MULTILATERALTREATY,OUA,,3ae6b3630,0.html>)

freely to determine its own political and constitutional status on the international level.<sup>8</sup>  
We see a parallel here to the approach of the Bill.

## Scotland<sup>9</sup>

24. The Scottish Parliament at Holyrood in Edinburgh is the devolved legislature of Scotland. It is unicameral, which means it only has one chamber, unlike the UK parliament in Westminster which has an upper house (the House of Lords) and a lower house (the House of Commons). **Devolution was designed to give the Scottish people “a greater say over their own affairs”**, according to the UK government at the time, and to address the “democratic deficit” felt in then Labour-dominated Scotland after a long period of Conservative rule.
25. There was also an aspiration that devolution could foster a more consensus-based and less executive-dominated style of politics, reflected in the use of proportional representation to elect the new Scottish parliament.
26. The Scottish parliament was created in 1999 as part of the Labour UK government’s plans to devolve power across the UK. Its creation was approved in a referendum in 1997 with 74% of votes cast in its favour, on a turnout of 60%. The devolution proposals had been developed by the cross-party and civil society Scottish Constitutional Convention, which functioned from 1989 to 1995.
27. It was the view of the First Minister in her speech “20 years of devolution and Scotland’s Parliament”:<sup>10</sup>

In addition, the Scottish Parliament has also gained trust, not simply because of what we do, but because of how we do it. Our way of working is very different from Westminster’s – and many of those differences are to our benefit.

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<sup>8</sup> Written statement of the Federal Republic of Germany, 15 April 2009, at 33 (emphasis added), online: ICJ (<http://www.icj-cij.org/docket/files/141/15624.pdf>)

<sup>9</sup> Scottish Parliament <https://www.instituteforgovernment.org.uk/explainers/scottish-parliament>

<sup>10</sup> <https://www.gov.scot/publications/fm-20-years-devolution-scotlands-parliament/>

## Saint Kitts and Nevis

28. Within the Caribbean context, the islands of Saint Kitts and Nevis provide a primary example of small islands and their experience of self-determination and self-government. Though distinctly different in their composition as a federal state versus the Republican model of Trinidad and Tobago, Saint Kitts and Nevis provides a practical model of a twin island state relationship and its operations. The Federal state was established by way of their **1983 Constitution, Chapter 1, Section 1, subsection (1)(2)** which reads:

### *CHAPTER I – THE FEDERATION AND THE CONSTITUTION*

#### *1. The Federation and its territory.*

*(1) The island of Saint Christopher (which is otherwise known as Saint Kitts) and the island of Nevis shall be a sovereign democratic federal state which may be styled Saint Christopher and Nevis or Saint Kitts and Nevis or the Federation of Saint Christopher and Nevis or the Federation of Saint Kitts and Nevis.*

*(2) The territory of Saint Christopher and Nevis shall comprise all areas that were comprised in the associated state of Saint Christopher and Nevis immediately before 19th September 1983, together with such other areas as may be declared by Parliament to form part of the territory of Saint Christopher and Nevis.<sup>11</sup>*

29. Despite its federal state, the island of Nevis has autonomous responsibility and specific governance over domestic matters as well as there is established, a Nevis Island Assembly (legislature) to directly address these local concerns of the island.

30. Similar to Tobago, the Island of Nevis has its own unicameral legislature. Pursuant to **Chapter 10, Section 100, Section 101 and Section 102** of the Constitution of Saint Kitts and Nevis, there has been established, a Nevis Island Legislature, Nevis Island Assembly, and a Nevis Island Administration. The Nevis's administration comprises of the Deputy Governor General, the representative of Her Majesty, and members of the Nevis Island Administration. Moreover, the Nevis Island Administration has a Cabinet of Ministers consisting of a Premier, a Deputy Premier, other elected members and a maximum of two nominated members.<sup>12</sup> Quite noteworthy, is that Nevis's administration sees over

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<sup>11</sup> Constitution of St Kitts and Nevis [https://www.oas.org/juridico/PDFs/mesicic5\\_skn\\_constitution\\_annex1.pdf](https://www.oas.org/juridico/PDFs/mesicic5_skn_constitution_annex1.pdf)

<sup>12</sup> Nevis Island Administration: <https://nia.gov.kn/government/>

approximately 12,000 persons which is starkly different to Tobago's approximated 60,000 population that would fall under the Tobago Island Government's management being proposed.

### **New Zealand and the Cook Islands**<sup>13</sup>

31. The territory of the Cook Islands comprises 15 widely dispersed islands and atolls that until administered by Europeans were never unified into a single political unit. It has a population of around 17,500. It is self-governing in 'free association' with New Zealand. Cook Islands is part of the Realm of New Zealand, and the Head of State is the Queen of New Zealand. The self-governance of Cook Island began in 1965. Prior to this the Cook Islands were simply treated as "annexed and proclaimed part of New Zealand" but because the islands lacked parliamentary representation and were not subject to New Zealand legislation unless such an application was expressly provided for.
32. In 1946, New Zealand began a series of reforms that aimed to involve the residents of the Cook Islands in the governance of the territory. A Legislative Council of the Cook Islands was created and was given the power to impose taxes and advise the Resident Commissioner on the creation of laws. (emphasis ours)
33. In 1965 New Zealand by statute created the "Constitution of the Cook Islands" and declared that "[t]he Cook Islands shall be self-governing". The Legislative Assembly of the Cook Islands was given the exclusive power to unilaterally make laws and to amend or repeal any law then in force in the Cook Islands, including the Constitution.
34. **Significantly, the power of the Parliament of New Zealand to legislate for the Cook Islands without its consent was explicitly abolished.** The Legislative Assembly of the Cook Islands was converted into an entirely elected body, and an appointed House of Arikis for traditional island leaders was created, which was given advisory powers only. A member of the Legislative Assembly who commanded the confidence of the Assembly

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<sup>13</sup> Adopted from Stephen Eliot Smith, "Uncharted Waters: Has the Cook Islands Become Eligible for Membership in the United Nations?", 8 N.Z. J. Pub. & Int'l L. 169 (2010)

would be the Premier, and the Premier and his Cabinet would have the “general direction and control of the executive government”. With these reforms and others, the Cook Islands largely resemble any other self-governing member of the British Commonwealth that had adopted the Statute of Westminster 1931 but was still associated with New Zealand with both sharing the same head of state.

35. The relationship continues to date without issue and has provided greater representation of the Cook Island domestically and internationally. However, its self governance is limited and does not extend to issues of immigration and national security.

### **What the Present Bill Proposes**

36. The proposed Bill offers a comprehensive overhauling of the system of governance for Tobago. It is not a piecemeal approach, rather it is one that not only repeals the old regime under the THA Act but also it proposes to entrench within our Republican Constitution a robust system to guarantee self-determination for the people of Tobago. Tobago’s self-governance would no longer be by a mere Act that could be amended simply by a simple majority.

37. Clause 4 of the Bill seeks to amend the Preamble of the Constitution to include the following:

*“recognise the right to self-determination of the people of Trinidad and Tobago including the right of the people of Tobago to determine in Tobago their political status and freely pursue their economic, social and cultural development;”*

38. This is significant since the preamble bears considerable and enforceable weight when interpreting the Republican Constitution. The Preamble of the Constitution has been noted as, “filling the Constitution with meaning” and breathing “life into the clay of the more

formal provisions in that document”.<sup>14</sup> It sets the foundation upon which the rest of the Republican Constitution is premised.<sup>15</sup>

**39. Including the right of self-determination in the Preamble of the Constitution shows that the Government does not intend to pay mere lip service to Tobago self-governance.**

40. Clause 4 of the Bill is further supported and bolstered by Clause 5 of the Bill which seeks to include the following so as to ensure Tobago’s **equality** of status with that of Trinidad in the Trinbagonian system of governance. In particular, Clause 5 provides:

*“There shall be equality of status between the Island of Trinidad and the Island of Tobago within the sovereign democratic State of Trinidad and Tobago and the Island of Tobago shall no longer carry the designation of a ward.”*

41. Clause 18 of the Bill would also see the proposed repealed THA transformed into Tobago’s very own August House and Legislature to make laws for the peace, order and good government of Tobago. The Tobago Legislature would consist of the President, a House of Assembly and a People’s House. A system similar to that mentioned in the Cook Islands above and is subject to certain very limited exceptions. Tobago could legislate for almost every aspect of its affairs apart from those issues which touch and concern Tobago and Trinidad as a whole unitary state. The limited exceptions for which the Tobago Legislature cannot legislate are provided in the Fourth Scheduled as follows:

- a. The President
- b. The Office of the Prime Minister
- c. Auditor General
- d. Civil Aviation
- e. Immigration
- f. Foreign Affairs

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<sup>14</sup> Attorney General v Joseph [2006] CCJ 3 (A) per Wit JCCJ

<sup>15</sup> The State of Mauritius v Khoyratty [2006] UKPC 13 per Lord Steyn

- g. Judiciary
  - h. Meteorology
  - i. National Security (except that internal policing shall be under the jurisdiction of the Tobago Island Government)
  - j. Ombudsman; and
  - k. The Integrity Commission.
42. Clause 13 of the Bill would now ensure that the President of Trinidad and Tobago acts only on the advice of the Tobago Executive Council on all affairs that do not touch and concern the items mentioned above from (a) to (k) above.
43. Clause 14 of the Bill by its proposed amendment would see the Chief Secretary him/herself directly keeping the President informed about the affairs of Tobago. Thus, the go to person for Tobago is a Tobagonian Chief him/herself. This is different from the current provisions of the THA Act which only caters for the Prime Minister and the Chief Secretary to *“hold regular discussions with a view to formulating administrative and legislative mechanisms for the promotion of harmony in the affairs of Trinidad and Tobago.”*<sup>16</sup>
44. Clauses 13 and 14 of the Bill and its proposed amendments to the Constitution gives credence to the equality of status between Trinidad and Tobago.
45. There can be no true self-governance and self-determination if there is no control over the revenues generated within Tobago, by Tobagonians using Tobago’s resources. To this end Clause 18’s proposed section 141AD to include in the Constitution would also see a Fiscal Review Commission with responsibility for ensuring that all revenues collected in Trinidad that are attributable to Tobago shall be held for the account of Tobago, that all companies operating businesses in Tobago pay taxes in Tobago on such operations, and that Cabinet and Parliament give due consideration to the needs of Tobago and allocate financial resources to Tobago as fairly as practicable. Therefore, Tobago’s revenue will be Constitutional due to the people of Tobago and its government.

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<sup>16</sup> Section 31 of the THA Act



46. Tobago is also given further geographic space by the proposed Bill. Currently under the THA Act Tobago is defined as “*every point of which is distant six [6] nautical miles from the nearest point of those baselines*”.<sup>17</sup> The proposed Bill gives Tobago more space, more resources over which its very own government exercises political and economic control. Clause 18 of the Bill proposes section 141A(11) to be included in the Constitution which defines Tobago as “*including any islands, the seabed and the subsoil, that lies within eleven [11] miles from the low watermark of Tobago.*”
47. Giving further credence to the equality of Tobago with Trinidad is included in the very equitable constitutional provision to ensure that the annual appropriation of not less than eight per cent of the national budget is given to the service of Tobago. This is also included in Clause 18 by way of its proposed section 141AD(5).
48. As presented, the **Constitution (Amendment) (Tobago Self-Government) Bill, 2020**, provides for a Tobago Island Government. Drafted as a companion Bill, the **Tobago Island Government Bill** provides for, *inter alia*, the intended parameters of operations which include, but are not limited to, financial administration, management and a suite of administrative matters. These matters are essentially anticipated to have a substantial impact on the island. In Tobago’s quest for self-autonomy, this Bill proposes, *inter alia*:
- a. Under **Clause 16 and 17**, the establishment of Public Administration and Appropriations Committee, which would have as its Chairman a member of the opposition. This would provide for a financial scrutiny committee will be established to oversee expenditure and use of public funds.
  - b. Under **Clause 22**, the Tobago Island Government would receive no less than 6.9% of the total sum appropriated by Parliament for that financial year;
  - c. Under **Clause 28**, the Executive would have powers to borrow domestically and internationally.

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<sup>17</sup> Section 4 of the THA Act

- d. Under **Clause 29**, the island’s government would have the power to invest as they may see fit and place the reasonability under the Central Bank of Trinidad and Tobago to manage any such investments.
- e. Under **Clause 30**, the Tobago Island Government will now have powers to make financial rules in accordance with the Exchequer and Audit Act Chap. 69:01.

### **Our Position**

49. When considering what exists in other territories, and our specific case, there are many sensitivities and complexities. Trinidad and Tobago has shared many milestones since the creation of the partnership of the twin island Republic. This on a large part has been successful and has stood the test of time.

50. We are cognizant of the policies, structure, and organization of Trinidad and Tobago as a Nation state, and the external world order. Any change may bring unintended consequences, but it is our position that the changes are proportionate in the circumstances when balanced and looked at through democratic lenses.

51. Hua Fan in their article “The Missing Link between Self-Determination and Democracy: The Case of East Timor”<sup>18</sup> states the following:

“Only democracy can minimize the transaction costs associated with self-determination and make it an efficient outcome for the society.”

52. The Specific case of East Timor illustrates the importance of the link of self-determination and democracy. It promotes the idea that only democracy validates governance. Fan argues that “*political decision-makers choose policies and institutions to maximize their own benefits, rather than the aggregate welfare of the society.*” It is suggested that a Parliament representative of Tobagonians may ultimately be more efficient in running. This would be beneficial to the twin island state as a whole.

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<sup>18</sup> The Missing Link between Self-Determination and Democracy: The Case of East Timor  
<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1070&context=njihr>

53. It is the Heliconia Foundation’s view that the benefits of this Bill will afford Tobagonians with greater economic flexibility, social and communal pride, a greater sense of trust and confidence in a Parliamentary body which is more representative of their particular needs. The Bill will further assist in the development of a unified Trinidad and Tobago.

We so advise.

Respectfully,

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