



Diplomat Center – P.O. Box N9583 Nassau Bahamas

BY HAND

13th August, 2014

Mr. Sean McWeeney QC
Chairman
Constitutional Commission
British Colonial Hilton Commercial Centre
Number One Bay Street
Nassau, Bahamas

Dear Mr. McWeeney,

Re: The Four Constitutional Bills to eliminate discrimination against women

You may recall that by a document dated 17th January, 2013, submitted under my signature, Bahamas Faith Ministries International provided feedback to the Commission on various aspects of the Constitution that it either wished to see entrenched, or changed in order to protect the rights of ordinary Bahamians and to protect national institutions.

Our recommendations were the result of extensive discussions with our attorney members and some of BFM's leadership team to ensure that we appreciated the legal nuances of the Constitution.

On page 11 of our document under the subheading "Discrimination against Women", our position on this issue was outlined. We attach the same hereto for ease of reference.

Our final recommendation on this subject read as follows:

"That all gender based bias that in any way disadvantages women be removed from the Constitution. This principle upholds the tenants of the spiritual values implied in our Preamble.

It should be noted that we do not think it is necessary to enshrine any other

groups in the Constitution under the heading of preventing discrimination. We think adding gender discrimination sufficiently identifies all persons under the Constitution who require protection”.

Recently, I have the opportunity to consult with our attorney members at BFM and invited legal counsel, which included Constitutional Commission Member, Retired Justice Ruby Nottage and former Bahamas Bar President, Dr. Peter Maynard.

After careful consideration and deliberation, please note the following comments in relation to the four Constitutional Bills currently being debated in Parliament:-

BAHAMAS CONSTITUTIONAL (AMENDMENT) BILL No. 1 2014

The first Bill proposes to repeal Article 8 of the Constitution and insert a provision that allows both a father and mother to pass on citizenship to their child automatically at birth if the child is born outside of the Commonwealth of The Bahamas after 9th July 1973.

Should this amendment be accepted, Article 9 would become unnecessary and therefore as proposed, it would be repealed.

CONCLUSION

We support the approval of this proposed amendment to the Constitution; however, we believe that this question and the three that follow need to be simplified for the benefit of the general public.

We propose that Question No. 1 be simplified to possibly read as follows:-

“Should a child born outside of The Bahamas, to a Bahamian born in The Bahamas, have a right to citizenship at birth?”

BAHAMAS CONSTITUTIONAL (AMENDMENT) (NO. 2) BILL, 2014

This Bill seeks to provide by an amendment to Article 10 of the Constitution that Bahamian women have the same right as Bahamian men to the automatic entitlement of registering their spouse as a citizen of The Bahamas.

We acknowledge that in our original recommendation to the Commission, we agreed that the rights under Article 10 should apply equally to men and women.

While we still hold the issue of gender equality as the desired end, we acknowledge the current difficulties that surround ensuring that this provision is not subject to

illegality and various forms of abuse or fraud.

We are concerned that extending this right to women may compound an existing situation that we may already have difficulty policing.

We submit that it may be necessary to consider whether the automatic right or entitlement to citizenship currently enshrined in the Constitution that provides a Bahamian man with the ability to pass on citizenship to his non-Bahamian spouse may need to be revisited.

Citizenship should not be a privilege that is easily acquired, and we therefore submit that both Bahamian men and women should have the right to ensure that their foreign spouse can easily obtain a spousal permit and permanent residency with the right to work in keeping with a prescribed process and subsequently in the case of both men and women, their foreign spouse will have an opportunity to apply for citizenship in accordance with a prescribed process.

This approach would allow us to ensure that foreign spouses can function effectively in The Bahamas without risk of their rights being infringed; however, **the access to citizenship would be equally subjected to a prescribed process for both men and women.**

CONCLUSION – RECOMMENDATION – Bill No.2

In light of the above it is our recommendation that to provide an adequate state of security, confidence and equality for both the Bahamian male and female, the Bill be amended to provide for the Bahamian women to have the same right as Bahamian men to an automatic entitlement to make application to register their spouse as a citizen of the Bahamas after successful completion of the procedures prescribed in the constitution and the supporting Immigration and Nationality Acts.

We also recommend that the years stipulated in the procedures be increased to from 5 to 10 years.

We propose that Question No. 2 be simplified to possibly read as follows:-

“Should the foreign husband of a Bahamian Woman have the same automatic entitlement to make application for her foreign Husband to Register for Citizenship as the foreign wife of a Bahamian Man?”

BAHAMAS CONSTITUTIONAL (AMENDMENT) (NO. 3) BILL, 2014

This Bill seeks to amend Article 14 of the Constitution by giving the Bahamian man the right to pass on citizenship to any child of his born out of wedlock, subject to a paternity test and other provisions included in the Status of Children Act.

CONCLUSION

We agree with this Bill and support the premise that fathers should have the ability to take responsibility for their children whether inside or outside of The Bahamas. Men must be responsible.

As before, we would respectfully suggest that the question be made as simple and non-technical as possible. **We submit the following simplified question for consideration:-**

“Should a Bahamian father of a child born outside of marriage be able to pass his citizenship on to that child?”

BAHAMAS CONSTITUTIONAL (AMENDMENT) (NO. 4) BILL, 2014

Bill No. 4 seeks to insert the word “sex” into Article 26 of the Constitution, making it an additional class that is entitled to protection from discrimination.

We fully support the general principle that women should have constitutional protection from discrimination with all the other forms of discrimination identified in Article 26.

We also accept that the term “sex” is used in Article 15 of the Constitution and that that term has to date been accepted as a reference to either male or female.

It is therefore not unreasonable to consider that the insertion of “sex” in Article 26 would carry the same historical meaning as it carries in Article 15.

We would like to submit, however, that over the course of time, it is possible for the definition of a word to change or to be expanded to include a wider class of persons that may have been the case historically.

We therefore think that careful consideration needs to be given to the issue of whether this word may be the subject of future Constitution challenges (which would not be the current intent of this Bill) where persons seek to conclude that the term sex may mean more than male and female.

In many jurisdictions, it is not uncommon for sex to be described as either male, female or other, and in some instances, the term gender now includes multiple meanings that extend far beyond a choice between male and female.

CONCLUSION – RECOMMENDATION

We therefore Recommend that the term ‘sex’ be defined positively as a person who is born either male or female. This definition would ensure that Article 15 would not be subject to any future challenges on this ground.

We do not think it unreasonable in the rapidly evolving world in which we live for the Constitution to decide that the term sex should be defined.

If this term is properly defined, we are prepared to consider lending our support to the amendment of the same.

We note the public confusion on this issue and we respectfully submit that if this question is to be successfully embraced by the general public, the widespread concerns about this term (whether reasonable or not), should be appropriately laid to rest by clearly explaining the meaning of the word in this context.

Recommended Question:

“Should the term ‘sex’ be defined as either a Male or a Female in reference to gender equality be inserted into Article 26 as an additional category of persons to be protected from discrimination?”

In conclusion, we are open to elaborate further on any of these questions and to assist the Commission in any way that we can.

We believe that it is very important that an educational process on the meaning of the Bills be carried out and that the language be simplified for the benefit of the average lay person.

While it is commendable to set a date for the Referendum for November 6, 2014, the setting of the date also creates some degree of anxiety for those members of the public who do not fully understand what is being proposed in these four Bills.

It is important that persons can be educated without feeling that they are

under the gun.

We are not suggesting that the date needs to be changed, but all factors need to be considered, and if making further amendments (including those we have suggested) and changing the date will increase the probability of these Bills being successfully enshrined in our Constitution, then we would recommend that the Commission and Government consider the benefit of any such postponement.

Yours faithfully,

Myles Munroe

Dr. Myles Munroe
President, Bahamas Faith Ministries International

Cc: Hon. Perry G. Christie - Prime Minister
Justice Ruby Nottage - Retired Justice