PRESENTATION BY BAHAMAS FAITH MINISTRIES INTERNATIONAL

BEFORE

THE CONSTITUTIONAL REVIEW COMMISSION OF THE COMMONWEALTH OF THE BAHAMAS

BY DR. MYLES MUNROE

CONSULTATION DOCUMENT

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To: Constitutional Reform Commission

From: Dr. Myles Munroe President, Bahamas Faith Ministries International

Date: January 17, 2013

Re: SUBMISSIONS ON CONSTITUTIONAL REFORM

Dear Mr. Chairman and Members of the Commission:

Thank you for this opportunity to appear before you and share some of my thoughts on the important constitutional issues you are considering. In the interest of time I will be as succinct and to the point as possible. What follows is the result of discussion internally within BFM’s leadership team as well as after exhaustive discussions with some of our attorney members.

In making recommendations to the Constitutional Reform Commission (“the Commission”), below is an analysis of various Sections and Articles of the Constitution that we submit should be given careful consideration.

Our overriding objective is to identify Articles in the Constitution:

1. That protect our traditional values and cultural norms
2. That have an adverse effect on our current state of affairs and that will negatively affect the future of our nation if left unchecked,
3. That violates or infringe on natural law and human natural justice.

1. THE PREAMBLE

The Preamble to the Bahamian Constitution states as follows:

‘WHEREAS Four hundred and eighty-one years ago the rediscovery of this Family of Islands, Rocks and Cays heralded the rebirth of the New World;

AND WHEREAS the People of this Family of Islands recognizing that the preservation of their Freedom will be guaranteed by a national commitment to Self-discipline, Industry, Loyalty, Unity and an abiding respect for Christian values and the Rule of Law;

NOW KNOW YE THEREFORE:

We the Inheritors of and Successors to this Family of Islands, recognizing the Supremacy of God and believing in the Fundamental Rights and Freedoms of the Individual, DO HEREBY...
**PROCLAIM IN SOLEMN PRAISE** the Establishment of a Free and Democratic Sovereign Nation founded on Spiritual Values and in which no Man, Woman or Child shall ever be Slave or Bondsman to anyone or their Labour exploited or their Lives frustrated by deprivation, **AND DO HEREBY PROVIDE** by these Articles for the indivisible Unity and Creation under God of the Commonwealth of The Bahamas.”

The Preamble to the Constitution is a brief introductory statement of the Constitution's fundamental purposes and guiding principles; it is the basis upon which the Constitution rests. It states in general terms, and courts have referred to it as reliable evidence of, the founding fathers intentions regarding the Constitution's meaning and what the Constitution seeks to achieve. In our view the Preamble, in its current form, need not be amended or revised and we conclude that it is still relevant today. It has and continues to affirm the values, traditions, culture and beliefs of the citizens of the Commonwealth of The Bahamas.

**Recommendation**

We submit that the Preamble should be incorporated into Chapter 1 of the Constitution as a new Article 2 because of its importance and to reinforce its importance as the fundamental guiding principle on which the country was founded and thus given the full weight of law that may not necessarily apply to a preamble. It is therefore our recommendation that the preamble be enshrined in the constitution with the full weight of constitutional law so as to assure its abiding role as a standard and reference in the interpretation and application of the rule of law in the commonwealth of the Bahamas.

2. **THE CONSTITUTIONAL POWERS OF THE PRIME MINISTER**

The office of Prime Minister is undoubtedly a significant one and His duties and powers are evident throughout the provisions of the Bahamian Constitution. However, the central concern is whether the Prime Minister's powers are excessive and should in any way be curtailed. In this
vain, we highlight below the far reaching powers of The Prime Minister as enshrined in our Constitution.

**Article 34 (1) (a) & (b)** of the Constitution speaks to the involvement of the Prime Minister in appointing a Deputy Governor General in the event that the Governor General is unable to fulfill his duties for a short period of time.

In **Article 39 (4)** which addresses the Composition of the Senate, it is noted that the sixteen members of the Senate shall be appointed by the Governor General, twelve of which shall be appointed by him, acting on the advice of the Prime Minister. The role the Prime Minister plays here is as stated in **Article 40**, which is to ensure that the political balance of the Senate reflects that of the House of Assembly at the time. We shall comment on the Senate in due course.

**Chapter VII** of the Constitution covers the Judicature and addresses the establishment of the Supreme Court. The Prime Minister is a part of the Executive arm of Government; the Executive arm should be independent from that of the Judicature. However, **Article 94 (1)** states that the Chief Justice shall be appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. Consultation with the Leader of the Opposition usually appears to be a mere formality and it is noteworthy that the Judicial and Legal Services Commission or some other independent body does not have the ability to scrutinize this appointment prior to final confirmation.

The Prime Minister also has the power to give advice on the selection of Acting Justices as evident in **Article 95 (1)**. Similarly, in **Article 96**, the Prime Minister can give recommendation to the Governor General on the extension of tenure of a Supreme Court Justice. The Prime Minister also has influence over the removal and suspension of a Supreme Court Justice.

Concern

It is possible to question whether the Judicature is indeed independent from the Executive as it should be. The Prime Minister has significant Constitutional power to make recommendation or influence the selection of Justices and Acting Justices.
Recommendation

The Prime Minister should nominate a person for the position of Chief Justice and the said nomination should be subject to the scrutiny and approval of either a fully independent Judicial and Legal Services Commission or a sub-committee of the House of Assembly by way of televised public hearings. All other judicial nominations should be subject to scrutiny.

3. CALL GENERAL ELECTIONS

Article 66 covers Prorogation and dissolution of Parliament. Based on this section, the Prime Minister advises the Governor General as to when parliament shall be dissolved.

Recommendation

We submit that rather than vesting the Prime Minister with such wide powers, in essence calling for a general election when convenient for him and his political party, there should be a set time as to when parliament shall be dissolved and general elections are called. Some discretion can be retained by the Prime Minister, for example reasons can be outlined that would necessitate or justify the calling of a general election prior to fulfilling a five year term in office.

4. CONSTITUENCIES COMMISSION

The Prime Minister’s power also extends to the appointment of various public bodies, which in many respects should be independent from the political directorate or the Executive.
Branch of Government. Article 69 of the Constitution addresses the Constituencies Commission. The Prime Minister is not a member of the Commission, however 69 (1) (c) says it shall include two members of the House of Assembly appointed by the Governor General acting in accordance with the advice of the Prime Minister, along with the Speaker of the House of Assembly (a member of the governing party) and a Justice of the Supreme Court. Without question, the Prime Minister, acting in this capacity may influence those who sit on this Commission and is always open to criticism as a result that he is only acting in the interest of the incumbent Government’s re-election efforts.

**Recommendation**

We submit that an independent election boundaries commission is necessary to encourage fairness prior to and during election season. It should be made up of persons who are not members of Parliament with two appointments by the Prime Minister, two by the Leader of the Opposition and two Supreme Court Judges.

**5. PUBLIC SERVICE COMMISSION**

The establishment of the Public Service Commission is addressed in Article 107. Members of this Commission shall be appointed by the Governor General who acts on the recommendation of the Prime Minister. The Public Service Board of Appeal covered in Articles 114 and 115, the Judicial and Legal Service Commission engrossed in Articles 116 through 117; as well as the Police Service Commission addressed in Articles 118 through 121, are all public bodies in which the Prime Minister has significant influence over the selection of members.

**Recommendation**
We submit that mechanisms should be put in place to ensure that the Judicial and Legal Services Commission is not merely a rubber stamp for the wishes of the Prime Minister. The overriding principle is that politics should not select law; politics should be subject to law. We recommend that the commission be made up of two members appointed each by the Prime Minister and the Leader of the Opposition and three persons by the Bahamas Bar Council with specific criteria being identified in order for persons to be eligible to sit on this commission.

The Public Service Commission should also have a formula for appointment that prevents the Prime Minister from controlling all of the appointments.

6. TERM LIMITS FOR THE PRIME MINISTER

We do not support term limits for the Prime Minister. It is our submission that the public should decide whether they wish to retain the services of a serving Prime Minister based on their perception of his performance.

We conclude that the Prime Minister has unchecked influence over every appointed public body in the Commonwealth. He has the constitutional power to give recommendations on who is appointed, the duration of tenure as well as temporary replacement in case of illness. These powers may work well in the hands of a benevolent Prime Minister, but could otherwise be subject to abuse and could lead to dictatorial tendencies. We submit that the powers of the Prime Minister should be carefully reviewed, revised, and in some
instances curtailed. All persons that the Prime Minister would wish to nominate for significant constitutional positions should be scrutinized by a commission set up for that purpose, and such commissions should be free from political interference. The present powers of the Prime Minister create the potential for misuse of these powers, threatens to reverse, manipulate and control the appointees.

7. REVIEW OF CONSTITUTIONAL PUBLIC OFFICERS

Generally speaking, we recommend that all deliberate steps be taken to ensure or strengthen the independence of the following constitutionally named public officers with the intent to ensure and strengthen the separation of Powers:

1. The Auditor General
2. The Director Of Public Prosecutions
3. The Attorney General
4. The Commissioner of Police and
5. The new office of an Ombudsmen

Office of the Auditor General

The Constitutional Commission should consider further enshrining and strengthening the Office of the Auditor General into the Constitution?

The role of the Auditor General is to foster transparency and accountability by conducting independent audits of the various governmental departments and agencies. Although the Auditor General is noted in the Constitution, (ARTICLE 136) there are concerns regarding the authority and independence of the office. In order to ensure the independence of the Auditor General, his office should be able to fund itself out of the Consolidated Fund (i.e. he
should be given a budget to conduct his office independently instead of seeking funds from the Minister of Finance) and he should be able to have full control over his staff.

He should also be given security of tenure to avoid any political influence or interference in his duties. The appointment should be made under Public Seal by the Governor General on recommendation of the Public Service Commission and with no need to consult the Prime Minister.

In support of the above recommendation the Commission should take into account that on 22 December 2011 the 66th United Nations General Assembly adopted the Resolution A/66/209 promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions (such as Office of the Auditor General in The Bahamas)

The UN General Assembly Resolution represents a milestone in the nearly 60-year history of International Organization of Supreme Audit Institutions: Therein, the General Assembly for the first time expressly recognizes that:

- SAI/Office of the Auditor General can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence; and also recognizes the
- Important role of SAI/Office of Auditor General in promoting the efficiency, accountability, effectiveness and transparency of public administration, which is conducive to the achievement of national development objectives and priorities as well as the internationally agreed development goals, including the Millennium Development Goals.

Office of Director of Public Prosecutions

The Constitutional Commission should consider the post of Director of Public Prosecutions be enshrined and strengthened in the constitution and further ensure its independence from the post of the Attorney General?
The Attorney General, by Article 72 of the Constitution, is a member of the Executive, which clearly leaves her or him open (potentially) to some measure of influence in the discharge of her duties by the Prime Minister and her Cabinet colleagues. The fact that the Attorney General sits in Cabinet is reason for concern. An independent DPP removes the element of political interference (real or perceived) in the decisions relating to criminal prosecutions.

The most important function of the DPP is to decide how prosecutions are handled (independently of the Government and/or political interference). The DPP should also act with the utmost integrity, honesty and professionalism, while being open and accountable as "Justice must not only be done, it must be seen to be done". Based on the above, the DPP should have the constitutional rights as listed in Article 78 and security of tenure and qualifications similar to that of a Justice of the Supreme Court. The DPP should be appointed in a similar manner to a Justice of the Supreme Court by the Judicial and Legal Services Commission.

The Office of the DPP should have constitutional independence with full administrative and litigation powers. Additionally, the office should also have the power to direct the Commissioner of Police to investigate any information or allegation of criminal conduct and to exercise all powers of prosecution and may in that capacity institute and undertake criminal proceedings against any person before any court in respect of any offence.

In order to ensure the independence of the DPP, this office should be able to fund itself out of the Consolidated Fund (i.e. he or she should be given a budget to conduct his office independently instead of seeking funds from the Minister of Finance or Attorney General’s Office) and he or she should be able to have full control over his staff.

Section 71A of Bermuda’s Constitution and Section 57 of The Cayman Islands Constitution (2010) are a good reference points on this office.

Office of the Attorney General

With the proposed transfer of the criminal prosecution responsibilities in Article 78 to the DPP, the Attorney General will assume full responsibility for all civil and commercial
matters including international treaties, law reform and drafting and the role of the Bahamas Government’s chief legal advisor. We note that in the United Kingdom, the Attorney General although a Member of Parliament by convention is not a member of the cabinet although they may attend meetings to give legal advice. It is considered preferable to draw a distinct line between the office holder and the political decisions on which they are giving legal advice. We submit that due consideration needs to be given to depoliticizing the office of the Attorney General.

**Recommendation**

We accept that there are compelling arguments for and against allowing the Attorney General to remain a political person, which should be fully explored. We lean toward removing or minimising the political involvement of the Attorney General. At minimum if the responsibility for criminal prosecutions is removed, we would consider this a great step forward in reducing the possibility of political interference, which can be even more pronounced in small island states like ours. The essence of true justice in a true democracy is “the separation powers”.

Note: The above offices should not be housed in the same facilities to further ensure transparency, separation of power and independence.

8. **THE SENATE**

    Article 40 of the Constitution says,” In the exercise of the functions conferred upon him by Article 39(4) of this Constitution, the purpose of the Prime Minister shall be to secure that the political balance of the Senate reflects that of the House of Assembly at the time.”
Recommendation

We propose that the Senate can be more effective if it doesn’t automatically reflect the political makeup of the House of Assembly. The Senate should be an elected body in its own right. This will allow its members to contribute meaningfully to the legislative activities of the country and also it would dilute the power of the Prime Minister. Further to this, under the Constitution, the requirements of becoming a Senator should be amended to reflect the required age of 21 as is the case for membership into the House of Assembly.

9. DISCRIMINATION AGAINST WOMEN

We believe that Constitutional reform is also necessary with regard to discrimination. The Bahamas stands amongst Middle Eastern countries like Kuwait and Lebanon and the majority of the Arab countries which do not allow a woman to pass citizenship to her child as of right. Also, a Bahamian woman cannot pass citizenship to her foreign spouse as of right even though a foreign woman is entitled to this benefit under the Constitution to take on the citizenship of her Bahamian husband upon her applying and taking the oath of allegiance.

Article 8 of the Constitution states that:

“A person born outside The Bahamas after 9th July 1973 shall become a citizen of The Bahamas at the date of his birth if at that date his father is a citizen of The Bahamas otherwise than by virtue of this Article or Article 3(2) of this Constitution.”

There is no identical provision outlined in The Bahamian Constitution for a woman save that Article 9(1) states that:
“Notwithstanding anything contained in Article 8 of this Constitution, a person born legitimately outside The Bahamas after 9th July 1973 whose mother is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years and before he attains the age of twenty-one years, in such manner as may be prescribed, to be registered as a citizen of The Bahamas…”

It is reflected in Article 10 of the Constitution that a Bahamian man can as of right pass Bahamian citizenship to a non-Bahamian woman who is his spouse but there is no provision outlined to reflect that a Bahamian woman can as of right does the same who is her husband. The Article states that:

“Any woman who, after 9th July 1973, marries a person who is or becomes a citizen of The Bahamas shall be entitled, provided she is still so married, upon making application in such manner as may be prescribed and upon taking the oath of allegiance or such declaration as may be prescribed, to be registered as a citizen of The Bahamas.”

It is also interesting to note that Chapter III of the Constitution covers the “Protection of Fundamental Rights and Freedoms of The Individual” and Article 26(3) under that Chapter states the following:

“In this Article, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

What is very peculiar about this Article is that it is completely silent about gender discrimination.

THE BAHAMAS MUST EVENTUALLY CHANGE THE CONSTITUTION TO REFLECT THE EQUALITY OF MALE/FEMALE GENDER RIGHTS
(Article 26 (Fundamental Rights & Freedoms) need to be amended to reflect the inclusion of discrimination against gender as fundamental protection and to make it consistent with Article 15.)

Notwithstanding the facts outlined above the Bahamas is conflicted in maintaining such discriminatory laws in its Constitution because The Bahamas did on October 6, 1993 accede to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) and accession is regarded as being the same as ratifying the tenets of the Convention.

In short, the Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status...of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

By accepting the Convention, The Bahamas has committed itself to undertaking a series of measures to end discrimination against women in all forms, including the commitment to incorporate the principle of equality of men and women in its legal system, abolish all discriminatory laws and adopt appropriate laws prohibiting discrimination against women.

**Recommendation**

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.
10. CITIZENSHIP

COMMENTS ON CITIZENSHIP REFORM IN THE BAHAMAS

A. The concept of citizenship is coterminous with nationality although it is possible to have a nationality without being a citizen. It is also possible to have political rights without being a national of a State; an example of this is seen in historical instances where Commonwealth citizens from former British colonies are permitted to participate in the general elections in England. Citizenship can be defined as a state of belonging to a country or in, as in the case of a supranational entity like the European Union, a political community. Citizenship entitles the holder with the greatest degree of benefits that the country provides and a level of protection from an international legal perspective. It confers a permanent right to reside in and participate fully in every aspect of that country. Citizenship can be acquired in several ways, for example, by birth, by descent, by registration and by naturalization. Citizenship at birth is conveyed through jus soli (right of soil) or through jus sanguinis (right of blood/descent).

B. Countries such as The Bahamas do not offer automatic birthright citizenship to children of immigrants or non-citizens but rather confer citizenship by applying policies based on jus sanguinis, that is, based on the nationality of one or both of the child’s parents (see Chapter 2, Sections 6 and 7 of the Constitution of the Commonwealth of The Bahamas.

C. Based on the foregoing, here are some recommendations:

**General Recommendation**

That due to the complexities, sensitivities, and the potential national security concerns relative to this issue, the Government should
establishes a non partisan ‘Commission on Citizenship and Immigration Reform.’

The purpose of the Commission is to conduct research and make recommendations to the Parliament of ways to define and change the nation’s policy on citizenship and immigration matters in the Constitution and the law. It should be made up of at least 15 members from various backgrounds including reputable Bahamians of Haitian, Jamaican, American, etc descent. This Commission should be chaired by a well respected Bahamian with no public allegiance to any political party.

The Commission should identify a clear process leading to citizenship that is widely circulated in the public domain and the final decision on citizenship should be established by way of criteria that negate the need for the political directorate making the final decision. The final decision should be made by a respected public body, which is subject to final approval by the Bahamas Government.

Constitutional Concern 1 (as it relates to children of a married Bahamian parent)

Unlike the case of a married Bahamian male who can automatically transfer citizenship to his child, where a child is born in The Bahamas to Bahamian woman who is married to the non-Bahamian father, that child is not regarded as a Bahamian citizen, rather, that child is eligible to be registered as a citizen on his attaining the age of 18 years or within 12 months thereafter in such manner as may be prescribed by law. The social impact of this current policy is that the child does not belong to anywhere for 18 years of their life. In essence for 18 years the child is stateless without legal or official status and thus due to the psychological, emotional, physiological, and mental disillusionment impacting on him or her, the sense of disconnect and lack of loyalty and allegiance breeds contempt. This scenario creates the potential for antisocial response to the society as a whole.

Recommendation 1
There should be no distinction in the Constitution between children born to married Bahamian men (who have automatic Bahamian citizenship) and children born in or outside of The Bahamas to married Bahamian women. Children born to any Bahamian parent should have the same automatic entitlement to citizenship regardless of the nationality of the other parent.

Constitutional Concern 2 (as it relates to unmarried Bahamian parents)

The Bahamian male is able to pass on citizenship automatically to his offspring whether born overseas and whether legitimate or not. This is clearly discriminatory.

Recommendation 2

The position of children born outside The Bahamas to unmarried Bahamian parents, male or female, should be the same and should provide for the automatic acquisition of citizenship, subject to proof of paternity in the case of the Bahamian male by a Declaration of Paternity from the Magistrate or Supreme Court.

Constitutional Concern 3 (as it relates to spouses of Bahamians)

The right of a spouse of a Bahamian male to register as a citizen by virtue of her marriage is protected by the Constitution; however, there is no corresponding constitutional right for a spouse of a Bahamian woman to register as a citizen.

Recommendation 3
The Constitution should provide that spouses of all Bahamian citizens (male or female) should be treated equally and that such persons upon marriage should have a right to reside and work in The Bahamas and own property jointly and upon application the right to become a Bahamian citizen 5 years after marriage subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy and to reduce marriages of convenience.

Constitutional Concern 4 (as it relates to marriage)

The concept of marriage is not defined or protected by the Constitution, based on our Christian heritage, and in light of the international pressure that have confused the concept of marriage in various countries, it is now necessary the our constitution define and protect marriage.

Recommendation 4

Furthermore, marriage should be defined and protected in the Constitution as a union between a man and a woman.

Constitutional Concern 5 (as it relates to children of Non Bahamian parents)

Where a child is born in The Bahamas to non-Bahamian parents who reside in The Bahamas, that child is not regarded as a Bahamian citizen. The social impact of this current policy is to deprive a child of any official status or sense of reality of belonging
for 18 years of his or her life. Moreover, this category of persons must be treated with careful consideration and sensitivity.

**Recommendation 5**

We believe that application of *jus soli* is the most humane policy with respect to the treatment of children of non Bahamian residents whether the parents are documented or not.

*We therefore recommend that all children born within The Bahamas should have entitlement to citizenship in The Bahamas irrespective of their parents’ immigration status.* This entitlement will arise on the birth (in the case of children of legal residents) and remain in effect until the child turns 21 years old and would be subject to several public policy guidelines. **Between the ages of 1 and 18 years, the child should be offered provisional citizenship similar to Permanent Residency status with all rights available to a Permanent Resident.** Upon turning 18, the child would be entitled to apply for a Bahamian Passport and be registered as a citizen upon successful completion of a citizenship and allegiance test, and swearing the oath of allegiance.

**Legal Support from the Common Law tradition**

The modern policies regarding birthright citizenship in some Common Law jurisdictions such as the United States are predicated upon the tenants of Natural law, and British common law. In 1608, the English court established the common law foundation in *Calvin's Case* (1608, Coke Report 1a, 77 ER 377), by ruling that a person's status was vested at birth, and based upon place of birth, a person born within the king’s
dominion owed allegiance to the sovereign, and in turn, was entitled to the king's protection.

Countries which allow birthright citizenship, directly or indirectly, recognize the right of all people to live as humans. Once persons are afforded the right to life and liberty, the society will benefit. For example, the United States has benefited from immigration over the past centuries. Immigrants from Africa, Asia, and Europe contributed their expertise in many fields to form the United States into the military and economic superpower that it is.

Bahamian Legal Support

In 2002, the Parliament of The Bahamas passed the Status of Children Act. Its purpose was to provide “illegitimate children” now referred to as ‘children born out of wedlock’, with the same rights and protection as ‘children born in wedlock’. The legislators finally recognized the fact that children are not responsible for their birth status or the circumstances in which they were conceived or born. All children are innocent and helpless at birth. It was therefore unjust to punish children for the conduct of their parents. The same reasoning should be applied to children born to undocumented parents. Recognizing the fact that children of undocumented immigrants are innocent victims of circumstance, all children born within a country should have automatic citizenship in that country irrespective of whether or not their parents’ had legal status when they entered into that country. Once again, these children should not be punished for the behavior of their parents.

UN Support

Citizenship should be granted based on the conviction that all humans have a right to life and liberty, and the international community has observed this through the creation of the United Nations Declaration on Human Rights, especially Article 15. Article 15 of the Universal Declaration of Human Rights states: ‘Everyone has the right to a
nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.’

Listed rights and responsibilities of citizens to be enshrined in the Constitution

1. There should be enunciated rights for citizens to enjoy (subject to certain exceptions):
   i. entitlement to a Bahamian passport and to Bahamian consular assistance overseas
   ii. entitlement to leave The Bahamas and return at any time without any immigration restrictions
   iii. immunity from arbitrary deportation
   iv. entitlement to register overseas born children as Bahamian citizens by descent (subject to some additional criteria)
   v. entitlement to seek employment by the Government,
   vi. Entitlement to vote and stand for public office (dual citizens cannot stand for office in the Parliament unless they have taken all reasonable steps to renounce their foreign citizenship.

2. Additionally, the following responsibilities are expected of Bahamian citizens:
   - obey the law,
   - pay taxes,
   - defend The Bahamas should the need arise
   - register to vote, and vote at all elections and referenda,
   - serve on a jury, if called upon,
   - swear allegiance to the State

Allegiance Requirement

3. Immigration Registration Policy and Requirement To Swear Allegiance
   There should be a test given to every applicant for citizenship. Once the applicant passes the citizenship test, he/she must take the Oath of Citizenship and Allegiance to The Bahamas, similar to the nation of Denmark where non-national residents upon attaining the age of 18 become eligible to take a test to gain citizenship.

When drafting a new Oath of Allegiance or Citizenship, the following elements should be included:
allegiance to the Constitution, the People or the State (but not the Queen or a person)
renunciation of allegiance to any foreign country to which the immigrant has had previous allegiances
defense of the Constitution against enemies "foreign and domestic"
promise to serve in the Security Forces when required by law
promise to perform civilian duties of "national importance" when required by law

Sample Oaths of Allegiance

Suggested Bahamian oath based on the South African model
I, [name], do hereby solemnly declare that I will be loyal to the Commonwealth of The Bahamas, promote all that will advance it and oppose all that may harm it, uphold and respect its Constitution and commit myself to the furtherance of the ideals and principles contained therein.

Suggested Bahamian oath based on the abbreviated American model
I, [name], hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign state, or sovereign of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the Commonwealth of The Bahamas against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

11. GENERAL OUTLINE OF THE OMBUDSMAN

NOTE – We are constantly stating that there is a need for the implementation of alternative dispute resolution (ADR) mechanisms in our society; however, our approach to enacting such mechanisms is extremely limited. The Ombudsman institution is an ADR mechanism that should be considered. The office of the Ombudsman uses the following ADR techniques to resolve disputes; namely, mediation and conciliation.
1. **ORIGIN** – Originated in Sweden in the 1700. The term was first used in 1713 when the Swedish King, Charles XII appointed a Chancellor of Justice to investigate complaints levied against Royal Officials and to scrutinize the conduct of persons such as judges and law administrators who acted in the name of the King. It was officially enshrined in the Swedish Constitution in 1809.

2. New Zealand was the first Commonwealth country to introduce the office of the Ombudsman and this took place in 1962.

3. Presently, this institution can be found in countries all over the world.

4. In 1988 the International Bar Association defined this institution as: “An office provided for the constitution or by an act of the Legislature or Parliament and headed by an independent, high level public official who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion; and who has the power to investigate, recommend corrective action and issue reports. Please note that in the Caribbean this definition is used to define the Parliamentary Ombudsman.

5. The present recourse used by aggrieved persons is by way of Administrative Law-Judicial Review – there is a cost associated with this approach.

6. **THE PURPOSE** - **To bridge the gap between the bureaucracy and the citizenry and to protect the citizenry from the abuses of the machinery of the state.**

7. **THE FUNCTION** – This office is established to investigate the complaints of citizens who have suffered injustices as a result of maladministration by the public or quasi government authorities. It focuses on the protection of fundamental rights and
individual liberties and it can increase the efficiency of services offered by the
government and quasi-government corporations to the public and ultimately it can help to
deepen democracy. The office helps to resolve the particular issue(s) and where possible,
it may suggest recommendations for improvement of matters of concern.

8. **THE MAIN FUNCTION** – To investigate decisions or make recommendations of an
administrative nature by a department or authority of government. The focus is on
injustice and maladministration.

9. Countries in the Caribbean where Ombudsman offices are established by the constitution
are: Guyana, Dominica, Jamaica T&T and St. Lucia.

10. **HOW A COMPLAINT IS INITIATED**- Either by the aggrieved person or body of
persons or where the Ombudsman initiates the complaint.

11. **SOME ADVANTAGES**- It is inexpensive, it is a recourse for persons who may feel that
they have suffered an injustice, it is flexible in nature, it is informal and has a personal
touch, it is an alternative to the court system, it is impartial, it saves time, it has the
capacity to identify and stimulate reforms in administration; and it is a watch dog for the
state.

12. **SOME DISADVANTAGES**- The strength and weaknesses of the institution is tied to
the office holder. It lacks financing, it suffers from political interference, if parliament
fails to act on the recommendations tabled by the Ombudsman, the aggrieved persons is
deprived. It is common to have the Ombudsman’s report shelved. It lacks the power to
question decisions and it is lacks the power to enforce effective sanctions.

13. **THE OMBUDSMAN’S REPORT**- He has the discretion to send the report to any
person whose conduct has been the subject of the complaint or who is in some way
connected to the report. If Parliament asks him to make a report he must submit the
14. AREAS WE PROPOSE TO BE INVESTIGATED: Extensive range of matters which look at judicial proceedings, the police, personal matters, areas of redress which deal with fundamental rights. There should be restricted areas such as areas which deal with state activities of national importance or matters which deal with security and defense.

15. TO AID IN ITS EFFECTIVENESS THE FOLLOWING SHOULD BE CONSIDERED:

- Be specific as to what we want to be investigated.
- The Ombudsman must be independent, fair and impartial.
- Its appointment procedure must be similar to what is being proposed for the DPP or the Auditor General.
- The Ombudsman should have powers of enforceability.
- The Ombudsman office should have an independent budget. Note if this is not done then suppose the Ombudsman has to investigate matters concerning the Ministry of Finance?
- The Ombudsman must have the power to question decisions and issue sanctions.
- The Ombudsman must be able to indicate the action(s) he or she recommends by way of a remedy or compensation.

RECOMMENDATION

THE PROVISIONAL RECOMMENDATION OF THE FORMER COMMISSION RECOMMENDED THE APPOINTMENT OF AN OMBUDSMAN WITH CONSTITUTIONAL TENURE SIMILAR TO THAT OF A SUPREME COURT JUDGE.

12. THE PRIVY COUNCIL
Additionally, as it stands now, The Bahamas adheres to the jurisdiction of the Privy Council as its final Appellate court; this is evident in Article 105 of the Constitution. The Constitution does empower Parliament to determine which court is retained as the ultimate Court of Appeal. Due consideration should be given to the fact that the culture and traditions of the United Kingdom are different from those in The Bahamas and other Caribbean States. There is a significant divide between the Privy Council’s view on capital punishment and that of the average Bahamian. Consideration should be given to retaining the Privy Council for commercial and civil matters with a different court identified for final criminal appeals.

13. CONSTITUTIONAL MONARCHY OR A COMMONWEALTH REPUBLIC

As we approach 40 years of independence, it would seem appropriate that we no longer need to retain the British Monarch as our head of state. We should gradually move away from the formal vestiges of our colonial past, which include:

The King or Queen as Head of State;
A Governor General as the Queen’s representative
The retention of the British system of honours;
The retention of the term “Her Majesty’s”
The requirement that wigs and gowns be worn in Parliament and the Supreme Court and Court of Appeal (even the United Kingdom is doing away with this)

Such a departure from this historical heritage need not be harsh or sudden. It can be used as a teaching tool for our citizens as we truly embrace our sovereignty or what’s left of it in a globalised interconnected and interdependent world.

CONCLUSION
We realize that a number of our submissions require further careful analysis. It was not possible in the time permitted to exhaustively study all the issues we have raised for your consideration. We are confident however that we have raised a number of issues of concern that if addressed will:

1. **Reinforce our support for traditional values and cultural norms**
2. **Eliminate gender discrimination**
3. **Reduce the potential abuse of political power**
4. **Reduce the potential for corrupt practices**
   Reduce instances of political interference with the constitutional powers of certain public offices
5. **Reinforce the importance of the independence of the judiciary**
   To further strengthen the separation of Powers within our democracy

We are open to further dialogue and communication on all issues we have raised for your consideration.

Yours faithfully,

Dr. Myles Munroe
President
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