

# **Constitutional Referendum: Correcting an Historical Error**

## **Part 2**

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Unlike most Caribbean Constitutions, the nationality provisions of the Bahamian Constitution discriminate against Bahamian women, as is reflected in Articles 8 and 9 in particular. Under Article 8, a child born outside of The Bahamas after the 9<sup>th</sup> July, 1973 to a Bahamian father, inside of a marriage, shall become a Bahamian citizen automatically at the date of birth. Whereas, under Article 9, a child born outside of The Bahamas after the 9<sup>th</sup> July, 1973, to a Bahamian mother married to a non-Bahamian father, is not automatically a Bahamian citizen at birth. To become a Bahamian citizen, such a person must:

- 1) make application upon attaining the age of eighteen (18) years and before the age of twenty-one (21) years to be registered as a citizen of The Bahamas;
- 2) renounce or make a declaration with respect to any other citizenship;
- 3) take the oath of allegiance to The Bahamas;
- 4) make and register a declaration of her/his intention to reside in The Bahamas; and

5) have been born legitimately.

Even after fulfilling these five requirements, such a person can still be denied citizenship on the bases of national security or public policy. These disabilities on a child born outside of The Bahamas to a Bahamian woman married to a non-Bahamian husband constitute invidious discrimination, when automatic citizenship is conferred at birth upon the child born outside of The Bahamas to a Bahamian father married to a non-Bahamian spouse.

Further, Bahamian women are treated less favourably than Bahamian men in granting Bahamian citizenship to their respective spouses. Under Article 10 of the Constitution, any women who marries a person who wishes to become a Bahamian citizen after the 9<sup>th</sup> July, 1973 shall be entitled to be registered as a Bahamian citizen, provided she makes an application, takes the oath of allegiance or makes a declaration and that there is no objection on the bases of national security or public policy. No such requirement is demanded of foreign spouses of Bahamian men.

Ironically, also discriminates against unmarried Bahamian men, who are not able to transmit citizenship to their children; whereas, unmarried Bahamian women can transit Bahamian citizenship to their children at birth.

Further, the Bahamian Constitution does not protect a woman from a law that discriminates against her on the basis of sex. However, Article 26 of the Constitution prohibits the making of any law, which discriminates on the basis of race, place of origin, political opinions, colour or creed.

These discriminatory constitutional restrictions on the right of a Bahamian woman to transmit citizenship, I submit, reflect stereotypical and traditional male perception of the role of women and are contrary to contemporary international humanitarian law. When examined objectively, these restrictions cannot be justified on the grounds of natural law, contemporary constitutional practice, international human rights law or democratic practice.

Under natural law, a progressive interpretation of the Bible would not support these restrictions. The Preamble of the Bahamian Constitution, in part, provides that the people of The Bahamas “**recognize 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.**” One interpretation of Christian theology, it may be argued, is that, rather than female subordination, the Risen Christ showed a gender preference when he first revealed himself to Mary Magdalene before he revealing himself to his male disciples. However, it is the common fatherhood of God, in the Christian faith that establishes the equality of men and women. The acceptance of Jesus Christ as the basis for salvation, irrespective of one’s gender, also establishes the principle of equality between men and women.

Historically, portions of the Old Testament of the Bible were used to justify the discriminatory treatment of women and the enslavement of African people. Dilip Hiro, in the book **Black British, White British**, shows how portions of the Old Testament have been used to justify the Trans-Atlantic Slave Trade. Eric Williams in **Capitalism & Slavery**, demonstrated, in compelling detail, that the

Trans-Atlantic Slave Trade was an economic institution for the benefit of Europe. Walter Rodney in the book **How Europe Underdeveloped Africa** marshals, in magisterial fashion, the historical data to demonstrate how the rich social, economic and political development process of the African continent was interrupted by the Trans-Atlantic Slave Trade and subverted into a pattern of underdevelopment for the benefit of Europe.

In support of the economic institution of slavery, religious, philosophical and pseudo-scientific justifications were developed to support this cruel and exploitative institution. Dilip Hiro shows that, through religion, philosophy and pseudo science, slavery in the Caribbean and the Americas was justified by asserting that Africans were the descendants of Ham, the black son of Noah condemned being “hewers of wood and drawers of water” and made a moral equivalence between the black skin of Africans with Satan; David Hume, the British philosopher published an essay “**Of National Characters**” in 1753 arguing the inherent inferiority of the African; and Charles Darwin’s theory of evolution in his book the **Origin of Species** published in 1859 was used to justify European dominance as proof of the survival of the fittest. Today, we are still dealing with the legacies of this racial ideology that was preached, taught and propagated for 400 years to justify the exploitation of Africa and the Americas to fund the industrial revolution in Europe and European global empire. While the European empire, built on the profits of slavery, has been decolonized, the racial ideology still persists.

Similarly, many of the stereotypes of the role of women in society are also rooted in portions of the Old Testament of the Bible to justify male dominance and the inferior treatment of women. Traditional notions of male dominance are also justified by reference to many other religions and traditions to support honour killing of women, female circumcision, denial of education for girls and the confinement of women and girls to the home. All of these practices, including the discriminatory provisions of the Bahamian Constitution, offend the global bill of human rights and norm of non-discrimination. From a Christian perspective, how can one justify treating women less favourably than men, when both claim a common fatherhood in God and equal right to salvation through an acceptance of Jesus Christ?

These discriminatory restrictions against women cannot be justified under the evolving constitutional and international humanitarian law. The liberal philosophy of John Locke, Jean Jacques Rousseau and Emanuel Kant establish that both men and women, as rational beings, prefer to exist, on the basis of equality, in a social contract rather than in an Hobbesian state of nature. Based on these liberal ideas, the world community has affirmed global democratic representative governance and the norm of non-discrimination, linking human rights and peace in the global order.

Since the Second World War, the evolving global norm of non-discrimination and women, with respect to the acquisition and transmission of nationality, is grounded in Article 1 (3) of the United Nations Charter that states that its purpose is to promote and encourage “**respect for human rights and**

**for fundamental freedoms for all without distinction as to race, sex, language, or religion.”** Further, it is also grounded in Article 15 of the Universal Declaration of Human Rights of 1948; in the International Covenant on Civil and Political Rights of 1966; the International Convention on the Elimination of All Forms of Racial Discrimination of 1965; and in Article 9 of the United Nations Declaration on the Elimination of Discrimination Against Women (“CEDAW”) of 1967 which provides that **“1. State Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.”**

Countries, upon acceding to CEDAW at Article 2, agree to condemn all forms of discrimination against women and to **“embody the principle of the equality of men and women in their national constitutions . . . to ensure, through law and other appropriate means, the practical realization of this principle.”**

The Bahamas acceded to CEDAW on the 6<sup>th</sup> October, 1993, with reservations to Articles 1, 2(a) and 9. For the past 21 years, The Bahamas has not been in full compliance with the provisions of CEDAW because, in part, of the aforesaid discriminatory provisions in the Bahamian Constitution.

The non-compliance of The Bahamas with the provisions of CEDAW was the subject of our country's fourth periodic report to the CEDAW Committee. In July 2012 Minister Melanie Griffin and a Bahamian delegation appeared before the CEDAW Committee at the United Nations to explain the current indefensible discrimination against women in The Bahamas. While the Committee commended The Bahamas for such measures as ensuring universal and equal access to education, the Sexual Offences and Domestic Violence Act, the Trafficking in Person, the Committee expressed concern that the Bahamian Constitution and national legislation do not contain an explicit definition of discrimination in accordance with the CEDAW. CEDAW, at Article 1 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, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”**

Further, the CEDAW Committee recommended that that The Bahamas withdraws its reservation to Article 2 (a) of the Convention and integrates the principle of equality of women and men in the Constitution.

Therefore, the four Bills before Parliament and which, if passed by the requisite majority, will be the subject of a constitutional referendum on the 6<sup>th</sup> November is an effort to implement the recommendation of the CEDAW Committee.

In 2000 The Bahamas demonstrated the political will and bipartisan collaboration in complying with its international obligations when the Parliament, in record time, passed a compendium of over 20 pieces of legislation to become compliant with the 40 Recommendations on anti-money laundering and the 8 special recommendations on combating the financing of terrorism of the FATF. Today, The Bahamas must demonstrate equal political will and bipartisan collaboration to amend its Constitution to become fully compliant with its international obligation under CEDAW and provide women with a fundamental right not to be discriminated on the basis of their sex.

I recommend a yes vote on the proposed four bills, as will be amended in the course of the legislative process, in the upcoming referendum in order to make our country compliant with its international obligations under CEDAW and to secure the dignity and equality of our mothers, sisters, spouses, daughters and all women in The Bahamas.