

CONSTITUTIONAL REFORM

By Alfred M. Sears

©

PART 4

CITIZENSHIP AND THE CONSTITUTION

In Part 3, I described the instances of unequal and discriminatory treatment of Bahamian women citizens who are married to non Bahamian spouses and their children born outside of The Bahamas and the condition of statelessness which results when children born in The Bahamas neither of whose parent is a citizen of The Bahamas are not regularized in a timely fashion. I now offer some recommendations for consideration in the reform Chapter 2 of the Bahamian Constitution.

RECOMMENDATIONS

The citizenship provisions of the Constitution should balance the principles of (1) careful control of national membership in the Bahamian nation, (2) a recognition of the human rights claim of

those who have a genuine link to The Bahamas and (3) the competition within the global market place amongst countries to attract and maintain the human resources of the world. The most critical resource in The Bahamas, I contend, is the people. The talent, creative imagination and intellectual production of the Bahamian people and residents are the critical factors that will determine whether The Bahamas realises its full potential.

Therefore we should be inclusive in our citizenship policies, giving all persons who have **a genuine link** to The Bahamas the security of a legal status to inspire in them a sense of loyalty to The Bahamas and a desire to make their best contribution to the development of The Bahamas. In this context, I therefore recommend that the citizenship provisions of our Constitution be amended in the following respects:

1. That all gender discrimination be removed from the citizenship provisions, especially with respect to the non-national spouses of Bahamian women and their children born outside of The Bahamas. Bahamian men

and women should be treated equally in all respect under the citizenship provisions of the Constitution.

The norm of nondiscrimination should be the guiding principle as we reconstruct the Constitution.

2. The protection of the status of children and the avoidance of statelessness amongst children in The Bahamas should inform the citizenship provisions of the Constitution dealing with children. Therefore, children born in The Bahamas should be deemed citizens at birth where at least one parent is a citizen of The Bahamas, a permanent resident, an immigrant on work permit or is registered under the Immigration Act 1967. Further, a child under five (5) years found in the Bahamas, whose parents are not known, should be presumed to be a citizen of The Bahamas by birth. Like the 14th Amendment of the United States Constitution and Article 5 of the Jamaican Constitution of Jamaica, which grant citizenship to all persons born in the United

States and Jamaica, we should retain and strengthen Article 7 of the Bahamian Constitution so that children born in The Bahamas, neither of whose parents is a citizen, are given citizenship at birth. We should not punish children for the illegal conduct of their parents.

3. Also children born overseas to a citizen of The Bahamas serving in a diplomatic or consular capacity should be recognised as citizens by birth.
3. The Constitution should be revised to recognise dual and multiple citizenship. Increasingly more Bahamian nationals are residing outside of The Bahamas, particularly in the United States. These Bahamians have benefited from obtaining the citizenship of other countries. Some may argue that dual and multiple nationalities may affect the security of The Bahamas, such as facilitating the fraudulent use of passports, the commission of major crimes, the provision of safe harbour for fugitives and the smuggling of would-be

immigrants. While these concerns must be carefully considered, I believe that the Bahamians across the diaspora have always shown an unswerving patriotism towards The Bahamas. Bahamians have always sought self-improvement and increased opportunities in other countries without losing their loyalty to The Bahamas and their sense of national pride. This was reflected in the “Project” during the 1940’s and 1950’s when thousands of Bahamian men and women worked as migrant workers in the United States. Today thousands of Bahamians reside outside The Bahamas in pursuit of higher education and professional opportunities. In fact, the Bahamian diaspora should be perceived and used as a critical source of influence, investment and remittances in the international community to advance the Bahamian strategic development, security and global brand. Dual and multiple nationalities would not, in my opinion, undermine the loyalty Bahamians

have to The Bahamas. Further, several Commonwealth Caribbean countries as well as the United States provide for multiple and dual citizenship. Moreover, The Bahamas tacitly recognises dual citizenship of its citizens, as is evidenced by Article 8 where a person born outside of The Bahamas to a Bahamian father become a Bahamian citizen at birth and in the note contained in The Bahamian Passport which states that “Citizens of The Bahamas who are also nationals of another country cannot avail themselves of the protection of the representatives of The Bahamas against the authorities of that country, and are not exempt, by reason of possessing Bahamian Citizenship, from any obligation (such as military service) to which they may be liable under the law of that country.”

4. Section 16 of the Bahamas Nationality Act shall not be required to assign any reason for the grant or refusal of any application or the making of any order under this

Act the decision upon which is at his discretion; and the decision of the Minister on any such application or order shall not be subject to appeal or review in any court.” This ouster clause does not mean that the Minister should not act in accordance with the rules of natural justice. Given the fundamental importance of decisions relating to nationality, the discretion of the Minister responsible for Nationality and Citizenship relating the determination of applications for registration or naturalization should be subject to judicial review and no person should be deprived of her/his citizenship without due process of law.

5. Finally, the Chapter 2 of The Constitution dealing with citizenship should be expressed in more readily understandable form and the language and structure should be simplified.

