

Recommendation for Changes in The Constitution of The Bahamas

Recommendations are by a trained professional who studies The Bahamas Constitution

Constitutional Recommendations for Amendment---Gender-Neutral Citizenship Provisions

Article 8 of the Constitution presently provides for the transmission of Bahamian citizenship to a person born outside The Bahamas through his or her Bahamian father. If Article 8 were amended to refer instead to a Bahamian “parent”, the distinction presently drawn between Bahamian mothers and fathers would be removed, and the continued need for Article 9 would arguably become obsolete.

Similarly, Article 10 gives a foreign woman who is married to a Bahamian man a constitutional right to apply for registration as a Bahamian citizen. This provision should also be amended in gender-neutral terms so that a foreign man married to a Bahamian woman is afforded the same right.

The adoption of gender-neutral citizenship provisions would also require consequential amendments beyond the Constitution. In particular, the Bahamas Nationality Act, 1973 contains provisions governing the acquisition of citizenship by children adopted by Bahamian citizens. These provisions should be reviewed to ensure that a Bahamian woman who is married to a foreign man and who jointly adopts a child is equally capable of conferring Bahamian citizenship upon that child.

Gender neutrality should therefore operate consistently throughout the citizenship framework rather than being confined to individual constitutional provisions.

Citizenship and the Marital Status of a Child's Parents

Beyond gender neutrality, the citizenship provisions of the Constitution also place considerable importance on the marital status of a child's parents at the time of the child's birth.

Where a child is born outside of wedlock and outside The Bahamas, the Constitution treats the mother as the relevant parent for the purpose of determining the child's citizenship. Consequently, where the child's mother is not a Bahamian citizen but the child's father is, the child is not automatically entitled to Bahamian citizenship through the father.

The continued constitutional significance attached to “legitimacy” is another important and thought-provoking area for reform. Consideration should be given to whether a child’s entitlement to citizenship should depend upon the marital status of his or her parents, particularly where the child’s relationship to the Bahamian parent can otherwise be legally established.

Citizenship by Descent and Successive Generations Born Abroad

It should also be recognised that the adoption of gender-neutral citizenship provisions would not necessarily require Bahamian citizenship to be transmitted indefinitely through successive generations born abroad.

The Constitution, particularly through Articles 8 and 3(2), already contains safeguards that restrict the transmission of citizenship through successive generations born outside The Bahamas.

Nevertheless, consideration may be given to whether these restrictions should also be amended to permit citizenship to be transmitted to successive generations born abroad where a substantial connection to The Bahamas can be established. Such a connection might include residence in The Bahamas, the residence of the Bahamian parent in The Bahamas for a prescribed period, or another demonstrable and continuing connection to the country.

Provision might also be made for exceptional circumstances, particularly where the refusal or inability to transmit citizenship would result in a person being rendered stateless.

Any proposed amendment would therefore need to strike an appropriate balance between maintaining a genuine connection to The Bahamas and avoiding outcomes that are unduly restrictive or discriminatory.

Retrospective Application

Consideration should also be given to how any amendments to the citizenship provisions would operate in practice, particularly whether they would apply retrospectively.

If the amendments were to operate only prospectively, persons who were previously excluded from citizenship because their Bahamian parent was a woman, because their Bahamian father was not married to their mother, or because of another discriminatory distinction within the existing provisions would remain without a remedy.

A transitional process could therefore be established to permit persons affected by the former provisions to apply for registration as Bahamian citizens. This would allow the Government to address the continuing effects of past constitutional discrimination while maintaining an appropriate administrative process for verifying each applicant’s entitlement.

Discrimination on the Basis of Sex — Article 26

Article 26 of the Constitution prohibits discrimination on the grounds of race, place of origin, political opinions, colour and creed. It does not, however, expressly prohibit discrimination on the basis of sex.

Article 26 should therefore be amended to include sex as a prohibited ground of discrimination. Such an amendment would most favourably coincide with the amendment of the discriminatory citizenship provisions of the Constitution and would ensure that the broader constitutional principle of equality is reflected consistently throughout the Constitution.

Consideration should also be given to expanding Article 26 so that it expressly recognises different forms of discrimination. In particular, the provision should recognise both direct and indirect discrimination.

Direct discrimination occurs where a person is treated less favourably expressly because of a protected characteristic. Indirect discrimination may arise where an apparently neutral law, policy or requirement places persons belonging to a protected group at a particular disadvantage without sufficient or objective justification.

Express recognition of both forms of discrimination would provide a more comprehensive constitutional protection than a provision concerned only with laws that are discriminatory on their face.

Modernisation of Fundamental Rights Provisions

More generally, consideration should be given to the adoption of modern constitutional provisions relating to the rights and protections afforded to individuals in The Bahamas.

As it relates to children in particular, worthwhile considerations include the express recognition of:

- the right of every child to have his or her birth registered;
- the right of every child to a name;
- the right of every child to acquire a nationality;
- the right of every child to protection from statelessness; and
- the right of every child not to be discriminated against because of the conduct, status, nationality or marital relationship of his or her parents.

The inclusion of these protections would reinforce the principle that a child's legal identity, nationality and constitutional rights should not be prejudiced by circumstances over which the child has no control. It would also modernise the Constitution so that it more clearly reflects contemporary principles of equality, dignity and the protection of children.