

**REPORT
OF THE
SAINT LUCIA CONSTITUTIONAL REFORM COMMISSION**



March 2011

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Saint Lucia Constitutional Reform Commission

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LIST OF ACRONYMS

CBO	Community Based Organisations
CCJ	Caribbean Court of Justice
CRC	Constitutional Reform Commission
DBS	Daher Broadcasting Service
DPM	Deputy Prime Minister
ECSC	Eastern Caribbean Supreme Court
FPTP	First Past The Post
GIS	Government Information Service
HTS	Helen Television Service
ILO	International Labour Organisation
JLSC	Judicial and Legal Services Commission
LOGB	Leader of Government Business
MP	Member of Parliament
NCA	National Conservation Authority
NIC	National Insurance Corporation
NPC	National Printing Corporation
NTN	National Television Network
OC	Outreach Coordinator

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OECS	Organisation of Eastern Caribbean States
PAC	Public Accounts Committee
PC	Privy Council
PM	Prime Minister
PMA	Piton Management Area
PR	Proportional Representation
PSA	Public Service Announcement
RCI	Radio Caribbean International
RSL	Radio Saint Lucia
SI	Statutory Instrument
SIDS	Small Island Developing States
SLP	St. Lucia Labour Party
TOR	Terms of Reference
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UWP	United Workers Party

LETTER OF TRANSMITTAL

Her Excellency, Dame Calliopa Pearlette Louisy, GCSL, GCMG, D.St. J., PhD, LL.D (Hon), FRSA.
Governor General.

The Honourable Dr. Hilda Rose Marie Husbands-Mathurin
Speaker of the House of Assembly

Your Excellency,

The Constitutional Reform Commission (CRC) of Saint Lucia is pleased and privileged to submit its final report to the Parliament and to the people of Saint Lucia.

The Mandate

By unanimous resolution dated 17th February, 2004, the House of Assembly of Saint Lucia authorised the establishment of a Constitutional Reform Commission (hereafter “the Commission”) to examine Saint Lucia’s Constitution (Saint Lucia Constitution Order S.I. 1901 of 1978) (hereafter “the Constitution”) and to report in writing, the Commission’s opinions and recommendations for possible reform of that same Constitution (“herein after the Resolution”)

The Resolution stated that the Commission was required, through broad-based consultations with Saint Lucians both at home and abroad, to “review and reform the Constitution of Saint Lucia in order to encourage effective governance, to ensure that the institutions of State remain strong and responsive and that the rights and freedoms guaranteed to all persons are respected.” It noted further, that the major objectives of the exercise were principally to:

- “(a) promote a meaningful expansion and widening of democratic participation by citizens in Government;
- (b) address possible weaknesses in the constitutional framework which political practice had highlighted over the years;

- (c) re-fashion the Constitution so that it better accorded with our changing social and political circumstances; and
- (d) promote better governance and greater equity in the constitutional framework generally”.

In the conduct of its affairs, the Commission was to be guided by a set of Terms of Reference (TORs) specified in the Resolution, which among other things, mandated the Commission to seek ways to;

- (a) strengthen democratic institutions;
- (b) encourage a wider and deeper participation by citizens in the processes of Government;
- (c) strengthen accountability of public institutions; and
- (d) strengthen the fundamental and basic rights of citizens of Saint Lucia.

The Resolution established the Commission in such a manner so that it constituted persons nominated by both Government and Opposition, as well as a wide cross section of Civil Society. It stated that the Commission would comprise twenty-five (25) individuals, with a Chairperson and Deputy to be appointed by the Governor General, with the former to be nominated by the Prime Minister after consultation with the Leader of the Opposition, and the latter to be nominated by the Leader of the Opposition after consultation with the Prime Minister. To ensure its independence, the Commission would not comprise members of Parliament.

This Resolution was also unanimously passed in the Senate on 14th April 2004. Its adoption represented the realisation of a statement of intent made just over four years prior, in Her Excellency's own Throne Speech delivered on 21st March 2000, during which the then Government of Saint Lucia indicated its intention to cause the Constitution to be reviewed. A copy of the Resolution is appended hereto as **Appendix I**.

Although the Resolution was published in the Saint Lucia Gazette on the 16th July 2004 as Statutory Instrument, 2004, No. 50, it was not until Friday 18th November 2005, almost sixteen (16) months later, that the Commission was able to formally launch and present its mission to the Saint

Lucian public. This was because in the intervening period between the publication of the Resolution and the ceremony launching the Commission, various administrative matters had to be settled before the Commission could commence its work.

The chairperson of the Commission, in the person of Madam Justice Suzie d’Auvergne (retired) was appointed by Your Excellency, on the advice of then Prime Minister, Dr. the Honourable Kenny D. Anthony, with the support and concurrence of then Leader of the Opposition, the Honourable Mr. Arsene James.

On Monday, 13th June 2005, the Prime Minister informed the public that Mr. James had also provided the Opposition’s final list of nominees for membership of the Commission, including its nomination for the position of Deputy Chair, in the person of Mr. Nicholas John, Attorney-at-Law. This paved the way for the remainder of the Commission to be formally appointed by Your Excellency and for the Commission to be presented to the public.

At the formal ceremony, launching the Commission to the public in November 2005, the Commission was honoured to be addressed by, among many distinguished persons, Mr. Parnel Campbell, CVO, Q.C., who at that time served as the Chairman of the Constitutional Review Commission of Saint Vincent and the Grenadines. In his remarks, he commended the Government of Saint Lucia and the Parliamentary Opposition for their bi-partisan approach to establishing the Commission, and reminded the Commission that bi-partisanship was essential to any eventual success at constitutional reform. The Commission was greatly influenced by Mr. Campbell’s exhortations and was grateful for the benefit of his experience in the Saint Vincent and the Grenadines context, up to that time.

Getting Off the Ground

In the period immediately following its launch, accommodation was settled for the Commission at Poinsettia Drive in Vigie, Castries, and appropriate furnishings, equipment and telephone and related services, were obtained through the kind assistance of the Office of the Prime Minister.

Ms. Zenith James, retired former Director of Finance in the Ministry of Finance, was recruited as Secretary to the Commission. This proved a fortunate choice since, in the course of the Commission’s five (5) year existence, many instances arose in which her diligence and knowledge

of the inner workings of the Ministry of Finance, probably staved off several forced interruptions in the Commission's work. To be sure, lack of operational funds, apparently occasioned by the sluggishness or indifference to the work of the Commission on the part of the Public Service, proved to be challenging. Ms. James also proved integral to guaranteeing the Commission's financial accountability for the resources it received.

The Commission began its work in earnest on 1st June 2006, nearly two years after publication of the Statutory Instrument which established it, and nearly a year after formal appointment of its membership by Your Excellency in 2005. By agreement, the Commission met once a week on Wednesday afternoons for several hours at a time.

Shortly after convening its first meeting, the Commission established a Management Committee, initially comprising the Chair, Deputy Chair, Mr. Eldon Mathurin and Mr. David Cox, and charged it with the responsibility of, among other things, developing appropriate structures to guide the work of the Commission over its lifespan, and a strategic plan to cover the initial stages of the Commission's work. In that regard, and with the concurrence of the full Commission, the following matters were decided:

- (a) that the work of reviewing the Constitution would be divided into three broad phases;
- (b) that the first phase would involve simultaneous public education programmes and internal familiarisation programmes for members of the Commission;
- (c) that the second phase would constitute a sustained, widespread community outreach programme of public consultations at home and abroad, to permit members of the Commission to engage the public on their views on the Constitution; and finally
- (d) that the third phase would involve examination and discussion of the various oral and written submissions received from the public and eventual preparation of the Commission's report for submission to Parliament.

Thereafter, the Commission took a decision to seek advice and assistance with the task of team building and organisational management. We regarded this as essential since the membership was

drawn from various backgrounds and disciplines and Commissioners were largely unknown to each other.

Consequently, the Commission recruited Dr. Aubrey Armstrong of Aubrey Armstrong Management Associates based in Barbados and Trinidad & Tobago, to conduct a one day workshop aimed at strengthening the organisational capacity of the Commission and promoting internal cohesion among our membership. Held on 30th September 2006, the workshop proved invaluable in shaping the Commission into a stronger body. We are grateful to Dr. Armstrong for his invaluable assistance which was provided gratis and are happy to report that the workshop was a resounding success at forging the Commission into a cohesive body.

In the course of our initial discussions, it became apparent to the entire membership that, quite apart from organisational issues, an extended immersion in Saint Lucia's Constitution and its history and traditions was required. Although the Commission counted several attorneys-at-law among its membership, the Commission felt that a focused education programme aimed at getting all Commissioners familiar with our Constitution was an essential requirement in preparation for engagement with the general public.

In that regard, several internal workshops were executed and documents prepared, with the purpose of training Commissioners on various aspects of the Constitution. Among other documents, we prepared a Glossary of Legal Terms for the benefit of the non-lawyer members amongst us. We drew upon the expertise of several Commissioners with expertise in Constitutional Law and Political Science, all of whom provided key assistance in leading workshop sessions.

These workshops reviewed legal, socio-political, historical, cultural and occasionally, operational matters. Not including the session led by Dr. Armstrong, a total of five (5) such workshops were held between October 2006 and September 2007, ranging from four (4) to eight (8) hours in duration. These workshops proved essential preparation for the Commission's later community outreach programmes.

Our Commitment to Public Education

Convinced that a deeper and wider knowledge of our Constitution would enable members of the public to better articulate their concerns with its provisions and ultimately lead to more successful public consultations, the Commission prepared a detailed and comprehensive public education initiative for the dual purposes of familiarising our citizens with their Constitution and sensitising them to the Commission's mandate. This ambitious and comprehensive initiative was designed to promote the Commission's agenda via print and electronic means, and drew on a wide range of resources and expertise.

With the assistance of the Voice Publishing Co. Ltd, the Commission secured the preparation of 20,000 easy to understand pamphlets which provided information on constitutional reform. These pamphlets were distributed in the Saturday edition of The Voice newspaper sometime in late September/early October 2006, and generated widespread discussion in the weeks immediately following release. See **Appendix II** for the content of the pamphlet.

With the support of the Office of the Prime Minister and the National Printing Corporation (NPC,) 1200 copies of the Constitution were prepared for sale by the Commission at a greatly reduced cost to the public. Several thousand copies of the Statutory Instrument establishing the Commission were also printed for distribution at various functions and for inclusion in copies of the Constitution when sold or distributed. Several copies of these documents were distributed by members of the Commission at various public functions to which the Commission was invited or which were convened by or on the Commission's behalf.

After much effort and considerable frustration, the Commission was eventually able to establish, with the kind assistance of Mr. Richmond Felix, then of the Government Information Service, a website in the final quarter of 2006, on which the Commission made available, among other things, information relating to the Commissioners, the Statutory Instrument establishing the Commission, and an electronic copy of the Constitution for download. Much to the dismay and regret of Commissioners, the dedicated technical and financial assistance necessary to make the website¹ as interactive as we initially hoped, was never made available through central Government.

¹ Commission's website address: www.saintluciaconstitution.org

Notwithstanding, the website proved adequate for our purposes in the period immediately after the commencement of operations.

Sometime in the final quarter of 2006, the Commission secured the services of a local playwright, to produce an initial run of twelve (12) public service announcements (PSAs) to be broadcast on local radio and television stations over a twelve (12) week period. These two minute PSAs, which principally featured well known local folk actors and which were titled “Constitutionally Speaking,” examined specific issues in Constitutional Reform, and were broadcast primarily on Radio St. Lucia (RSL) and the National Television Network (NTN). So well received were they and of such high quality, that the Commission ordered twelve (12) additional episodes for airing.

Unfortunately, and with much regret, the Commission was unable to broadcast on other television stations due to prohibitive costs. The Commission nevertheless feels fortunate to have secured the participation of all concerned in the production exercise and believes that the PSAs could be strategically re-utilised in any eventual referendum campaign on constitutional reform.

Simultaneously with the production of the PSAs, the Commission was able with the assistance of UNDP to produce a one hour television documentary on constitutional reform. The documentary, which was aired in two parts, focused first on the immediate pre-independence period and the difficulties experienced by Saint Lucia between 1979 – 82. The second episode focused on the full range of the constitutional issues with which the Commission would be occupied in the coming years.

In this connection, the Commission was grateful and fortunate to have secured the participation of, among many other distinguished persons, the late Sir John Compton and Dr. the Honourable Kenny D. Anthony, in the period immediately preceding and following general elections in 2006. To the extent that the documentary represents an historical record, we considered it fortuitous that the late Prime Minister was able to share his views on constitutional reform prior to his illness and death in 2007. The participation by Dr. Anthony during a time when political responsibilities were at their heaviest, meant that the Commission was in a privileged position of having two different Prime Ministers, publicly endorse and underscore the importance of the Commission’s work. The documentary was produced during the months between November 2006 and January 2007, and

aired on NTN, DBS and HTS in mid-April 2007, and by all accounts, received by the Saint Lucian public with much acclaim.

Sometime in early 2007, the Commission took a decision to retain the services of a public relations firm to prepare a programme drawing attention to the Commission's work and also to "launch" its public education initiative with an appropriate level of fanfare. This launching of the Constitutional Reform Education Campaign under the theme "Secure Your Rights. Raise Your Voice," took the form of three (3) simultaneous exhibitions in the Castries Town Hall, the Gablewoods Mall in Vieux Fort and the Soufriere Town Square, between 15th to 17th March 2007 inclusive. The programme included public addresses by the Chair and fellow Commissioners, and received widespread coverage in the local print and electronic media for several days.

Throughout much of 2007, the Commission also made diligent efforts to engage young people in Saint Lucia through visits to a number of institutions of learning. Between 3rd May and 17th October 2007 inclusive, Commissioners visited twenty-one (21) secondary and tertiary level educational institutions. The full list of learning institutions visited by the Commission is appended hereto as **Appendix III**. To complement this activity, the Commission also launched, with sponsorship from the 1st National Bank, an essay competition on the desirability and necessity of constitutional reform, with special awards aimed at two broad categories; persons under sixteen (16) years of age and persons above sixteen (16).

From the launch of the Commission right through to the completion of this report, members of the Commission participated in a number of popular radio and television "call-in" programmes on several local stations. Judging from the number of questions and calls received, these programmes appeared to have generated remarkable interest in the constitutional debate.

These activities represent only some of the public education initiatives undertaken by the Commission in the first phase of its work. This early sensitisation and focused public education drive, ran from June 2006 and for much of 2007. It would also continue, in some form or other, for nearly the full five years during which the Commission conducted its mission, and would be complemented by other activities.

While it is difficult to measure accurately how successful the Commission was in its efforts to promote a high level of awareness of constitutional reform among the public during this period, anecdotal evidence suggests that the measures adopted, were generally effective. We believe, for example, that the many “call-in” programmes focused on reform, played a significant role in raising public awareness about the functions of the Commission and in prompting widespread interest and participation in our eventual public consultations.

We noted for example, the repeated and persistent references to the work of the Commission, by members of the public in their daily commentary on various radio stations, even in cases of programmes unrelated to the topic. It was also not uncommon for nearly all Commissioners to relate stories of being approached by individuals seeking an update on the Commission’s work. We noted too, a special interest on the part of certain radio personnel and broadcasting stations, in keeping the discussion on constitutional reform in the forefront of the public’s mind.

In this regard, special mention must be made of the generous cooperation of Radio Caribbean International (RCI), and in particular Mr. Timothy Poleon and Ms. Cherry-Ann Gaillard, for their consistent efforts to keep the subject of constitutional reform current whether by inclusion of a news item in the midday news, or through frequent invitations to members of the Commission to discuss issues of constitutional import. The Commission is moved to wonder how much more successful it might have been, in promoting interest in reform, if other radio and television stations had followed this example.

Meeting the Public

In the next phase of the Commission’s strategic plan, a heavy focus was placed on community outreach programmes and/or widespread public consultations.

Sometime in April of 2007, the Commission first considered the possibility of retaining the services of a full time member of staff to organise community outreach activities. The position required an individual to arrange public meetings in all constituencies and to organise targeted consultations with groups throughout Saint Lucia. In September 2007, Mr. Amatus Edwards was recruited as an Outreach Coordinator to perform these tasks. With Mr. Edwards’ appointment, the Commission

began in earnest to make arrangements to engage directly with the public on their views on constitutional reform.

Beginning in October 2007 and extending until December 2008, the initial community outreach activities, varying in form from panel discussions to public lectures transformed into interactive consultations with members of the public. This was because, in some cases, the Commission felt that, notwithstanding the public education initiatives already discussed, it was necessary to do more intimate preparatory work with communities, to sensitise citizens on the issues before the Commission and to better equip them to express their views on what provisions should be changed, or what reforms should be pursued.

These sessions were generally held on evenings between the hours of 6:00 p.m. and 10:00 p.m. and were each facilitated by two (2) or three (3) Commissioners. They were audio recorded wherever possible. The level of attendance varied, with some meetings recording the presence of over a hundred persons while in others the numbers were in single digits. The consultations spanned the length and breadth of the country and sought Saint Lucians out in the most remote communities.

By early 2008, the Commission had recognised that an extension of time to complete the task mandated by Parliament was required. Accordingly, on 13th May 2008, the Chair dispatched correspondence requesting an extension of time to 31st December 2009 so as to complete the Commission's work. This extension was readily granted and as a result, the Commission was able to continue its consultations with the public.

The final outreach meeting between the Commission and members of the public took place on 11th December 2008 in the community of Blanchard, Desruisseaux. The Commission held public consultations in over one hundred and twenty-five (125) communities and villages from every constituency in Saint Lucia and each of these was visited at least twice. The complete list of communities visited by the Commission is appended hereto as **Appendix IV**.

In December 2008, intensification of the Commission's activities placed increased pressure on the Commission's planning capacity and accordingly, the size of the Management Committee was increased to include Commissioners Veronica Cenac, Dwight Lay, and Lawrence Poyotte.

In the Commission's desire to ensure that consultations with the public were as comprehensive as possible and addressed all the myriad nuances or concerns our people expressed, the Commission also convened special meetings with various associations and groups in Civil Society. These meetings were carried on simultaneously with the community consultations and included a cross-section of civil society organisations. A list of all organisations that met with the Commission is appended hereto as **Appendix V**.

Of special note, was a meeting between the Commission and several members of Parliament, including Prime Minister, Honourable Stephenson King and Leader of the Opposition, Dr. the Honourable Kenny D. Anthony.

Throughout this period also, the Commission continued to organise and execute a number of activities designed not only to promote discussion by members of the public on matters of reform, but also to help prompt debate and analysis among Commissioners. In November and December of 2008, we organised a series of panel discussions on the following issues:

- (a) the relevance and importance of constitutional reform;
- (b) whether Local Government should be afforded constitutional protection;
- (c) whether we should retain the first past the post system or move to proportional representation or a combination thereof;
- (d) whether the Senate should be abolished; and finally,
- (e) whether the Prime Minister should be directly elected.

The Commission was privileged to have been assisted in these discussions by the following distinguished persons: Drs. Hamid Ghany and Francis Alexis, the Honourable Justice Hugh Rawlins (now Chief Justice, of the Organisation of Eastern Caribbean States Supreme Court), Mr. Parnel Campbell, CVO, QC and Professor Albert Fiadjoe, among several others. A complete list of the persons who participated in panel discussions organised by the Commission is appended hereto as **Appendix VI**.

In an effort to provide some diversity in our approach, several public lectures on constitutional reform were also specially arranged. The Commission was extremely grateful indeed, to have secured, on separate dates and occasions, lectures by the distinguished personages of Drs. Hamid Ghany, Tennyson Joseph, Honourable Ralph Gonzalves, Prime Minister of Saint Vincent and the Grenadines and Donatus St. Aimée, Professors Simeon McIntosh, Rose-Marie Belle Antoine and Mr. Watson Louis.

The Diaspora

Financial constraints contributed to the Commission's inability to send large delegations to the Diaspora. As a consequence, a decision was taken to send small teams of two (2) Commissioners to well known Saint Lucian communities living abroad, based on availability and willingness to travel. In the event, the Commission undertook several overseas visits between early 2008 and late 2009 to St. Croix, USVI, St. Thomas, USVI, Tortola and Virgin Gorda, BVI, Barbados, Martinique, New York, Washington, Toronto and London. A list of visits and Commissioners who attended is appended hereto as **Appendix VII**.

These visits proved to be highly successful and the Commission was heartened at the level of interest displayed by Saint Lucians in the Diaspora, in matters of constitutional reform. We were reassured of the strong ties between the Saint Lucian Diaspora and Saint Lucians at home, and of their fervent desire to see no constitutional amendments which would weaken their ability to enjoy the privileges of citizenship, as a result of their decision to live in other countries.

The Commission is deeply grateful to all the individuals who made a concerted effort to arrange these meetings on our behalf.

Our Commitment to Public Consultation

As a result of the increased profile which the Commission's activities had prompted during this time, many Commissioners were privileged to be invited to discuss constitutional reform by representatives of the local electronic media on a number of different programmes. Members of the Commission made sixteen (16) appearances on the following radio and television programmes between 2008 and 2009: RCI's "News Spin" and "To the Point", RSL's "The Agenda", and "In the

Public Interest”, DBS’ “Newsmaker Live”, and the then Helen FM 100’s “An Hól-la”, “Bring It On”, Live 95 FM and “Straight Up”. Commissioners also participated in live radio talk shows on Hot FM, Radio Free Iyanola and Praise FM. In some cases, Commissioners made repeated appearances at the request of the hosts of the programmes and a wide diversity of reform related issues were discussed. A list of media appearances by Commissioners is attached hereto as **Appendix VIII**

By early 2009, the majority of the Commission’s planned community meetings were completed and the Commission readied itself to commence the enormous challenge of reviewing and debating the many submissions for reform we received from the public. However, convinced that the legitimacy of the entire review process depended on the quality and breadth of our public consultations, the Commission determined that it was still necessary to take additional measures to target as many different types of audiences as possible, before consultations could be finally concluded.

In that connection, the Commission developed a consultative plan for execution in 2009 that would build on the previous engagements with the public. In January 2009 the Commission collaborated with the Nobel Laureate Week Committee chaired by Your Excellency to organise three (3) public lectures in Gros Islet with Ambassador Dr. June Soomer, in Soufriere with Mr. Hilary Charlemagne and in Laborie with Mrs. Agatha Jn. Panel.

During the period 17th to 20th March 2009, the Commission organised public oral presentations at the National Insurance Corporation (NIC) Conference Centre in Castries. The purpose of these sessions was to allow members of the public to make oral presentations to the full Commission on various proposals for constitutional reform. They would permit members of the Commission in the course of what were essentially public “hearings,” to question presenters on the feasibility and the philosophical underpinnings of their recommendations. In part also, the Commission hoped that the activity would draw out those citizens who might be interested in reform, but who might not ordinarily attend evening consultations, to make direct appeals to the Commission.

These “open days” proved to be among the most well attended and well received activities undertaken by the Commission in its five (5) year existence. In the course of the initial hearings, the Commission was privileged to receive presentations from twenty-one (21) presenters over three (3) days, including representatives of interest groups and organisations and private individuals. The complete list of presenters at this activity is appended hereto as **Appendix IX**.

The Commission arranged for live broadcast on Radio St. Lucia and re-broadcast on NTN of this activity. The Station further assisted the Commission by airing interviews and panel discussions. Commissioners also participated in GIS programmes: Issues and Answers, Konsit Kwéyòl and Feedback. These programmes, which were meant to complement the public hearings, were broadcast during the week of the Commission's open day activities and were repeated on several occasions through the admirable initiative of the staff of NTN.

On the basis of the resounding success of the first open day activities held in March 2009, the Commission was moved to organise further public hearings for June of the same year. This was because, in the intervening period since the last activity, it became apparent that a number of persons who greatly desired to be heard by the Commission, but who were unable to attend for various reasons, were seeking a new opportunity to participate in "interactive" sessions with the Commission. In order to accommodate such persons and also to address a previous shortcoming of the initial activities, namely that they had been restricted to Castries, a second set of public hearings was arranged from 29th to 30th June 2009, at the Castries City Hall, Laborie Parish Hall, and the St. Isidore Hall in Soufriere.

In the course of these hearings, the Commission was pleased to receive further presentations from other individuals and organisations. The complete list of presenters at this second open event is appended hereto as **Appendix IX**.

The final hearing, which took place on the 30th June, 2009 was held exactly three (3) years and one (1) month after the Commission began official operations, represented the close of public consultations.

Our Review of Public Offices

Upon the close of public consultations, Commissioners undertook targeted meetings with persons who either previously held, or who were current holders, of various Constitutional offices.

These meetings, held between July and August 2009, proved extremely valuable, as the Commission gleaned many practical lessons about the operations of Government which eventually improved the quality of our final recommendations.

The Commission was grateful for the opportunity to organise twenty (20) such meetings. The complete list of persons interviewed during this series of meetings is appended hereto as **Appendix X**.

Despite several attempts by the Commission, we were never able to convene meetings with any former Attorney General or the holder of the office at the time. The last meeting with constitutional functionaries took place on 26th August 2009.

By the latter half of 2009, the Commission had received a number of submissions from the public and had amassed a great deal of information relating to constitutional thought and theory. By this time the Commission had accumulated several hundred hours of recordings of public meetings, approximately one hundred and thirty (130) written submissions and consulted with thousands of Saint Lucians both at home and abroad. From these consultations and submissions, the Commission distilled approximately two hundred and seventy (270) separate recommendations for reform of our Constitution. This list of summarised submissions is appended hereto as **Appendix XI**.

Since it was impractical to complete our review of the information in time to prepare a report to Parliament by 31st December 2009, it was clear to the membership that a further extension would have to be sought from Parliament. By letter dated 12th November 2009 therefore, the Commission duly requested a further extension of time to 31st December 2010, to complete our deliberations and prepare our report.

The Commission received confirmation for an extension for the year 2010 during the month of February, 2010.

The Final Phase

In anticipation of the vast amount of information we would have amassed and conscious of the importance of accurately recording the results of our deliberations, the Commission took a decision in early January 2009, to obtain the services of two additional members of staff. After urgent enquiries, the Commission retained the services of retired public servant Mr. Patrick Felix, who joined the Commission in February 2009 to prepare detailed transcripts of the Commission's deliberations.

In May 2009, Mrs. Vanesta Moses-Felix, previously attached to the Department of Information Services, Office of the Prime Minister, was also recruited on the basis of her qualifications and experience in archiving and indexing information. Her principal task at the Commission was to transcribe, index and properly cross-reference, the significant amounts of information in the Commission's possession, whether in the form of countless hours of recordings or in the form of written submissions.

The decision to retain their services, proved key for the Commission's operational success, since by virtue of their diligence and efficiency, countless hours of the Commission's deliberations were faithfully and comprehensively transcribed. Many records which the Commission was keen to safeguard and protect were duly secured, and the material on which the Commission itself would deliberate, was made conveniently available in an easily digestible form. This greatly facilitated the work of the Commission by enabling it to go directly into its deliberations as it entered the final phase of its operations in November 2009.

Our Decision-Making Process

To enable the Commission to arrive at its recommendations and complete the report in a timely manner, a decision was taken in late 2009, to hold meetings twice weekly. These "working sessions," which began on 16th November 2009, were scheduled for Monday and Wednesday evenings between 6:00 p.m. and 10:00 p.m., and were initially held in the conference room of the Ministry of Communications, Transport, Works, and Public Utilities but later moved to the Commission's office in Vigie. It was in the course of these sessions, that Commissioners debated and scrutinised, the many submissions received from the public.

This proved a difficult and at times, contentious process, due to the size of the Commission and the many strong and divergent views among Commissioners on some of the issues. The process was also unavoidably time-consuming, since a concerted effort was made to ensure that all views were heard and consensus arrived at where possible. Some Commissioners had such strong dissenting views on some subjects that they felt compelled to express their reservations to some of the recommendations of the Commission. These reservations are contained in Chapter Thirteen.

In the course of these sessions, Commissioners examined proposals from the public as well as from its membership. The Commission researched, examined and discussed a wide array of material, including, but not limited to:

- (a) jurisprudence about our own Constitution and those of other Commonwealth Caribbean countries,
- (b) several international treaties and conventions,
- (c) several Acts of Saint Lucia's Parliament (laws "related" to our Constitution),
- (d) the Constitutions of a number of non-Commonwealth countries,
- (e) news articles on constitutional matters from local, regional and international sources, and
- (f) scholarly papers on constitutional thought and theory from a range of sources.

The Commission also observed, examined, or took note of a number of significant local and regional events which had constitutional overtones, and which had implications for its work.

The Commission closed review sessions on the 22nd September, 2010, after ten (10) months of intense deliberations, and fifty-four (54) meetings totalling approximately two hundred and sixteen (216) hours of debate.

The Preparation of Our Report

In the first quarter of 2010, Commissioners determined that it was necessary to obtain the services of a consultant, to assist in the preparation of the instant report. This decision was premised on a frank assessment that Commissioners, who were fully employed persons in their private capacities, would be unable to dedicate the time required, to complete the work in time to meet the deadline of 31st December 2010. Commissioners were also mindful of the seriousness of the task entrusted to them by Parliament and considered it prudent to seek expert advice in preparing an appropriate document.

In May 2010 therefore, and after some deliberation, the Commission selected Dr. Hamid Ghany, Dean of the Faculty of Social Sciences, St. Augustine campus, UWI, Trinidad and Tobago, to assist us with this task. Dr. Ghany commenced work in late August of 2010 and submitted an initial draft report in October 2010, but due to the widespread dislocation caused by Hurricane Tomàs, which affected several members of the Commission living in various parts of Saint Lucia, we were unable to meet to consider the draft until well into December 2010.

As a consequence, and with much regret, the Commission was forced to request an additional extension of time to 28th February 2011, to permit even more frequent meetings and the dedication of yet more feverish hours to complete the review and revision of the report. After some delay, and in no small part due to the persistence of our Chair and the high esteem in which she is held, the requested extension was granted. We are therefore grateful to the kind consideration of the Honourable Speaker and the Honourable Prime Minister, in permitting us a final period of grace to complete our task.

We are indeed, also very grateful to Dr. Ghany for his efforts to ensure that the Commission was able to meet its vision in respect of this report. The Commission is also grateful of the efforts of some individual commissioners who wrote some parts of the report.

Conclusion

As we survey our work over the last five years, three observations resonate.

Firstly, we are struck by the enormity of the task we undertook. Although review of a Constitution such as we have managed represents only the beginning of a process of lasting constitutional change, we were perhaps late to realise the tremendous amount of work and effort this review demanded. Whether because we were initially too modest in our assessment of the efforts we made, or whether the haze of activity blurred our focus, it seems clear with the benefit of hindsight, that the work involved was quite extraordinary.

Perhaps the most elegant testimony of this fact is that, between preparatory meetings, working sessions, participation in public education and media activities, the organisation and attendance of countless public consultations, and preparation of this report, the Commission committed several thousand intensive hours to the completion of its work. As such, it is estimated that, if all the hours

spent by each Commissioner on constitutional reform were added up, it would probably constitute a full working year of each Commissioner's life.

Secondly, we have noted that there have been tremendous changes in Saint Lucia and in our sub-region since we commenced our work, not the least of which is that a different Parliament now exists to that which established the Commission in 2004. In that same vein, the Commission has also changed. When we began we were a group of twenty-five (25) strangers. In the years since, we became an extended family of seventeen (17). Sadly, several Commissioners lost relatives or loved ones in the intervening years. And whether through engagement with each other or with members of the public, we have all been transformed, by our desire to improve our system of governance and our consideration of other constitutionally related issues.

Thirdly, though the process has been long and involved tremendous sacrifice, Commissioners are struck by the deep sense of gratitude and satisfaction we derived from our participation in the process. Commissioners feel privileged to have been given the opportunity to contribute, through this document, to the development and history of our country and in some small measure, to the lives of all citizens. Commissioners feel ennobled not only by the commitment to the cause, but also by association with each other.

We wish to extend our heartfelt gratitude to all persons in the various community groups throughout Saint Lucia and overseas including developmental committees, town and village councils, sporting organisations, persons in charge of community centres, Saint Lucia Consulates and Missions as well as the various associations in the Diaspora. We also wish to extend our sincere thanks to all print and electronic media houses who gave much publicity by producing, covering, airing and/or publishing the activities of the Commission. The preparation of this report would not have been possible without their contribution.

Above all, Commissioners were conscientious in the discharge of our mandate and are hopeful that the report, which hereafter follows, bears testimony to this claim.

SIGNATURE PAGE

The following are the members of the Saint Lucia Constitutional Review Commission

Justice Suzie d’Auvergne - Chairperson

John, Nicholas (Mr.) - Deputy Chairperson

Abenaty, Francis K. (Dr.) - Member

Alexander, Rhikie (Mr.) - Member

Alphonse, Ulric (Mr.) - Member

Barrow-Giles, Cynthia (Ms.) - Member

Biscette, Gregor (Mr.) - Member

Cenac, Veronica (Ms.) - Member

Charlemagne, Terrance (Mr.) - Member

Constitutional Reform Commission – Saint Lucia

Charles,	Ferrel (Mr.)	-	Member
Chase,	Mc. Donald (Dr.)	-	Member
Cherry,	Flavia (Ms.)	-	Member
Cox,	David (Mr.)	-	Member
George,	Andie (Mr.)	-	Member
Jude,	Gabriel (Mr.)	-	Member
Lay,	Dwight (Mr.)	-	Member
Francis,	Michel (Fr.)	-	Member
Hilaire,	Ernest (Dr.)	-	Member
Mathurin,	Eldon (Mr.)	-	Member

Mathurin,	Patrick (Mr.)	-	Member
Poyotte,	Lawrence (Mr.)	-	Member
Seraphin,	Urban (Dr.)	-	Member
Vargas,	Barbara (Ms.)	-	Member

NOTE:

Of the twenty-five (25) persons initially appointed to the Commission, it should be noted that:

- The Representative of the farmers' organization never reported.
- Ms. Crescentia Phillips of the Seamen & Waterfront Workers Union resigned in 2006 and was not replaced.

Thus effectively reducing the Commission to twenty-three (23).

For various reasons some Commissioners were not able to participate throughout the process.

These include:

- Dr. Francis K. Abenaty is out of state due to illness.
- Dr. Ernest Hilaire and Ms. Barbara Vargas have taken up professional duties abroad.

These persons have not been able to affix their signatures to this document consequently the signatures affixed are those Commissioners who were present in Saint Lucia at the time the report was submitted.

FOREWORD

Although the following pages of this report faithfully reflect the specific recommendations we have reached as a body about our Constitution and our system of Government over the last five years, it would be wrong to assume that they contain the full sum of knowledge or of understanding that we have acquired over that period. The process of reforming our Constitution forced us to learn a great deal about how average Saint Lucians view our Constitution and our system of Government.

This is because the process was intense and extended. It led us to consult widely with Saint Lucians from all walks of life. It compelled us to seek them out and engage them on their views about how Government works; about their expectations for the future and about the changes they believed were necessary to meet these expectations.

It took us from the traditional corners of the Diaspora to the smallest nooks and crannies of our fair island. It required us to think more deeply and to inquire more closely into matters of governance in Saint Lucia, than was ever necessary before. Most of all, it required us to reflect, to listen and to question, with a singularity of purpose and a dedicated focus that was at times, challenging to sustain.

Such a level of focus has meant that we were deeply immersed, as a body and as individuals, in the political psyche of our nation. We emerged with a renewed respect for the uncommon wisdom of average citizens; a genuine admiration for the remarkable Saint Lucian spirit, and the surprising knowledge of a remarkable consensus.

This consensus is that the so called “Westminster inheritance” in the Saint Lucian context has at worst, not worked, or at best, been a double-edged sword. On the one hand, the Commission recognised an acceptance that transplanting a version of British democracy in Saint Lucia, perhaps contributed to a level of stability and continuity in our system of Government, which was desirable.

On the other hand, there appears to be a reasonable consensus among our people that what was perhaps appropriate for Britain - with its large Parliament and relatively small Executive, guarded by hundreds of backbenchers - was somewhat inadequate in a country of only seventeen (17)

constituencies and in which the near total domination of a small Executive over the Parliament, was virtually guaranteed. Put another way, we recognised a general agreement that the overwhelming concentration of power in the hands of a small Cabinet, was an unacceptable situation which cried out for change.

In fact, the Commission observed a real hunger for constitutional change. It discerned restlessness with the status quo, which manifests itself in a pervasive, near universal discontent with politicians and politics alike. At the heart of this cynicism, we detected a widespread belief that our Constitution condemns us to a situation in which, our Governments, once elected, seem beyond our ability to restrain or to influence.

With each new community meeting, each new submission we received, or each new engagement overseas, it became increasingly clear that Saint Lucians regarded our Constitution as placing them in the role of window-shoppers, passively standing outside the store-front of Government, looking in, hands pressed against the glass, but unable to influence decision-makers once an election was won. They collectively regretted their inability, except by the most indirect or diffuse means, to influence decision-making in “real time.” They lamented the fact that they could not hold a Government accountable, except through the remote mechanism of an election, by which time the damage resulting from poor decision-making, malfeasance, incompetence or outright contempt for the electorate, might be irreparable or irreversible.

Above all, they bemoaned the lack of appropriate checks and balances on Cabinet authority, the lack of a real separation between the Cabinet and the Parliament, and the lack of real and measurable accountability, expected from a mature system of Government.

In sum, the Commission gradually came to accept the fact that Saint Lucians appear to be dissatisfied with their system of Government although this concern was not always expressed in the same way. For some, the problem was a lack of local Government. For others, it was the lack of the ability to elect the Prime Minister directly, or the lack of a mechanism for recalling ineffective or dishonest parliamentarians, and for still others, what was required was the creation of new and super-powerful institutions to deal with abuses. For many, the solution was most or in some cases, all of these.

Many proposals spoke to a need to restrain Executive action. How else to explain numerous submissions calling for: (i) fixed dates for elections, (ii) term limits, (iii) restrictions on the ability of Government to acquire private property, or (iv) easier access to the Courts, so that ordinary citizens might better seek redress for human rights abuses or breaches of the Constitution generally. Other proposals focused on limiting the powers of the Prime Minister or increasing those of the Leader of the Opposition.

While the cures proposed for our constitutional maladies varied from speaker to speaker, submission to submission or constituency to constituency, the Commission was at least able to take some comfort in the fact that the diagnosis was shared.

In the diversity of submissions received or speakers who presented, we also gleaned a deeper lesson: after thirty-two (32) years of independence, Saint Lucians were desperate for real constitutional change. What was clear was that Saint Lucians yearned to exercise more control over their Government and wanted more opportunities for democratic participation. They regarded Government as too powerful and not sufficiently accountable to them.

This meant that the Commission had to make meaningful proposals for altering our Constitution, and that mere “tweaks” would not suffice. Any proposals for reform simply had to fundamentally address these concerns or they would be meaningless. They had to prioritise the desires and hopes of ordinary people in Saint Lucia, over those of parliamentarians or of politicians. In other words, we had to make a real attempt at actually solving the problems they identified.

This realisation – that an incremental, too conservative, or purely evolutionary approach to constitutional reform would not satisfy our people - infused all of the Commission’s work as it made its way across the length and breadth of our country. It became the yardstick by which we measured our deliberations. It liberated the Commission from being too concerned about whether the specific recommendations we made, would meet with the immediate favour of Parliamentarians or political parties.

While politicians, Parliaments and Governments would change, we recognised that any report we produced would be a document for posterity. It would stand as an eternal statement of how Saint

Lucians viewed themselves in the early part of this century and of how they hoped to change their Government for the better.

We simply owed it to our people to ensure that our report distilled and addressed the truth of their concerns.

Against this background, it was perhaps unsurprising that the Commission received a number of proposals recommending a full-scale adoption of the Presidential type system of Government practiced in the United States of America. Given the concerns we noted, the Commission could anticipate the attraction to this system of Government, in light of its many advantages, including a true separation between Executive, Legislature and Judiciary, its numerous mechanisms for promoting accountability and frequent opportunities for democratic participation by citizens, via a multiplicity of elections.

It was however unclear to the Commission, whether those making the submissions, fully understood or anticipated the complexities of how such a system might work in a local context. The Commission could not be certain for example, that these citizens understood the potential for deadlock in a system where, potentially, the directly elected President could come from a party, different to those who formed the majority in the Legislature. What were the implications, we wondered, of the wholesale “switching out” of the system of Government inherited from Britain, for the one practiced in the USA, for a small country with limited financial resources and highly tribal politics? Or put another way, how might such a system truly work, given the realities of our political culture?

On the other hand, if our system of Government was not meeting our needs, how could we ignore the merits of a system that at least outwardly, appeared to epitomise all the advantages we were seeking?

In the course of considering these questions, the Commission was eventually forced to confront and resolve one fundamental conundrum; how best to preserve the stability of strong central Government that is a defining feature of the British model, while also adopting the requisite checks and balances that are so attractive in the American system?

To a large extent, this report is an attempt to reconcile these two very different goals, and in arriving at the proposal to create a hybrid system of Government that attempts to borrow some of the best features from both models, the Commission remained conscious of one overriding thing: the important issue was not so much what system of Government was to be preferred, but whether we could push our Constitution, in new and novel directions, to make it more effective, and meet our people's needs.

In doing so, we rejected the all or nothing approach, which would have caused us to simply substitute one foreign culture's constitution for another, as if the process of constitution-making was a straightforward task of swapping meat for fish. At all times throughout our process, the Commission remained mindful that we could not divorce our Constitution from the political culture in which it was immersed.

Our solutions therefore had to recognise the need to balance the demand for accountability, against the realities of party politics in small island states. The status quo was unacceptable, but no less so than imposing a totally alien system on our people.

Accordingly, this report contains our best prescriptions for achieving a balance between these two goals.

In addition to the submissions we received on the structure or type of Government we had, the Commission also noted several recurring themes in the course of its public consultations.

As we examined the functions of the public service, we noted for example, that there appeared to be either unwillingness or an inability on the part of successive Governments, to ensure that public institutions entrusted with a public charge, did the work they were mandated to do. We acknowledged a widespread concern, both within the Commission and among the public, about the accountability and efficiency of the public service.

We noted an overwhelming passion among average Saint Lucians, for an expansion in their basic human, civil and political rights. We noted a concern about the potential encroachment by the State into areas of privacy, or with respect to private property, and acknowledged a call from many quarters, to ensure our Constitution protected vulnerable groups, like women and children, from various kinds of discrimination.

The Commission recognised urgency in the calls from the public, to offer special protection to our environment, and our cultural and historical patrimony, by restricting the ability of the state to dispose of properties of a sensitive nature. In a process dedicated to reviewing constitutional rules, it was perhaps surprising how many Saint Lucians felt aggrieved about the lack of access to beaches, or the apparent willingness of Governments to sell, lease or otherwise compromise property, which Saint Lucians regarded as sacred. In fact, the Commission discerned a strong commitment on the part of average Saint Lucians to the principle of sustainable development, and recognised a growing unease or even anger, about the ability of Government to permit commercial exploitation of certain sensitive natural resources, to the detriment of future generations.

Other recurring themes were the requirements for citizenship and the possibility of regulating political parties. In respect of the first matter, there seemed to be consensus that such requirements should be strengthened, while at the same time be made flexible enough to accommodate potential political unions with other countries in the region, should this happen in the future. As regards recognition of political parties, the main preoccupation was the issue of campaign finance reform.

A number of submissions were received from the public, regarding scrutiny of Government action. As a result, the Commission devoted many hours to the possible creation or strengthening of systems to scrutinise Government conduct. These proposals ran the gamut from strengthening the Public Accounts Committee and the office of the Parliamentary Commissioner, to creating new institutions, like the office of Contractor-General.

In part, because of an awareness of the lack of trust average citizens had in Government, and in part because of submissions received, the Commission also reflected on the matter of the apparent silence of our Constitution on the ethical standards required for elected officials. Over time, we came to regard this oversight as a significant problem which required addressing.

By happy coincidence also, the Commission was very fortunate to have been operational during an extended period in which a number of significant events, both locally and regionally, forced us to consider many constitutional issues, from fresh perspectives. In regional terms, we noted the results of elections in five neighbouring islands in the OECS, and the specific consequences to which these elections, gave rise.

In Antigua and Barbuda for example, we noted the High Court challenge to the results in three (3) constituencies and the subsequent High Court and Court of Appeal judgments on the matter of the late closing of polls. In St. Christopher and Nevis, we took note of Court challenges to proposed re-alignments of boundaries. In the Commonwealth of Dominica, elections there, only added to an already ongoing debate about dual citizenship on our own shores.

More recently in Grenada, we marked the potential crisis occasioned by a re-shuffling of Cabinet. In the run-up to elections in both Grenada and also St. Christopher and Nevis, we observed heightened local and regional discussion, on the issue of term limits for Prime Ministers.

Most importantly, in St. Vincent and the Grenadines, we observed with keen interest, the defeated referendum on constitutional reform, and the subsequent re-election, albeit by a smaller parliamentary margin, of the Government there. From the conduct of the referendum campaign and the subsequent results, we could not help but draw some sobering lessons.

Closer to home, we were fortunate for example, to have been operational in December 2006, when general elections in Saint Lucia were held. Like all Saint Lucians, we observed with sadness, the sudden illness and subsequent passing of Sir John Compton, while in office, in 2007. We noted the process of selecting his successor, and the temporary subsequent instability in the Cabinet thereafter.

We acknowledged the public controversy over the issue of un-disclosed convictions for criminal offences, of persons already elected to Parliament. Further, we could not avoid noting the Commission of Inquiry into the “Rochamel Affair”, the NCA and the West Coast Road Project, the judgements in the “Rochamel” Government guarantees, both judgments in the “Tuxedo Villas” affair, the controversy surrounding the transfer of the former Commissioner of Police, the change of the Attorney General in 2010 and the widespread public concern over the potential loss of World Heritage Status for the Pitons, due to proposed developments in the Piton Management Area.

These events helped to deeply inform our thinking about our system of Government and about our mission of constitutional reform. In the main, they reinforced the conclusions we reached after meeting with the public, or prompted us to re-evaluate our views and assumptions.

Above all, they focused our thoughts on the recurring themes of reform; the need for greater accountability, for the creation of ethical rules, and the need for greater checks and balances in a responsible democracy.

All these matters and more, the Commission has diligently considered in the course of its deliberations over the last five years, and on all these matters and more, the Commission has offered some recommendations on the way forward.

Yet, while the Commission has conscientiously offered a recommendation on most of the pertinent issues, either raised by the public or the Statutory Instrument that established us, it would be wrong to conclude that the report which follows, represents a detailed instruction manual to policy makers, Parliamentarians and public alike, on how to create the ultimate Saint Lucian utopia.

This is not the purpose of the report, nor is it the expectation or intention of the Commission, that the recommendations contained herein, be regarded as the “right answers,” to all the profound questions the Commission was required to resolve.

As one reads the report, two things should always be remembered. First, the Commission represented a microcosm of the larger Saint Lucian society, with diverging views and beliefs on the issues confronting us. As a body, the Commission comprised, among other groups or interests, Adventists and Catholics, scientists and men of faith, lawyers and laymen, women and men, public service and private sector functionaries, civil society and state officials, employers and union representatives, Opposition and Government, and young and old alike.

Second, the Statutory Instrument that established the Commission imposed on us an obligation to agree on recommendations by a two-thirds majority. This meant the Commission had to strive to reach consensus on the issues.

As a result of both of these factors, the recommendations contained in the following pages, represent the fruit of a painstaking, deliberative, and consensual process, aimed at arriving at the best potential answers we could agree upon as a body. In reaching our conclusions, some inevitable compromises had to be made. In the same vein, some matters could not be agreed and no recommendations could be made, and rightly so. In an undertaking to review democratic processes, it is only right that democracy should prevail.

In the end however, we believe that any compromises arrived at, only served to strengthen and not weaken our proposals, and to make them more representative of the views of the general public. Our objective was not to make our Constitution perfect, but to make it stronger. We are confident that these recommendations help us achieve that objective.

In sharing the knowledge we have acquired in the course of this process, we also fervently hope that this report, will help us to learn something about ourselves, as a society and as a country. We consign the lessons learned to the benefit of future generations.

In whatever case, no report could adequately relate all that we have learned, nor prescribe a cure for every malady that ails the Nation, and the Commission is the first to recognise that, in a country with many differing views and beliefs, not all of the recommendations we have made, will find unanimous acceptance or approval. It is one task to identify a consensus on a problem, and an altogether different task to agree on the best way to solve it.

We have nonetheless made the most genuine efforts we could to do so, and are resigned to the knowledge that history will best judge the same.

SUMMARY OF RECOMMENDATIONS

The following summarises the recommendations of the Commission. These conclusions are informed, in large measure, by submissions from the public and arise out of intense debate and discussions by members of the Commission.

SUBTOPIC	RECOMMENDATIONS
CHAPTER TWO REWORDING THE PREAMBLE	
Language of the Constitution	<p>(1) The language of the Constitution should be simplified.</p> <p>(2) The creation of a printed Kwéyòl version of the Constitution is not recommended to be part of the current exercise, but a future project should be the creation of an audio version in Kwéyòl.</p> <p>(3) The language of the Constitution should be gender neutral.</p>
Indigenous People	<p>(4) The indigenous people of Saint Lucia should not be specifically recognised in the Preamble.</p>
Preserving Culture	<p>(5) A statement on the preservation of Saint Lucian culture along the lines of paragraphs three (3) and five (5) of the Haitian Constitution should be inserted in the Constitution.</p>
Rule of Law	<p>(6) Subsection (d) of the Preamble should be reworded as follows:</p> <p style="padding-left: 40px;">“Maintain that these freedoms can only be safeguarded by the impartial enforcement of the rule of law”.</p>
Recognition of God	<p>(7) Subsections (a) and (b) of the Preamble should be reworded to</p>

SUBTOPIC	RECOMMENDATIONS
	<p>read as follows:</p> <p>“... acknowledge the reality that while the majority of Saint Lucians affirm their faith in the supremacy of Almighty God, they also commit to the principle of respect for other spiritual beliefs and persuasions.”</p>
Queen’s Chain	<p>(8) A statement on the protection of the Queen’s Chain must be made in the Preamble to reflect the protection of the patrimony of the people of Saint Lucia.</p> <p>(9) Provisions should be included in the Constitution to protect the rights of citizens to access the beach, coastal areas, rivers, reclaimed land and other public places.</p>
The Environment	<p>(10) Our natural resources should be used in such a way that ensures sustainability, development and safeguards our patrimony for future generations</p> <p>(11) A Natural Resource Management Act is required by ordinary legislation to facilitate the protection of the environment.</p>
Separation of Powers	<p>(12) There was no need to make specific mention of the concept of the Separation of Powers in the Preamble.</p> <p>(13) There should be some statement in the Preamble that would preserve the independence of the Judiciary.</p>

SUBTOPIC	RECOMMENDATIONS
Mandatory Review of the Constitution	(14) There should be periodic reviews but there should not be specifying a timeline for such review.
CHAPTER THREE STRENGTHENING OUR FUNDAMENTAL RIGHTS AND FREEDOMS	
The Right to Life	(15) The existing provisions on right to life should be retained.
Deprivation of Property	<p>(16) The ability of the State to alienate the patrimony of the country should be restricted. These restrictions should include, but not be limited to the ability to lease, to change land use or to promote sustainable development.</p> <p>(17) Access to the patrimony of the State should be a public right.</p> <p>(18) Compensation for property acquired by Government should be based on the current value of the property and, at that time, payment should be full and prompt.</p> <p>(19) Strengthening the provisions of the Constitution to ensure (15) above.</p>
Protection of Public Property	<p>(20) The ability of the State to alienate the patrimony of the country should be restricted. These restrictions should include, but not be limited to the ability to lease, to change land use or to promote sustainable development.</p> <p>(21) Access to the patrimony of the State should be a public right.</p>

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SUBTOPIC	RECOMMENDATIONS
	<p>(22) The Constitution should provide for the protection of public property especially our cultural heritage, and the State's natural resources.</p> <p>(23) A Natural Resource Management Act should be provided for.</p>
Capital Punishment	<p>(24) Capital punishment should be retained.</p>
Discrimination Against Women	<p>(25) The provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women (1979) should be implemented and where complementary included in the Constitution.</p>
Sexual Orientation	<p>(26) Discrimination based on sexual orientation is unacceptable and should be addressed under well-defined ordinary legislation.</p>
Common Law Unions	<p>(27) Parliament should consider examining the Convention on the Rights of the Child with a view to incorporation into domestic law.</p> <p>(28) Children born out of wedlock should receive the same treatment under the Constitution as those born in wedlock.</p> <p>(29) Parliament should enact laws to provide equal recognition and protection to parties in common law unions.</p>
Same Sex Union	<p>(30) Sexual intimacy in public should continue to be a criminal offence.</p> <p>(31) Marriage should continue to be between a man and a woman.</p>

SUBTOPIC	RECOMMENDATIONS
The Right to Privacy	<p>(32) The right to privacy should be expressly included in the Bill of Rights.</p> <p>(33) Related provisions to the right to privacy should be strengthened and extended to protect the rights and dignity of individuals.</p>
The Right to Health	<p>(34) The fundamental right to health along the lines expressed in Article 25(1) of the Universal Declaration of Human Rights should be included in the Constitution.</p>
The Right to Work	<p>(35) The right to work should be included as a specific right in the Bill of Rights in the Constitution; such right should include the right to strike.</p> <p>(36) The issue of special protection on the job is better addressed under the anti-discrimination provisions of the Constitution.</p>
Termination of Contracts of Employment	<p>(37) This matter would be more appropriately addressed through the enactment of ordinary legislation such as the Labour Code.</p>
The right to Universal Education	<p>(38) The right to universal education up to secondary level should be included in the Bill of Rights in the Constitution but should be subject to available resources.</p>
Consumer Rights	<p>(39) Consumer rights should be addressed under ordinary legislation.</p>

SUBTOPIC	RECOMMENDATIONS
Public Information and State Property	<p>(40) Ordinary legislation should clearly define what is the property of the State and therefore public property.</p> <p>(41) The details of the right to public information should be articulated in ordinary legislation.</p> <p>(42) The right to public information should be limited in the interest of national security or other relevant grounds.</p>
Protection of Patrimony, Cultural Heritage and National Assets	<p>(43) Certain sensitive and specified national assets or patrimony having historical or cultural significance should not be alienated.</p> <p>(44) Historic assets should be considered public property and that the State or its agents or other duly authorised bodies should have the authority to preserve or retrieve these public assets and hold them on behalf of the State.</p>
Human Rights Commission	<p>(45) A Human Rights Commission should be established.</p>
Youth Representation	<p>(46) A permanent advisory body consisting of youth organisations to meet with an appropriate Government agency on a regular basis to discuss issues affecting the youth of Saint Lucia should be established.</p>
<i>Locus Standi</i>	<p>(47) The <i>locus standi</i> provisions in the Constitution should be relaxed to make them less restrictive, especially as they relate to access to the fundamental human rights and freedoms provisions of the Constitution. In this regard the provisions of</p>

SUBTOPIC	RECOMMENDATIONS
	<p>Section 38 of the enforcement provisions of the South African constitution should be considered.</p> <p>(48) The fundamental rights provisions should be enforceable against both the State and private entities/citizens.</p> <p>(49) The wording of the Constitution should be made clear in establishing the right of a private citizen to take action against a private citizen or entity.</p>
<p>CHAPTER FOUR BECOMING A REPUBLIC WITH A NEW HEAD OF STATE</p>	
<p>Model of Government</p>	<p>(50) The Saint Lucia Constitution should be repatriated.</p> <p>(51) The constitutional monarchical system should be abolished and replaced with a republican constitutional system.</p> <p>(52) The personal authority of the British Monarch over Saint Lucia should be terminated.</p> <p>(53) The Head of State should be a ceremonial President.</p> <p>(54) The Head of State should be indirectly elected based on a limited electorate.</p> <p>(55) The oath of allegiance should be amended to reflect allegiance to the State of Saint Lucia.</p>
<p>Head of State</p>	<p>(56) The Governor-General should be replaced by a ceremonial President with similar powers and responsibilities, save and except as otherwise recommended in this report.</p> <p>(57) The ceremonial President should be elected at a joint sitting of</p>

SUBTOPIC	RECOMMENDATIONS
	<p>Parliament by a simple majority vote after a duly submitted recommendation by the Prime Minister in consultation with the Minority Leader.</p> <p>(58) There should be an office of Deputy President who shall be elected in like manner at the same time as the President.</p> <p>(59) The President should be a Saint Lucian by birth who has been resident in Saint Lucia for a minimum of ten years immediately prior to being nominated and must be between the ages of thirty-five (35) and seventy-five (75) years and should not have held office in a political party or stood for election as a candidate for elective office within ten (10) years of his/her nomination for President.</p> <p>(60) The same qualifications should apply to the Deputy President as for the President.</p> <p>(61) The President should serve no more than two (2) consecutive seven-year terms.</p> <p>(62) The grounds and procedure for the removal of the President or the Deputy President from office should follow the equivalent provisions in the Constitution of the Commonwealth of Dominica with appropriate adjustments.</p> <p>(63) Neither the President nor his/her Deputy should have control of any Ministry of Government.</p>

SUBTOPIC	RECOMMENDATIONS
CHAPTER FIVE REFORMING OUR PARLIAMENT	
Separation of Powers	<p>(64) There should be the creation of a mixed model of Government with a different kind of Executive branch, to that which currently prevails. Under that new system the only member of the Executive branch who will belong to both the Legislature and the Executive will be the Prime Minister. However, the Deputy Prime Minister will serve as a member of Cabinet without ministerial authority except when deputising for the Prime Minister. To this end, he/she will be appointed on the basis of his ability to command the support of a majority of elected Members of Parliament and he/she will appoint Ministers. If a minister is selected from Parliament, he/she must subsequently resign as a member of Parliament, to take up the post of Minister..</p> <p>(65) The Prime Minister will remain accountable to Parliament and can be removed by a motion of no confidence there, but his Ministers will be vicariously accountable through a summons that will be issued to them by parliamentary committees and the presiding officers of both Houses to appear there as and when their presence is desired or required.</p> <p>(66) The appointment of any Minister from the House of Assembly will require a substitute Member of Parliament to replace the Member of Parliament for the constituency that the Minister previously represented.</p> <p>(67) In order to effect this, one option is political parties can be required under the new constitutional arrangement to name running mates for all constituencies that are being contested</p>

SUBTOPIC	RECOMMENDATIONS
	<p>in general elections or bye elections and independent candidates will be required to name a substitute if they contest an election.</p> <p>(68) If at a future date there is the desire to appoint one of the M.P's as a Minister, then the running mate will be sworn into office as the Member of Parliament for that constituency.</p> <p>(69) Alternatively, a bye-election can be held to fill the vacancy created by the appointment of an elected Member of Parliament to the Executive branch.</p> <p>(70) The retention of the constitutional and political practice of appointing anyone including defeated electoral candidates to the Cabinet. This will allow Prime Ministers the same opportunities to ensure that their current availability of ministerial talent will remain intact.</p> <p>(71) The Legislative branch of Government should be given the right to approve/ratify Prime Ministerial appointments to the Cabinet.</p> <p>(72) In establishing a Government, the Prime Minister must ensure that apart from himself/herself, every Cabinet at a minimum consist of the following: the Attorney General, the Minister of National Security, the Minister of Foreign Affairs, and the Minister of Finance.</p>
Hybridization	<p>(73) With the exception of the Prime Minister and the Deputy Prime Minister, Members of the House of Assembly and the Senate will no longer be members of the Cabinet.</p>

SUBTOPIC	RECOMMENDATIONS
	<p>(74) The House of Assembly should scrutinise and ratify nominations made by the Prime Minister for persons to be appointed as Ministers.</p> <p>(75) Special Parliamentary Committees should be created as joint select committees to oversee Government ministries, departments, agencies and Service Commissions.</p> <p>(76) Ministers will be directly accountable to Parliamentary Committees.</p> <p>(77) These Committees will summon Ministers to appear to be questioned on matters of executive policy, proposed legislation and administrative functions of their Ministries.</p> <p>(78) Nomination of Ministers should be after Parliament has met for the first sitting.</p>
The Senate	<p>(79) That the status quo in terms of the role of the Senate should be retained.</p> <p>(80) The Senate should comprise expertise among its members that can give Bills the scrutiny that would enhance the process of approval.</p> <p>(81) An increase in the number of Senators from eleven (11) to thirteen (13).</p> <p>(82) The revised formula for the Senate should be seven (7) Senators appointed on the advice of the Prime Minister, three (3) Senators appointed on the advice of the Minority Leader, and three (3) Senators appointed by the President in his/her</p>

SUBTOPIC	RECOMMENDATIONS
	own deliberate judgement.
First-Past-the-Post	(83) The First-Past-the-Post plurality system of elections should be retained.
Fixed Date for Elections	<p>(84) There should be fixed dates for Parliamentary Elections so that these elections are held every five (5) years on the 5th anniversary of the previous elections.</p> <p>(85) Exception to the fixed date of elections should be made by retaining the provisions of Section 55 (4) (b) and (c) of the Constitution which state:</p> <p style="padding-left: 40px;"><i>“(b) If a resolution of no confidence in the Government is passed by the House and the Prime Minister does not within three days either resign or advise a dissolution, the Governor-General (now President), acting in his own deliberate judgment, may dissolve parliament; and</i></p> <p style="padding-left: 40px;"><i>(c) If the office of the Prime Minister is vacant and the Governor-General (now President), acting in his own deliberate judgment, considers that there is no prospect of his being able within a reasonable time to make an appointment to the office, the Governor-General (President) shall dissolve parliament.”</i></p>
Right of Recall	<p>(86) The right of recall should be provided for in a reformed constitution.</p> <p>(87) A recall should be automatically triggered if a Member of Parliament who was elected on a party ticket crosses the floor</p>

SUBTOPIC	RECOMMENDATIONS
	<p>or changes his/her political allegiance.</p> <p>(88) A recall should also be initiated in cases where:</p> <ul style="list-style-type: none"> ■ there is non-performance as it relates to constituency duties and which can only be initiated after the MP has served at least half of his parliamentary term; or ■ there is a breach of any law, rule or ethical standard established by Parliament; <p>(89) In either of these two (2) cases mentioned above, at least 25% of eligible voters must sign a petition requesting a recall.</p> <p>(90) In cases of recall petitions, the Electoral and Constituency Boundaries Commission will be required to certify that the names and signatures on the petition are <i>bona fides</i>.</p> <p>(91) In the recall referendum, a Member of Parliament is recalled if at least 60% of eligible voters in the relevant constituency vote in favour of the proposition.</p> <p>(92) The recalled Member has the right to contest the bye-election</p>
Ministers of Religion	<p>(93) With respect to ministers of religion participating in electoral politics, the status quo should be retained.</p>
Electoral and Constituency Boundary Commissions	<p>(94) The existing Electoral Commission and Constituency Boundaries Commission should be merged and call the Electoral and Constituency Boundaries Commission.</p> <p>(95) The membership of the Electoral and Constituency Boundaries Commission should comprise five (5) persons appointed as follows:</p>

SUBTOPIC	RECOMMENDATIONS
	<ul style="list-style-type: none"> ■ A chairperson appointed by the President after due consultation with the Prime Minister and the Minority Leader; ■ Two (2) persons appointed by the President acting in his own deliberate judgement; ■ One (1) person appointed on the nomination of the Prime Minister; and ■ One (1) person appointed on the nomination of the Minority Leader.
CHAPTER SIX CREATING A HYBRID EXECUTIVE	
Term Limits for the Prime Minister	(96) No person should be appointed to the office of Prime Minister for more than three (3) consecutive five (5) year terms. Where a Prime Minister has served for three (3) consecutive terms, he/she may return after a hiatus of five years.
Direct Election of the Prime Minister	(97) The <i>status quo</i> in relation to the appointment of the Prime Minister be maintained. There should not be direct election of the Prime Minister.
Deputy Prime Minister	<p>(98) Provisions should be made for the office of a Deputy Prime Minister.</p> <p>(99) The Appointment of a Deputy Prime Minister from among the elected members of the Parliament.</p> <p>(100) The Deputy Prime Minister upon appointment should become a member of Cabinet but not have ministerial responsibility other than when he is acting for the Prime Minister.</p>

SUBTOPIC	RECOMMENDATIONS
	<p>(101) The necessary amendment of Section 63 (2) and (3) of the existing constitution that empowers the Governor General (now President) in the absence of the Prime Minister to appoint a temporary Minister to replace a Minister who for whatever reason, is unable to perform his functions.</p>
<p>Prerequisite Qualification of the Attorney General</p>	<p>(102) The Commission recommends that the requisite qualification for the Attorney General should be equivalent to that of a High Court judge.</p> <p>(103) The option of appointing a political Attorney General should remain.</p>
<p>The Leader of the Opposition</p>	<p>(104) The title for the office of Leader of the Opposition should be changed to “Minority Leader”.</p> <p>(105) The Minority Leader should be appointed in the same way as exists now for the Leader of the Opposition.</p> <p>(106) The Minority Leader should be consulted by the President on a wider range of matters as specified within the body of this report.</p>
<p>CHAPTER SEVEN RE-ENGINEERING THE PUBLIC SERVICE</p>	
<p>The Public Service Commission</p>	<p>(107) The Teaching Service Commission should be merged with the Public Service Commission.</p> <p>(108) The members of the Public Service Commission after the merger should be appointed by the President as follows:</p> <ul style="list-style-type: none"> ■ three (3) persons acting on the advice of the Prime Minister;

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SUBTOPIC	RECOMMENDATIONS
	<ul style="list-style-type: none"> ■ two (2) persons acting on the advice of the Minority Leader; and ■ one (1) person acting in his/her own deliberate judgement who shall be the chairperson. <p>(109) Each member shall have one vote with the exception of the chairperson who shall have a casting vote in the event of a tie.</p>
The Police Service	<p>(110) There should be an independent Police Complaints Commission.</p> <p>(111) The Police Complaints Commission should be capable of suspending, disciplining and prosecuting, if necessary.</p> <p>(112) The existing powers of the Police Commissioner to exercise disciplinary control over officers should be retained.</p> <p>(113) The Police Act and Police Regulations should be modernised.</p>
Service Commissions	<p>(114) Service Commissions should be required to submit annual reports to Parliament.</p> <p>(115) Service Commissions should be subject to scrutiny by a Parliamentary Committee as to their administrative and management functions with a view to examining their efficiency and use of resources allocated.</p>
Director of Audit	<p>(116) The Constitution should make it clear that the Director of Audit is answerable to Parliament.</p> <p>(117) A name change from Director of Audit to Auditor General and the new office should be strengthened accordingly.</p>

SUBTOPIC	RECOMMENDATIONS
Director of Public Prosecutions	<p>(118) The person holding the office of Director of Public Prosecutions should no longer be permitted to hold the office of Attorney General simultaneously under any circumstances.</p> <p>(119) Both the Prime Minister and the Minority Leader should be consulted in the appointment of the Director of Public Prosecutions.</p>
<p>CHAPTER EIGHT LOCAL GOVERNMENT</p>	
Local Government	<p>(120) The system of elected Local Government in Saint Lucia should be re-established.</p> <p>(121) The Constitution should make provision for Local Government to be entrenched.</p> <p>(122) Community Based Organisations (CBOs) should be an essential component of Local Government.</p> <p>(123) Local Government bodies should comprise both elected and nominated representatives with the majority being elected.</p> <p>(124) Local Government should be instituted as a means of facilitating more efficient delivery of goods and services by the State to all communities.</p> <p>(125) Local Government authorities should comprise the following:</p> <ul style="list-style-type: none"> ■ Two (2) members nominated by the Parliamentary Representative ■ Two (2) members nominated by CBOs

SUBTOPIC	RECOMMENDATIONS
	<ul style="list-style-type: none"> ■ Six (6) members elected in Local Government elections <p>(126) Public Officers, whose functions do not involve the formulation and direct implementation of Government policies, should be allowed to stand for election to Local Government.</p> <p>(127) There should be a formal link between the Parliamentary Representative and the Local Government Authority.</p>
<p>CHAPTER NINE STRENGTHENING THE INSTITUTIONS AND PROCESSES OF SCRUTINY AND OVERSIGHT</p>	
<p>Parliamentary Commissioner</p>	<p>(128) Adequate provisions should be made to guarantee the financial independence and efficiency of the office of the Parliamentary Commissioner.</p> <p>(129) A Select Committee should be appointed by the House of Assembly to deal with reports tabled in Parliament on behalf of the Parliamentary Commissioner and that this Committee, among other things, should ensure that the Parliamentary Commissioner’s recommendations are implemented.</p> <p>(130) Reports made by the Parliamentary Commissioner should be released verbatim to the public once they have been laid in the Parliament, except in cases where such disclosure would not be in the interest of national security, because those reports are the people’s business and the people have a right to know.</p> <p>(131) The Ombudsman Act of Belize 2000 should be reviewed as a source to assist in making amendments to the Parliamentary Commissioner Act of 1982.</p>

SUBTOPIC	RECOMMENDATIONS
Integrity Commission	<p>(132) The President should consult both the Prime Minister and the Minority Leader before making appointments.</p> <p>(133) Non-compliance with the provisions of the Integrity in Public Life Act should be met with sanctions for the offending parties.</p> <p>(134) All members of Parliament and the Cabinet should make a declaration to the Commission within thirty (30) days of assuming office.</p> <p>(135) The list of persons in public life who ought to be required to make declarations to the Integrity Commission should be expanded to include the proposed Contractor-General, Chief Engineer as well as certain other functionaries below the rank of Comptroller of Customs and Excise and Comptroller of Inland Revenue.</p> <p>(136) The list of public bodies falling within the purview of the Integrity in Public Life Act should be extended to include any company, in which the Government or an agency of Government holds fifty-one <i>per centum</i> or more shares.</p>
Public Accounts Committee	<p>(137) It should be entrenched in the Constitution.</p> <p>(138) Membership should be broadened to include an individual with the necessary accounting and investigatory skills and that person must be drawn from outside Parliament.</p> <p>(139) Disciplinary action should be instituted against persons or entities for failing to submit timely reports, documents and information or otherwise fail to cooperate with the Committee.</p>

SUBTOPIC	RECOMMENDATIONS
	<p>(140) It should be established as a joint select committee of Parliament consisting of ten members with four drawn from the Senate, two (2) being nominated by the Minority and two (2) nominated by the Government; four (4) drawn from the House of Assembly, two (2) being nominated by the Government and two (2) nominated by the Minority; an independent member appointed by the President, who shall be a forensic accountant and the Minority Leader who shall be the chairperson.</p> <p>(141) The independent appointee with accounting skills will serve as a non-voting member.</p> <p>(142) The first meeting must be convened before the second sitting of the House of Assembly.</p> <p>(143) The quorum shall be three (3) members.</p> <p>(144) It should have the power to request an independent audit of an entity and should have the powers of investigating the finances of that entity whether or not an audit report has been submitted.</p> <p>(145) It should be empowered to obtain the services of a private independent auditor to carry out an audit in cases where it is found that there has been undue delay in the preparation and submission of the report, or where it is found that there is a matter to be dealt with in an expeditious manner.</p> <p>(146) Adequate provisions should be made for an automatic resolution by Parliament for the approval of expenditure incurred by the Committee should the services of a private</p>

SUBTOPIC	RECOMMENDATIONS
	<p>independent auditor be utilised.</p> <p>(147) Parliament must make its secretariat resources available for use by the Committee.</p>
Contractor-General	<p>(148) The office of Contractor-General should be introduced into the Saint Lucian Constitution based on an adaptation of the Belize Contractor-General Act 2000.</p> <p>(149) The public bodies that should come under the purview of the Contractor-General include but not limited to:</p> <ul style="list-style-type: none"> ■ All Ministries, Departments and Agencies of Government; ■ Local Government Authorities; ■ Statutory Bodies and Authorities; or ■ any company in which the Government or an agency of Government holds fifty-one <i>per centum</i> or more of the shares.
<p>CHAPTER TEN THE JUDICIARY</p>	
The Magistracy	<p>(150) It should be brought fully under the control and management of the Judicial and Legal Services Commission;</p> <p>(151) An appropriate mechanism should be created within the Eastern Caribbean Supreme Court and the JLSC to monitor and manage the day to day operations of the Magistracy in Saint Lucia.</p> <p>(152) There should be an elevation of the magistracy so that it could</p>

SUBTOPIC	RECOMMENDATIONS
	benefit from improved training, independence, mobility and remuneration of the “upper” judiciary.
The Eastern Caribbean Supreme Court	(153) It was not necessary or appropriate to make any recommendations for reform of the ECSC in the context of the current review.
The Caribbean Court of Justice	<p>(154) It should replace the Privy Council as Saint Lucia’s final appellate court;</p> <p>(155) It should be entrenched in a new Constitution, so that it is afforded similar protection as the ECSC in the domestic legal system.</p>
The Minister of Justice	(156) The Minister should become an advocate in Cabinet for the Judiciary and should liaise with the leadership of the Judiciary so as to more effectively communicate its needs at the level of the Executive.
CHAPTER ELEVEN CITIZENSHIP ACT AND RELATED PROVISIONS	
The Citizenship Act and the Provisions Relating to Citizenship	<p>(157) The definition, rights and obligations of a possible “regional citizenship” in acknowledgement of current regional integration arrangements should be properly determined through reciprocal treaty arrangements among the OECS or wider Caribbean before amendment to the Constitution or the Citizenship Act can be made to deal with the issue.</p> <p>(158) There should be a Constitutional restriction on the grant of economic citizenship.</p>

SUBTOPIC	RECOMMENDATIONS
	<p>(159) The Citizenship of Saint Lucia Act should be redrafted and simplified and made more coherent by dedicating separate sections of the Act to deal with the individual grounds of citizenship. Therefore, the revised Act should have clear sections dealing with citizenship by birth, citizenship by descent, citizenship by marriage, citizenship by naturalisation (residency requirements) and citizenship in special cases, for example, adoptions, minors, stateless children, persons who have given service to the country and people who would have been entitled before 1979.</p> <p>(160) The provisions relating to the entitlement to citizenship of an applicant by descent which is now restricted to cases where one's parent is a Saint Lucian should extend to a person whose grandparent is a citizen.</p> <p>(161) With respect to citizenship by marriage, the current discrimination against Saint Lucian women who marry a non-citizen should be removed.</p> <p>(162) The Act should empower the Minister to deny the grant of citizenship in cases where a marriage is found to be a sham or marriage of convenience. Strong sanctions should be imposed against persons engaging in sham marriages.</p> <p>(163) There should be no restriction defining a period of time after marriage before an applicant is eligible to apply for citizenship.</p> <p>(164) The power of the Minister to refuse a grant of citizenship should apply in all cases of marriage or naturalisation. The power to deny an application must be on clearly prescribed grounds contained in the Act. However, the discretion of the</p>

SUBTOPIC	RECOMMENDATIONS
	<p>Minister should be limited as much as possible as this privilege can be abused.</p> <p>(165) The procedure for the deprivation of citizenship obtained through fraud, false representation or concealment of any material particular should be clearly set out in the Act and refer to the procedure for initiation of the process, the process itself and what the Minister has to consider and find.</p> <p>(166) Matters concerning the investigation of eligibility requirements for the grant of citizenship should be removed from the purview of the Police Force to a civilian entity.</p> <p>(167) The Act should provide for the grant of temporary residence status as a precursor to the grant of citizenship by qualified applicants to ensure that their status is not in abeyance during the period between the filing of the application and grant or refusal of the grant of citizenship due the lengthy processing period.</p> <p>(168) The Head of State should be a citizen by birth or descent. In the case of citizenship by descent the individual should have been resident in the State for at least thirty (30) years.</p> <p>(169) Eligibility for election to the House of Assembly should be restricted to citizens by birth or descent. In the case of citizens by descent, the individual should have been resident in the country for a period of at least seven (7) years following the acquisition of citizenship and seven (7) years immediately prior to the election.</p> <p>(170) The existing rule which appears to disqualify the holders of</p>

SUBTOPIC	RECOMMENDATIONS
	<p>dual citizenship in some cases from being eligible for election to the House of Assembly in accordance with Section 32 (1) (a) of the Constitution should be retained.</p> <p>(171) In relation to Senators, nominations should be restricted to Saint Lucian citizens resident in the State for at least five years.</p> <p>(172) The existing rule which appears to disqualify the holders of dual citizenship in some cases from being eligible for nomination to the Senate in accordance with Section 26 (1) (a) of the Constitution should not apply.</p>
<p>CHAPTER TWELVE RELATED MATTERS</p>	
<p>Elections and Political Party Financing</p>	<p>(173) Saint Lucia should embrace the current global trend of creating a regulated environment for political parties and elections campaign financing.</p> <p>(174) Political parties should register for the purpose of elections.</p> <p>(175) A Political Party and Elections Campaign Finance Act should be enacted which would among other things provide for a system of both private and public funding.</p> <p>(176) The new Act should require full disclosure of all the financial contributions made to political parties. Non-disclosure should therefore be an offence.</p> <p>(177) Political parties should declare their assets and liabilities.</p> <p>(178) Appropriate sanctions should be placed on political parties that violate the provisions of the Act.</p>

SUBTOPIC	RECOMMENDATIONS
	<p>(179) All foreign government contributions for election purposes should be banned.</p> <p>(180) All financial contributions from foreign companies to political parties should be prohibited.</p> <p>(181) A limit should be placed on contributions to political parties by companies and individuals.</p> <p>(182) A ceiling should be placed on contributions that would not be required to be declared.</p> <p>(183) All sources of anonymous contributions should be prohibited.</p> <p>(184) The State should provide some form of funding to political parties. However, State funding should not supplant or dominate private funding.</p> <p>(185) There should be greater equity in terms of the access of all parties to the State media.</p> <p>(186) The Act should clearly define political parties.</p>
<p>Financial Accountability (The Finance (Administration) Act)</p>	<p>(187) The Act should be revised so as to clarify the respective roles of the Director of Finance and Planning and that of the Permanent Secretary in the Ministry of Finance.</p> <p>(188) No one individual should function in the capacity of Director of Finance and Planning and that of Permanent Secretary in the Ministry of Finance simultaneously.</p> <p>(189) The methodology for assessing or creating the Contingency Fund should be reviewed so as to safeguard against abuse.</p> <p>(190) The implementation of the recommendation of the Ramsahoye Report in respect to the Act should continue.</p>

HISTORICAL BACKGROUND

Pre-Independence Events

The pre-European history of Saint Lucia is somewhat uncertain. However, it is known that in 1627, the Earl of Carlisle received Letters Patent from King Charles I, in respect of the Government of the West Indian islands which included Saint Lucia in the Letters Patent.² There appeared to be resistance from the Caribs to any form of European settlement and in 1660, according to Roberts-Wray, “local treaties were negotiated by French and British Governors of islands in the Caribbean, which left the French in possession of St. Lucia; but in 1663 the Governor of Barbados (not a party to the treaties) purchased the island from the Caribs and took it from the French.”³

The island had the following exchange of hands between imperial powers between 1663 and 1814:

1. The English withdrew in 1666 and the island was occupied by the French.
2. There were disputes between Britain and France about occupation of the island between 1718 and 1763.
3. By the Treaty of Paris in 1763 Saint Lucia was delivered to France by Britain.
4. In 1778 the island was captured by the British.
5. In 1783, it was restored to France by the Treaty of Versailles.
6. It was recaptured by the British in 1794.
7. It was returned to France by the Treaty of Amiens in 1802.
8. It was recaptured by Britain in 1803.
9. It was permitted to remain in British occupation by the Treaty of Paris in 1814.

² Roll, 3 Car. 1, p.31, No. 15

³ Sir Kenneth Roberts-Wray, *Commonwealth and Colonial Law*. London: Stevens and Sons, 1966, p 857.

Foundations of the Legal System

The foundations of the legal system in Saint Lucia can be traced back to the application of the ***Coutume de Paris*** (Custom of Paris) to Saint Lucia in 1681. However, after Saint Lucia was ceded to Britain for the final time in 1814, it is noted that British law was gradually introduced to the island.

The condition under which British law was received in a colony differed depending upon whether the colony was conquered or ceded, on the one hand, or was settled, on the other hand. This distinction was made in the famous case of *from Grenada*.⁴ This case arose out of a dispute between a servant of the Crown, William Hall, a tax collector, and the plaintiff, James Campbell, over the payment of a certain tax on sugar in Grenada (a former French colony captured by British forces in 1762 and ceded to Great Britain by France by the Treaty of Paris in 1763).

In delivering the judgment of the Privy Council, Lord Mansfield, said, among other things, that:

“A country conquered by the British arms becomes a dominion of the King in the right of his Crown; and, therefore, necessarily subject to the Legislature, the Parliament of Great Britain.

The 2d⁵ is, that the conquered inhabitants once received under the King’s protection, become subjects, and are to be universally considered in that light, not as enemies or aliens.

The 3d, that the articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning.

The 4th that the law and legislative Government of every dominion, equally affects all persons and all property within the limits thereof; and is the rule of decision for all questions which arise there. Whoever purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the plantations, has no privilege distinct from the natives.

⁴ *Campbell v Hall* [(1774) 1 Cowp. 204]

⁵ System of writing ordinal numbers of that time.

The 5th, that the laws of a conquered country continue in force, until they are altered by the conqueror : the absurd exception as to pagans, mentioned in Calvin's Case, shews the universality and antiquity of the maxim. For that distinction could not exist before the Christian era; and in all probability arose from the mad enthusiasm of the Croisades.⁶ In the present case the capitulation expressly provides and agrees, that they shall continue to be governed by their own laws, until His Majesty's further pleasure be known.

The 6th, and last proposition is, that if the King (and when I say King, I always mean the King without the concurrence of Parliament) has a power to alter the old and to introduce new laws in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in Parliament, he cannot make any new change contrary to fundamental principles : he cannot exempt an inhabitant from that particular dominion, as for instance, from the laws of trade, or from the power of Parliament, or give him privileges exclusive of his other subjects; and so in many other instances which might be put.”⁷

This argument clearly established that in conquered or ceded colonies, the existing law remained until altered by the Crown under its prerogative or by the Legislature. This was the case with Saint Lucia and over a period of time British law was introduced. The English language was introduced in 1842 by Proclamation, trial by jury was introduced by Ordinance in 1848, a Civil Code was introduced by Ordinance in 1876 and came into force in 1879, a Commercial Code was detailed in 1879 and enacted in 1916, and a Criminal Code was introduced in 1920.

According to Roberts-Wray: “The Laws of St. Lucia (Reform and Revision) Ordinance, 1954, empowered the Commissioner appointed to prepare a New Edition of the Laws to assimilate the Codes (Civil, Civil Procedure, Criminal, Commercial, and ‘any other Code’ then in force) ‘to the law of England where they differ, in the light of the present needs of the Colony and to prepare draft measures suitable for enactment by the Legislative Council to give effect thereto.’ The Commissioner explained in the Preface that law reform was effected by the enactment of some eighteen Ordinances, the major reforms being the assimilation of the law of the Colony to the law

⁶ Now known as Crusades

⁷ Campbell v Hall [(1774) 1 Cowp. 204 at 208 – 209]

of England relating to contracts, torts, agency and guardianship of children, and the introduction of the English law of trusts.”⁸

In 1959, all of the laws in force in Saint Lucia on 30th June, 1957, were published in seven volumes under the authority of the Laws of Saint Lucia (Reform and Revision) Ordinance 1954. By this time, British law had been substantially incorporated into the legal system of Saint Lucia. However, the basis of the civil law may be regarded as French.

1954 to 1959 marked a period of deliberate attempts to shape the Civil Code into a British format. The statutory steps along the way include the Saint Lucia (Reform and Revision) Ordinance 1954⁹, the Civil Code Amendment Ordinance 1956,¹⁰ and the publication of seven volumes of the Laws of Saint Lucia in 1959.

It has to be noted that the reception of British law in Saint Lucia took place over a period of almost a century and a half from final cession to Britain in 1814 to the publication of the seven volumes in 1959.

Constitutional Fundamentals

The independence constitution of Saint Lucia was pre-dated by a constitution that was introduced in 1967 and came into effect on 1st March, 1967 under the authority of the West Indies Act 1967.¹¹

The effect of the West Indies Act 1967 was to introduce a new constitutional status for the territories of Antigua and Barbuda, Dominica, Grenada, St. Kitts-Nevis-Anguilla, Saint Lucia, and St. Vincent and the Grenadines by which they were to be known as Associated States. Under this arrangement, these states were given self-determination and their legislatures provided with full legislative competence to the extent that the applicability of the Colonial Laws Validity Act 1865¹² was removed. The effect of this Act was to restrict the powers of colonial legislatures to the extent that they could not enact any laws that were repugnant to British law.

⁸ op. cit Roberts-Wray, p.859

⁹ Saint Lucia (Reform and Revision) Ordinance 1954 (No. 21/1954),

¹⁰ Civil Code Amendment Ordinance (No. 56/1956)

¹¹ West Indies Act (U.K. Status 1967, c. 4).

¹² Colonial Law Validity Act 1865, (28 & 29 Vict. c. 63)

Self-determination was ensured by Section 10 of the West Indies Act that permitted either the legislature of an associated state or Her Majesty to seek to terminate the association. Saint Lucia terminated its association with Great Britain on 22nd February, 1979 and on that day it assumed fully responsible status, otherwise known as independence.

Declassified Information on Independence

The final months before independence was granted to Saint Lucia under the provisions of Section 10 of the West Indies Act 1967 were filled with political challenges. These political challenges are best captured in the Conclusions of a Meeting of the British Cabinet on Thursday 30th November, 1978, chaired by Prime Minister James Callaghan, at which time the issue of independence for Saint Lucia was discussed.

According to the now-declassified Secret Cabinet Conclusions for that meeting the following entry was made in respect of Saint Lucia:

“The Prime Minister said that the Defence and Overseas Policy Committee was considering proposals for the grant of independence to St. Lucia. Both the Government of St. Lucia and the Opposition were in favour of the principle of independence, but the Opposition were arguing that the people of St. Lucia should first be consulted directly in an election. It was not, however, expected that the Opposition would resort to violence if independence was granted without an election, but even so, the possibility of having a Royal Navy ship close at hand as a precautionary measure at the time was being examined.”¹³

After the consideration of the matter by the Defence and Overseas Policy Committee of the Cabinet (DOP), it then went for consideration at a meeting of the Parliamentary Labour Party on 7th December, 1978. According to a report prepared by the West Indian and Atlantic Department dated 7th December, 1978 under the heading “Debate on the St. Lucia Termination of Association Order 1978” the following was said:

¹³ [CM (78) 41st Conclusions, p. 3]

Constitutional Reform Commission – Saint Lucia

1. *“The St. Lucia Government (SLG) have asked us to terminate their status of association with Britain and to promulgate a new independence constitution, using the same procedure under the West Indies Act as for Grenada (1974, under the previous Government) and Dominica (last month).*
2. *St. Lucia has been self governing since 1967 in all matters except foreign affairs and defence and is well qualified to move to full independence. This is however a politically controversial issue in the island.*
3. *The St. Lucia Opposition do not oppose the principle of independence but argue that the people of St. Lucia should be consulted directly in an election, which otherwise does not have to be held until next September. They are actively lobbying MPs here of all parties and have recently threatened to resign their seats in the House of Assembly if independence goes through without a prior election. We think at present that this is an empty threat. They seem to believe they would win this and thereby steal the glory of taking St. Lucia to independence.*
4. *The DOP have recently accepted that it has been shown through democratic process that the majority of the people of St. Lucia do want independence and that a satisfactory constitution, fully preserving human rights and the rule of law has been prepared. Any attempt by the British Government to delay a decision on independence would be to go against the wishes of an elected Government with universal adult suffrage and be seen locally as support for the St. Lucia Opposition. This would cause dismay among other Commonwealth Caribbean Governments and could have a serious effect on the progress of the three remaining Associated States to independence. The DOP therefore agreed to the request of the SLG to move to independence and debates on the Independence Order in Council will take place in both Houses next week.*
5. *We have been assured by the Opposition Spokesman that their Members will not stand in the way.”¹⁴ It was apparent that the party caucus had decided to go ahead with the grant of*

¹⁴ (U.K. National Archives, FCO 44/1910, Folio 434).

independence to Saint Lucia having considered all of the political issues surrounding the matter following its acceptance by the Defence and Overseas Policy Committee (DOP). The next stage would be to manage the parliamentary phase of the approval process. It is noted that the Opposition in the British Parliament had agreed not to “stand in the way”.

In working out the parliamentary timetable, there was a desire on the part of the British Government to have the Saint Lucia Termination of Association Order made before the Christmas recess in 1978.

In a declassified confidential internal memorandum at the Foreign and Commonwealth Office dated 30th November, 1978, P.C. Duff of the West Indian and Atlantic Department defines the following problem and argument:

“ST. LUCIA INDEPENDENCE

PROBLEM

- 1. To consider whether the St. Lucia Termination of Association Order can be made before the Christmas recess.*

ARGUMENT

- 2. I understand that Mr. Rowlands wishes to have the St. Lucia Termination of Association Order made at the meeting of the Privy Council on 20 December. This may just be possible, depending on the parliamentary timetable.*
- 3. The DOP Paper has been approved by the Secretary of State and was delivered to the Cabinet Office on 28 November. We said that we will assume concurrence if nothing is heard by 4 December.*
- 4. The weekly meeting of the Joint Committee on Statutory Instruments on Tuesday 12 December will therefore be the only one at which the draft Order could be scrutinised in time for it to be debated in Parliament and made on 20 December. We must lay the draft Order before Parliament by Thursday 7 December to get it on the agenda for the Joint*

Committee meeting of 12 December. The Lords will rise for the Christmas recess on 14 December, and 13 December therefore seems the latest possible date for the debate in that House. Since it is possible that the Commons may also rise early for Christmas, it would be safest to assume that the debate there will have to take place on the following day, 14 December.

5. *Before the draft Order can be laid, it will be necessary to insert the date on which the termination of Association is to take effect. The date will therefore have to be agreed very rapidly with Mr. Compton as soon as DOP approval has been secured*¹⁵

What had become a top priority after the British Government had decided to go ahead with independence for Saint Lucia was to get an independence date from the Premier of Saint Lucia, John Compton. In a declassified confidential telegram dated 4th December, 1978 from C.G Mortlock, Deputy British Government Representative, resident in Saint Lucia, to the Foreign and Commonwealth Office in London, the following message was sent:

“St. Lucia Independence

1. *I saw Premier Compton this afternoon and delivered Mr. Rowland’s message. Compton was delighted and asked that his appreciation and gratitude for this quick response be conveyed to the Minister.*
2. *Without any hesitation he nominated Thursday 22 February as Independence Day.*¹⁶ The swift response from Premier Compton was crucial to the parliamentary timetable back in London as the Minister of State for Foreign and Commonwealth Affairs, Ted Rowlands, was working with a tight schedule. The announcement of the decision of the British Government as well as the date of independence was made by way of a reply to a Question for Written Answer in the House of Commons on 6th December, 1978. The House of Commons Hansard records it as follows:

¹⁵ .” (U.K. National Archives, FCO 44 / 1910, Folio 408).

¹⁶ U.K. National Archives, FCO 44 / 1910, Folio 418.

“Mr. Boothroyd asked the Secretary of State for Foreign and Commonwealth Affairs if he will make a statement on the termination of the status of association between St. Lucia and the United Kingdom.

Mr. Ted Rowlands: The Government have decided to recommend to Parliament that the status of association be terminated by Order in Council under Section 10(2) of the West Indies Act with effect from 22nd February 1979. Copies of the proposed independence constitution are being made available in the Library of the House.”¹⁷ (

It is to be noted that The Saint Lucia Termination of Association Order 1978 (S.I. 1978/ No. 1900) and the Saint Lucia Constitution Order 1978 (S.I. No. 1901/1978) were both made on 20th December, 1978 and came into effect on 22nd February, 1979.

The Post-Independence Experience

In the post-independence period, Saint Lucia faced many challenges and constitutional controversies which have caused many in the society to entertain the thought of the need for constitutional reform. The establishment of the Constitutional Reform Commission by way of a Statutory Instrument [S.I. No. 50/2004] in 2004 has emerged out of the many travails that the society has had to bear from the collapse of the Government in 1982 to the two general elections that were held in April 1987 to the death of Sir John Compton in office as Prime Minister in 2007 among other things

Through all of this, one can say that the system of Government has survived. Some may argue that it is the independence constitution that has preserved the democratic process in Saint Lucia, while others may argue that the political culture has been the saviour of the society to the extent that the local political soil is fertile for democracy regardless of the type of constitutional system that is operated.

The general election of July 1979 saw the St. Lucia Labour Party (SLP) coming to power under the leadership of Allan Louisy. However within months of capturing power, there were problems within

¹⁷ House of Commons, Hansard, Written Answers, Vol. 959, p. 709, 6th December, 1978).

its ranks as a split emerged between Prime Minister Louisy and George Odum who was subsequently dismissed from the Government.

The split in the SLP widened which led to the collapse of the Government by 1982 resulting in early general elections being called. At these elections, the United Workers Party (UWP) under the leadership of John Compton returned to power with a 14 – 3 margin of victory. This margin was not sustained at the next general election on 6th April, 1987 which the UWP narrowly won by a 9 – 8 margin.

Prime Minister Compton requested dissolution of Parliament after the formalities of opening a new Parliament had been completed on 13th April, 1987. This cleared the way for another general election on 30th April, 1987. The Governor-General, Sir Allen Lewis, had a choice here to refuse the request for dissolution by Prime Minister Compton. The provisions of Section 55(4) (a) of the Constitution state as follows:

“(a) if the Prime Minister advises a dissolution and the Governor-General, acting in his own deliberate judgment, considers that the Government of St. Lucia can be carried on without a dissolution and that a dissolution would not be in the best interests of St. Lucia, he may, acting in his own deliberate judgment, refuse to dissolve Parliament;...”

However, he opted to grant the request for dissolution so soon after the previous request and the result of the first general election was repeated. Saint Lucia is one of three countries in the Commonwealth Caribbean that has a provision that permits the Governor-General to refuse the request of the Prime Minister for dissolution. The other two are St. Vincent and the Grenadines and Belize.

In the aftermath of the second general elections of 1987, Neville Cenac stepped down as leader of the SLP and Julian Hunte became the new leader. Subsequently, a different political behaviour arose when Cenac ‘crossed the floor’ which gave Compton and the UWP a more comfortable 10 – 7 margin by which to govern.

Needless to say, the phenomenon of crossing the floor and switching allegiances was a matter of considerable political disquiet as anti-Government emotions expressed on the campaign trail were converted after the election into pro-Government support. This type of phenomenon would replay

itself in future years in St. Lucian politics and would force many persons to ask whether this was a creature of personal choice, political ambition or systemic failure.

The critical issue that arises here is the question of whether party politics should be the dominant force in the system of Government and how dominant it should be. On the one hand, loyalty to the party is the essence of the Westminster-style system of Government as it creates an adversarial contest between two major political parties in which one will emerge victorious by virtue of capturing a majority of seats in the elected House of Parliament and the other will earn a minority. The majority is entitled to have its leader appointed Prime Minister, while the leader of the minority is appointed Leader of the Opposition. However, both sides operate on the basis of parliamentary caucuses in which the need to toe the party line is paramount.

The premise of this type of system of Government is that the minority is expected to oppose the majority and that it is assumed that power will rotate between two major parties at future dates when general elections are held. The fluidity that changing political allegiances brings to the process is that Governments can be strengthened or weakened by the shifting allegiances of elected Members of Parliament during their terms of office which can lead to the sustenance or the collapse of a Government.

The reality is that many in the society would like to see a more independent-minded Member of Parliament who is not simply a creature of party loyalty, but rather is willing to stand up on matters of principle for constituents under their care. This clash between constituency needs and party loyalty has created internal pressures for the major political parties and the current system of Government does not adequately permit equality between the two. After all, the collapse of party loyalty can bring about the demise of any Government.

Indeed, party loyalty is driven by the political process in which the selection of candidates, the election of Members of Parliament and their discipline in the Parliament after their election are all driven by party loyalty. The challenge here is to devise a system of Government in which political parties continue to play an important role in providing candidates for elected and selected public office, while simultaneously playing the roles of political education and political mobilisation that are so vital to the political process.

The 1992 general election saw the return of the UWP to power and John Compton continued as Prime Minister. However, in 1996 Prime Minister Compton stepped down from office and was replaced by Dr. Vaughan Lewis as Prime Minister. In the general election that followed in 1997, the UWP were defeated and the SLP under the leadership of Dr. Kenny D Anthony assumed office with a 16 – 1 majority in the House of Assembly. This was reduced to a 14 – 3 majority in the general election of 2001.

In December 2006 Sir John Compton led the UWP to victory in the general elections. He assumed the office of Prime Minister for a sixth time having held the office from 22nd February to 2nd July, 1979; then from 3rd May, 1982 to 2nd April, 1996; and then again from 12th December, 2006 until his death in office on 7th September, 2007¹⁸ after five general elections in 1982, 6th April 1987, 30th April 1987, 1992 and 2006.

Indeed, Saint Lucia has experienced a full range of political events from successful turnovers of power from one party to another after general elections (July 1979, May 1982, May 1997 and December 2006); to resignations of Prime Ministers (Allan Louisy – 4th May, 1981, Winston Cenac – 17th January, 1982, Michael Pilgrim – 3rd May, 1982, and John Compton – 2nd April, 1996); to the death of a Prime Minister in office (Sir John Compton – 7th September, 2007).

In spite of all of this, the country has remained a stable democracy at its foundation, but has demonstrated a high level of political fluidity at the higher levels of Government. With seven persons having held the office of Prime Minister from independence up to the time of writing.¹⁹ there is no doubt that Saint Lucia has a very democratic ingredient in its political soil that bodes well for constitutional reforms that it may need to undertake for its future development and prosperity.

¹⁸ Mr. Compton was Chief Minister from 1964 to 1967 when the island was a Crown Colony and Premier from 1967 to 1979 when the island was an Associated State.

¹⁹ (John Compton – 22nd February, 1979 to 2nd July, 1979; Allan Louisy – 2nd July, 1979 to 4th May, 1981; Winston Cenac – 4th May, 1981 to 17th January, 1982; Michael Pilgrim – 17th January, 1982 to 3rd May, 1982; John Compton – 3rd May, 1982 to 2nd April, 1996; Dr. Vaughan Lewis – 2nd April, 1996 to 24th May, 1997; Dr. Kenny Anthony – 24th May, 1997 to 11th December, 2006; Sir John Compton – 11th December, 2006 to 7th September, 2007; and, Stephenson King since 7th September, 2007).

The ability of the country to endure such frequent political change at the level of the Prime Minister and the two main political parties, the SLP and the UWP, being able to reorganise themselves after suffering major political defeats and internal convulsions is another marker that can be used to appreciate the extent to which a democratic tradition can be identified in the political culture.

RECOGNISING THE CONTRIBUTION OF SIR ARTHUR LEWIS

As Saint Lucia moves to reform its constitution, it would do well to recognise the contribution of one of its Nobel Laureates to the development of democratic theory. Sir Arthur Lewis²⁰ has been hailed as a world-renowned economist, but not many people are aware of his intrinsically valuable cross-disciplinary contribution to the development of democratic theory. This was acknowledged by Professor Arend Lijphart,²¹ who noted the immense contribution of Lewis to the development of what he (Lijphart) has called “consociational democracy”. In his book *Thinking About Democracy*, Lijphart wrote:

“Another striking example of consociational democracy as a rationally invented model can be found in Sir Arthur Lewis’ (1965) “Politics in West Africa”. Lewis was an economist, born in St. Lucia in the Caribbean and of African descent. He served as an economic adviser to several of the Governments of West Africa from 1953 to 1965, and he observed and deplored the breakdown of democracy that was occurring in these countries. His diagnosis of this failure was that the West African ethnically divided countries had not adopted the right kind of democracy upon independence. What they needed, he argued, was broad inter-ethnic coalitions, elections by PR, and ethnic group autonomy. He did not attach a comprehensive label to these proposals, but they clearly add up to a consociational democracy. He did not mention any empirical examples of consociationalism either, and he appears not to have known of the Colombian, Lebanese, Dutch, and other precedents. Hence, in contrast to political scientists like Gerhard Lembruch and myself who discovered consociationalism a few years later, Lewis invented it by trying to think what would be the logical solution to the problems in West Africa. This is another example of consociationalism as a creative invention and rational choice –

²⁰ Sir Arthur Lewis was a former Principal of the University of the West Indies and he also held Professorial Chairs in Economics at the University of Manchester in the United Kingdom and at Princeton University in the United States. He served as an advisor to several African Governments as well as being the Federal negotiator for the Federation of the West Indies.

²¹ Research Professor Emeritus in Political Science at the University of California, San Diego, and a renowned scholar on democratic theory in the field of political science.

especially significant because, as I already mentioned in the Introduction, Lewis was the first modern scholar to identify the consociational model of democracy.”²²

Lewis' famous work, *Politics in West Africa*²³ provided an interesting insight into the emergence of new states in West Africa which had only recently attained their independence. Lewis did not confine himself to English-speaking countries, but also analysed those that had emerged from colonial rule under other imperial powers.

His economic theory on “Industrialisation by Invitation” and his anti-Marxist view of politics would put him at loggerheads with many in the academic world. On Marxism in *Politics of West Africa*, he wrote:

“The point is not that the Marxist thesis is wrong, but that whether right or wrong it does not apply to West Africa. This fact is of tremendous importance. Most of the political philosophy of Europe and the Americas, stretching back long before Marx, derives from the clash between haves and have-nots; as we shall see later, when transported to West Africa much of this philosophy is irrelevant.”²⁴

In relation to the political problems being faced by new states that were emerging in the post-colonial era after gaining their independence in the 1950s and early 1960s, Lewis had this to say:

“Plurality is the principal political problem of most of the new states created in the twentieth century. Most of them include people who differ from each other in language or tribe or religion or race; some of these groups live side by side in a long tradition of mutual hostility, restrained in the past only by a neutral imperial power.”²⁵

²² Lijphart, Arend. *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice*. New York; Routledge, 2008 pp. 278 – 279.

²³ This book was published out of Series X of the Whidden Lectures that he gave in 1965 on the topic of Politics in West Africa at Mc Master University in Canada. These lectures were established in 1954 to honour the memory of a former Chancellor of Mc Master University, the Reverend Dr. Howard P. Whidden.

²⁴ Lewis, W Arthur. *Politics in West Africa*. London; Allen and Unwin, 1965. pp. 18 – 19).

²⁵ Ibid p 66

The problems that Lewis diagnosed in West Africa may not apply to Saint Lucia, but it is important to celebrate his contribution to the emergence of democratic theory given the fact that this aspect of his life's work is not widely known. The importance of citing Lewis here is also to confirm that Saint Lucia has a rich history of democratic tradition that has been sternly tested and it has survived, unlike in some other parts of the world where political outcomes have been very different.

The Commission did not consider the writings of Sir Arthur Lewis until very late. Nonetheless, the Commission was able to arrive at the same conclusion as Lewis about the differences between West Africa and Saint Lucia on the subject of democratic traditions.

As a relatively young democratic state, the problems analysed by Lewis in West Africa in the 1950s and 1960s are not akin to Saint Lucia. The Commission, therefore, wants to signal its intention to offer recommendations that do capture the spirit of what Lewis stood for in seeking to preserve functioning democracies for future generations as one of the keys to the enjoyment of general prosperity.

CHAPTER ONE

PRELIMINARY

The Constitution of Saint Lucia belongs to a stock of constitutions that are based on a parliamentary system that recognises the person of the Monarch of the United Kingdom as their Monarch. To this end, Queen Elizabeth II is the Queen of Saint Lucia and the Governor-General is Her Majesty's personal representative in Saint Lucia. The prerogative powers of the Crown are exercised by the Governor-General in the name of Her Majesty and these powers are primarily exercised on the advice of Ministers, except in cases where they may be exercised on the advice of persons or authorities other than Ministers or after consultation or in the deliberate judgment of the Governor-General.

This is specifically detailed in Section 64 (1) of The Saint Lucia Constitution Order 1978 as follows:

“In the exercise of his functions the Governor-General shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution or any other law to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet:

Provided that the foregoing provisions of this subsection shall not apply where the Governor-General is authorised to act in his own deliberate judgment in accordance with the following provisions of this Constitution-

- a) *section 57 (which relates to the Constituency Boundaries Commission and the Electoral Commission);*
- b) *section 60 and 63 (which relates to Ministers);*
- c) *section 67 (which relates to the Leader of the Opposition);*
- d) *section 86 (which relates to the appointment, etc, of public officers);*
- e) *section 88 (which relates to the Chief Elections Officer); and*
- f) *section 95 (which relates to the Public Service Board of Appeal).”*

Saint Lucia is therefore a parliamentary monarchy whose constitution resembles the stock of Westminster-Whitehall constitutions that are the foundation of all of the countries of the Commonwealth Caribbean with the exception of Guyana. Any reform of its constitution will be based on three possible options. These options are (i) the retention of the parliamentary monarchy; (ii) a change to a parliamentary republic; and, (iii) a change to a presidential republic. The constitutional status of Saint Lucia is a product of its political history and culture and, therefore, the changes proposed will have to take account of this reality in respect of the alterations.

Simultaneously, the influence of the Washington model and some of its techniques cannot be underestimated. This may present the opportunity for hybridization in some instances between parliamentary and presidential models. Some of the more popular Washington model techniques are confirmation hearings for the appointment of certain public officials, the ratification of Executive appointments by the Legislature, the right of recall, term limits for certain public officials, the use of elections for a wide range of public officials, etcetera.

The balance between the Westminster-Whitehall and Washington models will provide philosophical challenges in advocating reform as the attractions of the latter model are, in some instances, incompatible with the former. Some countries in the region (namely the Commonwealth of Dominica and Trinidad and Tobago) have adopted parliamentary republics and, in doing so, have included some Washington constitutional techniques that are reasonably compatible with the parliamentary model, for example term limits for the President of the Commonwealth of Dominica and an Electoral College for the election of the President in Trinidad and Tobago.

The parliamentary system is designed to function on the basis of domination of the Parliament by the Cabinet on a natural foundation of majoritarian division (Government majority and Opposition minority). Such a system cannot accommodate consensual techniques of divided Government that would involve the Executive being controlled by one party and the Legislature by another with no harm to the political system. Therefore, it is easier for Commonwealth Caribbean societies to absorb the effect of a change from a parliamentary monarchy to a parliamentary republic as opposed to skipping the parliamentary republic and heading directly for a presidential republic because of the severity of the change in political culture. Nevertheless, the effect of the Washington model on the evolutionary processes of Commonwealth Caribbean constitutions in

their Westminster-Whitehall attire is likely to tilt the balance in years to come as Caribbean societies become weary of the authoritarian tendencies of the Westminster-Whitehall model in their application in small island states with small parliaments that are just the opposite of Westminster.

While the Westminster model itself has moved with purpose over the last decade to catch up with Commonwealth Caribbean countries whose separation of powers was far advanced to theirs, the mother of our parliaments has done some reforms of its own; the highlights of which have been the dismantling of the office of Lord Chancellor and the introduction of executive, parliamentary and judicial reforms.

On 1st October, 2009, history was created in the United Kingdom when the long standing tradition of having the House of Lords as the final court of appeal in that country came to an end with the establishment of the United Kingdom Supreme Court. The Lord Chancellor is no longer the Head of the Judiciary, but rather the Lord Chief Justice is. The Lord Chancellor is no longer the minister responsible for the judiciary in the Cabinet, but rather the Secretary of State for Justice is. The Lord Chancellor no longer presides over sittings of the House of Lords, but rather the Lord Speaker plays this role.

With such far-reaching reforms, the Westminster system itself is no longer what it used to be. Constitutional reform has been embraced in a manner that has changed many constitutional and administrative law textbooks within the last ten years. Saint Lucia is no different in seeking to undertake a reform of its own more than three-decade old constitution. Unlike the United Kingdom that does not have a written constitution; Saint Lucia will have to undergo the three tenets of entrenchment to get a new constitution into place.

These tenets are (i) a time delay procedure between first and second reading of a bill to amend the Constitution; (ii) a three-fourths majority in the House of Assembly; and, (iii) a simple majority vote at a referendum after the bill has been passed with the special majority in the House of Assembly and a simple majority in the Senate. This is the most extreme situation for a complete overhaul of the Constitution. There are other clauses that do have as strict a requirement as do amendment of the whole constitution.

In such a situation, consensus will be required to make constitutional reform a reality as both Government and Opposition will have to come together to forge a new dawn for the people of Saint Lucia.

Constitutional Reform and a Referendum

In attempting to ensure that the constitutional reform process should have the widest public participation when it comes to making that final decision on a new draft constitution, there was discussion among Commissioners on whether issues raised in this constitutional reform process should form the basis of a referendum as well as issues to be raised at the next general election.

There was a clear recognition that it was very important to ensure that any referendum on a new Constitution for Saint Lucia should avoid being treated as a party political issue to the extent that there should be some distance between the holding of a referendum and the holding of a general election. Having regard to the bipartisan approach that was adopted in the establishment of the Commission, there is a clear expectation that the two major political parties (the SLP and the UWP) are both committed to changing the Constitution and that neither side would want to have a reform process culminate in controversy.

The search for consensus over whatever the Commission recommends can create a situation whereby both major political parties can urge their supporters to vote in favour of the new Constitution because of the way in which the entire process has been handled.

The Commission is ever mindful of the fact that its recommendations will have to be converted into a Bill to be debated in Parliament and that, once that Bill is successfully passed by the required majority in the Parliament, it will have to be submitted to the electorate at a referendum for their approval.

The earnest wish of the Commission is that ultimately there should be consensus among the parliamentarians of the political parties who are represented in the House of Assembly to enact a new Constitution that a majority of the electorate will support at a referendum.

CHAPTER TWO

REWORDING THE PREAMBLE

Language of the Constitution

In seeking to reword the Preamble, the Commission was ever mindful that, on the whole, the language in the Constitution is very legalistic and that it should be made simpler, more contemporary and void, as far as possible, of technical legal jargon. This view comes from recognition of the fact that the average layman has difficulty in understanding all of the niceties of the language of constitutional drafting. This viewpoint about the language of the Constitution starts in the Preamble and then works its way through the entire document.

There was a suggestion that the Constitution should be written in both English and Kwéyòl. This was not supported on the ground that the very persons who would read the English version would be the ones to read the Kwéyòl version. Owing to this situation, it was considered more practical to consider developing an audio version in Kwéyòl as a future project.

There were concerns about the absence of any gender neutrality in the language of the Constitution with the use of the words “he” and “his” being used to also include “she” and “her”. There was consensus that the language of the Constitution should be gender neutral to the extent that “he” should be replaced with “the person” and that other usage should as far as possible be reflective of a genuine attempt to be gender neutral. These are general guidelines that the draftspersons must consider in preparing the draft constitution.

Recommendations

With respect to the language of the Constitution, the Commission recommends the following:

- (1) The language of the Constitution should be simplified.
- (2) The creation of a printed Kwéyòl version of the Constitution is not recommended to be part of the current exercise, but a future project should be the creation of an audio version in Kwéyòl.

- (3) The language of the Constitution should be gender neutral.

The Preamble

The purpose of a Preamble to the Constitution is to provide a statement of prevailing beliefs and values at the time of the introduction of the Constitution. While the Preamble is not a legally enforceable part of the Constitution, its importance lies in the fact that it introduces the Constitution and states quite clearly what the values of the State are and, by so doing, gives character to the Constitution. The Commission is of the view that the Preamble is an umbrella or underlying sentiment that informs the beliefs, customs, or practices of the society.

Since 22nd February, 1979, there have been changes to some of the values that constitute the very essence of the Constitution. Indeed, there have been latter-day debates about the importance of the environment, the need to preserve the national patrimony, the broadening of human rights' considerations that have questioned the inalienability of human rights themselves as well as greater social diversity to include atheism, sexual orientation, and gender.

Indigenous People

The Commission considered a presentation on the rights of indigenous people, however, there was no definition of the term "indigenous people" save that the Commission was referred to the Convention on the Rights of Indigenous People that states: "People who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories are called Indigenous Peoples". The Commission also noted the definition by the UN Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which states that indigenous communities, peoples and nations are: "...those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems."

The Commission took the view that the indigenous people of Saint Lucia should not be specifically recognised in the Preamble because the Commission did not wish to give special constitutional recognition to any one group over any other.

Recommendation

- (4) With respect to indigenous people of Saint Lucia the Commission recommends that the indigenous people of Saint Lucia should not be specifically recognised in the Preamble.

Preserving Culture

The Commission discussed the importance of Saint Lucian culture, its preservation and its being constitutionally recognised. Paragraphs three (3) and five (5) of the Preamble of the Haitian Constitution were instructive on this point which states: “Establish a strong and stable State, capable of protecting the country’s values, traditions ...” and “Strengthen national unity ... by accepting the community of language and culture ...”

Commissioners agreed to the submission that some statement about the preservation and protection of our culture be inserted in the Constitution, be it in the Preamble or otherwise, in order that our way of life, both traditional and modern, can be constitutionally recognised.

Recommendation

- (5) With respect to preserving our culture, the Commission recommends that statement on the preservation of Saint Lucian culture along the lines of paragraphs three (3) and five (5) of the Haitian Constitution should be inserted in the Constitution.

Rule of Law

The Commission supported a suggested amendment that subsection (d) of the existing Preamble which says, “maintain that these freedoms can only be safeguarded by the rule of law”, would be strengthened by stating that the enforcement of the rule of law was necessary in order to maintain rights and freedoms for the individual. The Commission concluded that the revised wording should

read: “maintain that these freedoms can only be safeguarded by the impartial enforcement of the rule of law”.

Recommendation

- (6) With respect to the rule of law, the Commission recommends that the revised wording for Subsection (d) of the Preamble should be reworded as follows:

“Maintain that these freedoms can only be safeguarded by the impartial enforcement of the rule of law”. “Maintain that these freedoms can only be safeguarded by the impartial enforcement of the rule of law”.

The Recognition of God

One of the major areas of debate in respect of the Preamble was the issue of the mention of God and that such references did not include non-believers and atheists. While there is recognition of the rights of atheists, the Commission felt that this cannot overcome the fact that the State is founded on a belief in the existence of Almighty God.

To remove references to God in the Preamble would severely compromise the argument contained in the existing Preamble that people are endowed by God with inalienable rights and dignity. The premise of the Preamble is that rights come from God and not from Mankind which is what makes them inalienable. Furthermore, dignity which is important for the existence of civilisation also comes from God.

The Commission considered that as a tolerant society, Saint Lucia does not have to eliminate its foundation as a God-fearing society in order to accommodate non-believers and atheists. Their principles are adequately included in all of the provisions of the existing Preamble. With the belief by some that rights are an inalienable divine gift to mankind, the non-believers and the atheists are protected as no man or woman will ever have the right to deprive any individual (believer or non-believer) of their natural and inalienable rights.

This is not to diminish in any way the many concerns/proposals about the Preamble in which there were conflicting views on this matter. However, there was a recognition that the majority of people

were in favour of keeping the references to God in the Preamble. Nevertheless, there was the recognition of the fact that the views of the minority could be accommodated in the Preamble by an appropriately worded statement which would provide a sense of inclusion as opposed to a feeling of exclusion for anyone. The relevant section of the Preamble of the Independence Constitution states:

“WHEREAS the People of Saint Lucia –

- (a) affirm their faith in the supremacy of the Almighty God;*
- (b) believe that all persons have been endowed equally by God with inalienable rights and dignity;”*

The Commission suggests that (a) and (b) above should be replaced with the following:

- (a) Acknowledge the reality that while the majority of Saint Lucians affirm their faith in the supremacy of Almighty God, they also commit to the principle of respect for other spiritual beliefs and persuasions.

It must also be noted that the Preamble cannot be regarded as conflicting, because it has no function for the purpose of interpreting the later provisions in the Constitution which protect the rights of minorities.

Recommendation

- (7) With respect to the recognition of God, the Commission recommends that subsections (a) and (b) of the Preamble should be reworded to read as follows:

“... acknowledge the reality that while the majority of Saint Lucians affirm their faith in the supremacy of Almighty God, they also commit to the principle of respect for other spiritual beliefs and persuasions.”

The Queen's Chain

In considering the Preamble to the Constitution, the Commission engaged in a debate about the need to protect the Queen's Chain from property and other developers in order to safeguard the right of Saint Lucians to access their beaches.

The Queen's Chain is the portion of land measuring One Hundred and Eighty-six Point Five (186.5) feet from the foreshore. The foreshore is that portion of land which is alternatively covered and left dry by the ordinary flux and reflux of the tides.²⁶ In other words, the Queen's Chain is that expanse of land running 186.5 feet inland from the high water mark, or rather, 186.5 feet from the edge of the clear-cut land and where the flow of the sea and waves do not come.

Article 355 of the Civil Code of Saint Lucia states that the "*roads and public ways maintained by the State, the Queen's Chain, the sea-shore, land reclaimed from the sea, ports, harbours and roadsteads, and generally all those portions of territory which do not constitute private property, are considered as being dependencies of the Crown domain*". Therefore, it is clear from the language of Article 355 that the Queen's Chain is part of the Crown's domain, and as such belongs to the people of Saint Lucia, for which the Government is the custodian.

As far back as the late 1600's an area of land was reserved by the King of France, around the Island of Saint Lucia to enable the establishment of towns, parishes, forts, entrenchments, batteries and other public and necessary works. This was as much for their decoration as for the defence of the Island. In areas where towns, fortresses and batteries were established, they served for that purpose. In the rest of the island, the owners of lands above that portion which was reserved, obtained from the Lords, Governors and Stewards of the King permission to clear the lands which enabled them to procure facilities for the exploitation of their plantations. Permission was granted gratuitously, without any dues to the Lords or King and with the understanding that those lands can be reclaimed when they were needed for the service of the King or for the use of the public.

²⁶ Coulson & Forbes on the Law of Waters: Sea, Tidal and Inland and Land Drainage. London: Sweet & Maxwell, 1952. p 22

The Commission concluded that there is a need to write into the Constitution provisions which protect the rights of citizens with regards to access to the beach, coastal areas, reclaimed land and other public places. As it relates to the foreshore and seabed, there should be a reserve. There should always be some level of discussion and public participation on the disposal of public lands which the Government holds in trust for the people.

In order to guarantee protection to the citizens on this point, the Preamble should include a clear statement that protects the Queen's Chain as an area that must be protected in perpetuity for the people of Saint Lucia as part of the patrimony for future generations.

Recommendations

With respect to the Queen's Chain, the Commission recommends the following:

- (8) A statement on the protection of the Queen's Chain must be made in the Preamble to reflect the protection of the patrimony of the people of Saint Lucia.
- (9) Provisions should be included in the Constitution to protect the rights of citizens to access the beach, coastal areas, rivers, reclaimed land and other public places.

Additional Matters Considered

There was general agreement among Commissioners that the format and content of the remainder of the Preamble were adequate; save for some minor additions or amendments. It was also determined that most of the remaining submissions were already provided for in the Preamble. However, there were some submissions that Commissioners agreed should be given due consideration and included in the Preamble.

The Environment

There were a number of submissions that protection of the environment be among the extension of rights. Generally, the trend is that constitutions make mention of the environment in the Preamble and make specific provisions for it in the Bill of Rights. The sentiment that the current generation should use our natural resources in a way that ensures sustainability, development and safeguards

our patrimony for future generations, should be embodied in the Preamble, was endorsed by the Commission. To this end, the Commission concluded that a Natural Resource Management Act was required in ordinary legislation to support this thrust.

Recommendations

With respect to the environment, the Commission recommends the following:

- (10) Our natural resources should be used in such a way that ensures sustainability, development and safeguards our patrimony for future generations
- (11) A Natural Resource Management Act is required by ordinary legislation to facilitate the protection of the environment.

Separation of Powers

There was a debate about whether or not there was a need to enshrine the separation of powers in the Preamble. Commissioners noted that there is a sufficient body of law under the existing Constitution that is very clear on the separation of powers as a doctrine and as an accepted principle. Commissioners felt that they would like to see the principle enshrined as an ideal, as they felt that laws could be easily changed by a majority in Parliament. At the very least, there should be a statement that would preserve the independence of the Judiciary.

Recommendations

With respect to separation of powers, the Commission recommends the following:

- (12) There was no need to make specific mention of the concept of the Separation of Powers in the Preamble.
- (13) There should be some statement in the Preamble that would preserve the independence of the Judiciary.

Constitutional Review

The Commission considered the issue of a mandatory review of the Constitution after a designated number of years. It was felt by a majority of Commissioners that such a provision would lead to an extreme level of uncertainty which would adversely affect the supreme law of the land. The process of constitutional reform cannot be labelled in such a way as to make it time-specific, but rather that future generations would respond to a prevailing need to amend the Constitution in the same way that the House of Assembly passed a resolution on 17th February, 2004 and the Senate did likewise on 14th April, 2004, calling for the establishment of a Constitutional Reform Commission.

Recommendation

- (14) With respect to the Constitution, the Commission recommends that there should be periodic reviews but there should not be specifying a timeline for such review.

CHAPTER THREE

STRENGTHENING OUR FUNDAMENTAL RIGHTS AND FREEDOMS

The existing constitutional provisions for the fundamental human rights and freedoms currently enjoyed by Saint Lucians emerged out of a strengthening of the provisions that were in the previous associated state constitution.

The Marlborough House Agreements on Human Rights

At the Marlborough House Constitutional Conference where the independence constitution for St. Lucia was discussed during the period 24th – 27th July, 1978, the declassified summary of what was agreed between the British Government, the Saint Lucian Government and the Saint Lucian Opposition reveals as follows:

1. *“Protection of Fundamental Rights and Freedoms*

The existing provisions which already contain the usual safeguards have been further strengthened as a result of the constructive contributions by the St. Lucia Government and Opposition delegations to the constitutional conference (see paragraph 11 of Cmnd 7328).²⁷

The modifications made to the fundamental rights and freedoms provisions contained in the associated state constitution for the independence constitution are detailed in paragraph 11 of the *Report of the St. Lucia Constitutional Conference*²⁸ as follows:

11. *“The constitution would include provisions modelled on Chapter I of the existing constitution with modification as follows:*

- 1) *references should be included to equality before the law, and to the protection of personal privacy and family life in the declaratory provisions of section 1;*

²⁷ U.K. National Archives, FCO 44/1910, Folio 419, Annex A, St. Lucia Constitution.

²⁸ Report of the St. Lucia Constitution Conference, 1978/Cmnd 7328

- 2) *in section 3(2), the phrase “as soon as reasonably practicable” should be replaced by the phrase “with reasonable promptitude”;*
- 3) *an additional subsection should be added giving an arrested person the right to retain and instruct a legal representative promptly and to hold private communication with him;*
- 4) *the language of section 3(5) should include an explicit prohibition of excessive bail;*
- 5) *an additional provision should be added to section 3 giving a minor who is arrested or detained the right to communicate with his parents or guardian;*
- 6) *section 3(6) should be amended so that, to the extent that it is so provided by law, no compensation would be payable where the arrest or detention was effected in pursuance of the order of a Court or magistrate or justice of the peace;*
- 7) *section 4(3)(d) should be amended so as to replace the reference to “any other emergency or calamity” by a reference to “any accident or natural calamity”;*
- 8) *section 6(1) should be amended so that property may only be acquired compulsorily for a public purpose;*
- 9) *section 6(4) should be amended so as to permit the imposition of reasonable restrictions on the remission to another country of any amount of compensation for the deprivation of property for the purpose of controlling the export from St. Lucia of capital raised in St. Lucia or capital raised in some other country the Government of which has entered into arrangements with the Government of St. Lucia for the purpose of controlling the export of such capital;*
- 10) *section 8(2) should be amended on the lines of section 8(2) of the Dominica Independence Constitution which refers to the circumstances in which a trial may take place in the absence of the accused;*

- 11) *section 9(3) which relates to the protection of freedom of conscience should be amended on the lines of section 9(3) of the Dominica Independence Constitution;*
- 12) *section 11(1) should be amended so as to refer explicitly to the right to form or belong to political parties;*
- 13) *section 15(1)(a) should be amended so that a detained person is to be informed in a language that he understands and in detail, of the grounds of detention and also furnished with a written statement in English specifying those grounds in detail;*
- 14) *section 17 which relates to Declarations of Emergency should be replaced with a provision on the lines of part 3 of Chapter 1 of the constitution of the Republic of Trinidad and Tobago.”²⁹*

Armed with the knowledge of how the Bill of Rights was amended for the Independence Constitution, the Commission felt that this should now be juxtaposed against some of the issues raised in consultation with the population as well as those areas of debate that engaged Commissioners in their review sessions.

The Right to Life

On the issue of arbitrary or unlawful deprivation of life, some Commissioners were of the view that issues relative to respect for the integrity of the person, including freedom from arbitrary or unlawful deprivation of life, protection of the unborn as well as when life begins, could best be afforded protection through ordinary laws.

Other Commissioners were of the view that the present Constitution does not deal with the right to life where it exists before birth, consequently it cannot be dealt with under ordinary legislation. It

²⁹ Report of the St. Lucia Constitutional Conference (1978/Cmnd. 7328, pp. 2 – 3).

was argued that if conception was seen as the commencement of life, then due consideration should be given to what medical practitioners and others say in that regard.

There was the view that while the right to life is already afforded constitutional protection, there has always been a clear restriction on abortion. The law has only recently been amended to allow it under certain circumstances. In fact, there has always been the allowance for medical reasons but it has been extended to include two new categories, rape and incest, albeit under stringent conditions. Some argued that if the right to life is applied to most vulnerable groups, then, the unborn child should fit that category and the fundamental laws should seek to protect the existence of such a life. There is also the view that life begins after the first trimester. Ultimately the Commission was divided as to whether life begins at conception or at birth.

There was the view that the law is not the place to determine where life begins when the medical profession has not been unable to do so definitively. There are also widely varying views among different religions. What has been done, and it is the correct strategy, is to provide general protection to life in the Constitution and place restrictions in ordinary legislation as to how that can be abrogated and where it can be protected.

Recommendation

- (15) [With respect to the right to life, the Commission recommends that the existing provisions on right to life should be retained.](#)

Deprivation of Property

The Commission noted that Section 6 (1) of the Constitution relating to protection from deprivation of property indicates that:

“No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.”

Despite the fact that this section had been specifically amended by the drafters of the independence constitution on the instructions of the Marlborough House Conference, the Commission still hold the view that adherence to this provision was questionable.

It was felt that Section 6 (2) did not adequately address the situation where there are competing interests. Also there were questions as to whether that should be a matter for the Courts to determine.

Some Commissioners felt that the problem was not with the constitutional provisions but with the provisions of the legislation thereunder. Other Commissioners were of the view that ordinary legislation cannot take care of this situation. The Commission concluded that the problem arose mainly due to the unwillingness of politicians to follow the law.

Restrictions should therefore be placed in the Constitution so that the legislation can better address the situation. A case in point is the Land Acquisition Act (No. 11 of 1984) which restricts compensation to the market value of the property at the time of the acquisition and not at the time of payment. If these constitutional changes are applied, it would more than likely force prompt settlement.

Recommendations

With respect to deprivation of property, the Commission recommends the following:

- (16) The ability of the State to alienate the patrimony of the country should be restricted. These restrictions should include, but not be limited to the ability to lease, to change land use or to promote sustainable development.
- (17) Access to the patrimony of the State should be a public right.
- (18) Compensation for property acquired by Government should be based on the current value of the property and, at that time, payment should be full and prompt.
- (19) Strengthening the provisions of the Constitution to ensure (15) above.

Protection of Public Property

The Commission received submissions that the Constitution should provide for the protection and promotion of the cultural heritage of the State including historic sites, monuments, places and objects of artistic and historic interest, language, literature, visual and performing arts to enrich the cultural life of the citizens of the State. The Commission endorsed these submissions.

There were also submissions that the provision of a public right to access parks, beaches and public property (i.e. patrimony) should be granted constitutional protection. There was extensive discussion among Commissioners on the issue. Commissioners concluded that some aspects of this issue can best be addressed by ordinary legislation.

Commissioners and the public were concerned with the protection of the patrimony not just for this generation but also for the generations to come. The idea that benefits, such as access to beaches, are enjoyed by non-nationals to the exclusion of most nationals was a situation that needed to be redressed. To this end, the Commission took a firm stand on the issue of the Queen's Chain by agreeing to have it included in the Preamble and in the Chapter on Fundamental Human Rights and Freedoms. It was also felt that a Natural Resource Management Act should provide for adequate management of our environment and natural resources.

Recommendations

With respect to Protection of Public Property, the Commission recommends the following:

- (20) The ability of the State to alienate the patrimony of the country should be restricted. These restrictions should include, but not be limited to the ability to lease, to change land use or to promote sustainable development.
- (21) Access to the patrimony of the State should be a public right.
- (22) The Constitution should provide for the protection of public property especially our cultural heritage, and the State's natural resources.
- (23) A Natural Resource Management Act should be provided for.

Capital Punishment

There were as many recommendations calling for the retention of capital punishment as there were those calling for its abolition. The Commission was mindful that the issue has preoccupied the Commonwealth Caribbean, ever since the Judicial Committee of the Privy Council's decision in *Pratt v Morgan* in 1993. In that case, the Judicial Committee overturned a previous decision, holding that an extended delay in carrying out the sentence of death by hanging, could convert an initially lawful sentence of death to cruel and inhuman punishment, contrary to the Constitution. The effect of the decision is that sentences of hanging in the Commonwealth Caribbean now have to be carried out before the expiration of five years, to be legal.³⁰

After considerable debate on the issue, the Commission remained sharply divided on the retention of the death penalty, although a majority favoured retention. In the end, the Commission recommended that the current legal position permitting the application of the death penalty in certain cases of murder should be retained. The Commission therefore does not recommend any changes to the law on capital punishment in Saint Lucia.

Recommendation

- (24) [With respect to capital punishment, the Commission recommends that capital punishment should be retained.](#)

EXTENSION OF PROTECTION ON THE GROUNDS OF DISCRIMINATION

Gender

In considering protection from discrimination, there was a proposal that gender should be included among the provisions. It was the general view of Commissioners that sex was already included in the Constitution; however, there was a strong minority view that discrimination on the basis of sex does not mean gender. Therefore, on that basis, non-discrimination on the basis of gender should

³⁰ Will return to this issue of hanging when dealing with the matter of the CCJ – where the repatriation of our court system is being considered.

be included in the Constitution. While Commissioners were sensitive to the issue, the majority did not endorse that viewpoint.

Discrimination against Women

The Commission noted the definition of discrimination against women as proffered by the UN Convention on the Elimination of All Forms of Discrimination Against Women (1979), which states that:

"...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."

The Commission also noted that the Convention establishes an agenda for action to put an end to sex-based discrimination. Those countries ratifying the Convention are also required to enshrine gender equality into their domestic legislation, repeal discriminatory provisions in their laws, and enact new provisions to guard against discrimination against women. By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- (a) to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- (b) to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Commission noted that Saint Lucia has ratified the Convention and that countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice.

Recommendation

- (25) [With respect to discrimination against women, the Commission recommends that the provisions of the UN Convention on the Elimination of All Forms of Discrimination Against](#)

Women (1979) should be implemented and where complementary included in the Constitution.

Sexual Orientation

The Commission was made aware of an opinion by Justice Edwin Cameron, Judge of the South African Supreme Court cited in the South African Law Times,³¹ where it was noted that sexual orientation was defined on the basis of erotic attraction in the case of heterosexuals to members of the opposite sex, in the case of gays and lesbians to members of the same sex.

With respect to sexual orientation, the majority of Commissioners were not convinced that it should be included as one of the provisions while a minority could not understand why such a significant percentage of the population should be ostracised in a modern constitution.

It was noted that giving sexual orientation constitutional approval will have implications for certain sexual offences such as buggery. To this end, there may have to be legislative reforms on a wider scale if such a concession is made.

The point was made that there was a high level of violence and abuse directed against persons who were not heterosexuals and who have other sexual orientations. Constitutional protection would ensure that state-sponsored organisations would not discriminate against these individuals.

It was argued that persons should not be fired from their jobs or excluded from employment on the basis of their sexual orientation. The fundamental rights and freedoms clauses of the Constitution ought not to allow any discriminatory practices against anyone regardless of their sexual orientation.

There were divergent views among members of the Commission. One view was that the first paragraph of Chapter 1 on The Protection of Fundamental Rights and Freedoms which states:

“Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of

³¹ *South African Law Times* 1993. Page 44.

others and for the public interest, to each and all of the following, namely-...

appears to be comprehensive enough to cover everybody regardless of sexual orientation. It was further argued that this issue should be dealt with under ordinary legislation and not in the Constitution.

A contrasting view to this was that Section 1 under the fundamental rights and freedoms provisions is not enforceable by virtue of the exclusion of Section 1 under the provisions of Section 16 which states:

“If any person alleges that any of the provision of Sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.”

In order to make Section 1 enforceable, Section 16 would have to be extended to say:

“If any person alleges that any of the provision of Sections 1 to 15 inclusive of this Constitution has been, is being or is likely to be contravened ...”

This was refuted, on the basis that the discriminatory grounds referred to in Section 13 (3) repeats the very grounds cited in Section 1. This therefore makes these rights enforceable. The additional ground being recommended would be better placed under Section 13 (3) rather than including it in Section 1.

Another argument for inclusion of sexual orientation as a ground for discrimination is that Constitutions must have a built-in ability to reflect the times as they are. Race, place of origin, political opinions, colour, creed or sex are the issues of that time when the emphasis was on political and civil rights. Most Constitutions that have been reviewed in recent times, for example the South African Constitution, are beginning to recognise another class of rights and have gone the route of extending the grounds of discrimination to include social and economic rights.

It was further argued that ordinary legislation that dealt with some of those issues, for example issues of gender identity, sexual orientation and gender issues, are not sufficient and that they really should be reflected in the Constitution to secure, particularly for women, equal treatment and protection. There was also a growing acceptance of the fact that there are clear issues relating to sexual orientation in that it is being used as a basis upon which to promulgate severe levels of abuse.

The Commission also considered whether sexual acts between consenting adults of the same sex in private should not be criminalised but did not make a recommendation.

Recommendations

- (26) [With respect to sexual orientation the Commission recommends that discrimination based on sexual orientation is unacceptable and should be addressed under well-defined ordinary legislation.](#)

Common Law Unions

The Commission recognised that common law relationships are integral to Saint Lucian society. In examining the issue the Commission recognised the need to provide protection to parties in common law relationships and considered whether they should be granted rights to protect them from discrimination.

The status of marriage as against common law unions was discussed by the Commission and the debate ranged from whether this fell within the purview of the Commission because it did not receive any recommendations on that issue, neither was it an issue discussed at the public consultations in respect of making special provision for common law unions.

The Commission considered several questions, including what determines a common law union. What are the consequences of such a union? What is a person entitled to on the death of a party? How do you regulate the interest of an existing spouse and a common law spouse and the children of the two unions? The Commission considered that these were among the issues to be decided. The Commission took note of the Organisation of Eastern Caribbean States (OECS) Family Law Project which dealt with the issue in some respects and noted that the intention was to draft

legislation in that regard. Therefore, some Commissioners felt that the Commission might be premature in addressing this topic at this stage. Further, Commissioners considered that the issue was not so much recognition of common law unions in the Constitution as it is the consequences of such unions. In this regard, there will be need to ensure protection for children. An examination of the Convention on the Rights of the Child may be more relevant in terms of securing protection for children of a common law union.

There was the view that there may not be a need to mention common law unions in the Constitution if there is already sufficient protection on the basis of gender and for children in keeping with the Convention on the Rights of the Child, the law of trust, et cetera. These will go a very long way in terms of securing the necessary benefits.

The Constitution is the supreme law which holds the ideals of the society. Marriage is considered in the Constitution because it is something the society regards as ideal.³² The dearth of submissions in relation to common law relationships leaves the Commission guessing as to the public's position on the matter. However, the commission found it necessary to make the following recommendations.

Recommendations

With respect to common law unions, the Commission recommends the following:

- (27) Parliament should consider examining the Convention on the Rights of the Child with a view to incorporation into domestic law.
- (28) Children born out of wedlock should receive the same treatment under the Constitution as those born in wedlock.
- (29) Parliament should enact laws to provide equal recognition and protection to parties in common law unions.

³² Section 13 (4) of the Constitution states that the protection from discrimination may be infringed by a law so far as that law makes provisions with respect to marriage.

Same-Sex Unions

No submissions were received by the Commission for or against same sex unions. However, the Commission considered the matter and concluded that marriage should continue to be between a man and a woman.

While the Commission agreed that this was not a constitutional issue, it considered a submission that sexual acts between consenting adults of the same sex should be criminalised. The Commission's view was that any kind of sexual intimacy in public should continue to be a criminal act.

Recommendation

With respect to same sex unions, the Commission recommends the following:

- (30) Sexual intimacy in public should continue to be a criminal offence.
- (31) Marriage should continue to be between a man and a woman.

The Right to Privacy

Commissioners noted that the right to privacy is mentioned in the Preamble but not dealt with specifically within the Constitution, except for the provisions of Section 7 pertaining to protection from arbitrary search or entry.

There were submissions that people's rights to privacy were frequently violated by the media. This view was also shared by some Commissioners. However, at the same time, the Commission noted that care should be taken not to stifle the media but there was a need to find ways to ensure that the media report with due accuracy and prudence. The Commission considered Section 14 (1) of the Belize Constitution which provides as follows:

"A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to any unlawful attacks on his honour and reputation.

The private and family life, the home and the personal correspondence of every person shall be respected."

Recommendations

With respect to the right to privacy, the Commission recommends the following:

- (32) The right to privacy should be expressly included in the Bill of Rights.
- (33) Related provisions to the right to privacy should be strengthened and extended to protect the rights and dignity of individuals.

The Right to Health

There were submissions that the right to health should be protected under the Constitution. In the view of the Commission, this is generally formulated as the provision of a basic standard of living and safe environment as per Article 25 (1) of the Universal Declaration of Human Rights which reads as follows:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The Commission observed that, generally speaking, countries which have adopted the provisions of the Right to Health have limited themselves to providing “a standard of living adequate for health and well-being of the person and of his/her family”, and that there is usually the proviso that this is “subject to the extent and level of resources of the State.”

The Commission further noted that the Preamble of the present Constitution speaks about these social and economic rights in subsection (e) when it states:

“WHEREAS the People of Saint Lucia realise that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State....”

The view was expressed that the high cost of medical care and the proliferation of disease and chronic illnesses make the right to health or the provision of a basic standard of health care, even more relevant today.

There was concern that when rights are subjected to broad statements such as “subject to the extent and level of resources of the State” it becomes difficult to challenge in law as it relates to the enforcement provisions.

On the other hand, some constitutions express these principles, not as rights, but as inspirational targets for the society. That is to say, they are dealt with within the realms of guiding principles for state policy.

The Commission agreed that this submission should be included and that the provisions of Article 25 (1) of the Universal Declaration of Human Rights should inform its drafting. It should also be extended to include, but not limited to, access to clean drinking water. As regards drinking water, this is a phenomenon that affects many developing countries and represents a priority area of public policy for future attention.

Recommendation

With respect to the right to health, the Commission recommends the following:

- (34) The fundamental right to health along the lines expressed in Article 25(1) of the Universal Declaration of Human Rights should be included in the Constitution.

The Right to Work

The Commission considered proposals related to the right to work and took due note of the provisions of the Universal Declaration of Human Rights, the International Labour Organisation (I.L.O.) Conventions as well as the Belize Constitution Act of 2000 during their deliberations on this subject.

It was noted that Article 23 of the Universal Declaration of Human Rights provides that:

- *“Everyone has the right to work, to free choice of employment, to just and*

favourable conditions of work and to protection against unemployment.

- *Everyone, without any discrimination, has the right to equal pay for equal work.*
- *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
- *Everyone has the right to form and to join trade unions for the protection of his interests.”*

The I.L.O Convention provides for the right to decent work which takes into account factors such as proper standards of safety, a healthy working environment, proper services, decent remuneration and the right to associate among others. Further, the Commission noted that Belize has leaned towards giving its nationals the unrestricted right to apply for work for which they are qualified.

There were submissions that the right to work be included as a specific right in the Bill of Rights and the Commission agreed to this in principle. The right to decent work as well as the right not to be hindered in one’s ability to apply for work was suggested as the preferred phrasing. However, further consideration should be given to the scope of that provision when the actual drafting is undertaken.

The Commission considered submissions on the right to strike and also took into consideration the provisions of the draft St. Vincent and the Grenadines Constitution Bill 2009 in which Sections 10 (1) and 10 (2) stated that:

- (1) *“Every member of the Vincentian work-force has the right to work in his chosen field, whether his work be manual or mental or otherwise, there being dignity in all honest labour; and he has the right to be paid fair remuneration for his work.*

and

- (2) *In turn, every member of the Vincentian work-force has a responsibility to render a fair day’s work, and to yield worthy production as well as proper productivity.”*

Some Commissioners were of the view that one should not have the absolute right to strike and that there should be restrictions in the Public Sector where such action can endanger public safety, and national security. Other Commissioners were of the view that the right to strike is associated with freedom of expression and association which is provided for under Sections 10 and 11 of the Constitution.

The Commission concluded that the right to strike was already a principal component of the right to work which had already been agreed and that a more modern formulation of rights provisions are written in positive language as opposed to negative language. The drafter should be instructed in that regard.

The Commission also held the view that the State should guarantee special protection on the job as it relates to health status and not restrict the protection to persons living with HIV or AIDS.

Recommendations

With respect to the right to work, the Commission recommends the following:

- (35) The right to work should be included as a specific right in the Bill of Rights in the Constitution; such right should include the right to strike.
- (36) The issue of special protection on the job is better addressed under the anti-discrimination provisions of the Constitution.

Termination of Contracts of Employment

The Commission received a submission that:

“the Constitution should ensure the principles of natural justice apply to all contracts of employment and that Parliament shall not deprive any employee of the right to a fair hearing in accordance with the principles of natural justice for the determination of his/her rights and obligations or deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the right to the principles of natural justice in his/her employment

relationship with his/her employer.”

It was noted that the submission sought to extend the protection until now reserved for public servants to workers in the private sector. The Commission felt that the implementation of such a provision would be too onerous on the private sector.

Recommendation

- (37) This matter should be more appropriately addressed through the enactment of ordinary legislation such as the Labour Code.

The Right to Education

Commissioners agreed with a submission that the right to education should be a fundamental right. This was so primarily because of the importance of the development of a knowledge based economy and the type of transformation that is possible in a society where the level of education is linked to survival and development.

The Commission considered favourably a submission that: *“Free universal education should be a fundamental right”*, and agreed that there should be free universal education up to the secondary level subject to the limitation of resources.

Recommendation

With respect to the right to education, the Commission recommends the following:

- (38) The right to universal education up to secondary level should be included in the Bill of Rights in the Constitution but should be subject to available resources.

Consumer Rights

The Commission received submissions on consumer rights and felt that giving constitutional protection to consumer rights was not necessary and that this could be taken care of under ordinary legislation.

Recommendation

With respect to consumer rights, the Commission recommends the following:

- (39) [Consumer rights should be addressed under ordinary legislation.](#)

Public Information and State Property

The Commission received a submission that:

“all records created on whatever media or whatever format by any Government official, ministry, department or parastatal agency shall be the property of the State.”

In relation to public documents and documents of public importance in the possession of private individuals, the Commission received a submission that:

“no person except in the normal course of their duties shall copy in whatever form on whatever media, donate or otherwise give to any person or institution or other entity, shred or otherwise destroy, any record without the express written permission of the National Archives Authority.”

The Commission agreed with the submission but felt that it should be dealt with in ordinary legislation, as well as a submission that “all non-current records of any public official, ministry, department, public institution shall be deposited to a central depository for storage and access and determination of their value for current and future

The Commission also received to the following submissions:

“The Constitution shall provide for the freedom of information and full disclosure of, and prohibit unreasonable refusal or failure to provide access to, documents of Government contracts, operations and projects and access to the individual of personal files and information that have been compiled by Government institutions and corporate bodies in the course of business.”

and

“The Constitution shall provide for the privacy of information to protect the personal information of individuals particularly in the private sector and health sector.”

These submissions captured the challenge that exists between official secrecy and the right to information. As the modern state has developed, many democracies have moved in the direction of relaxing the doctrine of official secrecy and replacing it to varying degrees with a right to information or the enhancement of freedom of information laws.

Commissioners were of the view that there is always the need to indicate what constitutes State or public documents and apply the limitation which is generally applied to the right to information. Taken as is, the submission was considered too broad.

Commissioners agreed that the right to information on civil status records, birth status records and other public documents, for example, should be available freely. This right should also specify what is private information as opposed to information relative to national security and seek to give protection to the latter. It should also specify what can and cannot be accessed as well as mandating the press, in particular, to be accurate in what they publish and make provisions for recourse by those aggrieved.

Recommendations

With respect to public information and State property, the Commission recommends the following:

- (40) Ordinary legislation should clearly define what is property of the State and therefore public property.
- (41) The details of the right to public information should be articulated in ordinary legislation.
- (42) The right to public information should be limited in the interest of national security or other relevant grounds.

Protection of Patrimony, Cultural Heritage and National Assets

It is the inheritance of our culture that makes us a people and gives us an identity. It is therefore the Commission's position that was this too important to leave to the insecurity of ordinary legislation. With regards to the protection of our cultural heritage, the Commission received and considered the following submissions:

1. "The constitution shall provide for the protection of the cultural heritage of the State including historical sites, monuments, places and objects of artistic and historic interest language, literature, visual and performing arts to enrich the cultural life of the citizens of the State". Commission were in agreement with this submission and also felt that consideration should be given to the enactment of legislation making it mandatory that researcher on areas such as Saint Lucian bio-diversity, cultural forms such as the Djab Dèwò, the flower festivals, Listwa, Koudmen, Kòdwil, Débòt, Bèlè, Koutoumba, Lavéyé, traditional music (such as those now owned by the Smithsonian institute) traditional herbal treatments and cures among other things, leave copies of their research with the Saint Lucia National Archives.
2. A statement must be made in the constitution requiring the provisions of the Draft Cultural Policy of 1988 be implemented
3. "Patwa should be made the official language of the State".

The majority of Commissioners were of the view that this was not a constitutional matter and that this could be dealt with through ordinary legislation.

4. "The use of Cannabis in the religious rituals of the Rastafarian Movement should be legalised, as religion is part of the culture."

The majority of Commissioners were of the view that this was a matter for ordinary legislation.

5. "Disposal of national assets be it by the government or otherwise, is so important to the life of the State that it must never be done without a referendum."

The Commission, having understood National Assets to mean, the patrimony³³ of the State supported the submission.

The Draft Cultural Policy of 1988 was seen by the Commission as a comprehensive document which captures most of the relevant issues as regards the protection, promotion and preservation of our cultural heritage and therefore advocate the adoption of the said policy in ordinary legislation.

Recommendations

With respect to Cultural Heritage, the Commission recommends the following

- (43) Certain sensitive and specified national assets or patrimony having historical or cultural significance should not be alienated.
- (44) Historic assets should be considered public property and that the State or its agents or other duly authorised bodies should have the authority to preserve or retrieve these public assets and hold them on behalf of the State.

Human Rights Commission

There were submissions calling for the establishment of a Human Rights Commission. Concerns were expressed as to whether such a body should be created or whether there should be continued reliance on the existing court structures to consider constitutional motions.

The Commission considered whether such a body would effective to ensure that people have access in terms of enforcement of the fundamental rights and freedoms provisions.

The Commission was of the view that there should be an independent institution that can regulate and investigate the relationship between the State and the individual which should extend to actions by the State that compromises individuals' rights and also ensuring that the necessary access is available.

³³ Patrimony refers to the aggregate of property over which the Crown may assert ownership on behalf of those citizens to whom the law does not allow self-management

The functions of the Police Complaints Commission could also be subsumed under the Human Rights Commission as one of its tasks. This would take away the powers of investigation from the police and alter the situation in which the police service investigates complaints against itself.

Recommendation

- (45) With respect to a Human Rights Commission, the Commission recommends that a Human Rights Commission should be established.

Youth Representation

There was a submission that there should be Youth representation in Parliament which was expressed, in part, as follows:

“... the young people should have the right of a representative body to speak to Parliament on their behalf for their needs.”

Commissioners supported the submission in principle and recommended that a mechanism be put in place by ordinary legislation for the National Youth Council to meet with some regularity with a Special Parliamentary Committee dedicated to Youth Affairs to air their views and express their concerns.

Recommendation

- (46) A permanent advisory body consisting of youth organisations to meet with an appropriate Government agency on a regular basis to discuss issues affecting the youth of Saint Lucia should be established.

Locus Standi

In relation to the issue of *locus standi*³⁴, the Commission considered the provisions of the South

³⁴ **Locus standi**, in law, means the right to bring an action, to be heard in court, or to address the Court on a matter before it. To this end, it represents the ability of a person or other entity to demonstrate to the court a sufficient connection to and harm from the law or action challenged that would support that person's or entity's participation in the case.

African Constitution which were instructive in that regard. The Commission considered that the rules on locus standi in the Saint Lucia constitution are too restricted. There is therefore a need to extend or redraft the provisions under Section 16 of the Saint Lucian Constitution so that it allows for representative groups of persons or somebody acting on behalf of a group of persons to bring an action, and not be restricted to detained persons.

The Commission recommends the adoption of Section 38 on enforcement of rights in the South African Constitution which states:

“Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are—

- (a) anyone acting in their own interest;*
- (b) anyone acting on behalf of another person who cannot act in their own name;*
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;*
- (d) anyone acting in the public interest; and*
- (e) an association acting in the interest of its members.”*

The Commission took note of the fact that extending *locus standi*, would have implications for the rights of access before the Courts, specifically it raises questions about the availability of legal aid and the costs associated with enforcing the rights before the courts. However, the Commission regarded it as an important first step to relax the rules on *locus standi* to enable citizens to more easily access the protection of the courts.

In promulgating a Bill of Rights to provide protection for citizens, then a corollary should be to provide access to a tribunal. If the tribunal were a court, then there should be procedures in place to minimise the cost so that this would not be a barrier.

Further, the Commission considered that the language of the Constitution should be made clearer as to whom action could be brought against. Further the language ought to ensure that there is an understanding that an action can be brought against both the state and private individuals.

Recommendations

With respect to *locus standi*, the Commission recommends the following:

- (47) The *locus standi* provisions in the Constitution should be relaxed to make them less restrictive, especially as they relate to access to the fundamental human rights and freedoms provisions of the Constitution. In this regard the provisions of Section 38 of the enforcement provisions of the South African constitution should be considered.
- (48) The fundamental rights provisions should be enforceable against both the State and private entities/citizens.
- (49) The wording of the Constitution should be made clear in establishing the right of a private citizen to take action against a private citizen or entity.

CHAPTER FOUR

BECOMING A REPUBLIC WITH A NEW HEAD OF STATE

Monarchy or Republic – The Pre-Independence Debate

One of the topics that engaged the Marlborough House Conference in 1978 was the debate over whether Saint Lucia should continue with a monarchical form of Government or become a republic.

This debate is adequately captured in paragraph 6 of the Conference Report as follows:

“6. The St. Lucia Government proposed that the new constitution should continue the monarchical form and reported that this had been the consensus of view in St. Lucia and was reflected in the report of the Select Committee. The delegation representing the Opposition in St. Lucia felt unable to express a view on this matter, saying that the people of St. Lucia had not been adequately consulted and had not expressed a clear view on this specific issue. Since, however, no substantial body of opinion had raised overt objection to the principle of a monarchical constitution as proposed by the Government, the Conference proceeded on the basis that this was the system to be incorporated in the draft constitution until a contrary view was clearly demonstrated.”³⁵

The contentious nature of this discourse between the Government and the Opposition delegations can be further identified in the Conference Report at paragraph 12 under the heading of “The Governor-General” as follows:

“12. Subject to the reservation by the Opposition mentioned in paragraph 6, the Conference agreed that the constitution should provide that the Governor-General should be a citizen of St. Lucia. Opposition proposals that the Governor-General (a) should be elected by the House of Assembly; (b) should have been ordinarily

³⁵ 1978/Cmnd. 7328, p. 1.

resident in St. Lucia for five years before the appointment; and (c) should not be younger than forty years old, were not agreed.”³⁶

It was not unusual for such a debate to be going on in July 1978 as Trinidad and Tobago had become a republic in August 1976 and Dominica was about to become a republic in November 1978.

Becoming a Republic

According to Simeon McIntosh the post-colonial constitutions of the Anglophone Caribbean countries are:

... Orders-in-Council of the British Imperial Parliament –amended versions of the colonial constitution, with Bills of Rights engrafted onto them. This allowed easy transition from colony to independent state. This continuity implied no important changes between the colonial and independent constitution.³⁷

It is in that context that its continuation is regarded by its opponents as the very definition of colonialism. Former Prime Minister of Jamaica, P. J. Patterson noted that, because the Jamaican constitution was an order in council of Britain and therefore not a creature of the Jamaican Parliament, the time had come for the supreme law of the land to be established as an act of the sovereign Jamaican Parliament.³⁸ However in some quarters, there is the view that the constitutional monarchical system represents a better one than the republicanism political form.

The debate on repatriation of the constitution has thrown up three modalities of selection of the new Head of State:

- ceremonial President appointed by the Prime Minister.
- a publicly elected President,
- a President elected by members of parliament.

³⁶ 1978/Cmnd. 7328, p. 3.

³⁷ See Simeon C. R. McIntosh's, *Caribbean Constitutional Reform, Rethinking the West Indian Policy*; Caribbean Law Publishing Company; Kingston: 2002.

³⁸ See McIntosh, *Caribbean Constitutional Reform: Rethinking the West Indian Polity*. The Caribbean Law Publishing Company; Kingston, 2002.

Another element in the debate on repatriation of the constitution is to ensure that, while the change would lead to the removal of the British sovereign, it does not facilitate the increased political control of the political elite nor enhance the possibilities for constitutional crisis.

New Practices in State Craft Regionally

The post-independence era in the former British West Indies has witnessed the creation of three presidencies, namely in Guyana (formerly British Guiana), Trinidad and Tobago and the Commonwealth of Dominica. In two of these three territories, Guyana and Trinidad and Tobago, there was a change from being an independent monarchy to an independent republic which involved the replacement of the authority of Queen Elizabeth II in person as the Queen of Guyana and the Queen of Trinidad and Tobago respectively with presidencies in which the executive authority of the State was then vested.

In the case of the Commonwealth of Dominica, there was a termination of associated statehood and the creation of an independent republic in 1978 which had the effect of terminating the personal authority of Queen Elizabeth II over the country as its Queen at the point of the termination of association.

Guyana was an independent monarchy between 1966 and 1970 and became a republic with a ceremonial President in 1970. In 1980 its presidency was altered in such a manner as to make it an executive one. Trinidad and Tobago was an independent monarchy from 1962 to 1976 and then it became an independent republic in 1976 with a quasi-ceremonial president.

Under the independent constitution of Trinidad and Tobago and Guyana the relationship between Queen Elizabeth II as Queen of these colonies was substantially changed from a situation in which she acted on the advice of British Ministers to a situation where she became Queen of these independent monarchies acting on the advice of her Guyanese or Trinidad and Tobago Ministers as the case may be.

Owing to the fact that Queen Elizabeth II is the Queen of so many countries simultaneously, it is, therefore, necessary for her to have a personal representative in each independent country of which she is Queen in the person of the Governor-General. The authority of the Governor-General

of any Commonwealth country (which includes Saint Lucia) is located in the Royal Prerogative³⁹ of the British Monarchy and it is those powers that are exercised by the Governor-General on behalf of Her Majesty on the advice of local Ministers.

The reality is that the executive authority of the State is accordingly grounded in the Royal Prerogative of the British Monarchy. In the circumstances, Ministers and certain other public officials pledge an oath of allegiance to Queen Elizabeth II, her heirs and her successors upon taking office.

The transfer from monarchical to republican status in Trinidad and Tobago therefore saw the transfer of the Royal Prerogative to the new republic as the basis of their State power and the inclusion of transitional provisions in the Act of Parliament creating the Republic and the new republican constitution. In Guyana, provision was already made in the independence (monarchical) constitution of 1966 for Guyana to become a republic upon the approval of a resolution to that effect in the National Assembly by simple majority vote. There were no transitional provisions in the Constitution, but rather replacement provisions to give effect to the transfer. In 1980, Guyana enacted a new Constitution to become the Co-operative Republic of Guyana with an executive presidency.

In the case of the Commonwealth of Dominica, the island had become a State in free association with the United Kingdom (an Associated State) in 1967 under the provisions of the West Indies Act 1967. Like Saint Lucia, Dominica enjoyed full internal self-Government, while citizenship, defence and external affairs were the responsibility of the United Kingdom. Either party (the United Kingdom or an Associated State) could withdraw from the arrangement unilaterally under the provisions of the Act. The independence constitution of the Commonwealth Dominica of 1978 came into force on 3rd November, 1978 together with an Order made after a resolution was passed in the Dominica House of Assembly on 12th July, 1978 that led to the termination of Dominica's associated statehood following discussions with the British Government. Transitional provisions relating to the transfer from associated statehood to a sovereign democratic republic were included in the Constitution.

³⁹ The Royal Prerogative authority, privilege, and immunity recognised in common law as belonging to the sovereign alone.

Today, Saint Lucia is considering that option of becoming another republic in the Commonwealth Caribbean. Republicanism is the dominant form of Government among the fifty-three member states of the Commonwealth. There are sixteen monarchies of which Queen Elizabeth II is the Head of State and the removal of Saint Lucia from this category will reduce it to fifteen.⁴⁰

The removal of monarchy and its replacement by republicanism in Trinidad and Tobago and Guyana, and the creation of a republic at independence in Dominica required a method of election to choose an indigenous Head of State, namely the President of the Republic. It may be argued that this became necessary because of the fact that the succession to the British Monarchy could no longer be applied to the appointment or election of an indigenous Head of State for a new republic.

During the period of monarchy in Trinidad and Tobago and in Guyana, the appointment of the Governor-General was normally based on Letters Patent from Her Majesty given on the advice of the Prime Minister of that independent monarchy. The Governor-General in both Trinidad and Tobago and in Guyana held office "during Her Majesty's pleasure" which allowed the Prime Minister of the day considerable control over the actual appointment of a Governor-General as the Queen would normally act on the advice of the Prime Minister in appointing a Governor-General.

The heir to the British Throne would become, upon succession, the new Head of State of those independent monarchies in the Commonwealth that shared the person of the British Sovereign as their Head of State.

In Guyana, the President is elected by direct-like election; in Trinidad and Tobago the President is elected by an Electoral College which comprises a joint sitting of both Houses of Parliament, while in Dominica the President is elected by the House of Assembly only if the Prime Minister and the Leader of the Opposition are unable to agree on a single nominee for the office.

These methods, therefore, vary from the direct choice of the electorate, to the indirect choice of the Legislature and to the concurrence of the Prime Minister and the Leader of the Opposition. In all instances the President serves for a period of five years.

⁴⁰ There are five indigenous monarchies namely (i) the Sultan of Brunei; (ii) the King of Lesotho; (iii) the Yang di-Pertuan Agong (or King) of Malaysia; (iv) the King of Switzerland; and (v) the King of Tonga

The election of any proposed President of Saint Lucia will highlight the challenge of devising a method of election that will allow the holder of the office of President an important measure of legitimacy without competing with the Prime Minister and the Cabinet for political dominance in the system. The method of indirect election dominated by the elected representatives of the people of Saint Lucia would cater to such a need.

Such a presidency may be described as being quasi-ceremonial based on the mixture of advisory and minimal discretionary powers exercised by the President. This would not be dissimilar from what obtains currently with the Governor-General. In these circumstances, the shift from the Governor-General to the President is not alien to the political development of the Commonwealth Caribbean.

There was general consensus among Commissioners that the Presidency should be a ceremonial one and not an executive one. Accordingly, neither the President nor his/her Deputy would have control of any Ministry. Commissioners did not therefore support the idea of an Executive President, as it was felt that the concept was too radical a deviation from the present system and that Saint Lucian political culture was not ready for such a recommendation.

Recommendations

With respect to the model of government, the Commission recommends the following:

- (50) The Saint Lucia Constitution should be repatriated.
- (51) The constitutional monarchical system should be abolished and replaced with a republican constitutional system.
- (52) The personal authority of the British Monarch over Saint Lucia should be terminated.
- (53) The Head of State should be a ceremonial President.
- (54) The Head of State should be indirectly elected based on a limited electorate.
- (55) The oath of allegiance should be amended to reflect allegiance to the State of Saint Lucia.

The Head of State of Saint Lucia

The Commission considered Chapters II – The Governor General and IV – The Executive of the Saint Lucia Constitution jointly as some of the topics were closely related. There was consensus on a submission that the office of the Governor General should be abolished in favour of a Ceremonial President. With this change, the monarchical system will be replaced.

Method of Appointment

The Commission supported a submission that proposed a system in which the Nation, through its representatives in Parliament, elects the Head of State on the basis of indirect election as opposed to direct election by the people. The Commission agreed that the ceremonial President should be elected at a joint sitting of Parliament by a simple majority vote to replace the Governor-General and that the Deputy President should be elected in like manner at the same time.

The Commission agreed with the submission that a non-partisan person should be appointed as Head of State and that such an appointee should be scrutinised by both chambers of Parliament after a duly submitted recommendation by the Prime Minister following consultation with the Leader of the Opposition.

Qualification

There was consensus that the Head of State should be a Saint Lucian by birth who must be between the ages of thirty-five (35) and seventy-five (75) years of age. The individual must have a minimum residency of ten years immediately preceding his/her appointment.

The person who is elected to hold the office of President of Saint Lucia should not have held office in a political party or should not have been a candidate for elective politics within ten (10) years of his/her election as President.

Tenure

The Commission agreed that the President should be subjected to term limits and that no more than two consecutive seven-year terms should be permitted under the Constitution. The

Commission believes that the seven year term would promote continuity in the office and would reduce the politicisation of the office. It must be noted, however, that there was a minority but vocal view within the Commission who felt that the term of office of the President should be restricted to five years to coincide with the parliamentary electoral cycle of five years.

Removal from Office

The Commission found the provisions of the Constitution of Dominica on the issue of the removal of the President from office to be suitable for implementation in Saint Lucia with appropriate adjustments.

The President and Deputy President should be removed from office where:

- he/she wilfully violates any provisions of the Constitution;
- he/she is found guilty of an indictable offence;
- he/she behaves in such a way as to bring the office into hatred, ridicule, contempt or disrepute;
- he/she behaves in a way that endangers the security of the State;
- he/she is unable to perform the functions of his/her office because of mental or physical incapacity; or
- any circumstance were to arise that, if he/she were not President, would cause him/her to be disqualified to be elected under the provisions of the Constitution.

Procedure for Removal

The office of the President shall become vacant if-

- (a) the House (acting upon a motion signed by not less than one third of all the members of the House proposes the removal of the President from office on grounds of complaint specified with full particulars in the resolution;
- (b) a tribunal consisting of the Chief Justice and two other judges of the Supreme Court appointed by the Chief Justice, being as far as practicable the most senior judges, investigates the complaint and makes a report on the facts thereof to the

House; and

- (c) the House, after considering the report, by resolution supported by the votes of not less than two-thirds of all the members of the House declares that the President shall be removed from office.

Parliament may make provision with respect to the powers, practice and procedure of tribunals established for the purpose of subsection 1(b) of this section and, subject as aforesaid, any such tribunal may by regulation or otherwise regulated its own procedure.

Where a resolution is passed in accordance with subsection (1)(a) of this section, the President shall forthwith cease to perform the functions of this office; but he may resume the performance of those functions if, after the House has considered a report made to it under subsection (1)(b) of this section, no such resolution as is referred to in subsection (1)(c) of this section is passed.

Recommendations

With respect to the Head of State, the Commission recommends the following:

- (56) The Governor-General should be replaced by a ceremonial President with similar powers and responsibilities, save and except as otherwise recommended in this report.
- (57) The ceremonial President should be elected at a joint sitting of Parliament by a simple majority vote after a duly submitted recommendation by the Prime Minister in consultation with the Minority Leader .
- (58) There should be an office of Deputy President who shall be elected in like manner at the same time as the President.
- (59) The President should be a Saint Lucian by birth who has been resident in Saint Lucia for a minimum of ten years immediately prior to being nominated and must be between the ages of thirty-five (35) and seventy-five (75) years and should not have held office in a political party or stood for election as a candidate for elective office within ten (10) years of his/her nominated for President.
- (60) The same qualifications should apply to the Deputy President as for the President.

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- (61) The President should serve no more than two (2) consecutive seven-year terms.
- (62) The grounds and procedure for the removal of the President or the Deputy President from office should follow the equivalent provisions in the Constitution of the Commonwealth of Dominica with appropriate adjustments.
- (63) Neither the President nor his/her Deputy should have control of any Ministry of Government.

CHAPTER FIVE

REFORMING OUR PARLIAMENT

The Pre-Independence Debate

The Report of the Marlborough House Conference in 1978 reveals the following discussion under the heading “The Legislature” from paragraphs 13 to 20:

“13. Section 25(1)(b)(ii) should be amended so that a person who has resided in St. Lucia for a period of twelve months immediately before his nomination should be qualified for election to the House of Assembly.

14. An Opposition proposal to remove the disqualification upon a Minister of Religion for election to the House of Assembly was not accepted by the Government.

15. Section 26(5) should be amended so that Parliament may provide that any person who has held an office or appointment prescribed as a disqualifying office or appointment under that section and which carries emoluments above a prescribed level, shall continue to be disqualified for a prescribed period not exceeding three years after his relinquishment of that office or appointment. The Opposition made it clear that they were opposed to such a provision.

16. A provision should be added stipulating that a by-election must be held within three months of a seat in the House of Assembly becoming vacant.

17. Provision should be made for an Electoral Commission consisting of a Chairman appointed by the Governor-General in his own deliberate judgment and two other members, one of whom would be appointed by the Governor-General acting on the advice of the Prime Minister and the other would be appointed by him acting on the advice of the Leader of the Opposition. The duties of the Commission would be similar to those of the Electoral Commission in the Dominica Independence Constitution and there should be a Chief Elections Officer as in that Constitution.

18. Section 36 which relates to the alteration of the Constitution and certain other laws should be amended on the lines of Section 42 of the Dominica Independence Constitution so as to facilitate amendments relating to the West Indies Associated States Supreme Court.

19. The Opposition delegation tabled a paper proposing that there should be a Senate to act as a Review Chamber on [sic] the House of Assembly consisting of 12 persons elected from a list of candidates recommended by community organisations covering all aspects of the social, economic and cultural life of the island. The St. Lucia Government delegation were [sic] not prepared to accept the Opposition proposal. They proposed instead that the dormant provisions of the existing constitution relating to a Senate consisting of nominated members should be activated at Independence and thus included as an operative part of the Independence Constitution. They further proposed that of the eleven Senators only six should be appointed on the advice of the Prime Minister while the number to be appointed on the advice of the Leader of the Opposition should be increased to three. The two remaining Senators would be appointed by the Governor-General acting in his own deliberate judgement, after consultation with such religious, economic or social bodies or associations as he might think fit. The Government also proposed that a Minister of Religion should no longer be disqualified for appointment as one of the two Senators appointed by the Governor-General acting in his own deliberate judgement. The Opposition contended that the disqualification upon Ministers of Religion for appointment as Senators should be removed entirely.

20. Section 49 which relates to delimitation of constituencies should be replaced by provision for an Electoral Constituency Boundaries Commission which should consist of the Speaker of the House of Assembly as Chairman and four other members, two appointed by the Governor-General on the advice of the Prime Minister and two appointed on the advice of the Leader of the Opposition.⁴¹ .”

⁴¹ 1978/Cmnd. 7328, pp. 3-4.

Separation of Powers

A basic architectural premise of all modern democracies is that the main constitutional mechanism for assuring good governance is democratic accountability primarily through elections. Indeed in the process of drafting one of the first modern democratic constitutions (USA), founding father James Madison argued that “dependence on the people is, no doubt, the primary control on the Government.” It is anticipated that when these primary controls work well they will produce good Government through the selection of rulers who will govern for the common benefit of the citizenry. In so doing it is expected that the governing elite would be primarily motivated by patriotism and justice and that this would prevail over all other considerations.

Another architectural assumption of modern democratic constitutions is that the primary system may fail to produce such a body of citizens resulting instead in the selection of a group of individuals primarily motivated by local prejudice, narrow and sectoral interest or worst by sinister designs who may ultimately betray the interests of the people on whom they are dependent. Thus to guard against such a possibility, constitutional safeguards have been created in order to limit the capacity of the bad or self interested rulers to do serious harm to the public good. These fail safe constitutional systems of accountability are normally found in the separation of powers, federalism, the protection of specific individual liberties in an entrenched Bill of Rights, a system of checks and balances and an independent judiciary. Indeed as John Locke wisely advocated in the Social Contract, to simultaneously check and prevent the abuse of power, power must be able to check power, which he identified as executive, legislative and judicial. If one individual holds all powers, that is the power to make the laws (legislative), the power to enforce the laws (executive) and the power to judge violations, then the life of the citizen would be imperilled. This basic philosophical idea has also found expression in Baron de Montesquieu’s Spirit of the Laws where he argued that power should be enabled to check power so as to prevent tyranny. For:

“When legislative power is united with executive power in a single person or in a single body ... there is no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically

Nor is there liberty if the power of judging is not separate from legislative power and from executive power. If it were joined to legislative power, the power of life and liberty of the

citizens would be arbitrary, for the judge would be the legislator. If it were joined to executive power, the judge would have the force of an oppressor.

All would be lost if the same man or the same body of principal men, either of nobles, or of the people, exercised these three powers; that of making the laws, that of executing public resolutions, and that of judging the crimes or the disputes of individuals.”⁴²

In like vein James Madison in the Federalists papers 47 contended that:

“The accumulation of all powers, that is legislative, executive and judiciary in the same hands, whether of one, a few, or many and whether hereditary, self appointed, or executive, may justly be pronounced the very definition of tyranny.”⁴³

The central idea therefore is that good governance can only be guaranteed in the context of the separation of power and backed by a system of adequate checks and balances. Separation of powers can therefore only work effectively in an environment where the political elite in a system of governance are given adequate powers to check the potential for the accumulation of power in one branch of Government. Such an accumulation is viewed as potentially dangerous. In effect, this ability to check the other power would enable the system to not only resist and force a retreat but would ultimately safeguard the integrity of the system.

In designing the American political system, the founding fathers were less concerned with the efficiency of the institutional structures and deliberately did not seek to prevent conflict from paralysing the smooth operation of the system. Consequently, the doctrines of the separation of powers and checks and balances that were accepted by the framers of the constitution and which undergird the political model were not designed to promote efficiency but rather to prevent the exercise of tyrannical power.

The principles of the separation of powers and checks and balances have found expression under the American constitution more so than any other modern democracy. In stark contrast to this

⁴² Montesquieu, *The Spirit of the Laws* in Arend Lijphart (ed), *Parliamentary Government Versus Presidential Government*. Oxford: Oxford University Press, 1992; pp. 48-51.

⁴³ Madison, James. *The Particular Structure of the New Government and the Distribution of Power among its Different Parts*. The Federalist No. 47. New York Packet, Wednesday January 30, 1788. p.1

ability to constitutionally restrain and resist the amassing of power in one branch of Government, the Westminster parliamentary form of Government while paying lip service to the constitutional notion of the separation of power, is in fact defined more by the fusion of power than by the separation of power. Consequently, lacking the formal separation of executive and legislative functions, the Westminster system and its many parliamentary variations around the world tend to depend on a system of elaborate enumerations of protected individual liberties in an entrenched Bill of Rights and by a strong or relatively strong independent judiciary. It is anticipated that these two architectural pillars would safeguard these rights against the possibility of intrusion and at worst hijacking, by overzealous politicians. Parliamentary Government is therefore not as unfettered as a cursory glance at the main institutional pillars would suggest. Indeed parliamentary regimes are constitutionally, politically and legally constrained as they are subject to judicial review. Saint Lucia is no exception to this model.

Throughout our consultations with the citizenry of Saint Lucia, there were persistent strong calls for the reform of the current system that enables the political executive to completely dominate the legislative branch of Government. Submission after submission urged the separation of the Executive from the Legislature. Specifically, a call was made for the Constitution to make provisions for the complete separation at the level of personnel. In a slight twist to the usual recommendation that a complete separation of power be institutionalised, many Saint Lucians urged the Commission, to consider not only the separation of personnel and functions, but to create a system that would prevent the constituency representatives from exercising both legislative and executive functions.

The Commission agreed that small island states like Saint Lucia have suffered from the total domination of the Legislature by the Executive which can therefore lead to ‘runaway’ Executives. Nonetheless it considered that the current model was premised on the need for efficiency and that whatever changes made should have to reconcile the demands of the people for a clear demarcation of personnel and functions, with the need for efficiency of Government business. Therefore, the desire of the Commission to engage in a clear demarcation of the powers of the Executive and the Legislature, as a means of enforcing a stricter separation of powers while attempting to maintain the main architectural design of the model that facilitated efficiency led to

the engineering of a mixed model, with a different kind of executive branch of Government, than that which currently prevails.

In the view of the Commission, the only member of the Executive branch who will belong to both the Legislature and the Executive will be the Prime Minister.⁴⁴ To this end, he/she will be appointed on the basis of his ability to command the support of a majority of M.P.s elected to the House of Assembly and he/she will appoint Ministers who may emerge from Parliament but who must subsequently resign their position in the Parliament..

This means that the Prime Minister is accountable to Parliament and can be removed by a motion of no confidence there, but his Ministers will be vicariously accountable through a summons that will be issued to them by parliamentary committees and the presiding officers of both Houses to appear there as and when their presence is desired or required.

In order to satisfy the demands of the citizenry for change and for a clear demarcation between the legislative and executive branches of Government without encountering the problems associated with that architecture, the Commission considered the novel experimentation of the French Fifth Republic of 1958 which required that any member of the legislature who was selected to the Cabinet of Ministers must vacate his/her legislative seat and be replaced by a substitute. At face value, a bye-election seemed a reasonable device to use to effect a replacement. Moreover, it would be more easily accepted by the populace. However, the Commission was also motivated by a desire to ensure that the balance of power in the Legislative branch would not be unduly impeded should the selection of an MP to the Cabinet require a substitute. The Commission was certainly aware that it was not uncommon for some seats to be won by small margins. Consequently, it was politically possible that a bye-election could change the profile of the House of Assembly, with the attendant consequence of divided government. In our view this would be untenable and dangerous. Thus the appointment of any Minister from the House of Assembly will require a substitute M.P. to replace the M.P. for the constituency that the Minister previously represented. In order to effect this, political parties should be required under the new constitutional arrangement to name running mates for all constituencies that are being contested in general elections or bye elections and independent candidates should be required to name an alternate if they contest an

⁴⁴ However, it is to be noted that the Deputy Prime Minister, who is a member of Parliament, will be a member of Cabinet without ministerial responsibility and will exercise executive power when deputizing for the Prime Minister.

election. If at a future date there is the desire to appoint one of the Members of Parliament as a Minister, then the running mate can be sworn into office as the M.P. for that constituency. However there was a strong dissenting view which advocated that the replacement of the Minister can be effected through the agency of a bye-election, which is already part and parcel of the political culture of the country. Further, it was felt that it may be difficult for Saint Lucians to accept the replacement of their elected constituency representative by a substitute. Whatever the method used however, the objective of the reform is clear. Whether through the agency of a bye election or a substitute, the net effect would be to remove the fusion and coincidence that currently obtains under our present constitutional design without sacrificing the efficiency of the model.

In assessing the current method of selection to the Cabinet, Commissioners noted that the provisions of the Constitution permit the Prime Minister to select defeated candidates for appointment to the Senate and they were also frequently appointed to the Cabinet of Ministers. The majority of Commissioners accepted the status quo on the grounds that Saint Lucia like other resource starved countries, suffers from a critical mass problem. Consequently the majority of Commissioners opined that the retention of this constitutional and political practice, will allow Prime Ministers to appoint Ministers from among defeated candidates as well as persons who did not contest elections and are available for service. There was a strong minority view against this recommendation, on the grounds that one of the most frequent submissions received from the public was that this should not occur. The minority felt that the wishes of Saint Lucians should be respected. The majority also felt that rejection at the polls did not mean the public disapproved of possible appointment as a Minister, especially as Saint Lucians at home and abroad thought that Ministers of Government should be separated from the legislative branch of Government. In the majority's view therefore, the material basis for this recommendation remains.

In any event the Commission felt that, given the proposed reform of the political model, the Legislative branch of Government would be adequate to give the right to approve/ratify Prime Ministerial appointments to the Cabinet. This would be sufficient to guard against abuse.

Under the proposed system the House of Assembly may also pass motions of no confidence in the Ministers. Any motion that is successful can be reviewed by the Prime Minister for him/her to make

a determination as to whether to dismiss that Minister from the Government. That will be a political judgment call for the Prime Minister at the bar of public opinion.

In establishing a Government, the Prime Minister must ensure that apart from himself/herself that the following other Ministers are included in the Cabinet, namely the Attorney General, the Minister of National Security, the Minister of Foreign Affairs, and the Minister of Finance. These portfolios are considered essential to the operation of a Government at minimum.

In respect of the Attorney General, it was felt that the existing system of having a political Attorney General should continue. However many Commissioners felt that the qualifications of the Attorney General deserved special attention. For that reason, a group within the Commission felt that the Attorney General should have the same qualifications of a High Court Judge. While the Commission recognised that this would significantly reduce the pool of persons from whom the Prime Minister can choose, the Commission felt that this recommendation was a way to address the numerous concerns from the public about the competence of persons occupying the position.

The recommended hybrid model, while not fully embracing the American presidential political form, recognises the need to engage in some level of separation of the important functions and personnel of Government. We note that the presidential form is seductive with its fixed date of elections, its functional and personnel spread, however we can agree with *Walter Bagehot* in *The English Constitution: The Cabinet*, that:

“The American Government calls itself a Government of the supreme people; but at a quick crisis, the time when a sovereign power is most needed, you cannot find the supreme people. You have got a congress elected for one fixed period...which cannot be accelerated or retarded – you have a president chosen for a fixed period, and immovable during that period: all of the arrangements are for stated times. There is no elastic element, everything is rigid, specified, dated. Come what may, you can quicken nothing and retard nothing. You have bespoke your Government in advance, and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it

Even in quiet times, Government by a president is ... inferior to Government by a cabinet; but the difficulty of quiet times is nothing as compared with the difficulty of unquiet times. The comparative deficiencies of the regular, common operation of a presidential Government are far less than the comparative deficiencies in time of sudden trouble – the want of elasticity, the impossibility of a dictatorship, the total absence of a revolutionary reserve.”⁴⁵

Recommendations.

With respect to the separation of powers, the Commission recommends the following:

- (64) There should be the creation of a mixed model of Government with a different kind of Executive branch, to that which currently prevails. Under that new system the only member of the Executive branch who will belong to both the Legislature and the Executive will be the Prime Minister. However, the Deputy Prime Minister will serve as a member of Cabinet without ministerial authority except when deputising for the Prime Minister. To this end, he/she will be appointed on the basis of his ability to command the support of a majority of elected Members of Parliament and he/she will appoint Ministers. If a minister is selected from Parliament, he/she must subsequently resign as a Member of Parliament, to take up the post of Minister.
- (65) The Prime Minister will remain accountable to Parliament and can be removed by a motion of no confidence there, but his Ministers will be vicariously accountable through a summons that will be issued to them by parliamentary committees and the presiding officers of both Houses to appear there as and when their presence is desired or required.
- (66) The appointment of any Minister from the House of Assembly will require a substitute Member of Parliament to replace the Member of Parliament for the constituency that the Minister previously represented.
- (67) In order to effect this, one option is political parties can be required under the new constitutional arrangement to name running mates for all constituencies that are being

⁴⁵ Walter Bagehot, *The English Constitution: The Cabinet* in Arend Lijphart (ed), *Parliamentary Government Versus Presidential Government*. Oxford: Oxford University Press, 1992; pp.66-71.

contested in general elections or bye elections and independent candidates will be required to name a substitute if they contest an election.

- (68) If at a future date there is the desire to appoint one of the M.P's as a Minister, then the running mate will be sworn into office as the Member of Parliament for that constituency.
- (69) Alternatively, a bye-election can be held to fill the vacancy created by the appointment of an elected member of Parliament to the Executive branch.
- (70) The retention of the constitutional and political practice of appointing anyone including defeated electoral candidates to the Cabinet. This will allow Prime Ministers the same opportunities to ensure that their current availability of ministerial talent will remain intact.
- (71) The Legislative branch of Government should be given the right to approve/ratify Prime Ministerial appointments to the Cabinet.
- (72) In establishing a Government, the Prime Minister must ensure that apart from himself/herself, every Cabinet at a minimum consist of the following: the Attorney General, the Minister of National Security, the Minister of Foreign Affairs, and the Minister of Finance.

The Westminster Parliamentary Model

Independence constitution accepted the parent model of the Westminster parliamentary system. In essence the model of Government is defined by the following criteria:

- a) A dual executive (split between the Head of Government and the Head of State).
- b) A Parliament which has formal or informal powers.
- c) A Cabinet (Executive) which is the collective decision making body.
- d) The Cabinet which is politically responsible to the parliamentary representatives.
- e) A parliamentary majority which can force the Cabinet to resign through the no-confidence motion. As such, parliamentary Governments are typically defined by

Governments that rise and fall on the basis of the confidence of the parliament. The Chief Executive (The Prime Minister) must therefore be supported by a majority in the Legislative branch.

- f) As Governments rise and fall on the basis of the confidence of the Parliament, the terms of office of the Government and the parliament are not fixed. Essentially therefore, the Cabinet is supposed to be accountable to the parliament.
- g) Collective and individual responsibility of the Cabinet and the ministers to the parliament.
- h) The Prime Minister's ability to dissolve the parliament.
- i) Strong party discipline
- j) Fusion of power between the executive and legislative branches of Government.
- k) Typically too, in Westminster parliamentary democracies, the Head of Government (the Prime Minister) is not popularly elected.

Simply put, parliamentary Government can be defined/viewed as a form of constitutional democracy in which executive authority emerges from, and is responsible to, legislative authority and is thus accountable to the parliament. In this way parliament can dismiss a Government through an ordinary or constructive vote of no confidence.

The Parliamentary Westminster model of Government also concentrates power in the executive branch which when supported by the majority in the legislature, enables it to carry out the wishes of the parliamentary majority. Thus, in order to work effectively, the executive branch of Government and its parliamentary majority must work in tandem and in close cooperation. To ensure this close cooperation between the Cabinet and the legislative majority, strong party discipline is expected. Further, given the fusion of power between the Legislative and Executive branches of Government, the Westminster model ensures efficiency (swiftness) of decision making. This permits the Cabinet to not only conduct its legislative agenda with efficiency but also to conduct its domestic and foreign policy with the assurance that the parliamentary majority will support it against the Opposition. Additionally, the model of Government permits the easy identification of responsibility

for success and failure of Government policy. There is therefore little difficulty in allocating blame or praise.

While the model has clear advantages, nonetheless it also has serious defects especially as it functions regionally. Foremost among these defects is the excessive partisanship or adversarial politics. Secondly, given the fusion of power and the small size of the parliament itself, the legislative branch of Government has not been able to effectively check Cabinet to ensure that the Executive branch does not engage in hasty policy making that is designed to achieve short-term popularity of their policy proposals. Consequently, while the ability of the system to lend itself to speedy decision making and to avoid the gridlock and deadlock that is evident under the Presidential political form is advantageous, nonetheless, given the extensive concentration of power and swiftness with which decisions can be reached, it is fraught with danger. Ultimately therefore “There is no security for due reflection, no opportunity for second thoughts. Errors may be irretrievable”.⁴⁶

By comparison, the Presidential or Washington political model which is built on a clear separation of power and a system of checks and balances that is absent in the Westminster model, negates many of the defects of the latter system. Foremost among these, is the model’s ability to ensure that there is prudence and consensus in decision making given the imperative for both the legislative and executive branches of Government to support any piece of legislation. However, the institutional requirement for consultation and participation in the policy making ensures prolonged debate, which contributes to gridlock, deadlock and filibustering. According to Giovanni Sartori, the American presidential system is characterised more than by any other single factor, by the division (separation) of power between president and congress.⁴⁷ The essence of the American political system is the separation of the executive from parliamentary support, compared to the power sharing feature of parliamentary models, whereby the executive both stands on and falls without that support from parliament. Inevitably what has occurred as a result of the structure of Government in the United States is a system of divided Government. Sartori contends that, in the “last forty years, a trend of minority presidents, of presidents whose party did not have a majority in

⁴⁶ Bryce, James (1921). *Modern Democracies*. New York: Macmillan

⁴⁷Sartori, Giovanni. *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*. 2nd ed. MacMillan Press. 1997

the houses' has emerged".⁴⁸ This was a deliberate institutional device of the framers of the American constitution to prevent abuse and concentration of power that prevails under the parliamentary Westminster form.

Presidential systems such as the American prototype were therefore deliberately created to ensure safety, and not speed. Presidential Government also solves the problem of stability by guaranteeing that members of the executive and legislative branch serve a fixed term of years. This lends itself to stability unlike the parliamentary system which is quite flexible given the no confidence motion and the constitutional power of the Prime Minister to dissolve the parliament. However, a fixed term of office is a double edged sword as it can also contribute to the crisis of governability as the electorate has no constitutional means by which to replace a non functioning executive or legislative branch of Government. This can be compared to the Westminster parliamentary system that permits the parliament to remove the Government which fails to maintain the confidence of the Legislature and in this way avoid a constitutional or Governmental crisis.

Public Concerns.

One of the most consistent themes to emerge in the consultations of the Commission was the nature of the political system in the region. Specifically, Saint Lucians expressed strong concern about the seeming lack of a system of checks and balances, the nature and composition of the parliament, the overwhelming power of the Prime Minister, and the minimum time that parliamentary representatives devoted to constituency matters. The Commission considered all of these issues in arriving at its recommendations on reforming the parliament in Saint Lucia.

Bi-cameralism

Insofar as the political system is concerned, while the Commission seriously considered the many submissions that the current bicameral form should be abolished and replaced with a unicameral system, the Commission was not sufficiently persuaded by the arguments advanced. However, it should be noted that the Commission entertained various submissions on the nature and composition of the two houses of parliament, ranging from fully elected chambers, to partially elected and partially nominated chambers. Many of the recommendations showed an overriding

⁴⁸ Boyce, op.cit.

concern with the subordination of the Senate to the House of Assembly and the tendency of the Senate to rubber stamp the decisions of the Government. This, we accepted was related to the manner in which the Senate is appointed. Thus, we considered a submission that called for the appointment of Senators who were representatives of various interest groups in the Saint Lucian society. Specifically, the submission called for representatives to be appointed to represent the Trade Unions, the Business Community, the Professionals, the Churches, Sporting Bodies, and Environmental Interests and others. It was felt that constituency of interest should be required to appoint a representative from their ranks to sit on the Senate.

Mindful of the impact that such a reform would have on the functioning of the system, the Commission's position was that the current bicameral form should be maintained. However, the Commission felt that in an effort to make the Senate a more effective institution, there should be an increase in the numbers without undermining the Government's majority. Specifically, the Commission was persuaded that an increase in the number of independent Senators was warranted. As an appointed body it was felt that the Senate should not frustrate the elected element in parliament. While therefore the proposed minimalist reforms would not affect the balance of power, more independent voices would be heard in the Senate. In this way the Commission reasoned that the original intent of the Senate would be realised.

In a strong dissenting view on the composition of the Senate, it was proposed that the Senate should comprise an equal number of persons appointed by the Head of State in his/her own deliberate judgement, the Prime Minister and the Minority Leader. Such a reformed Senate it was argued, would be more effective and provide a "sober, second thought" on the work done by the Lower House. Consequently, this would promote "greater adherence to the principles of good governance through accountability, transparency and responsibility."

The Role of Elected Representatives

A vigorous debate ensued within the Commission on the question of the role of elected representatives in Parliament. Commissioners felt that while submissions' recommending the establishment of an American type political system was not justifiable, nonetheless there was an urgent need to effect some form of separation of powers. This was especially critical given the fusion of power and the small size of the national parliament which made it near impossible to

engage in any form of meaningful scrutiny of Government business. In evaluating the relative merit of the presidential system of Government, it was accepted that the appeal of the system partly resided in its ability to provide that critical scrutiny which was absent or minimal under the existing model. In the main, it was accepted that one of the failings of the current system appeared to be the absence of functioning Parliamentary Committees which is possible in larger sized parliaments. In the view of the Commission, Parliamentary Committees have a critical role to play as the watchdog of the Executive. Consequently, the Commission reasoned that freeing Parliamentarians from their triple function as legislators, executives and constituency representatives and restricting them to a dual function of legislators and constituency representatives would present the opportunity for the committee system to be more effective.

After more than thirty years of independence, the society has been able to assess the performance of the Parliament. Whereas the Independence discussions sought to make minor alterations to the structure and functioning of the Parliament, the Commission has concluded that Saint Lucians would like to see a parliamentary system where there is more scrutiny of public affairs and less dominance of a party line on all aspects of the functioning of Parliament and so on.

The debates about reforming the Parliament of Saint Lucia have involved the expression of a desire to give the Parliament more powers of scrutiny over the Executive branch of Government. In doing this, it became apparent that there was strong influence from the United States Constitution in respect of seeking to have ministerial appointments vetted by the Senate, the establishment of fixed dates for elections, seeking to have Ministers who were appointed from among the ranks of the Senators resign their senatorial positions and serve from outside the Parliament, et cetera.

Essentially, the strong influence of the Washington model in the reform of the Parliament would ultimately lead to the creation of a hybrid between the Westminster and Washington models as opposed to the retention of the Westminster-style democracy that has existed.

The major challenge to be faced here was how to create a greater separation of powers between the Legislature and the Executive in such a way as to find a mid-point between the parliamentary system that has existed in Saint Lucia since independence and the presidential system which is best represented by the Washington model.

Creating a Hybrid System

The Commission advocates the creation of a hybrid parliamentary – presidential constitution with parliamentarism being the dominant force. This system would be unique in the Commonwealth Caribbean.

Under this system, the Prime Minister would select Ministers who may emerge from Parliament but who must subsequently resign their position in the Parliament. In doing so, the elected Members of Parliament would only hold their positions as constituency representatives and as legislators. The hope is that this would lead to the development of professional legislators who could devote time to the scrutiny of legislation and provide oversight of the Executive through committees, while at the same time devoting themselves to the demands of their constituencies.

The objective here will be to create a greater check and balance against the exercise of excessive power. There will no longer be a parliament dominated by the executive since members of the executive branch will now be prevented from being members of the legislative branch with the exception of the Prime Minister and the Deputy Prime Minister.

This will create a more level political situation in relation to the separation of powers in which the dominance of the Cabinet over the Parliament will be diminished. Persons who seek to stand for election as a Member of the House of Assembly or are appointed to the Senate will be doing so on the basis that they will not also be entitled to become Ministers. These persons will be seeking to become parliamentarians, not Ministers.

The availability of more Parliamentarians to perform legislative roles as distinct from executive roles as Ministers can lead to more powerful committee oversight of Executive action by these Parliamentarians. In order to ensure that committee membership is seen to be attractive, the Standing Orders of Parliament will have to be amended to ensure a new level of functionality and legislators will have to be regarded as full-time servants of the State.

The position of a committee chairperson will have to become reasonably attractive under the new constitution in respect of the level of power that will be exercised so that persons who are willing to serve will come forward to be selected as candidates for their parties. Under the current system,

the main attraction is that if one is elected or selected to Parliament, one can become a Minister. Under these proposed reforms, that will no longer necessarily be the case.

With the emphasis in the creation of this hybrid being placed upon creating a more rigid separation of powers between the Executive and the Legislature, Parliament will play a renewed role as a scrutineer of Executive action. Ministers will now be required to attend committee hearings to discuss their portfolios under cross-examination from parliamentary committees which will not only retain accountability to Parliament on their part, but also create a new method of accountability.

Political competition inside and outside of political parties will create a different environment for scrutiny in which performance will have to be enhanced on the part of Ministers because of the type of cross-examination that they will have to undergo from their own colleagues as well as those opposed to them.

Some Effects of Hybridization

The retention of the bicameral system will ensure that there will be diversity in the different chambers of Parliament for hearings as well as the increased use of joint select committees for oversight with all special departmental committees consisting of members from the House of Assembly and at least one or two Senators.

The retention of a nominated Senate will ensure that the House of Assembly will be dominant over the Senate by virtue of the fact that the latter is elected and the former is nominated. When coupled with the retention of the Prime Minister as a member of the House of Assembly, the effect will be to make the House of Assembly and whoever controls an effective majority in it, the effective power broker under the proposed constitution.

There will now be a diversity of Committees which will lead to the establishment of three types of committees, namely (i) departmental oversight; (ii) standing committees; and, (iii) ad hoc committees. With the creation of special departmental joint select committees for oversight of Government Ministries and Departments and the Service Commissions, there will be the need for the Standing Orders of Parliament to be amended once the Constitution has been changed to recognise such committees.

The continuation of the existing oversight committees such as the Public Accounts Committee and other Standing Committees of both Houses and the specific committees for each House that currently exist such as the Privileges Committee and others will give them new meaning as the business of both Houses will be addressed by persons who are legislators only and not Ministers. This will change the culture of the operations of both Houses of Parliament.

This new and enhanced role of scrutiny for the Parliament will provide a basis for the introduction of some elements of the Washington model, insofar as the appointment of Ministers is concerned. The power of the Prime Minister to appoint whomsoever the Prime Minister wishes to be a Minister will be shared in such a way that the Prime Minister nominates Ministers and a majority of Members of the Parliament will ratify those nominations. This will be a new role for the House of Assembly and it will mean that the Cabinet can only be appointed after the Parliament has been summoned and the Members of Parliament take their oaths of office.⁴⁹

Recommendations

With respect to hybridization, the Commission recommends the following:

- (73) With the exception of the Prime Minister and the Deputy Prime Minister, Members of the House of Assembly and the Senate will no longer be members of the Cabinet.
- (74) The House of Assembly should scrutinise and ratify nominations made by the Prime Minister for persons to be appointed as Ministers.
- (75) Special Parliamentary Committees should be created as joint select committees to oversee Government ministries, departments, agencies and Service Commissions.
- (76) Ministers will be directly accountable to Parliamentary Committees.
- (77) These Committees will summon Ministers to appear to be questioned on matters of executive policy, proposed legislation and administrative functions of their Ministries.
- (78) Nomination of Ministers should be after Parliament has met for the first sitting.

⁴⁹ This will be the subject of further discussion in Chapter Six.

The Senate

The Commission would like to see an increase in the size of the Senate from eleven (11) to thirteen (13) Senators. The revised formula for the Senate will be seven (7) Senators appointed on the advice of the Prime Minister, (3) three Senators appointed on the advice of the Minority Leader, and three (3) Senators appointed by the President in his/her own deliberate judgement from among such groups or organisations or from such fields of endeavour as the President thinks fit.

The Commission received a submission that the role of the Senate and the role of the President of the Senate should be outlined in the Constitution. Further, the view was expressed that the Senate should take on an informational role in which it actually explores issues and presents them to the public. This role could be expressed through town hall meetings, chat rooms, public lectures, or the Internet, before the parliamentary stage.

In an effort to separate the Legislature and the Executive, there was a submission that the number of members of the Executive in the Senate should be restricted. A further submission proposed that the Senate should comprise expertise that can give legislative measures the scrutiny that they deserve in order to ensure the creation of a Senate that will function with a higher level of scrutiny than exists under the current Constitution.

In discussion, the Commission felt that to spell out the role of the Senate may in some way create conflict and could possibly prove to be destructive to the legislative process. Additionally, having the Senate take on an informational role could prove controversial.

Recommendations:

With respect to the Senate, the Commission recommends the following

- (79) That the status quo in terms of the role of the Senate should be retained.
- (80) The Senate should comprise expertise among its members that can give Bills the scrutiny that would enhance the process of approval.
- (81) An increase in the number of Senators from eleven (11) to thirteen (13).
- (82) The revised formula for the Senate should be seven (7) Senators appointed on the advice of the Prime Minister, three (3) Senators appointed on the advice of the Minority Leader, and three (3) Senators appointed by the President in his/her own deliberate judgement.

Choice of an Electoral System

In keeping with the pre-independence electoral environment, the 1978 Independence Constitution of Saint Lucia accepted the plurality First-Past-the-Post system (FPTP) as the effective electoral system of the country. Combined, the Constitution of Saint Lucia and the Elections Act⁵⁰ make it clear that Saint Lucia operates a single member constituency system for election purposes. Section 30 (1) of the Constitution which speaks to the composition of the House of Assembly clearly states that:

“The House shall consist of such number of members as corresponds with the number of constituencies for the time being established in accordance with the provisions of section 58 of this Constitution, who shall be elected in accordance with the provisions of section 33 of this Constitution.”

Section 33 (1) of the Constitution states:

“Each of the constituencies established in accordance with the provision of section 58 of this Constitution shall return one member to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.”

Further, Section 66 (7) of the Elections Act states that:

“The candidate who, on such final count of the votes, is found to have the largest number of votes, shall then be declared elected in writing and a copy of such declaration shall be delivered to each candidate or his or her agent, if present at the final count of the votes, or, if any candidate is neither present nor represented thereat, shall be transmitted to such candidate by registered post.”

In appraising the performance of the system currently in place in Saint Lucia, the Commission acknowledged the historical tendency of the model to restrain and therefore limit the number of

⁵⁰ Elections Act Cap 1.02 (Rev. Ed. 2006)

political parties that have acquired seats in the elected House of Assembly. Therefore the Commission agreed with the view that:

“The most serious and fundamental defect in the First Past The Post system is that it regularly and repeatedly fails to create a parliament in which the image of the feelings of the nation are truly reflected. There is the general tendency to exaggerate the representativeness of the largest party and to reduce that of the smaller ones.”⁵¹

The Commission also considered the possibility of this representational distortion resulting in a situation where a party may be able to win the Government (the absolute majority of seats) while finishing second in popular vote thereby creating an artificial majority. While the electoral history of Saint Lucia has not yet exhibited the latter tendency, nonetheless the Commission recognised that it was a distinct possibility and indeed was not alien to the Commonwealth Caribbean.

In its deliberations, the Commission considered different types of electoral systems. Special attention was paid to the system of proportionality which lends itself to erasing many of the distortions that are created under the current system. Foremost among the appeals of the proportional representation system was its tendency to create a political space for a greater number of political parties to participate in the decision making process of the country. Thus proportional representation would correct the tendency of the plurality electoral system to deprive third parties of representation.

However, the Commission was also troubled by the possibility that, given the historical closeness in the national vote, support of the two dominant political parties in the country, its adoption as the institutional system for Saint Lucia could lead to deadlock in the Parliament, create excessive control by party bosses, and had the potential to create instability. Therefore the Commission reasoned that the post election bargaining and horse trading which takes place under the Proportional Representation system (PR) would be avoided by the retention of the status quo. Further, the Commission recognises that proportional representation systems are prevalent in diverse societies with groups or groupings. These types of divisions are absent in Saint Lucian society.

⁵¹ See Peter A. Jamadar, *The Mechanics of Democracy: Proportional Representation Vs First Past the Post*. Port of Spain: Inprint Ltd., 1989.

The Commission viewed the FPTP system as a simpler system to administer than the other electoral models. Consequently the Commission rejected other voting systems such as the Single Transferable Vote, the Double Ballot System, the Proportional Representation system and others which might prove not only intellectually taxing but also incur higher administrative costs for the country. Additionally the Commission felt that the FPTP would work well with its flagship recommendation of the right of recall for the elected members of Parliament, which would be difficult, if not impossible, to exercise under a proportional representation system which was often recommended by Saint Lucians.

Perhaps with the single exception of the powers of the Prime Minister, no other issue occupied the mind of the Saint Lucian public more than the nature of the electoral system and the general elections environment. In that respect the Commission received memoranda and heard from the constituents during the many group discussions and public consultations that were held both at home and abroad. In general there appeared to be much dissatisfaction with the operation and performance of the model in the country.

Additionally the Commission received recommendations that there should be a fixed date of elections. This was justified on the grounds that such an important democratic instrument should not be left to the whims and fancy of the Prime Minister. This was readily supported by the Commission who felt that this constitutional power of the Prime Minister tended to give an unfair advantage to the ruling political party which would always select a date that was most convenient to them. The Commission, however, was cognisant of the fact that the retention of the parliamentary form of Government, albeit with some important changes, necessitated a refashioning of the electoral and parliamentary systems that would continue to provide the Parliament with the opportunity and the right to move a no confidence motion against the Government. In that regard therefore, the Commission felt that it would be impractical to maintain that important instrument of censure (no confidence) against the Government while instituting the fixed date of elections. How then to resolve the dilemma of a fixed date of elections within the confines of a parliamentary principle of the no confidence motion? In the event, the Commission took the compromised position that the fixed date of election would substitute for the current flexible timeline (subject to the constitutional requirement that elections be held once in every five years), except under circumstances where a successful no confidence motion automatically

triggered a dissolution of the Parliament of Saint Lucia. As such the Commission strongly advocated the retention of the current constitutional provision which provides for the Head of State to dissolve the Parliament if the Prime Minister fails to either resign or advise dissolution, within three days of the passing of a resolution of no confidence in the Government.

Recommendations

With respect to choice of an electoral system, the Commission recommends the following:

- (83) The First-Past-the-Post plurality system of elections should be retained.
- (84) There should be fixed dates for Parliamentary Elections so that these elections are held every five (5) years on the 5th anniversary of the previous elections.
- (85) Exception to the fixed date of elections should be made by retaining the provisions of Section 55 (4) (b) and (c) of the Constitution which state:

“(b) If a resolution of no confidence in the Government is passed by the House and the Prime Minister does not within three days either resign or advise a dissolution, the Governor-General acting in his own deliberate judgment, may dissolve parliament; and

(c) If the office of the Prime Minister is vacant and the Governor-General acting in his own deliberate judgment, considers that there is no prospect of his being able within a reasonable time to make an appointment to the office, the Governor-General shall dissolve parliament.”

Right of Recall

Against the backdrop of tremendous concern expressed by Saint Lucians about the behaviour of elected Parliamentarians, lack of accountability between elections, and general limited contact between parliamentary representatives and constituents, the Commission considered the proposals to make Parliamentary representatives more responsive to the people. We have already noted elsewhere in the report the changes that we envisaged for a reformed Parliament which in the Commission’s opinion would create a larger space for such representation. However, the Commission felt that this in itself was inadequate to correct the deficiencies in the current system of

delegated representation. Therefore we considered a number of mechanisms that have been utilised in various jurisdictions to create a closer relationship between constituents and the elected members of parliament. In our view the recall mechanism offered a best practice which could easily be adopted without seriously undermining the working of the system.

Simply put, a recall mechanism is designed to trigger a recall election of an elected official who in the view of the electorate has failed to perform or has violated a regulation. Globally, it is one of the best means of institutionalising a form of direct democracy, in which the politically relevant citizens are able to cut short the term of an elected representative through a public vote. There are several modalities but as a general rule, using the recall mechanism requires the affected citizens asking for a recall to sign a petition. Only when a sufficient number of the electorate signs the petition, would a recall process be initiated. This involves a special election (usually a referendum) to determine whether the official should be removed from office.

The Commission accepted that as a tool designed to effect greater accountability of elected officials the recall mechanism has tremendous value. In addition, the Commission believes it would deepen the democratic process in a representative democracy with little opportunity for direct democracy. Firstly, the Commission accepts the view that sovereignty should truly rest with the people. The Commission thus reasoned that as much power as possible should reside with the people. While the Commission noted that the citizenry/electorate entrust power to legislators and members of the executive, Commissioners felt that if that trust was broken or abused, there should be a mechanism to recall from office the offending politician. In this way, the Commission reasoned that elected officials would not only behave in a more ethical manner but would also be forced to perform even more effectively than at present. Secondly, the Commission considered that as elections generally focus on an entire party, the lack of a recall mechanism may allow an offending official to escape judgement when the public was desirous of returning a party to Government. As such, regardless of their incompetent and unethical conduct, such an official may escape judgement. The recall mechanism in the estimation of the Commission therefore, is designed to correct this, by isolating the official from the party and to also facilitate quicker action. Ultimately therefore, the Commission felt that in the period between elections, elected officials facing the prospect of a recall, would moderate their behaviour.

In arriving at its decision the Commission weighed the potential for disruption to the system and abuse by constituents. In evaluating the merits of the system, we accepted that a recall mechanism offered the potential for abuse. This was potentially dangerous, especially in elections which produced very close constituency results. Indeed marginal victories in constituencies are typical, not only in Saint Lucia but throughout the Caribbean where candidates often lose the constituency race by small margins. The Commission was also mindful of the fact that electorally the two main political parties are very close in terms of national support. In the past, Governments have been known to hold only a one seat advantage in the national Parliament. Under such circumstances the recall mechanism would be extremely attractive to the opposition and their supporters and powerful private interests groups adverse to the Government or the Member of Parliament. These groups could theoretically manipulate the system in order to effect a change of Government at any time. This, the Commission reasoned would be unfair and potentially dangerous as it would certainly present a picture of instability which a small dependent economy could ill afford.

To be sure, the Commission was mindful of the fact that while we were charged with offering solutions to deepen the democratic environment, we could not allow democracy to be undermined by the constant fear of local recall initiatives. Further, we acknowledged the vulnerability of elected officials, and in our estimation felt that in order to prevent deliberate mischief on the part of political opponents and highly partisan electors, the model of recall would have to have inbuilt a safeguard against the arbitrariness or abuse. In the perspective of the Commission therefore, a recall should only be initiated on very limited and specific grounds and should be subject to a time line. The commission was therefore of the view that the following conditions must be satisfied:

- Non-performance as it relates to constituency duties and which could only be initiated after the MP has served at least half of his parliamentary term; or
- Breach of a law, rule or ethical standard established by Parliament.

This of course is subject to our other recommendation elsewhere that an automatic recall should commence in the case of a Member of Parliament crossing the floor which would lead to an automatic vacating of the parliamentary seat.

In reviewing the various modalities used globally, the Commission was intrigued by the model which is used in Venezuela and which triggered the recall referendum of populist political leader and President Hugo Chavez. The specific regulation in Venezuela provides for the recall of an elected official, only if the elected official had served at least half of the term of office. Secondly, in order to trigger the recall mechanism, at least twenty five percent (25%) of the registered voters in the affected constituency must petition for a calling of a referendum to revoke that official's term of office. If voters in numbers equal to or greater than twenty-five percent (25%) of the eligible voters, who had, in the previous elections for the official, vote for recall, the official's mandate is revoked and a bye-election must take place to fill the vacancy with immediate effect.⁵²

The Commission agreed that the twenty-five percent (25%) threshold utilised in Venezuela was reasonable and should be adopted in Saint Lucia. Additionally, in cases of recall petitions, the Electoral and Constituency Boundaries Commission will be required to certify that the names and signatures on the petition are *bona fides*.

The Commission also felt that a sufficiently high ceiling should be placed on the recall election of sixty percent (60%) of the eligible electors in the relevant constituency. While there was general consensus on the right of recall, a minority of Commissioners was of the view that only persons who had voted in the previous election should have the right to participate in the recall election. The majority disagree with this viewpoint, maintaining that this would be difficult to administer by an Electoral and Constituency Boundaries Commission starved of resources and that in any event, every eligible voter had the legitimate right to vote in any election.

In evaluating best practices globally, the Commission also noted the need to ensure that in the event of a successful recall, the bye-elections triggered by this action would not remove the right of the recalled Member to contest the bye-election.

⁵² Venezuela enjoys a rather straightforward approach to recall which is contained under section 72 of its Constitution. Article 72 of the Constitution of Venezuela enables the recall of any elected representative, including the President. This provision was used in the Venezuela recall referendum of 2004, which attempted to remove President Hugo Chavez.

Recommendations

With respect to right of recall, the Commission recommends the following:

- (86) The right of recall should be provided for in a reformed constitution.
- (87) A recall should be automatically triggered if a Member of Parliament who was elected on a party ticket crosses the floor or changes his/her political allegiance.
- (88) A recall should also be initiated in cases where:
 - there is non-performance as it relates to constituency duties and which can only be initiated after the MP has served at least half of his parliamentary term; or
 - there is a breach of any law, rule or ethical standard established by Parliament;
- (89) In either of these two (2) cases mentioned above, at least 25% of eligible voters must sign a petition requesting a recall.
- (90) In cases of recall petitions, the Electoral and Constituency Boundaries Commission will be required to certify that the names and signatures on the petition are *bona fides*.
- (91) In the recall referendum, a Member of Parliament is recalled if at least 60% of eligible voters in the relevant constituency vote in favour of the proposition.
- (92) The recalled Member has the right to contest the bye-election.

Ministers of Religion

The debate about the role of Ministers of Religion that formed part of the Marlborough House discussions in 1978 continued inside the Commission insofar as they can be appointed to the Senate. There was much debate on the question of whether Ministers of Religion should continue to be barred from standing in elections. Commissioners were divided in their discussions on this matter. Some argued that Saint Lucian society is a very religious one and at election time Ministers

of Religion may have an unfair advantage. Others felt that the principle of the separation between Church and State is one which has stood the test of time.

Further arguments were that the Constitution of Saint Lucia had a Westminster foundation in which ecclesiastical representation was permitted in the House of Lords. In the Caribbean, other territories had removed this restriction thereby permitting Ministers of Religion to participate in electoral politics.

After much debate the Commission was unable to arrive at a consensus. The majority of the members of the Commission agreed to maintain the status quo.

Recommendation

(93) [With respect to ministers of religion participating in electoral politics, the Commission recommends that the status quo should be retained.](#)

Electoral and Constituency Boundaries Commissions

The Commission considered the Electoral Commission and the Constituency Boundaries Commission to determine whether the institutions should be merged or kept separate. On the one hand, the Commission considered a submission that the method of appointment of the Constituency Boundaries Commission left it vulnerable to undue partisan political influence, while the Electoral Commission managed to enjoy a degree of independence. On the other hand it was argued before the Commission that the Constituency Boundaries Commission was too important to be politicised and could benefit significantly from the independence enjoyed by the Electoral Commission. The question before the Commission was how to reform the Constituency Boundaries Commission to better insulate it from partisan political interference. In making its decision, the Commission noted that the current separation of the two commissions did not permit achievement of the purposes for which they were designed. Accordingly, the Commission believes that if the institutions were merged the Constituency Boundary Commission could be given the level of independence that it did not currently enjoy, provided that the manner of appointment of its membership followed the pattern of appointment of the current Electoral Commission. However, it was argued that with the merging of the two institutions, the membership should comprise five (5) persons. These persons would be appointed as follows:

- A chairperson appointed by the President after due consultation with the Prime Minister and the Minority Leader;⁵³
- Two (2) persons appointed by the President acting in his own deliberate judgement;
- One (1) person appointed on the nomination of the Prime Minister; and
- One (1) person appointed on the nomination of the Minority Leader.

It was agreed that the Head of State should be given greater power of appointment. The Commission was therefore of the view that the Head of State should have the power to nominate three (3) persons to the Electoral and Constituency Boundaries Commission. In their view the enhanced role of the President in the selection of the membership of the Commissions would afford the Commissioners a greater level of independence inasmuch as the President would now have greater independence than that enjoyed by the office of the Governor-General under the Independence Constitution.

Recommendations

With respect to the Electoral Commission and the Constituency Boundaries Commission, the Commission recommends the following:

- (94) The existing Electoral Commission and Constituency Boundaries Commission should be merged and called the Electoral and Constituency Boundaries Commission.
- (95) The membership of the Electoral and Constituency Boundaries Commission should comprise five (5) persons appointed as follows:
 - A chairperson appointed by the President after due consultation with the Prime Minister and the Minority Leader;
 - Two (2) persons appointed by the President acting in his own deliberate judgement;
 - One (1) person appointed on the nomination of the Prime Minister; and
 - One (1) person appointed on the nomination of the Minority Leader.

⁵³ Due to the sensitivity of the post of Chairman of the Electoral and Constituency Boundaries Commission, and due also to the fact that the President would not be popularly elected, the Commission regarded a requirement for consultation as essential.

CHAPTER SIX

CREATING A HYBRID EXECUTIVE

The Report of the Marlborough House Conference in 1978 reveals the following discussion under the heading “The Executive” from paragraphs 21 to 24:

“21. Opposition proposals that the Prime Minister should have to be a person born in St. Lucia of St. Lucia parents, and that he should not serve more than 10 years consecutively were not accepted. It was observed that as an elected member of the House of Assembly the Prime Minister would already be a citizen of St. Lucia.

22. It should be mandatory on the Governor-General (rather than within his discretion as at present provided) to remove the Prime Minister after a resolution of no confidence in the Government had been passed by the House of Assembly.

23. Consequential amendments should be included on the lines of those proposed in the Report of the Select Committee of the House of Assembly to take account of the possibility of there being no elected member of the Opposition, in which case the Governor-General would be enabled to act on his own deliberate judgement in matters where otherwise he would be required to consult the Leader of the Opposition. The Governor-General would also have the power to decide whom to appoint as Leader of the Opposition when there was doubt about which elected member commanded the most support among those elected members who did not support the Government.

24. There should be provision in the constitution for appointment of a political Attorney General at the option of the Government.”⁵⁴

The continuation of the dialogue that was started at the Marlborough House Conference about term limits for and the Powers of, the Prime Minister were once again considered by the Commission in active debate.

⁵⁴ Report of the Marlborough House Conference. 1978/Cmnd.7328, pp. 4 – 5

Submissions were received that term limits be established for the Prime Minister as Head of the Executive. The majority of the submissions were for two (2) terms not exceeding ten (10) years. The Commission held differing views on this matter. Some saw term limits as undemocratic, while those who agreed with term limits felt that and that after two (2) consecutive terms there should be a hiatus of at least one term before the individual is qualified to take up the office again.

Term Limits for the Prime Minister

The fascination with American presidential techniques, particularly in relation to term limits for the Prime Minister and fixed dates for elections for the Parliament appear not only to be a fixation with the Washington model, but also a fixation with trying to limit the considerable powers of the Prime Minister in Westminster-style constitutional systems.

As far as term limits for the office of the Prime Minister is concerned, this will be more difficult to regulate in a parliamentary system as the post-independence political history of Saint Lucia has shown. With the appointment of eight (8) different persons as Prime Minister over a period of twenty-eight years, there is no compelling argument for term limits other than the fact that Sir John Compton held the office so many times after independence.

What clearly complicates the measurement of this is the fact that the term of office of a Prime Minister of Saint Lucia is not broken if the party that he/she leads is successful at a general election. Section 60(7) of the Saint Lucia Constitution⁵⁵, confirms this as follows:

“If, at any time between the holding of a general election of members of the House and the first meeting of the House thereafter, the Governor-General considers that in consequence of changes in the membership of the House resulting from that election the Prime Minister will not be able to command the support of the majority of the members of the House the Governor-General may remove the Prime Minister from office.”

Such a constitutional arrangement emphasises incumbency and only places the burden for the removal of the Prime Minister from office if the Governor-General is satisfied that as a result of the

⁵⁵ Saint Lucia Constitution (S.I. 1978/No 1901, Schedule 1).

outcome of a general election the Prime Minister would be unlikely to command the support of a majority of the members of the House of Assembly.

It is for this reason that there was no need to appoint Honourable John Compton (later Sir John) in 1987 and in 1992. The same applied to Dr. the Honourable Kenny D. Anthony in 2001. Essentially, Sir John really served only one term between 1982 and his resignation in 1996 owing to the wording of the Constitution. The same can be said for Dr. the Honourable Kenny D. Anthony between 1997 and 2006.

Additionally, the desire for fixed dates for elections has arisen out of the number of times that there have been general elections in Saint Lucia. With eight (8) general elections in twenty-seven (27) years, one may argue that with fixed dates for elections the arithmetic would have been very different as forty (40) years would have had to elapse.

However, Saint Lucia has a provision in its Constitution at Section 55(4)(a) for the Governor-General to refuse the request of a Prime Minister for a dissolution of Parliament. It appears that this provision has not been invoked since independence and will provide a stronger basis for seeking fixed dates for elections in any reforms that may be undertaken to give effect to such a desire.

It is the domination of the political process by the Prime Minister and the party in power that has led many to seek ways to curb that dominance without compromising the ability of governments to govern. At the same time, Saint Lucians are all too familiar with the instability associated with political infighting and turmoil as we saw between 1979 and 1982 and also between 2006 and 2007.

The challenge is to provide for political stability while enhancing the institutions of scrutiny that can make governments more accountable to the population without hampering their ability to govern. To this end, the hope is that institutional change will bring with it altered political behaviour and the emergence of a different political culture.

Once more we can see that this represents the importation of the presidential technique of limiting the terms of office of the Prime Minister. The issue has been around for a while. It was directly considered by the Constitution Review Commission under the chairmanship of the Right

Honourable Sir Hugh Wooding in Trinidad and Tobago during the period 1971 – 74. The Wooding Constitution Commission took a hostile view of it in paragraph 284 of its 1974 Report as follows:

“We considered and rejected the suggestion that a limit should be placed on the number of terms which any person may serve as Prime Minister. Essentially at any general election voters choose the party which they wish to form the Government. It seems to us unthinkable to impose any restrictions on the number of successive terms which any party could win. Once that is conceded, it would seem to be wrong in principle to place a restriction on the party’s choice of leadership. This could have a significant effect on their chances of winning the elections. Compelling them to change their leader may, in effect, reduce their chances of success. We do not think that any useful purpose can be served from a study of the experience of the United States of America and some Latin American countries where the choice of President is essentially the choice of a person, not of a governing party. In these systems the office of President stands by itself separate and apart from Congress which may be controlled by a party other than that to which the President belongs.”⁵⁶

After considering whether to retain the Parliamentary system or whether to embrace the Executive Presidential model, the Commission was of the view that a hybrid parliamentary-presidential model should be considered for reasons outlined above.

The parliamentary model only works when the Executive can dominate Parliament. A presidential model can function with different parties controlling the executive branch and the legislative branch of Government or one party may control both with the concurrence of the electorate.

The key factor here is that both the fixed dates for elections and the proposal for term limits are features of presidential models of Government and are not features of parliamentary systems, unless there is some kind of compromise.

For example, Canada introduced fixed dates for elections by amending its electoral laws in May

⁵⁶ Report of the Constitution Commission, Trinidad and Tobago Printing and Packaging Co., 1974, para. 284).

2007; however, the amendment to the electoral law provided for an exception to the powers of the Governor-General under the Royal Prerogative (in order to avoid having to seek a constitutional amendment). Accordingly, the revised electoral law provided that a general election should be held at the federal level on the third Monday in October after the previous general election had been held. This established that the next general election ought to have been held on 19th October, 2009.

In September 2008, Prime Minister Stephen Harper, whose Government was surviving a number of confidence votes in the Canadian House of Commons because of opposition abstention to avoid forcing a general election, was able to secure a dissolution of Parliament in defiance of the electoral laws because the Governor-General, Michaëlle Jean, exercised the prerogative powers of the Crown to dissolve Parliament in 2008 one year ahead of the fixed date prescribed in electoral law which is inferior in the face of the prerogative powers of the Crown.

The proposal for term limits for the Prime Minister is fashioned after the Twenty-Second (22nd) Amendment to the United States Constitution that was ratified in 1951. The Amendment read as follows :

“Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.”

The amendment did not apply to the person holding office at the time of its approval, but would apply to future holders of the office of President. This amendment came into effect while President Harry Truman was in office but he did not seek to be elected for a third term after the New Hampshire primary in 1952.

Setting aside the example of Canada, the Commission recognises that fixed dates for elections in Parliamentary systems were not normal due to the problem that in the event of a crisis, (as occurred in Saint Lucia during the 1979 – 1982 period) the life of a Government may need to be ended prematurely. In short, the Commission recognised that one of the strengths of the Parliamentary system was the flexibility it allowed to end the Parliament earlier where circumstances arose which makes this desirable. Accordingly, if dates for elections were fixed a problem could arise where a Government may need to return to the polls, due to a loss of confidence for example, earlier than the typical five (5) year anniversary. Having considered the issue at length, the Commission decided to address this issue with fixed dates for elections by retaining the current provisions of Section 55 (4) (a) & (b) of the Constitution to ensure some degree of flexibility to avert possible constitutional crises.⁵⁷

In a Parliamentary system, the appointment of the Prime Minister is not determined by the people, but rather by the Head of State based on constitutional guidelines. In these circumstances, the Commission has determined that it will recommend that any appointment to the office of Prime Minister continue to be made as it is now, with the President replacing the Governor-General.

In the Commonwealth Caribbean, there are written constitutions that regulate the manner in which the Prime Minister is to be appointed. These constitutions may be separated into different methods

⁵⁷ In the exercise of his powers to dissolve Parliament, the Governor-General shall act in accordance with the advice of the Prime Minister:

Provided that:

- a) if the Prime Minister advises a dissolution and the Governor-General, acting in his own deliberate judgment, considers that the government of Saint Lucia can be carried on without a dissolution and that a dissolution would not be in the interests of Saint Lucia, he may, acting in his own deliberate judgment, refuse to dissolve Parliament;
- b) if a resolution of no confidence in the Government is passed by the House and the Prime Minister does not within three days either resign or advise a dissolution the Governor-General, acting in his own deliberate judgment, may dissolve Parliament;

as regards the appointment, and termination of appointment, of a Prime Minister. One method emphasises the incumbency theory by making provision for the removal of the Prime Minister only if the changes in the membership of the elected House, after a dissolution and before the first sitting of Parliament, are such that the Governor-General or President, as the case may be, determines that it is necessary to remove the Prime Minister from office. Otherwise, the Prime Minister does not have to be re-appointed if he/she continues to command the support of a majority of elected members after a general election. Commonwealth Caribbean countries that follow this method in their constitutions are Dominica, Grenada, St. Christopher and Nevis, Saint Lucia, and St. Vincent and the Grenadines.

Another method emphasises the need for the termination of office regardless of incumbency after a dissolution and before the first sitting of Parliament. In this case, the termination of office comes as a consequence of being re-appointed as Prime Minister so that one term of office ends and another begins for every incumbent. The appointment of someone else as Prime Minister will naturally end the term of the incumbent. However, effect is given to this termination merely by way of the Governor- General or President, as the case may be, informing the incumbent Prime Minister that he/she is to be re-appointed or someone else is to be appointed Prime Minister. Commonwealth Caribbean countries that follow this method are Antigua and Barbuda, Barbados, Belize, Jamaica, The Bahamas, and Trinidad and Tobago.

The incumbency method recognises that there is no need to re-appoint the Prime Minister if the alterations in the elected membership of Parliament after a general election do not warrant any change. The termination method makes it mandatory that the Prime Minister vacate office every time after a general election whether the reason is re-appointment or the appointment of someone else.

In Saint Lucia, the Parliaments that assembled after the general elections of 6th April, 1987 and 30th April, 1987 would have created some controversy as Saint Lucia had adopted the incumbency rule where re-appointment of the Prime Minister is not required as opposed to the case of Trinidad and Tobago where the termination method exists. Each term of Parliament in Saint Lucia is not matched by a re-appointment of the Prime Minister thereby negating a term limit rule. In Trinidad

and Tobago, a victorious outcome for the incumbent Prime Minister still requires a re-appointment in order to end one term and to start another.

Notwithstanding the above, a majority of the Commission voted in favour of term limits for the Prime Minister of three consecutive five-year terms. A minority however, viewed term limits as being somewhat undemocratic as it fails to take into consideration the wishes of the people if their desire is for a particular person to remain in office.

Recommendation

With respect to term limits for the Prime Minister, the Commission recommends the following:

- (96) No person should be appointed to the office of Prime Minister for more than three (3) consecutive five (5) year terms. Where a Prime Minister has served for three (3) consecutive terms, he/she may return after a hiatus of five years.

Direct Election of the Prime Minister Excluded from Hybrid

The Commission considered and rejected the submission that the Prime Minister should be elected in direct elections. However, it must be noted that this submission was among those with the highest frequency among the submissions that the Commission received.

The Commission was of the view that the recommendation of the direct election of the Prime Minister will lead to the creation of an Executive Presidential system along the lines of the United States. Commissioners did not support the idea of an Executive President, as it was felt that the concept was too radical a deviation from the present system and our political culture may not be ready for such a recommendation.

The prospect of having the Prime Minister being directly elected and the constituencies electing their representatives could create a situation in which the Prime Minister could emerge from a party that won a minority of seats in the House, but capture the premiership in national (and not constituency) elections. This would therefore make it difficult for the Prime Minister to implement the policies of the party to which he/she belonged because the majority in the House of Assembly may be controlled by another party. In a small island developing state like Saint Lucia, this may make governing untenable.

Recommendation

With respect to the election of the Prime Minister, the Commission recommends the following:

- (97) The *status quo* in relation to the appointment of the Prime Minister be maintained. There should not be direct election of the Prime Minister.

Deputy Prime Minister

The Commission received and considered many submissions calling for the direct election of the Prime Minister and a Deputy Prime Minister. The Commission did not support the idea of a directly elected Prime Minister and Deputy Prime Minister for the reasons canvassed above. While the Commission therefore rejected the submission, nonetheless in considering the new arrangements for the political executive in Saint Lucia, the Commission felt that it was necessary to give constitutional effect to the office of a deputy to the Prime Minister.

During its deliberations, the Commission concluded that in the interest of succession and decisive action, it would be preferable that a Parliamentarian be appointed to the post of Deputy Prime Minister. Accordingly, it was argued, that in the absence of the Prime Minister from the State, or under circumstances where the Prime Minister was unable to perform the functions of the chief executive as a result of illness, the Deputy Prime Minister would automatically fulfil the functions of the Prime Minister. Further, the Commission held the view that Section 63 (2) and (3) of the current Constitution which speaks to the appointment of a temporary Minister to replace a Minister who is unable to perform his ministerial responsibilities, should be amended to remove the discretion of the Governor General (now President) in respect of the position of Prime Minister..⁵⁸ Essentially

⁵⁸ Section 63

- (2) Whenever a Minister other than the Prime Minister is absent from Saint Lucia or is within Saint Lucia but by leave of the Governor-General is not performing the functions of his office or by reason of illness is unable to perform those functions, the Governor-General may authorize some other Minister to perform those functions or may appoint a Senator or a member of the House to be a temporary Minister in order to perform those functions; and that Minister may perform those functions until his authority or, as the case may be, his appointment is revoked by the Governor-General or he vacates office as a Minister under subsection (8) or (9) of section 60 of this Constitution.
- (3) The power of the Governor-General under his section shall be exercised by him in accordance with the advice of the Prime Minister;

therefore, under the new arrangement where the Minister in question under Section 63 (2) is the Prime Minister, the Deputy Prime Minister will automatically assume the duties of the Prime Minister. The Deputy Prime Minister shall be the one empowered under the Constitution to advise the President.

In order to facilitate the Deputy Prime Minister in the discharge of his functions when deputising for the Prime Minister, he would have to become a member of Cabinet upon his appointment but such appointment would not make him a Minister nor would such appointment require him to resign as a Member of Parliament. As a result of this, there would be two (2) elected members in the Cabinet, but the only time the Deputy Prime Minister would exercise Executive functions is when he is deputising for the Prime Minister.

Recommendations

With respect to the Office of the Deputy Prime Minister under the new Constitution, the Commission recommends the following:

- (98) Provisions should be made for the office of a Deputy Prime Minister.
- (99) The Appointment of a Deputy Prime Minister from among the elected members of the Parliament.
- (100) The Deputy Prime Minister upon appointment should become a member of Cabinet but not have ministerial responsibility other than when he is acting for the Prime Minister.
- (101) The necessary amendment of Section 63 (2) and (3) of the existing constitution that empowers the Governor General (now President) in the absence of the Prime Minister to appoint a temporary Minister to replace a Minister who for whatever reason, is unable to perform his functions.

The Attorney General

In respect of the Attorney General, it was felt that the existing system of having a political appointee as Attorney General should be retained. However, whichever way the Prime Minister

Provided that if the Governor-General, acting in his own deliberate judgment considers that it is impracticable to obtain the advice of the Prime Minister owing to his absence or illness he may exercise those powers without that advice and in his own deliberate judgment.

decides, the requisite qualification for the Attorney General should be equivalent to that of a High Court judge. While the Commission recognises that this recommendation may reduce the pool of persons from which the Prime Minister can choose, the Commission felt that this recommendation was a way of addressing the numerous concerns expressed by the public about the competence of the persons occupying this position.

Recommendations

With respect to the Attorney General, the Commission recommends the following:

- (102) The requisite qualification for the Attorney General should be equivalent to that of a High Court judge.
- (103) The option of appointing a political Attorney General should remain.

Maintaining Stability and Efficiency Under the New Hybrid: The Cabinet, Collective Responsibility and Parliament.

Undoubtedly the conceived political system envisaged under the proposed changes to the Constitution will have implications for the conduct of both parliamentary and executive behaviour. Having previously established that the anticipated system will maintain the parliamentary political form, while simultaneously engineering a near complete separation between the executive and the legislative branches of government, the burning question that the Commission needed to answer was, how would the system maintain its efficiency and stability in a context of a separation of these two important powers? Indeed, under the existing political form, one of the critical ex-post mechanisms used to maintain efficiency and stability is the doctrine of collective responsibility.

Simply put, the doctrine of collective responsibility refers to the conduct of Ministers of government in relation to government policy. By convention it is expected that Ministers are bound to publicly support the decisions of the Cabinet and should therefore not show public disagreement with those decisions. In so doing, the expectation is that there will be the appearance of Cabinet unity and party discipline and support with respect to governmental policy. Parliamentary government with a strong Prime Minister and Cabinet, which is the norm in the Commonwealth Caribbean, means that every member of the Cabinet, must accept and if, and when necessary, defend Cabinet decisions

even if he/she is opposed to and or dislikes them, unless he/she chooses to resign. While political developments in Saint Lucia have showed that collective responsibility has not always worked in the way that it is expected, and Ministers have chosen instead to violate the doctrine,⁵⁹ nevertheless it is primarily because of this conventional practice that governments have tended to remain efficacious and stable. Thus the doctrine of collective responsibility provides an effective constraint on the behaviour of Cabinet members as they are expected to be bound by the collective decision making process and outcome, even when they disagree with the decisions made. Ministers will therefore inevitably find themselves in a position where arising out of the convention, they must publicly (that is in Parliament) not only support but defend the policy even while personally finding the policy an abomination.

Samuel H. Beer et al therefore contended that under the doctrine of collective responsibility:

“Not only are members of the Cabinet bound in vote and speech to defend the authoritative decisions of the cabinet system, but so also are all members of the Government and, though not so tightly, their parliamentary private secretaries. Moreover the decisions to which they are bound are not only those of the full Cabinet. The decisions of the cabinet Committees now have the same validity as decisions of the cabinet proper.”⁶⁰

Another critical component of the convention is the need for secrecy about disagreements in Cabinet. It is argued that any revelation of Cabinet disagreements would mean that Ministers were not presenting a united front which is the core principle of the doctrine of collective responsibility.

Consequently, the constitutional doctrine of collective responsibility as it applies in Parliamentary systems has three main rules, which are:

- (i) the confidence rule, which dictates that government will only stay in power in so far as it continues to maintain the confidence of the Parliament, in this case the House

⁵⁹ Sarah Flood-Beaubrun violated the convention of collective responsibility when she publicly broke rank with her Cabinet colleagues over the abortion provisions of the Criminal Code of Saint Lucia.

⁶⁰ See Samuel H. Beer et al. *Patterns of Government: The Major Political Systems of Europe*. Random House: New York, 1973, p. 148.

of Assembly. The confidence of the Parliament is therefore always assumed unless there is a successful no confidence motion against the government.

- (ii) the unanimity rule, which requires that all members of the government speak and vote together in the Parliament unless an exception is made; and
- (iii) confidentiality rule, which provides for all discussions in the Cabinet to be confidential and private if open and frank discussions are to take place. This latter dimension of the doctrine of collective responsibility is the *sine qua non* of the doctrine, without which Cabinet government and governmental stability would be endangered.⁶¹

However, the Commission notes a recent decision of the Eastern Caribbean Supreme Court where the confidentiality rule appears to be eroded when the Court made an order for Cabinet minutes to be disclosed.⁶²

Under this proposed hybrid, all of these rules will have to be upheld in order to prevent Cabinet disruption. However, the Cabinet will have to depend upon the Leader of Government Business in the House of Assembly to uphold the confidence rule so that the Government will not collapse in the face of any no confidence votes. As regards the confidence rule in both Houses, the Leaders of Government Business in both chambers will have to try and ensure that Government policy is supported as no Ministers will have a right to vote in either House.

However, the Parliamentary caucuses of the party forming the Government will have to effect any compromises to policy and legislation given their control over party discipline in the Houses of Parliament.

In Parliamentary systems, legislators who support the majority usually toe the party line so as to avoid disrupting power arrangements for the Cabinet that depends upon the continued confidence of a majority of elected legislators. Under the hybrid which promotes a greater separation of powers (by removing the Ministers from Parliament), we eliminate the possibility where, as has happened in Saint Lucia, a member of Cabinet who has been part of a Cabinet decision, can vote against that same decision in Parliament.

⁶¹ See Stephen Buckley: *The Prime Minister and Cabinet*. Edinburgh University Press: 2006 for more details.

⁶² Attorney General v Kenny D. Anthony HCVAP 2009/031

In practical terms, discipline in the House should be the responsibility of the Leader of Government Business, acting on behalf of the Prime Minister, while discipline in Cabinet, should be the sole responsibility of the Prime Minister. However, political problems may arise in the cases of Ministers who are dismissed from, or who may resign, their ministerial portfolios as they may earn the support of others in the House of Assembly who may not toe the party line. The Prime Minister may be able to avert a political crisis by offering ministerial portfolios to any disgruntled M.P. thereby removing him/her from the membership of the House in exchange for ministerial office.

With the hybrid, the Cabinet will not collapse (as would be the case under the doctrine of collective responsibility under the present Constitution). All that would happen is that the Parliament would continue and Cabinet would be forced to engage in constructive dialogue and compromise, in order to effect policy and legislative changes. The Prime Minister will not be able to dissolve Parliament. Instead he/she would be able to rearrange the membership of the Cabinet and that of the House of Assembly and the Senate, through judicious use of his/her enhanced powers of appointment, subject to ratification. However, this can be curbed if a majority of the new substitute Members of Parliament and the existing Members of Parliament do not support the Prime Minister.

The Leader of the Opposition

The Leader of the Opposition will be appointed in the same way as exists now on the basis of being the Member of Parliament who can command the support of the largest number of Members of Parliament who do not support the Government. This would be measured by the fact that these Members of Parliament do not support the Prime Minister. However, the Commission recommends that the title of the office be changed to “Minority Leader” to capture the fact that the office is not about perpetual opposition to the Government.

The value of this office can be measured by the fact that the Opposition, in Westminster-style democracies, is considered the alternative Government. In the independence Constitution of Saint Lucia, provision has been made for the Leader of the Opposition to be consulted by the Governor-General before certain appointments are made in accordance with the Constitution. These include:

- the appointment of a tribunal to investigate the removal of the members of the Electoral Commission (other than the Chairman) (Section 57);

- the Parliamentary Commissioner (Section 110); and,
- the Deputy Parliamentary Commissioner (Section 111).

Recommendations

With respect to the position Leader of the Opposition, the Commission recommends the following:

- (104) The title for the office of Leader of the Opposition should be changed to “Minority Leader”.
- (105) The Minority Leader should be appointed in the same way as exists now for the Leader of the Opposition.
- (106) The Minority Leader should be consulted by the President on a wider range of matters as specified within the body of this report.

CHAPTER SEVEN

RE-ENGINEERING THE PUBLIC SERVICE

The Public Service

In every truly democratic society a public servant holds a unique status in many respects. As the servant or agent of the State, he/she enjoys special advantages and protections and correspondingly submits to certain restrictions. The public servant's distinctive position is recognised in the existence of a special chapter, Chapter VI, in the existing Constitution containing provisions relating to them and also to the express provisions in sections 10 and 11 authorising restrictions on their freedom of expression and of association and assembly, respectively.

The Public Service of Saint Lucia is part of the executive branch of Government and was originally established as part of the machinery of the colonial administration. Today, after thirty-two years of independence the ethos and regulations of the service remain substantially patterned upon that of Britain. As a result, and following the British tradition, the Public Service is characterised more or less by permanence, confidentiality, anonymity and political neutrality. The permanence of public servants ensures that the public service does not change with the Government. As a result, public servants should acquire a sense of duty to the country since they do not work for the goals of the political party in power - instead they work towards administering the country. Confidentiality ensures that all the advice that public servants give to Ministers remain secret so as to enable public servants to be totally frank with such advice without fear of reprisal. Through anonymity, the public remains unaware of the intricate details of the actual work done by individual public servants. The Minister (as distinct from the public servants) remains the one who is accountable to both the electorate and the Parliament. And finally, political neutrality should ensure that public servants do not bring their political views into their work. They are expected to be non-partisan. To make this possible the current Constitution insulates members of the Public Service and the police service from any political influence that may be exercised directly on them by the government of the day. The mechanism adopted for doing so is to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments, to remove and to exercise disciplinary control over members of the public service.

Underlying these characteristics is the legitimate concern that the Public Service and its servants should be seen to serve the public in the administration and implementation of Government policies and programmes, in an impartial and effective manner. The preservation of the impartiality and neutrality of public servants has long been recognised in democratic societies as of critical importance in the preservation of public confidence in the conduct of public affairs. The point is made by Hood Phillips' Constitutional and Administrative Law⁶³ that:-

“... the public interest demands the maintenance of political impartiality in the Public Service and confidence in that impartiality as an essential part of the structure of government in this country.”

A major challenge facing the Public Service in the post-independence era is that of making a paradigm shift from administration to management. The classical Weberian philosophy of an ideal-type bureaucracy whereby the existence of a hierarchy was the foundation for building a career in the public service on the basis of seniority and promotion until retirement and using the tools of administration of public policy as opposed to management of public policy has since been challenged. In addition, the reality that face modern human resource practice is the need, given the ever-increasing rate of change in the modern environment, for organisations to cultivate the practice of self-renewal. The hallmarks which may have characterised a “good” employee of yesteryear are no longer valid in today’s extremely competitive world, and given the ever escalating cost of the Public Service, the taxpayer deserves the best that can be provided, both in terms of service and productivity.

The issue of the “permanence” of public servants has been placed under examination by both the disappearance of the loyalty that once existed in the psyche in the public servant, and factors such as the growing tendency to recruit “contract” officers. In the face of the rapidly increasing pace of change, there will always be the need to inject specialist expertise into a dynamic public service. The injection of such expertise, however, must be carefully done; it cannot be assumed that the most brilliant technician is not the worst possible manager. The institutionalisation of appointments by contract throughout the Public Service may provide a solution to this issue. In this regard, the

⁶³ 5th edition (1973) at page 299

approach could be to define specific posts within the Public Service where such appointments could be made.

The hallmark of the good manager is to become thoroughly acquainted with the culture of his/her new organisation, and to try and bend that culture gradually in the direction of excellence. The “inertia” which is often complained about is however, a necessary “check and balance” which enables careful study of new policy – the good public servant is very familiar with the attention and action required in an emergency. The inexperienced one may not necessarily know which buttons to press.

The public’s perception of the public service seems to suggest that the political protection offered by Chapter VI in the Constitution is being abused. This stems from the usually inordinate delay in the hearing of disciplinary offences coupled with what appears as no serious culture within the Service to tackle these problems. There is also a feeling that corruption within the Service is astronomical and occurs at senior levels.

The Report of the Marlborough House Conference in 1978 reveals the following discussion under the heading “The Public Service” from paragraphs 26 to 28:

“26. A proposal by the Leader of the Opposition that the Prime Minister should consult the Leader of the Opposition before advising the Governor-General on the appointment and removal of the Chairman and members of the Public Service Commission and certain other public service officers was agreed.

27. The Conference agreed that the Teaching Service Commission should be among the public bodies given specific recognition in the constitution.

28. The Conference agreed that the Public Service Board of Appeal should consist of a Chairman, a member appointed on the advice of the Prime Minister, and two members appointed by the Governor-General after consultation with the various appropriate bodies representing the public service associations.”⁶⁴

⁶⁴ Report of the Marlborough House Conference 1978/Cmnd. 7328, p. 5.

Some of the submissions for reform of the Public Service that were received by the Commission may be summarised as follows: -

- (a) That the concept of a neutral, non-political public service be retained;
- (b) The jurisdiction of the Service Commissions should be extended to members of Statutory Corporations and members of Statutory Boards; it is therefore recommended also that a special Commission be introduced for statutory bodies, and a common professional resource service all of the Commissions' requirements under the aegis of the Public Service Ministry.
- (c) That Public Officers below a certain grade or rank should be given a constitutional right to sign public petitions, take part in the management of newspapers, furnish the press with letters or articles which are of a "political or administrative nature", give broadcast talks and participate in discussions of a political or administrative nature;
- (d) That members of the Service Commissions should be appointed by the Head of State (President) in the following manner (a) the Chairman, acting in accordance with the advice of the Prime Minister (b) one member, acting in accordance with the advice of the Prime Minister after consultation with the relevant employees' representative e.g. Saint Lucia Civil Service Association; and (c) up to three members on the advice of the Prime Minister after consultation with the Leader of the Opposition;
- (e) That members of the Service Commissions should enjoy tenure as well as protection of conditions of service;
- (f) That there should be a quarantine period during which retiring members of the Commissions may not hold public office;
- (g) Removal of members of the Commissions should only be for cause; and
- (h) That there should be a Tribunal hearing before dismissal of members of Service Commissions. Such Tribunal should be appointed by the Head of State and chosen from persons who hold or have held or are eligible to hold high judicial office.

- (i) The issue of corruption should be addressed by creating internal mechanisms of accountability in respect of lower level public officials but a more inquisitorial mechanism for senior officials such as the politicians, permanent secretaries and heads of departments by which they could be investigated without prejudice or favour and if found guilty suffer the consequences like any other ordinary person.
- (j) The institutionalisation of appointments by contract for specific post within the Public Service which should exclude posts of Permanent Secretary and Head of Department.
- (k) There is need for a Procedures Manual or and Operations Manual for the Public Service.

If the nature of the concerns which were expressed by both members of the public and by public servants themselves, are examined carefully, it will be noticed that they point to a realisation that the management of the human resource, the most important asset of any organisation, and certainly the most expensive commodity of the Public Service, does not appear to have kept pace with the developments which have occurred since independence. The role of the Service Commissions therefore, is paramount, and their leadership is crucial. The staffing resources with which they are equipped need also to be carefully chosen and thoroughly trained.

The Public Service Commission

The mechanism of the Public Service Commission, as in other Constitutions of this ilk, has been used as a means of protecting the public officer from any form of direct political pressure, to give effect to the concept of meritocracy in advancement, and impartiality in the application of disciplinary action. Increasing demands to ensure the fulfilment of these functions have made the resources allocated to the servicing of these requirements inadequate.

There was a submission that the Leader of the Opposition should have a greater role to play in the determination of the composition of the Public Service Commission. It submitted further, that the Public Service Commission should therefore comprise:

- three (3) persons nominated by the Prime Minister;
- two (2) persons nominated by the Leader of the Opposition (who will be

renamed “Minority Leader”); and

- one (1) person nominated by the President acting in his or her own deliberate judgment; this nominee should be the Chairperson.

The Commission accepted this submission noting that this represented an extension of the proposal at the Marlborough House Conference in 1978. In the Commission’s view, such reform would introduce a greater level of balance in the appointment of members of the Public Service Commission which it regards as a desirable goal.

There was also a submission that the Teaching Service Commission should be subsumed under the Public Service Commission for purposes of greater efficiency. This proposal represents a reversal of one of the reforms adopted at the Marlborough House Conference in 1978. The Commission agreed with this proposal for change on the grounds that separate service commissions was an unnecessary duplication and that, in practical terms, both commissions share the same personnel and resources.

Recommendations

With respect to the Public Service Commission and the Teaching Service Commission, the Commission recommends the following:

- (107) The Teaching Service Commission should be merged with the Public Service Commission.
- (108) The members of the Public Service Commission after the merger should be appointed by the President as follows:
 - three (3) persons acting on the advice of the Prime Minister;
 - two (2) persons acting on the advice of the Minority Leader; and
 - one (1) person acting in his/her own deliberate judgement who shall be the chairperson.
- (109) Each member shall have one vote with the exception of the chairperson who shall have a casting vote in the event of a tie.

The Police Service

In 1965 the Police Act⁶⁵ and the Police Regulations⁶⁶ became law in Saint Lucia. These two pieces of legislation were to provide for the organization, administration, duties and discipline of the Police Force.

The Commissioner of Police is empowered to deal with the hearing and determination of charges or complaints against members of the Police Force, below the rank of Inspector. He is also empowered to delegate these powers to other senior officers. In summary the Police was given power to hear and determine complaints against their colleagues. Needless to say as the years went by, the people of Saint Lucia became very frustrated with the situation and started to voice their frustration.

In order to curb the spate of discontent from the public against the members of the Police Force, the Police Complaints Act No 6 of 2003 was passed. The Act provided for the receipt, investigation and determination of complaints by the public against the police. It made provision for the establishment of a Complaints Unit within the Police Force and for the establishment and organization of a Police Complaints Commission.

Subsequently, in August 2004, the Complaints Unit and the Complaints Commission were established.

The primary functions of the Complaints Unit are as follows:

“Investigate complaints made by members of the public against police officers and referred to it by the Commission.”

Resolve the said complaints in accordance with the Act.

Finally to submit on a quarterly basis a progress report on the work done and eventually a final report on all investigations carried out by the Commission and the Commissioner of Police.”

⁶⁵ Police Act 30 of 1965

⁶⁶ Statutory Instrument 22 of 1965

The Complaints Commission on the other hand, had to receive complaints on the conduct of any police officer; monitor the investigation of a complaint by the Police Complaints Unit so as to ensure that the investigation is conducted impartially; report to the responsible Minister (for Home Affairs and Internal Security) from time to time or at his request; and to review reports from the Police Complaints Unit and may in such a case conduct an investigation of its own accord.

A perusal of the Police Complaints Act reveals that the Complaints Commission only plays an advisory role. It has no authority to either discipline police officers or establish departmental policies within the Police Force. The Commission is also unable to provide complainants with the results of disciplinary action recommended.

Notwithstanding and not surprising, the public continues to complain about the work of the Unit and the Complaints Commission. It is regarded as a waste of time for, in the final analysis, it is the same policemen who are investigating their colleagues. However, there appears to be some breakthrough, a little light through the tunnel. By Cabinet Conclusion No. 1243 of 2008, Cabinet approved the appointment of two independent adjudicators one for the North and the other for the South of the island.

The Commission received and considered a submission suggesting that there should be an independent police complaints authority because what currently exist undermines public confidence as investigations are carried out by police officers appointed by the Police Commissioner. In the Commission's view this practice represented a fundamental weakness in the current system.

Commissioners supported, in principle, the submission that there should be an independent police complaints office. If Saint Lucia is to re-engineer its police service, it has to ensure that an independent capacity exists with constitutional protection, for the conduct of investigations against errant officers whose treatment of civilians can have the capacity to damage the confidence and reputation of the police service in the eyes of the public.

In the view of the Commission, a modern police service is one in which the police will have confidence to protect and serve their communities and the nation. In order to instill that trust and confidence, the police service must have the capacity to withstand independent scrutiny. It should

have the power to suspend, discipline and prosecute if necessary, officers found to be in breach of their oath to uphold and preserve the law. To this end, an independent Police Complaints Commission is an absolute necessity. The powers being recommended for the police Complaints Commission are in addition to that which are already vested in the Commission of Police.

Recommendations

With respect to the Police Service, the Commission recommends the following:

- (110) There should be an independent Police Complaints Commission.
- (111) The Police Complaints Commission should be capable of suspending, disciplining and prosecuting, if necessary.
- (112) The existing powers of the Police Commissioner to exercise disciplinary control over officers should be retained.
- (113) The Police Act and Police Regulations should be modernised.

Scrutiny of Service Commissions

There was a submission that there should be a Parliamentary Committee to oversee the performance of Service Commissions and that the Opposition should be given the chairmanship of this committee with no political majority on the committee.

The Commission had mixed views on this submission. It was noted that the Service Commissions were established to insulate public servants from political influence. Some Commissioners argued that this would have the net effect of challenging the integrity of an independent Service Commission to guarantee oversight and maintain that independence. A counter view was that a Parliamentary Committee would serve to guarantee and maintain that independence. Yet another view was that it was unreasonable for public bodies like the PSC to remain untouchable.

Some Commissioners felt that the problem of non-performance within the Public Service is a problem of management within the Public Service and not an indictment of the Commissions.

As part of the process of re-engineering the Public Service, the question of some kind of scrutiny of service commissions may be required if their performance is to move the public service forward. The ethos of the service commissions in the Commonwealth Caribbean is one in which their independence is designed to protect the public servants from the politicians.

The challenge here is to determine how well the service commissions have worked. The tradition has been to treat service commissions as the “sacred cows” of the Constitution and to place them above the level of scrutiny. However, as bodies charged with making strategic decisions about public bureaucracies, there have been questions asked about their efficiency. Scrutiny would be designed to probe their efficiency and effectiveness as opposed to their independence.

The Commission was persuaded by this latter view and therefore supported the submission calling for the creation of a Parliamentary Committee to oversee the administration of service commissions. In the Commission’s view, it is important that the Parliamentary Committee’s role be restricted to the proper and efficient functioning of the service commissions but not scrutiny of its decisions. Some Commissioners nevertheless expressed their concern that this would compromise the independence of the service commissions by exposing them to the risk of political interference.

Recommendations

With respect to scrutiny of Service Commissions, the Commission recommends the following:

- (114) Service Commissions should be required to submit annual reports to Parliament.
- (115) Service Commissions should be subject to scrutiny by a Parliamentary Committee as to their administrative and management functions with a view to examining their efficiency and use of resources allocated.

The Director of Audit

The Commission reviewed the section in the Constitution relating to the Director of Audit. The Commission felt that the powers of the Director of Audit were clearly spelt out under Section 90. Notwithstanding that, the Commission felt that this office should be strengthened in relation to existing duties and responsibilities. Additionally, in the Commission’s view, the Director of Audit

should be answerable to Parliament. This would introduce a measure of accountability that would contribute to the overall thrust by the Commission to re-engineer the public service through the use of parliamentary scrutiny as a new device to promote greater efficiency and delivery of service.

One submission was that there should be a title change from Director of Audit to Auditor General. The Commission was referred to other jurisdictions where such a change had been effected. The argument advanced is that there is a perception that the office of Director of Audit was a department of a broader office not realising that it had overriding jurisdiction over all Government offices. A further argument was that many departments were headed by a Director and the perception was that the Director of Audit was just another such Director and not seen as a senior constitutional position, which it is. The Commission felt that the arguments advanced for a name change were sufficiently compelling.

Recommendations

With respect to the Director of Audit, the Commission recommends the following:

- (116) [The Constitution should make it clear that the Director of Audit is answerable to Parliament.](#)
- (117) [A name change from Director of Audit to Auditor General and the new office should be strengthened accordingly.](#)

The Director of Public Prosecutions

The Commission considered the provisions of Section 72(3) of the Constitution that permits the Attorney General (if the person holding the office is a public officer) to also hold the office of Director of Public Prosecutions. Commissioners felt that it was important to make a separation between the functions of the Attorney General and those of the Director of Public Prosecutions in order to remove the taint of the political directorate upon prosecutions being handled by the State.

There was a submission that the provision which requires that the Judicial and Legal Services Commission to consult with the Prime Minister in the appointment of a Director of Public

Prosecutions⁶⁷ should be removed.

Commissioners did not support that submission because it was felt that consultation with the Head of Government on such an important appointment was reasonable. However, the Commission was of the view that the Minority Leader should also be consulted.

Recommendations

With respect to the Director of Public Prosecutions, the Commission recommends the following:

- (118) The person holding the office of Director of Public Prosecutions should no longer be permitted to hold the office of Attorney General simultaneously under any circumstances.
- (119) Both the Prime Minister and the Minority Leader should be consulted in the appointment of the Director of Public Prosecutions.

⁶⁷ The Saint Lucia Constitution Order 1978, Section (89) (1, 2, 3)

CHAPTER EIGHT

LOCAL GOVERNMENT

Pre 1946

Local Government was introduced in Saint Lucia by an Ordinance No. 6 of 1850 entitled “The Mayor and Town of Castries”. Although the short title was specific to the town of Castries, provisions were also made for the town of Soufriere and the other rural districts to incorporate their own Local Government councils.

The procedure for the incorporation of any town or district council was the submission of a petition to the Lieutenant- Governor signed by two thirds of the male inhabitants of full age who were owners of three acres of real or free hold property, or lessees of six acres of land, or was in possession of real or personal property with a clear value of £300, in the town or rural district.

The first petition requesting the incorporation of a Local Government Council consisted of one hundred and twenty- six (126) names of the burgesses of Castries and it was published in the Gazette of January 2, 1851. By a Proclamation dated February 18, 1851 the Lieutenant- Governor announced that elections will be held on February 27, 1851 and that the elections will be conducted by a “Barrister, Attorney or Notary as the Lieutenant- Governor may appoint for that purpose”. Elections were for nine (9) Councillors and two (2) Auditors. There were no provisions, however, which prevented Government officials, or employees of the Crown from being elected, but clergymen were not allowed to run for any of these offices.

Elections were held every three (3) years until 1872 when an Ordinance entitled “Castries Town Board” was passed by the Legislative Council at the instance of, and proclaimed by, the Administrator G. William Des Voeux on May 4 of that year. This Ordinance disbanded the elected council and replaced it with a Castries Town Board of three (3) members nominated by the Administrator who also served as Chairman.

Elected Local Government was reintroduced by an amended Castries Town Board Ordinance of 1889, which provided for the town of Castries to be governed, by a Corporate Body with perpetual

succession and a Common Seal. The number of councillors was reduced to eight (8) and the first election under this Ordinance was held in December 1889.

Post 1946 to Present

After a period of suspension, local government was reintroduced in Saint Lucia with the passage of the Local Authorities Ordinance of 1947. For much of the period between the 1950s to the late 1970s, Local Government operated at the very heart of community life, offering a range of services.

In 1979, Local Government elections were again suspended and Interim Councils comprising nominated members were appointed to conduct the affairs of Towns and Village Councils.

In 1997, a Local Government Reform Task Force was established by Central Government, to, among other roles, “examine and advise on the appropriate legislative, fiscal, institutional and administrative measures required to strengthen the operations of Local Government.”⁶⁸

A Green Paper was published by the said Task Force as a Discussion Draft, after much consultations and discussions at a series of consultative meetings. Unfortunately, this document was not circulated for review, nor put up for any further discussion or public consultation.

However, this Commission noted some salient recommendations of the Task Force, which the Commission felt were worthy of consideration in making recommendations for the entrenchment of Local Government in the Constitution. In particular two issues were highlighted by the Commission, namely:

- (i) roles and functions of a Local Government Authority; and
- (ii) a new structure for Local Government.

One of the goals of Local Government is that it should be established at the heart of communities, providing a broad range of services. Further, Local Government should have the power to provide any service they consider necessary that will redound to the benefits of the people that they serve, in addition to those other functions and services that are assigned exclusively to Central Government.

⁶⁸ *Green Paper on Local Government* (Discussion Draft) Undated.

It is being recommended that a two-stage approach to service provision be adopted as follows:

- (i) in the short term the focus should be on 'Standard Services', meaning those services which are exclusive and local in nature which might more efficiently be provided at a local level. For example: maintenance and repairs of roads, cemeteries, squares, sporting facilities, parks, beaches and open spaces, public buildings; granting of permits and licenses, operation of libraries etcetera; and
- (ii) Long Term Services – the focus might be on those services which might be provided at a later date as the Local Government Authority develops the requisite capacity; including but not limited to, advisory to Central Government, provision of housing for the poor, destitute and disabled, provision of primary health care, management of pre-schools, land use planning, operation and maintenance of select educational facilities such as libraries and schools.

Conduct of Elections

Prior to the suspension of Town and Village Councils, elections were conducted in accordance with Regulations in the Local Authorities Ordinance of 1947. Each prospective candidate would apply for nomination papers, which would be endorsed by signatures of six eligible voters and returned to the Presiding Officer appointed for such election in the said community. On the prescribed Election Day, eligible voters of the said community would cast their votes accordingly for the number of members required since the term of office of all members would not expire at the same time. There would be on the Council, three nominated members appointed by Central Government to represent their views and seven elected members. The Council would comprise ten members of which one elected member would be the Chairperson and one of the three nominated members would be elected as the Deputy Chairperson. The Chair and his Deputy would be elected by the entire Council at the first sitting of the Council.

The Commission noted that at the public community consultations conducted by the Task Force of Local Government Reform, the feedback clearly indicated that persons did not wish to see elections contested on the basis of party politics. The view was that party politics was divisive and would not encourage the growth of "community spirit and action", which it is believed to be the

bedrock of Local Government. The Commission endorses this view of the Task Force as this assertion is consistent with the findings of the Commission during its community outreach activities.

The Commission is mindful of the importance of keeping the election process simple, so as to increase the potential for effective participation. However, it would be unfair to exclude the views of the Parliamentary Representative from the discussions of the Local Government Authority when deciding on improvement and developmental plans of the community.

Role of Parliamentary Representatives .

The role of the Parliamentary Representative in Local Government is of paramount importance. The Parliamentary Representative, as the name implies, represents all the people in his/her constituency in Parliament regardless of their party affiliation. Following the recommendation of the Commission that Parliamentary Representatives should no longer be Ministers of Government, the primary function of the Parliamentary Representative would be the welfare of his/her constituents in conjunction with the Local Government Authority. Besides nominating persons for membership in the Local Government, the Parliamentary Representative should be a liaison between the local authority, Central Government and in particular the Ministry or ministries responsible for Local Government and community development.

There must be a link between the Parliamentary Representative and the Local Government at all times. These two parties must treat each other with mutual respect. Local Government will function effectively if appropriate communication linkages are established between the Parliamentary Representative, the Local Government and the Ministry responsible for Local Government. The relationship should be a collaborative and consultative one. To cultivate this, it is imperative that a programme of education and awareness be planned to sensitise both the Parliamentary Representative and the Local Government in team building and conflict resolution.

In seeking to re-engineer the public services of Saint Lucia, the emphasis has to be placed upon delivery of goods and services to the population. The most effective manner in which to accomplish this will be to re-introduce the system of elected Local Government on such a basis that the implementation of Government policy can reach all corners of Saint Lucia.

Since its suspension in 1979, there have not been any Local Government elections and the Commission would like this to be the first step towards a renaissance movement to carry Government to the very basic levels of society.

There is no other way that the citizens of Saint Lucia will enjoy the benefits of public policy decisions on an equal basis unless the State is prepared to employ a philosophy of decentralisation in which the Local Government network can serve as the vehicle of delivery.

The ravages of Hurricane Tomàs in October 2010 only served to highlight the need for fundamental reform of the public services and their ability to reach all communities. As Saint Lucia rises out of the trauma of that event, the lessons to be learnt may now be squarely addressed in reforming the Local Government system as part of the overall exercise of re-engineering public service delivery.

The Commission recognised that Local Government was too important an issue to be left to ordinary legislation. Therefore, in seeking to make improvements, the Commission recommends that Local Government be entrenched within the Constitution so that it receives the appropriate protection and permanence that it deserves.

The Commission recommends that there should be a place for Community Based Organizations (CBOs) in the new arrangements for Local Government on a non-partisan basis.

The Commission agrees that Local Government is an important step forward in making systemic change. To that end, it recommends the adoption of a system of nominated and elected members with the elected representatives constituting the majority.

In its examination of the issue of Local Government, the Commission reviewed the aforementioned Green Paper on Local Government. The Commission noted that this document contained many good recommendations which could serve as a basis for the reintroduction of an effective system of Local Government.

Among the objectives outlined in Statutory Instrument No. 50, 2004, the Commission was mandated “to promote better governance and greater equity in the constitutional framework

generally”. There could be no better way to accomplish this objective than to restart the Local Government system on an ideally non-partisan basis.

Recommendations

With respect to Local Government, the Commission recommends the following:

- (120) The system of elected Local Government in Saint Lucia should be re-established.
- (121) The Constitution should make provision for Local Government to be entrenched.
- (122) Community Based Organisations (CBOs) should be an essential component of Local Government.
- (123) Local Government bodies should comprise both elected and nominated representatives with the majority being elected.
- (124) Local Government should be instituted as a means of facilitating more efficient delivery of goods and services by the State to all communities.
- (125) Local Government authorities should comprise the following:
 - Two (2) members nominated by the Parliamentary Representative
 - Two (2) members nominated by CBO's
 - Six (6) members elected in Local Government elections
- (126) Public Officers, whose functions do not involve the formulation and direct implementation of Government policies, should be allowed to stand for election to Local Government.
- (127) There should be a formal link between the Parliamentary Representative and the Local Government Authority.

CHAPTER NINE

STRENGTHENING THE INSTITUTIONS AND PROCESSES OF SCRUTINY AND OVERSIGHT

The Report of the Marlborough House Conference in 1978 reveals the following discussion under the headings “Parliamentary Commissioner”, “Integrity Commission” and “Salaries Review Commission” from paragraphs 30 to 32 :

“Parliamentary Commissioner - 30. Provision should be included in the constitution for such an office on the lines of Chapter VIII of the Dominica Independence Constitution.”

“Integrity Commission – 31. Provision should be included in the constitution for an Integrity Commission, similar to that of Trinidad.”

“Salaries Review Commission – 32. An Opposition proposal to provide in the constitution for a Salaries Commission as in the Trinidad constitution was not agreed.”⁶⁹

These three proposals came from the Opposition delegation to the Conference, but only two of the three were agreed. The declassified summary on what was agreed for the Parliamentary Commissioner and the Integrity Commission reveals as follows :

“10. Parliamentary Commissioner – At the suggestion of the Opposition delegation at the constitutional conference provision has been made in the new constitution for a Parliamentary Commissioner to investigate complaints of maladministration along the lines of the Parliamentary Commissioner in the United Kingdom.

⁶⁹ Report of the Marlborough House Conference(1978/Cmnd. 7328, p. 7).

11. Integrity Commission – At the suggestion of the Opposition delegation at the constitutional conference provision has been made in the new constitution for an Integrity Commission. Its functions are to receive declarations as to the financial interests of Senators, Representatives and certain officials.⁷⁰

In 1978 it would have been considered progressive to advance such institutions of scrutiny as the discipline of public administration and the study of the administrative sciences were moving in the direction of transparency, scrutiny and monitoring of the personal performance and wealth of individuals in public life.

The fact that the proposals made by the Opposition delegation to the Conference were all to be borrowed from elsewhere is testimony to the fact that no attempt was made to reinvent the wheel. The reality is that many constitutional proposals are transportable anywhere and they can be adjusted to suit local realities. And so it was with the Parliamentary Commissioner and the Integrity Commission in Saint Lucia.

The intention of both the Parliamentary Commissioner and the Integrity Commission are clearly stated in the declassified summary above. However, the Commission did have some views on how to strengthen them.

One of the shortcomings of the Westminster-style model in the Commonwealth Caribbean has been the slow development of a culture of scrutiny of public officials by dedicated institutions that are expected to play an enquiring role in the affairs of State. This has tended to be exacerbated in small states where the concentration of power in majoritarian democracies has only been undone by the will of the electorate or internal political struggles between persons who belong to the same political parties and who are seeking power for themselves.

The creation of a culture of scrutiny can only come through a fundamental systemic alteration that will not undermine the ability to govern, but will curb the excesses of the zero sum game (winner takes all) that emerges after victory in a general election. The perception of the State as an agent of victimisation against persons of a different political persuasion has to be tempered against the

⁷⁰ U.K. National Archives, FCO 44/1910, Folio 419, Annex A, St. Lucia Constitution.

need for a new Government to exercise its right to dispense political patronage. At the same time this ought to be accomplished without doing injury to the ability of the State to function effectively, as well as not jeopardising the contribution of persons of unquestioned talent already holding certain positions.

The Parliamentary Commissioner

The Commission examined the provisions relating to Parliamentary Commissioner. It regarded the position as an important institution of scrutiny and oversight. It noted that notwithstanding the provisions there was a general perception that the office was ineffective and required strengthening.

The Commission received the following submissions relating to the Parliamentary Commissioner:

- Reports made by the Parliamentary Commissioner should be released verbatim to the public once they have been laid in the Parliament, except in cases such as in the interest of national security, because these reports are the people's business and the people have a right to know.
- The Parliamentary Commissioner's Annual Reports should be released to the public after review by Parliament.
- The Parliamentary Commissioner should be retained, but the process, when it comes to investigating certain matters, is in need of change because the existing system is ineffective.
- The Parliamentary Commissioner's main budget to be approved by an independent board as a local grant.

In the Commission's view, there is need for the office of the Parliamentary Commissioner to be strengthened since Commissioners felt that the Office was not taken seriously enough by Parliament and the general public. The Commission noted the lack of any specific action taken on the reports of Parliamentary Commissioners and the general lack of awareness of the Office and its functions by the public. Commissioners supported in principle the submission that the

Parliamentary Commissioner's reports should be released verbatim to the public, except in those cases such as in the interest of national security.

While the Commission was unclear as to how a local grant would be administered within the context of the Finance Laws and Regulations,⁷¹ the Commission was of the view that the office of the Parliamentary Commissioner was in need of greater financial independence. Therefore, adequate provisions should be made to guarantee the financial independence and to promote greater efficiency of the office.

The introduction of a hybrid system whereby parliamentarians will be expected to perform as full-time legislators will create the environment for a functioning committee system. In these circumstances a forum will be available for detailed examination of the reports submitted by the Parliamentary Commissioner. A properly functioning committee system in Parliament can be an effective watchdog for the public and, in the process, strengthen this institution of scrutiny over the public service.

Commissioners felt that if every report produced by the Parliamentary Commissioner could get devoted committee time in Parliament, then the problems encountered by average citizens in their daily lives as reported by the Parliamentary Commissioner would get attention. The Commission believes that this would make a difference to people who feel that their issues matter to somebody and that real action to redress maladministration will be taken. Currently, the Parliamentary Commissioner has to rely on moral suasion to a large extent to get redress for many aggrieved persons. The institutionalisation of parliamentary committee hearings on these reports will change this dynamic. After all, the Parliamentary Commissioner and the Deputy Parliamentary Commissioner are officers of Parliament and the use of committees to facilitate and highlight their work will make their offices more efficient and effective.

During the Commission's discussions on the Parliamentary Commissioner, the Commission considered and compared the Ombudsman Act of Belize 2000⁷² and the Parliamentary

⁷¹ Finance (Administration) Act. Cap 15.01 of the Revised Laws of Saint Lucia

⁷² Ombudsman Act, Chapter 5, of the revised laws of Belize 2001.

Commission Act of Saint Lucia 1982⁷³ along with an article titled “Essential Characteristics of a Classical Ombudsman by Dean M. Gottehrer and Michael Hostina.⁷⁴

It was noted by the Commission that the Belize Act was developed along the guidelines advocated by Gottehrer and Hostina. This act is comprehensive and written in clear and simple language. The Commission suggested that these documents should be reviewed as a source to assist in making amendments to the Parliamentary Commission Act 1982.

Consideration was given to a number of sections of the Belize Act, in particular, Section 16 which speaks to the extent of exercise of powers; Section 17, the procedure in respect of investigation; Section 18 evidence; Section 20, power to enter premises and retain documents; Section 21, procedure after investigation; Section 22, disciplinary action against officers and procedure for criminal offences; Section 26, performance of functions of Ombudsman by members of his staff; Section 27, funding and accounts; Section 34, power of Ombudsman in relation to Contractor-General; and Section 35, regulations.

Recommendations

With respect to the Parliamentary Commissioner, the Commission recommends the following:

- (128) Adequate provisions should be made to guarantee the financial independence and efficiency of the office of the Parliamentary Commissioner.
- (129) A Select Committee should be appointed by the House of Assembly to deal with reports tabled in Parliament on behalf of the Parliamentary Commissioner and that this Committee, among other things, should ensure that the Parliamentary Commissioner’s recommendations are implemented.
- (130) Reports made by the Parliamentary Commissioner should be released verbatim to the public once they have been laid in the Parliament, except in cases where such disclosure

⁷³ Parliamentary Commissioner Act Cap 1.13 of the Revised Laws of Saint Lucia.2008

⁷⁴ Dean M. Gottehrer and Michael Hostina. *Essential Characteristics of a Classical Ombudsman*

would not be in the interest of national security, because these reports are the people's business and the people have a right to know.

- (131) The Ombudsman Act of Belize 2000 should be reviewed as a source to assist in making amendments to the Parliamentary Commissioner Act of 1982.

Integrity Commission.

The matter of proper standards in public life by politicians and public officers in Saint Lucia has been the subject of comment at political meetings, at private parties, debates in Parliament, on radio and television talk shows and in calypsos. It has also been the subject of comment in the course of Commissions of Inquiry and judicial pronouncements. Indeed, it was a concern raised at several of the outreach sessions convened by this Commission. All this implies that the issue of good governance and the elimination of corruption in public life should be given adequate attention in constitutional reform.

The Commission notes that, with the enactment of integrity legislation, provisions have been put in place to ensure checks on the assets and liabilities of politicians, senior public servants and persons managing statutory corporations.

In that regard the Integrity in Public Life Act,⁷⁵ calls for the appointment of an independent Commission, the functions of which are to:

- (a) *“receive, examine and retain all declarations filed with it under this Act;*
- (b) *make such enquiries as it considers necessary in order to verify or determine the accuracy of the declaration filed under this Act;*
- (c) *receive and investigate complaints regarding non-compliance with or breach of this Act; and*
- (d) *perform such other functions it is required by this Act to perform.”*

⁷⁵ No.6 of 2004, in force 1 January 2006 (S.I.169/2005)

Parliament has determined that the Integrity Commission shall be an independent statutory authority in the exercise of its functions. Under the Act, the Commission is not subject to the control or direction of any person or authority. This provision, in its terms, vests the Integrity Commission with the similar autonomy as is afforded independent authorities under the Constitution. These include the Director of Public Prosecutions, the Director of Audit and the constitutionally mandated Commissions. Once appointed, members of the Integrity Commission have security of tenure for three years and can only be removed from office by the Governor General for inability to discharge the functions of their offices or for misbehaviour and only on the recommendation of an independent high level tribunal, after proper inquiry. However, this does not mean that the Commission can do whatever it likes as it is subject to the jurisdiction of the Courts.

By being in receipt of public moneys from the Consolidated Fund under Section 39 of the Act, the management of the funds of the Integrity Commission falls within the ambit of the Finance (Administration) Act and related regulations. The accounts of the Commission are to be audited by the Director of Audit, and the Commission is required to submit an annual report of its activities for tabling in the House of Assembly.

The Integrity Commission is appointed by the Governor General on the advice of the Prime Minister who shall consult with the Leader of the Opposition before providing this advice. The Integrity Commission shall have at least a chairperson and not less than two nor more than four other members, of which one must be a chartered or certified accountant and one must be an attorney-at-law. The members, by reason of their expertise, are expected to be capable of collectively assessing submissions to ensure their accuracy and compliance with the provisions of the Act.

The Act includes provisions for behaviour defined as “corruption”. According to the Act, a person in public life commits an act of corruption if:

- (a) *“he or she solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or herself or another person for doing any act or omitting to do any act in the performance of his or her official functions or causing any other person to do so or omit to do anything;*

- (b) *he or she in the performance of his or her public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or herself or any other person;*
- (c) *he or she fraudulently uses or conceals any property or other benefit derived from any such act or omission to act under paragraph (a) or (b);*
- (d) *he or she offers or grants, directly or indirectly, to a public servant any article, money or other benefit being a gift, favour, promise or advantage to the public servant or another person, for doing any act or omitting to do any act in the performance of the public servant's public functions;”*

There are several other provisions in the Act which speak to the issue of corruption. These include improper use of Government property for the benefit of an individual and the use of official influence to support any scheme or contract in which the individual has an interest. The penalties are severe and, in extreme cases, individuals can be fined and confined.

It must be noted that the Act is not aimed solely at politicians. The provisions which define corruption are also aimed at citizens, companies and others who attempt to bribe decision makers in Government to obtain decisions in their favour.

As with many other laws in this country, the success of implementation and enforcement relies on the active participation of members of the public. Accordingly, the Act allows members of the public to report acts of corruption.

In recent times, the Integrity Commission has had to report several instances of non-compliance by parliamentarians, Government Ministers, senior public servants and heads of public corporations and statutory boards. As currently exists, the Integrity Commission can only report breaches to the Director of Public Prosecutions or the Attorney General for further action. The Commission regards this as unsatisfactory and is of the view that the Integrity Commission needs to be empowered to deal with defaulters more directly.

According to a former Chair of the Integrity Commission,

“Increasingly fewer and fewer people comply as delinquents are not prosecuted as provided by the law. In ten years not one person has been called to account. There is an urgent need for enforcement as well as strengthening the law in this regard. Further, persons whether from within the Public Service or otherwise before being appointed to a post that would make them a Person in Public Life, should be informed by the PSC or the relevant ministry, of their obligation to file a declaration in accordance with the Act on behalf of themselves and their spouse.

At the moment, there is a contemptuous disregard for the Integrity in Public Life Act and by extension the Commission; this should be addressed as a matter of urgency. He also thought that the dragnet of the Commission should be wider.”⁷⁶

The Parliament of Saint Lucia, by enacting integrity legislation, deemed it necessary to subject a class of persons⁷⁷ to a special regime of disclosure of their financial affairs. This was done for the express purpose of establishing probity, integrity and accountability in public life in Saint Lucia. Hence, under the Act, they are required to disclose their income, how much they owe and to whom, their investments if any, their properties and even the life insurances that they carry.

The Commission recognises the important role of the Integrity Commission and considered some other key positions deserving of such scrutiny. Additionally, the Commission is of the view that defaulters should face sanctions for non-compliance.

⁷⁶ Evelyn, Randolph. In Saint Lucia Constitutional Reform Commission. Report on Meetings with Constitutionally Established Functionaries/Bodies. Castries Saint Lucia, 11 – 15 May, 2009 pp 60-61

⁷⁷ These persons in public life, within the meaning of the relevant Act are: Members of the Senate and of the House of Assembly; Ministers of Governments; Parliamentary Secretaries; Chief Technical Officers in Government Ministries and Heads of Department; Speaker of the House of Assembly; President of the Senate; Secretary to the Cabinet; Attorney-General; Permanent Secretaries and Deputy Permanent Secretaries; Parliamentary Commissioner; Heads of Diplomatic Missions of Saint Lucia accredited to any country or any international organisation; Commissioner of Police, Superintendent of Prisons, Chief Fire Officer and their Deputies; Managing Directors and Managers of banks in which the State has a controlling interest; Chairperson, Managing Director, General Manager, Chief Executive Officer and departmental head of a public corporation, company or public institution in which the State has a controlling interest; Director of Audit; and Director of Public Prosecutions.

The Commission received a submission that the Prime Minister should not be the only person involved in the appointment of the Integrity Commission. The Minority Leader should also be involved. The President should consult both the Prime Minister and Minority Leader before making appointments to the Integrity Commission.

Commissioners were concerned with non-compliance with the provisions of the Integrity in Public Life Act. Therefore, the Commission strongly suggests that such non-compliance should be met with sanctions for the offending parties. Further, the Commission also agreed that all members of Parliament and the Cabinet should make a declaration to the Commission within 30 days of assuming office.

The list of persons in public life who ought to be required to make declarations to the Commission should be expanded to include the Chief Engineer as well as other key functionaries below the rank of Comptroller of Customs and Excise, Comptroller of Inland Revenue and the proposed Contractor-General.

The list of public bodies falling within the purview of the Act should be extended to include any company or corporate body, in which the Government or an agency of Government holds fifty-one per cent or more of the shares.

Recommendations

With respect to the Integrity Commission, the Commission recommends the following:

- (132) The President should consult both the Prime Minister and the Minority Leader before making appointments.
- (133) Non-compliance with the provisions of the Integrity in Public Life Act should be met with sanctions for the offending parties.
- (134) All members of Parliament and the Cabinet should make a declaration to the Commission within thirty (30) days of assuming office.
- (135) The list of persons in public life who ought to be required to make declarations to the Integrity Commission should be expanded to include the proposed Contractor-General,

Chief Engineer as well as certain other functionaries below the rank of Comptroller of Customs and Excise and Comptroller of Inland Revenue.

- (136) The list of public bodies falling within the purview of the Integrity in Public Life Act should be extended to include any company, in which the Government or an agency of Government holds fifty-one *per centum* or more shares.

The Public Accounts Committee

Public Accounts Committees are one of the instruments that Parliaments can use to check Governments' activities. They can be institutionalised by:

- a country's Constitution as in Antigua and Barbuda, St. Vincent and the Grenadines and Trinidad and Tobago;
- Standing Order of the Legislature as in Jamaica, Guyana and Saint Lucia; or
- an Act of Parliament as in Australia and the United Kingdom.

In Saint Lucia, the Public Accounts Committee (PAC) is a bipartisan select committee of Members of Parliament established by Standing Order 67 of the Standing Orders of the House of Assembly. The PAC, has the duty to examine:-

- the accounts showing the appropriation of the sums granted by the Legislature to meet public expenditure;
- such other accounts as may be referred to the PAC by the House or under any law; and
- the report of the Director of Audit on any such accounts.

Hence as a select committee of Parliament, the PAC is a mechanism for overseeing Government revenue and expenditure to ensure that they are effective and honest and to ensure transparency and accountability in the financial operations of Government.

The Leader of the Opposition serves as the Chairman of the PAC which consists of five members - three Government and two Opposition representatives. Pelizzo and Stapenhurst propose that the fact that the chairmanship of the PAC is given to the Opposition performs two basic functions. Firstly, it re-equilibrates the balance of power between the Government and the Opposition, and secondly, it performs a symbolic function in that it indicates the willingness of both the majority and the minority to operate, within the PAC, "in a perfectly bipartisan manner".⁷⁸

The PAC is empowered to hold hearings on the contents of the report of the Director of Audit, and call before it public servants from the audited organisation and the staff of the Audit Office. After the hearings, the Committee reports to the House of Assembly, commenting on the Audit findings and recommending possible action to eliminate any problems identified by the Director of Audit. Parliament is therefore able to call to account those who are entrusted with the physical, human and financial resources provided by taxpayers. The work of the PAC, therefore, completes the cycle of accountability. It is then up to Government to respond to the Committee's recommendations.

In a submission made to the Commission, it was indicated that the Committee rarely ever met, as some members were frustrating the convening of meetings by ensuring that a quorum could not be obtained. In addition, the report of the Director of Audit, for various reasons, was not always available in a timely manner to facilitate such meetings.

The Commission considers the PAC vital to the process of good governance and is of the view that the membership of the Committee and quorum requirements need to be reviewed. Additionally, the powers of the Committee need to be augmented in an attempt to make it more effective and to curtail any deliberate attempts to hinder its work. The Commission has therefore made appropriate recommendations in that regard.

⁷⁸ Pelizzo and Stapenhurst, Public Accounts Committees, SMU Social Sciences & Humanities, Working Paper Series 2006, Paper No.01-2006, Singapore Management University.

The Commission felt that it was necessary to enact constitutional provisions mandating the entrenchment of the PAC. These provisions would give the Committee a status beyond what it currently has under the Standing Orders of Parliament.

The Commission identified a number of issues hindering the proper functioning of the PAC:

- The PAC cannot meet if the accounts of Government Ministries, Departments and Agencies are not tabled.
- The membership is too small.
- Not all of the members of the Committee have the requisite skills for the task.

Therefore, the Commission proposes a broadening of the membership to include persons with the necessary accounting and investigatory skills and these may be drawn from outside of Parliament as special advisors to the Committee.

The PAC should be established as a joint select committee of Parliament consisting of ten members with four drawn from the Senate, two (2) being nominated by the Minority and two (2) nominated by the Government; and four (4) drawn from the House of Assembly, two (2) being nominated by the Government and two (2) nominated by the Minority; an independent member appointed by the President who shall be a forensic accountant and the Minority Leader who shall be the chair. The Commission took into account the possibility of there being no elected member of the Opposition and in such a case, the Commission felt that the President acting in his/her own deliberate judgment, should be empowered to appoint representatives from the extra-parliamentary wing of the minority party (party coming second) to fill such posts. With the new hybrid arrangements for Parliament, there will be no Ministers eligible to sit on the PAC. The PAC should be convened at the second sitting of the House of Assembly.

At any meeting of the PAC the quorum shall be three members. It is expected that this would address the issue of infrequent meetings due to lack of a quorum.

The PAC should have the power to request an independent audit of an entity and should have the powers of investigating the finances of such entity whether or not an audit report has been submitted. This should allow for greater efficiency and make delinquency a thing of the past.

Further, the Commission is of the view that where it is found that there has been undue delay in the preparation and submission of the report, or where it is found that there is a matter to be dealt with in an expeditious manner, the PAC should be empowered to obtain the services of a private independent auditor.

The Commission believes that adequate provisions should be made for an automatic resolution by Parliament for the approval of expenditure incurred by the PAC, should the services of a private independent auditor be required. Further, there must be the provision that Parliament makes its secretariat resources available for use by the PAC.

Recommendations

With respect to the Public Accounts Committee, the Commission recommends the following:

- (137) It should be entrenched in the Constitution.
- (138) Membership should be broadened to include an individual with the necessary accounting and investigatory skills and that person must be drawn from outside Parliament.
- (139) Disciplinary action should be instituted against persons or entities for failing to submit timely reports, documents and information or otherwise fail to cooperate with the Committee.
- (140) It should be established as a joint select committee of Parliament consisting of ten members with four drawn from the Senate, two (2) being nominated by the Minority and two (2) nominated by the Government; four (4) drawn from the House of Assembly, two (2) being nominated by the Government and two (2) nominated by the Minority; an independent member appointed by the President, who shall be a forensic accountant and the Minority Leader who shall be the chairperson.
- (141) The independent appointee with accounting skills will serve as a non-voting member.
- (142) The first meeting must be convened before the second sitting of the House of Assembly.
- (143) The quorum shall be three (3) members.

- (144) It should have the power to request an independent audit of an entity and should have the powers of investigating the finances of that entity whether or not an audit report has been submitted.
- (145) It should be empowered to obtain the services of a private independent auditor to carry out an audit in cases where it is found that there has been undue delay in the preparation and submission of the report, or where it is found that there is a matter to be dealt with in an expeditious manner.
- (146) Adequate provisions should be made for an automatic resolution by Parliament for the approval of expenditure incurred by the Committee should the services of a private independent auditor be utilised.
- (147) Parliament must make its secretariat resources available for use by the Committee.

A Contractor-General for Saint Lucia

Against the backdrop of increased public discussion and concern about public procurement of goods and services, the Commission considered the position of Contractor-General in other jurisdictions with a view to possible adoption.

Further, the controversies that have erupted in many Commonwealth Caribbean countries over the award of State contracts have led to calls for greater monitoring and scrutiny of the processes by which awards are made as well as any subsequent variations to original awards of contracts.

The allocation and supervision of Government contracts is a critical area of State activity that must be adequately scrutinised to ensure proper segregation of duties, transparency of process, exposure of bid rigging, prevention of collusion and conspiracy to defraud the State, exposure of insider informants and declaration of conflicts of interest.

The Commission considered the Jamaican Contractor-General Act 1999 and the Belize Contractor-General Act 2000 on their respective Contractors-General and concluded that such an office should be introduced into the Saint Lucia Constitution. Additionally, the Commission expressed a preference for the adaptation of the Belize provisions.

The Belize Act makes provisions for the establishment of the office of the Contractor-General, appointment and removal of a Contractor-General, and spells out provisions to ensure the independence of the office, among other things. According to the Act, the Contractor-General's functions are:

“(a) to monitor the award and the implementation of public contracts with a view to ensuring that-

- such contracts are awarded impartially and on merit;*
- the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve any impropriety or irregularity;*
- without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof;*
- there is no fraud, corruption, mismanagement, waste or abuse in the awarding of contracts by a public body;*

(b) to investigate any such fraud, mismanagement, waste or abuse;

(c) to develop policy guidelines, evaluate programme performance and monitor actions taken by a public body with respect to the award, execution and termination of contracts; and

(d) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.”

The public bodies that should come under the purview of the Contractor-General include:

- a Ministry, Department or Agency of Government;
- Local Government Authorities;

- a Statutory Body or Authority; or
- any company in which the Government or an agency of Government holds fifty-one *per centum* or more of the shares.

The reports by the Contractor-General would also inform the work of the parliamentary committees contemplated under the new hybrid system for Parliament that has been proposed by the Commission.

Recommendations

With respect to the Contractor-General, the Commission recommends the following:

- (148) The office of Contractor-General should be introduced into the Saint Lucian Constitution based on an adaptation of the Belize Contractor-General Act 2000.
- (149) The public bodies that should come under the purview of the Contractor-General include but not limited to:
 - All Ministries, Departments and Agencies of Government;
 - Local Government Authorities;
 - Statutory Bodies and Authorities; or
 - any company in which the Government or an agency of Government holds fifty-one *per centum* or more of the shares.

CHAPTER TEN

THE JUDICIARY

In the aftermath of the Marlborough House Conference in 1978, the declassified summary on what was agreed for the Judicial Provisions reveals as follows:

“9. Judicial Provisions – Like the other former Associated States which have become independent, St. Lucia will retain its connection with the West Indies Associated States Supreme Court. In St. Lucia the court will be known as the Eastern Caribbean Supreme Court. The Court consists of a Court of Appeal and a High Court. The Judicial Committee of the Privy Council remains the final court of appeal.”⁷⁹

These arrangements have remained in place since independence.

As directed by the Statutory Instrument (S.I.) that established it, the Commission inquired into potential reforms aimed at “maintaining and strengthening the independence of the Judiciary at all levels.”⁸⁰ The Commission considered the various Constitutional provisions relating to the Judiciary. It took note of Section 91 of the Constitution which governed the appointment of Magistrates and Legal Officers of the State. It reviewed the provisions relating to the High Court and Court of Appeal of Saint Lucia, and of the provisions specially preserving appeals to the Privy Council as Saint Lucia’s final court of appeal,⁸¹ among others. The Commission also considered and reviewed the Supreme Court Order,⁸² which established the Eastern Caribbean Supreme Court, of which Saint Lucia is a part.

Based on an examination of these provisions, and of the Constitution as a whole, the Commission took note of the special position of the Judiciary as the third arm of government. It noted, for example, that the various rules governing the appointment and discipline of judges, as well as the

⁷⁹ U.K. National Archives, FCO 44/1910, Folio 419, Annex A, St. Lucia Constitution.

⁸⁰ S.I. No. 50, 2004.

⁸¹ Sections 105 – 109 of the Constitution.

⁸² The ECSC was established in 1967 by the West Indies Associated States Supreme Court Order No. 223 of 1967.

structure of the Court, were all aimed at creating an independent institution, capable of serving as a bulwark against the erosion of rights enjoyed by citizens. The Commission was especially cognisant of a number of decisions by the Eastern Caribbean Supreme Court, which pronounced upon Executive action in Saint Lucia. It noted that in a number of instances, the Court was required to and did issue decisions, which declared laws passed by Parliament unconstitutional, or decisions taken by Cabinet, illegal. The Commission therefore recognised that the Judiciary played a key role in serving as a check and balance against both governmental and parliamentary over-reach, and that its role required it to be in occasional divergence with both institutions. It acknowledged that by dint of this fact, the Judiciary occupied a special and privileged position in the Constitutional framework.

The Commission considered the various issues surrounding potential reform of the Judiciary. It determined that any reforms proposed should only strengthen and not weaken the special position enjoyed by the Judiciary. In that regard, the Commission understood the direction contained in the S.I. to require an examination of the Judiciary at three levels, namely; the Magistracy, the Eastern Caribbean Supreme Court, and the Privy Council. It concluded that the issues related to each level were distinct and required separate consideration.

The Magistracy

The Commission considered a number of submissions that suggested there was a crisis in the Magistracy. It noted that persons commenting on the Magistracy emphasized the critical role played by the Magistracy in dispensing justice in Saint Lucia. The Commission's attention was drawn to the fact that a very high percentage of all criminal cases were heard and dispensed with in the Magistrates' Courts, as well as a significant number of civil matters. For some persons, corruption or incompetence in the Magistracy contributed significantly to the inefficiencies and ineffectiveness of the existing criminal justice system.

In the view of those making the submissions, the problem with the Magistracy was located in our Constitution. It was argued before the Commission that the fundamental problem was an issue of accountability. The Commission's attention was drawn to the fact that, while responsibility for discipline and removal of Magistrates vested solely in the Judicial and Legal Services Commission, (JLSC,) actual day to day management of the operations of Magistrates fell under the purview of

the Minister of Justice. In other words, it was suggested that the Constitution was unclear as to which authority was ultimately responsible for management of the lower Judiciary. It was also argued that our Constitution did not sufficiently clarify the roles and functions of the lower Judiciary.

At the same time, it was noted that the public held the government responsible for the performance or apparent lack thereof, of the Magistracy. It was also suggested that, by virtue of the itinerant nature of the JLSC, and the lack of dedicated human and other resources to monitor performance, that body was ill-equipped to assume the role of monitoring and managing the performance of Magistrates in Saint Lucia.

Accordingly, the suggestion before the Commission was that the Constitution should be amended to permit responsibility for management of the Magistracy to vest solely with the elected government of the day and to permit the appropriate Minister of Justice to have authority to appoint and discipline non-performing, ineffective, or corrupt Magistrates.

The Commission considered the submissions with respect to the Magistracy at length. It conceded that there was a widespread perception that the Magistracy was in crisis. It acknowledged that there was an apparent ambiguity in the operational accountability of the Magistracy and agreed with the proposition that the Magistracy was critical to an effective criminal justice system and that the vast majority of criminal matters came before and were dispensed with, in Magistrates' courts. It recognized a potential weakness in terms of how the JLSC was currently set up to manage the lower Judiciary. It therefore agreed that the Magistracy was an area requiring urgent Constitutional reform.

Notwithstanding, the Commission did not agree that the responsibility for appointment and discipline of the Magistracy should rest solely with a Minister of Justice or Cabinet. The Commission regarded this proposal as likely to undermine the effectiveness and independence of the lower judiciary, rather than to strengthen it. It recalled the critical role played by the Judiciary in protecting the rights of citizens. It considered the privileged position of the higher courts, and noted the relative high effectiveness of judges at High Court and Court of Appeal levels. The Commission regarded this effectiveness as a function of two major factors:- firstly the independence and security of tenure afforded to judges at those levels, and secondly the adequacy of the financial resources dedicated to the operations of those institutions.

The Commission was concerned that, without the security of tenure of the “upper” judiciary, and without the dedicated resources required to properly discharge their functions, Magistrates might become a hostage of a corrupt government, seeking to influence criminal cases based on narrow, political considerations. By handing responsibility for the Magistracy over to the Cabinet, the Commission believed a door would be opened for a dangerous encroachment of the Executive into the Judicial arena. Accordingly, rather than improving the effectiveness and accountability of the Magistracy as some submissions contended, the Commission was fearful that political considerations might influence the dispensation of justice in Magistrates’ courts, should the Magistracy be removed from the control of the JLSC.

The Commission also considered regional trends and took notice of the regional discussions on the Magistracy in the last few years. It noted that the general trend in the region in terms of potential reform of the Magistracy, appeared to advocate the assumption of responsibility for the Magistracy by the Chief Justice and the “upper” Judiciary. It noted that several regional academics and statements by a number of regional governments, strongly advocated for the creation of a “regional Magistracy,” drawn from across the sub-region, in order to help promote and increase its effectiveness.

For that reason also, the removal of the Magistracy from the control of the JLSC, ran counter to recent regional trends and developments in terms of the reform of the Magistracy. The Commission therefore firmly rejected the submissions in this regard.

However, the Commission felt it was necessary to urge some reforms of the Magistracy, since it regarded the status quo as unsatisfactory. Contrary to the suggestion by some who made submissions before it, the Commission believed that further strengthening the capacity of the JLSC to monitor and manage the day-to-day operations of the Magistracy, was the most appropriate method of improving the quality of justice dispensed in the lower Courts. The Commission regarded the problems with the Magistracy as essentially a management issue, and believed that adequate allocation of resources, coupled with the creation of appropriate institutions within the JLSC, should significantly strengthen the performance and accountability of the Magistracy in Saint Lucia.

Further, the Commission also believed that, in light of the need to strengthen the Magistracy and to afford it the independence enjoyed by judges at High Court and Court of Appeal levels, it was necessary to bring the Magistracy fully under the purview of the Chief Justice. In that regard, the Commission was of the view that the Magistracy should be made a full part of the Judiciary, and that the current constitutional arrangement, in which responsibility for management and supervision of the Magistracy is shared between the JLSC and the Minister responsible for Justice, should be terminated. In the Commission's view, what was required to improve the quality of service dispensed in the lower courts, was an elevation of the Magistracy, so that it could benefit from the improved training, independence, mobility and remuneration of the "upper" Judiciary. In short, the Commission determined that the privileges enjoyed by judges of the High Court and Court of Appeal should be extended to the Magistracy in full.

The Commission was therefore convinced that, by firmly clarifying the responsibility for the management and supervision of the Magistracy in the Constitution and by bringing the Magistracy exclusively under the purview of the JLSC and Eastern Caribbean Supreme Court, the concerns expressed by citizens about the effectiveness and integrity of the Magistracy, would be reduced over time.

Recommendations

With respect to the Magistracy, the Commission recommends the following:

- (150) It should be brought fully under the control and management of the Judicial and Legal Services Commission.
- (151) An appropriate mechanism should be created within the Eastern Caribbean Supreme Court and the JLSC to monitor and manage the day to day operations of the Magistracy in Saint Lucia.
- (152) There should be an elevation of the magistracy so that it could benefit from improved training, independence, mobility and remuneration of the "upper" judiciary.

The Eastern Caribbean Supreme Court

The Commission considered the position of the Eastern Caribbean Supreme Court. It noted that the Court was a shared institution, of which Saint Lucia was only one part. It also noted that the Court was constituted in common for the members of the OECS and that any recommendations for reform of the Court may be hampered by or could have implications for, Saint Lucia's membership of the Court.

The Commission took notice of the manner of appointment of judges of the High Court and Court of Appeal. It perused the Supreme Court Order which established the Court in Saint Lucia and noted that judges of the Court enjoyed security of tenure and that the Court, as an institution, enjoyed special protection in Saint Lucia's Constitution.⁸³

The Commission was privileged to count among its membership, a retired former member of the Court, in the person of our Chairperson, Madam Justice Suzie d'Auvergne, (retired,) and the current President of Saint Lucia's Bar Association, Mr. Andie George, as well as a number of practicing attorneys in Saint Lucia. These members drew the Commission's attention to a number of occasions in the past on which the Court issued decisions against successive Saint Lucian governments. The Commission noted that the Court issued similar decisions in a number of OECS jurisdictions and that by and large, judges of the ECSC enjoyed a high degree of respect and admiration among the general public, regional academics and other courts in the Caribbean. The Commission took special note of the fact that a number of retired judges who served on the ECSC, were called upon to provide additional judicial service in other countries in the region. The Commission's attention was also drawn to the fact that in a very high number of cases, decisions of the Court of Appeal were expressly approved of by the London based Privy Council.

The Commission considered the position of the ECSC, and determined that the Court already evidenced the high level of independence and integrity contemplated by the S.I. Consequently, the Commission did not regard reform of the ECSC as necessary in the context of the review. Moreover, the Commission believed that even if some recommendations for reform were appropriate, which was in any event not the case; it would be imprudent to offer them, given the regional nature of the Court.

⁸³ See e.g. section 41 of the Constitution dealing with "alteration of the Constitution."

Recommendation

- (153) With respect to the Eastern Caribbean Supreme Court, the Commission concludes that it was not necessary or appropriate to make any recommendations for reform of the ECSC in the context of the current review.

The Caribbean Court of Justice

In addition to the direction contained in the S.I. that the Commission should inquire into the means of “maintaining and strengthening the independence of the Judiciary at all levels,” the Commission also took note of the commands that it should “advise and make recommendations concerning the appropriateness or otherwise of maintaining Saint Lucia’s links with the British Crown,” and “advise and make recommendations concerning the patriation of the Constitution.”⁸⁴ In the Commission’s view, the S.I. that established the Commission essentially directed it to consider the need to complete Saint Lucia’s independence by breaking ties with the British Crown at various levels, and this included Saint Lucia’s judicial ties to Britain.

In that regard, the Commission examined the judicial provisions contained in the Constitution and in particular, considered the position of the London based Privy Council (PC) as Saint Lucia’s final court of appeal. It noted that during the period since independence, there were two major developments which were likely to impact upon the continued existence of the PC as Saint Lucia’s court of last resort. One was the establishment of the Caribbean Court of Justice (CCJ) in April 2005 and the other was the establishment of the United Kingdom Supreme Court in October 2009.

As regards the latter development, the judicial provisions that came into effect in the United Kingdom in October 2009 were part of a suite of reforms that started in January 2004, with the announcement of a Concordat between the Lord Chief Justice and the Lord Chancellor. This Concordat proved a precursor to the enactment of the United Kingdom Constitutional Reform Act 2005.

The effect of this Act was to make provision for the ultimate creation of a Ministry of Justice which would be led by a Secretary of State for Justice and Lord Chancellor. It was the first time that the

⁸⁴ Op. cit S.I.

office of Lord Chancellor would be held by someone who was not a member of the House of Lords. The office was joined with the Secretary of State for Justice who became the Minister responsible to Parliament for the Judiciary. Such a responsibility had previously been held by the Lord Chancellor before these reforms which removed the right to preside over the House of Lords from the Lord Chancellor. Next to go was the removal of the office's ministerial responsibility for the Judiciary with the creation of a Ministry of Justice.

The final act of dismantling the office of Lord Chancellor, which had a unique position in the British Constitution of belonging to all three branches of government, came in October 2009 with the establishment of the United Kingdom Supreme Court. This Court is led by the Lord Chief Justice and all members of that court ceased to hold their previous positions as Law Lords.

However, the title "Lord Chancellor" still exists as there are many statutes that make reference to this office. Insofar as the Lord Chancellor (who is also the Secretary of State for Justice) and the Lord Chief Justice are concerned, both offices have a Concordat to govern their relations.

The significance of this development is arguably two-fold. In the first case, by undertaking these reforms, the United Kingdom has actually moved closer to the direction of its former colonies in the Commonwealth Caribbean, by establishing a Supreme Court in a similar style and vein to what has obtained in the region, in many respects. At the very least, the establishment by Britain of institutions similar to those already established and operated in the region, implies a high level of confidence, in the types of institutions themselves, and suggests a need for greater confidence in the region's own ability to operate them.

In the second case, the willingness of the British Parliament to undertake such reforms, certainly raises questions about whether the privileged position of the PC as the final appellate court for the region, can be indefinitely guaranteed. The reforms by the British Government signal a desire on its part to modernise its judicial system and to create an independent, robust court, capable of meeting the demands of the twenty-first century. The dismantling of the constitutional oddity of the office of Lord Chancellor perhaps best embodies this strong commitment to modernisation and common-sense reforms.

In the wake of this Constitutional revolution however, a number of law lords and senior British judicial officials have expressed doubts about the continued reliance by countries in the Commonwealth Caribbean, on the Judicial Committee as their final court of appeal. Indeed, some officials have even suggested that the situation places an undue burden on British judicial resources. Accordingly, these circumstances raise the spectre that the region may be “pushed” before it is ready to leave.

On the other hand, on 14th February, 2001, the Agreement establishing the Caribbean Court of Justice was signed among CARICOM member states. That Agreement came into force on 23rd July, 2003 and the Court was inaugurated on 16th April, 2005. The headquarters for the Court is in Trinidad and Tobago.

The countries that have acceded to its appellate jurisdiction (as opposed to its original jurisdiction in relation to the Caribbean Single Market) and have thereby replaced the Judicial Committee of the PC as their final Court of Appeal are Barbados, Belize and Guyana. Jamaica attempted to do so in 2004 but the legislation that gave effect to the replacement was held to be unconstitutional by the Privy Council itself in the matter of *the Independent Jamaica Council for Human Rights (1998) Ltd. v. The Hon. Syringa Marshall-Burnett and the Attorney General of Jamaica*⁸⁵ in a judgment handed down on 3rd February, 2005.

In any event, the Commission noted that these two developments (the creation of the CCJ and the creation of the United Kingdom Supreme Court) placed the Commonwealth Caribbean at the crossroads of history as regards the replacement of the Judicial Committee of the PC with the CCJ.

In that regard, the Commission received and considered a number of submissions that the PC should be replaced with the CCJ. The Commission noted that there appeared to be some general consensus among the Saint Lucian public that the process of completing Saint Lucia’s independence was important and that the abolition of appeals to the PC was an integral and important step in that direction.

The Commission nevertheless considered some of the major arguments in favour of retention of appeals to the PC and against adoption of the CCJ as Saint Lucia’s final court of appeal. The

⁸⁵ Privy Council Appeal No. 41 of 2004

Commission noted that one of the traditional arguments in favour of retention of the PC was that the judiciary of the region had not sufficiently matured to discharge the role of such a final appellate court. The Commission considered suggestions that there was a greater likelihood of political interference in the operations of the CCJ which was not a danger if the PC was retained. It noted further too, that other considerations were that there as yet did not appear to be a widespread consensus among the political elites and body-publics of the region, on the CCJ.

In that connection, the Commission took note of the fact that in late 2010, Prime Minister Bruce Golding of Jamaica proposed that the country establish its own final appellate court. Golding revealed during debate on the Charter of Rights in Parliament on Tuesday December 21, 2010, that the Government was hoping to establish a local final court of appeal to replace the Privy Council. The Commission noted though, that the main opposition party, the People's National Party, was in favour of the CCJ, which was yet to be established in the Constitution of Jamaica in its appellate jurisdiction.

The Commission was also referred to and considered the Jamaican case of *Independent Jamaica Council for Human Rights (1998) Ltd. v. The Hon. Syringa Marshall-Burnett and the Attorney General of Jamaica* (see above.) It noted the PC's judgment to the effect that the attempted replacement of the PC by the CCJ, without entrenching the CCJ in Jamaica's domestic law, had the effect of weakening the level of protection afforded to the Judiciary by the Jamaican Constitution.

However, after having reviewed the facts pertinent to the CCJ, the Commission was unable to agree that the PC should be retained as Saint Lucia's final appellate court. The Commission noted that, while support for the CCJ as a replacement for the PC varied throughout the region, some jurisdictions, including Belize, Barbados and Guyana, were highly in favour of the Court and had already taken steps to make the CCJ their final appellate court.

More importantly however, the issue was not whether there was widespread support in the region for the Court, but whether support for the CCJ in Saint Lucia was sufficiently robust. As such, the Commission noted that in Saint Lucia, support for the CCJ among the general public was relatively high, in light of the popularity of the various submissions received to the effect that it should replace the PC. Moreover, the Commission recognised for example, the statements in support of the Court

from the late Prime Minister, Sir John Compton. It noted further, that the current Prime Minister of Saint Lucia, Honourable Stephenson King, and the current Leader of the Opposition, Honourable Dr. Kenny D. Anthony, had on separate occasions, expressed disappointment in the position of the Jamaica Government as regards its stated plans for having its own final court. In the Commission's view, these facts suggested a strong commitment on the part of both the Government and the Opposition in Saint Lucia for the CCJ.

The Commission recalled its previous discussions on the judiciary in Saint Lucia and its examination of the relative success of the ECSC. It noted that to a large extent, the CCJ was a court very similar in design and structure to the ECSC. The Commission recognised for example that, like the ECSC, the CCJ was a regional court, constituted in common for several states at once. It recognised that the system of appointment of judges to the CCJ were identical in most respects to the system of appointment of judges to the ECSC. The Commission noted that, with the exception of the selection of the Chief Justice of the CCJ, governments of the region played no role whatsoever in the appointment and selection of judges to that court. The Commission acknowledged that this was peculiar to the court and unique in the world.

The Commission also recalled the high level of independence and the demonstrated intellectual capacity of the judges on the ECSC over the years. It recognised the competence of the persons appointed to the court, and recalled that a very high number of decisions by the Court of Appeal were approved by the PC. The Commission acknowledged that in Saint Lucia's case alone, it had produced several distinguished and eminent jurists who had served on the ECSC. The Commission specifically recalled the example of the late, Rt. Honourable Sir Vincent Floissac Q.C., among others, and took notice of the fact that Sir Vincent had been called upon to serve on the PC at points in his illustrious legal career; that in fact Sir Vincent had written lead judgments for the Judicial Committee on occasions.

The Commission therefore believed that the argument that the region did not produce jurists of sufficient intellectual, moral and legal capacity to perform the functions of a judge on a final appellate court like the CCJ, was easily dispensed with and could be rejected outright.

As regards the decision of the PC itself in the Jamaican case, (see above,) the Commission here too, rejected the arguments advanced for several reasons. Firstly, the Commission took

cognisance of the fact that the PC was not entrenched in the Jamaican Constitution.⁸⁶ Accordingly, the suggestion by their Lordships that a court created to replace the PC had to be strongly entrenched in the Jamaican Constitution was illogical.⁸⁷ Put in other terms, the Commission recognised an incongruity in the PC's suggestion that, while it was not entrenched in the Jamaican Constitution, any court created to replace it had to be entrenched. While the Commission agreed that entrenchment was probably very desirable, it could not understand the suggestion by the PC that only a court entrenched in the Jamaican Constitution could provide the same quality of justice previously supplied by the un-entrenched PC..

Secondly, the PC argued that the CCJ needed to be entrenched due to the apparently small risk (described as “fanciful” by their Lordships,) that the governments signing the agreement establishing the Court, could amend the agreement and thereby weaken the protection afforded to the judges who sat on the court. The Commission was unable to regard this as a material concern, as the Commission took special note of the fact that amendments to the agreement establishing the Court, required unanimous approval of all the governments that were signatories to the agreement. In the Commission's view, this fact converted any risk of possible amendments to the Treaty establishing the Court from “fanciful” to near impossible, as the Commission was unable to anticipate what circumstances could arise which could possibly prompt twelve sovereign governments to unanimously agree to undermine the independence of the CCJ.

In any event, the Commission recognised that the Jamaican case turned on the question, not of the desirability of the CCJ as a replacement for the PC, but the method and means by which the Jamaican Government had attempted to replace the PC with the court. In other words, the Commission acknowledged that the important lesson of the Jamaican decision was that it was critically important for the correct procedure, outlined in Saint Lucia's Constitution for the abolition of appeals to the PC, to be followed. In the case of Jamaica, the government attempted to abolish appeals to the PC and replace it with the CCJ, but did not take any special measures to entrench the court in the domestic legal system. It also attempted to achieve this without a referendum on the issue.

⁸⁶ In the Jamaican context, appeals to the PC could be abolished by a simple majority vote in Parliament.

⁸⁷ See e.g. the Jamaica Observer, Editorial, March 7th 2005.

In the case of Saint Lucia, it is unclear whether a referendum would be required to abolish appeals to the PC and replace that court with the CCJ. The Commission's attention was drawn to a body of thought which took the view that no referendum might be required in the case where Saint Lucia seeks to establish a regional court in common with other states in the OECS, to replace the PC. If correct, the implication is that it might be possible for Saint Lucia to accede to the appellate jurisdiction of the CCJ without the need to deeply entrench the CCJ in Saint Lucia's domestic legal system.

Notwithstanding, the Commission believes that, irrespective of the actual procedure contained in our Constitution for abolishing appeals to the PC, the CCJ should be afforded appropriate protection in a new Constitution and should be entrenched in order to promote confidence in the court and to ensure that the CCJ is afforded no less protection than the ECSC.

However, perhaps the most important reason for the Commission's support of the court, is that the Commission regards breaking ties with the PC as an important last step in completing Saint Lucia's journey of independence. The Commission considered the mandate entrusted to it by the Parliament of Saint Lucia, and agreed that Saint Lucia had reached a stage in its development, where it could take full ownership and responsibility for its judicial policy and affairs. While the Commission took notice of the critical role played by the PC in the past in the development of Saint Lucian and regional law, the Commission was convinced that, in the context of the current review, a commitment needed to be made to complete Saint Lucia's growth as a civilization in its own right, and that the umbilical ties to the former colonial motherland needed to be broken. The Commission regarded it as incompatible with the status of independence that the interpretation of Saint Lucia's laws should be done for it by a foreign power, on foreign soil. The Commission believed that Saint Lucia, in tandem with other OECS states, had demonstrated its judicial maturity and integrity since it gained independence, and could sever ties with Britain with confidence.

As such, for all reasons discussed above, the Commission recommends the replacement of the Judicial Committee of the Privy Council with the CCJ as Saint Lucia's final court of appeal and the entrenchment of the CCJ in the domestic legal system.

Recommendations

With respect to the Caribbean Court of Justice, the Commission recommends the following:

- (154) It should replace the Privy Council as Saint Lucia's final appellate court;
- (155) It should be entrenched in a new Constitution, so that it is afforded similar protection as the ECSC in the domestic legal system.

The Role of the Minister of Justice

In light of the Commission's proposals for reform of the lower judiciary, and mindful of the requirement to make recommendations designed to "maintain and strengthen the independence of the judiciary," the Commission considered the potential role for the Minister of Justice in a revised Constitution.

The Commission took special notice of the Edinburgh Plan of Action for the Commonwealth that was prepared at the end of the Commonwealth (Latimer House) Colloquium held on 6th and 7th July, 2008 at the Scottish Parliament and presented to the Commonwealth Law Ministers meeting in Edinburgh in July 2008. In that connection, Commonwealth Law Ministers broadly agreed that adequate resources should be allocated to the judiciary to enable it to properly discharge its functions, judges should be accountable to the Constitution and should submit regular reviews to Parliaments on the financing and administration of the courts, and the Minister of Justice had an important role to play in Cabinet, as an advocate for judicial independence.

Accordingly, in the Law Ministers view, Ministers of Justice played an important institutional and political role in defending the independence of the judiciary. Via means of functional cooperation between the Minister of Justice and the Chief Justice, the Law Ministers envisaged opportunities to build public confidence in the administration of justice. Ministers were expected to facilitate an important dialogue between the Executive and the Judiciary on the one hand, and the Judiciary and the public on the other. Above all, a Minister of Justice was required to be a champion on behalf of the judiciary for the allocation of sufficient resources to secure its independence.

The Commission considered the recommendations coming out of the Colloquium and agreed in principle that a Minister of Justice should be a powerful advocate on behalf of the Judiciary in

Cabinet. The Commission agreed that the independence of the judiciary was closely related to its receipt of adequate resources to discharge its functions, and that some mechanism should be institutionalised to enable the Chief Justice to liaise with an appropriate functionary of the Executive, to make direct representations with respect to the same.

Recommendation

- (156) With respect to the Minister of Justice the Commission recommends that the Minister should become an advocate in Cabinet for the Judiciary and should liaise with the leadership of the Judiciary so as to more effectively communicate its needs at the level of the Executive.

CHAPTER ELEVEN

CITIZENSHIP ACT AND RELATED PROVISIONS

Although closely associated with nationality, citizenship is an independent concept with the nation being only one possible community within which citizenship is exercised. Citizenship as opposed to nationality is defined as belonging to a community or groupings of persons who recognise that they have something in common, either based on the acceptance of the legitimacy of the state in which they live, shared history, ethnicity, religion or common purpose. This means that nationals and non-nationals can exercise citizenship by their participation in the economic, social and political life of their community. Nationality generally connotes membership of a nation or sovereign state which affords the state jurisdiction over the person and affords the person the protection of the state.

Notions of citizenship in constitutional theory reflect a nexus between one's national identity and sense of belonging to the state which confers certain rights and obligations as defined in domestic law, principally, a constitution. Citizenship in this regard is therefore restricted to concepts of allegiance, entitlement and obligations. A constitution should therefore define and guarantee the position of the citizen. This relationship is defined as 'constitutional reconstruction'⁸⁸ in the sense that the citizen should play an active role in the respect for and advancement of the constitution and, the constitution should in turn protect and foster citizenship.

Recent world trends towards the establishment of multi-country political and economic unions have introduced the concepts of "regional citizenship" or "international citizenship". For example, the Maastricht Treaty establishing the European Union gave recognition to the concept of "citizenship of the European Union"⁸⁹ with citizens having some minimal rights including the right of non-discrimination within the scope of the Treaty, a limited right to free movement and residence in Member States as well as certain political rights⁹⁰.

⁸⁸ Starkey, H *Democratic Citizenship, Languages, Diversity and Human Rights*, The Open University, Milton Keynes, 2002

⁸⁹ Article 17 (1) of the amended EC Treaty states:

"Citizenship of the Union is hereby established. Every person holding the nationality of a member state shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship."

⁹⁰ See Articles 18-21 and 225 of the Treaty

The Commonwealth of Nations to which Saint Lucia belongs also prescribes the notion of a “Commonwealth citizen” being one who is a citizen of a Commonwealth member state. This form of citizenship offers certain privileges within some Commonwealth countries including the waiver of visa restrictions to enter and remain in the state, the ability to participate in the political life of the country including, in the case of Saint Lucia, nomination to the Senate (Upper House)⁹¹. There are many pieces of ordinary legislation in Saint Lucia which confer a ‘privileged position’ to Commonwealth nationals as opposed to other nationals generally described in law as ‘aliens’. For example, the period of residency and fees required to apply for citizenship of Saint Lucia is less onerous for a Commonwealth citizen than for a non-Commonwealth citizen.

The current regional movements toward OECS Economic Union and the CARICOM Single Market and Economy (CSME) required that the Commission explore the issue of regional integration and the impact of a possible “regional citizenship”. The Commission considered the two arrangements and submissions, to allow for this new class of citizenship in the future. It was noted that Section 103 of the Constitution empowers Parliament to make law regarding the acquisition of citizenship by persons who are not eligible under the existing provisions of the Constitution. Therefore it is possible that the Citizenship Act can be amended to include a class of “regional citizens” without falling foul of the Constitution. The Commission was therefore of the view that there was no need to make a clear recommendation on this, given the provisions of Section 103. Further the Commission felt that the matter should be properly determined through reciprocal treaty arrangements among the OECS or wider Caribbean before any amendment to the Constitution or related legislation⁹² as the case may be.

The Commission also considered the grant of citizenship on economic grounds. It was argued that this can generate significant revenue for developing states like Saint Lucia and encourage investment. The Commission was wary however, of the potential negative impact of these schemes and the perception that the country was “for sale”. The submission was very unpopular among members of the public who participated in the consultations and there were suggestions that this should be specifically banned in the Constitution. The Commission was not persuaded that the advantages of economic citizenship were sufficient to sacrifice the ideals of national

⁹¹ See Section 25 (a) of the Saint Lucia Constitution

⁹² The Citizenship of Saint Lucia Act Cap 1.04 of the Revised Laws of Saint Lucia 2001

identity and citizenship. The Commission by a majority therefore agreed that economic citizenship should be excluded and specifically banned in the Constitution.

In its review of the constitutional provisions relating to the acquisition, retention and deprivation of citizenship contained in Sections 99 to 104 of the Constitution, the Commission was also required to review the provisions of the Citizenship of Saint Lucia Act⁹³ and regulations made pursuant to the Act. The Commission was of the view that the Act is incoherent in its organisation. Further, the Commission felt that the Act was imprecise and as such open to wide interpretation and leading to weak enforcement. More over, both the Act and the Constitution contained discriminatory provisions in relation to women with respect to the conferment of benefits on a non-St. Lucian spouse.

In accordance with the Constitution and the Citizenship Act, an individual may become a citizen of Saint Lucia on the following grounds: *jus soli*⁹⁴ (right of soil), that is by virtue of being born in the country, *jus sanguinis*⁹⁵ (right of blood) by virtue of the citizenship of at least one parent, *jure matrimonii*⁹⁶, through marriage to a person holding citizenship and through *naturalisation*⁹⁷, having satisfied periods of residency within the country.

With respect to citizens by birth or *jus soli* it was noted that children born in Saint Lucia to non-nationals whose father possesses diplomatic immunity or whose father is a citizen of a country with which Saint Lucia is at war, shall not become a citizen. It is therefore possible to be born in Saint Lucia and not be entitled to citizenship. There were many complaints made by persons in the Diaspora who felt that they were treated as second class citizens by immigration officers on entry into Saint Lucia with a foreign passport, notwithstanding that the passport would have a notification to the effect that the holder was “born in Saint Lucia”. While the Commission took cognisance of

⁹³ Cap 1.04 of the Revised Laws of Saint Lucia 2001 which came into effect on 5 June 1979(Act No. 7 of 1979)

⁹⁴ See Section 100 of the Constitution and Section 4 of the Citizenship of Saint Lucia Act Cap 1.04

⁹⁵ See Section 101 of the Constitution and Section 5 of the Citizenship of Saint Lucia Act Cap 1.04.

⁹⁶ See Sections 102 (1) (a) and 102 (2) (a) of the Constitution and Sections 6 (1) (a) and 6 (2) (a) of the Citizenship of Saint Lucia Act Cap 1.04

⁹⁷ See Sections 102 (1) (b) and 102 (2) (b) of the Constitution relating to Commonwealth citizens and Sections 6 (1) (b), 6 (2) (b) of the Citizenship of Saint Lucia Act Cap 1.04 relating to Commonwealth citizens. See also Section 8 of the Citizenship of Saint Lucia Act Cap 1.04 extending to other “aliens” as provided for by Section 103 of the Constitution.

the affirmation of allegiance by members of the Diaspora and the strong ties they feel towards Saint Lucia, the Commission was constrained to accept submissions that they should be treated as holders of Saint Lucian passports for the following reasons. As described in the scenario above, the status of being born in the State does not necessarily confer citizenship and secondly the Commission took cognisance of the fact that in some cases there would have been a renunciation of the Saint Lucian citizenship to facilitate the acquisition of the other.

With respect to citizens by descent or *jus sanguinis*, the law restricts the entitlement to a person whose parent is a citizen. Therefore, an individual is not entitled if a grandparent and not the parent is a citizen of Saint Lucia. The Commission agreed with the submissions that this provision was too restrictive and that entitlement to citizenship should extend to a person whose grandparent is a citizen.

With respect to citizenship through marriage or *jure matrimonii* the Constitution and the Act allow the appropriate Minister, on specified grounds, to deny the application for the grant of citizenship to a man married to a Saint Lucian woman. In contrast, the appropriate Minister must grant citizenship to a woman married to a Saint Lucian man once the applicant fulfils the requirements. The Commission supported submissions that this distinction, although rooted in the principle under old law, that a woman assumed the domicile of her husband was discriminatory and unacceptable. The Commission was therefore of the view that this right (citizenship) should extend to both male and female applicants.

However, the Commission considered the provisions on marriage to be very weak, in that, there are no provisions dealing with sham marriages which the Commission defined as a marriage solemnised solely for the purpose of presenting an application for citizenship. The Commission agreed that the Act should be redrafted to contain a separate section or sections dealing with marriage including the power to deny an application or revoke a grant where the marriage is found to be a sham.

With respect to submissions that there should be a period of time after the marriage before one would be entitled to apply for citizenship, the Commission noted that there were many “real” marriages which did not survive the first or second anniversary. Imposing this restriction would only ensure that the sham is perpetuated for the requisite period.

With respect to applications on the basis of marriage and in cases of *naturalisation* or residency requirement (seven (7) years for Commonwealth citizens and eight (8) years for all other nationalities), the Commission received many complaints relating to the length of time for processing the application. The Commission was informed that in some cases this may take up to two years. The main reason cited for the long delays was that these applications were vetted by the Police who investigated each application. However, due to the limited human resources within the Police Force, applications would languish for years or months before being investigated. The Commission was persuaded by submissions that this function should reside in a civilian entity dedicated to this task.

Submissions were made that the Act should provide for the granting of permanent residence status as a precursor to the grant of citizenship in eligible cases. In the absence of such a provision, the residency status of the applicant must be renewed on a monthly basis. The legislation does not categorise these applicants as residents and consequently they are forced to keep paying for extensions of stay and work permits in addition to paying the fee for the grant of citizenship. The Commission agreed that the Act should make clear provisions regulating the status of an individual during the period between the filing of the application and grant or refusal of the grant of citizenship.

The Commission was equally consumed with submissions on the issue of dual citizenship in relation to Members of Parliament, including the Head of State, Prime Minister, Parliamentary Representatives and Senators. There were strong sentiments that persons in such high offices entrusted with the peace, order and good government of the country ought to demonstrate a clear and unequivocal allegiance to the State and that therefore they should not have dual nationality. In considering these submissions the Commission reviewed the current requirements relevant to the various offices.

With respect to the Office of Governor General, Section 19 of the Constitution only requires that the individual be a “citizen”. There is no distinction as to the source of citizenship, that is, whether by birth, descent or naturalisation. The Commission was of the view that in keeping with the recommendations of the changes in that office to “President”, eligibility for appointment should be citizenship by birth or descent. It was further agreed that in the case of citizenship by descent the

individual must have been resident in the State for the least thirty (30) years. This would assist in guaranteeing that the Head of State is someone who is “Saint Lucian in heart and identity” and in whom the confidence of all Saint Lucians would repose.

In relation to elected members of the House of Assembly, the Commission considered Section 31 of the Constitution which sets out the grounds of qualification for election to the House. In particular Sections 31 (a) and (b) which provide:

“31. Subject to the provisions of Section 32 of this Constitution, a person shall be qualified to be elected as a member of the House if, and shall not be so qualified unless, he –

(a) is a citizen of the age of twenty-one years or upward;

(b) was born in Saint Lucia and is domiciled and resident there at the date of his nomination or, having been born elsewhere, has resided there for a period of twelve months immediately before that date; and”

Section 32 (1) (a) goes on to disqualify a member of the House who: *“by virtue of his own act, is under any acknowledgment of allegiance, obedience or adherence to a foreign power or state.”* The provision appears to require a positive act of allegiance to a foreign power or state, for example, swearing an oath of allegiance or pursuing an application for citizenship of another country. The question of allegiance and knowledge of local circumstances was viewed as critical prerequisites of persons charged with the responsibility of making laws affecting the day to day living of Saint Lucians by many persons participating in the consultations of the Commission. It appears therefore, that with respect to Members of Parliament, dual citizenship is not allowed where there has been any acknowledgement of allegiance, obedience or adherence to a foreign power or State. The Commission noted and agreed with the status quo in relation to the restriction on dual citizenship of members of the House of Assembly. There was consensus that eligibility for election to the House of Assembly should be restricted to citizens by birth or descent. In the case of citizenship by descent the individual should have been resident in the country for a period of at least seven (7) years prior to the acquisition of citizenship and seven (7) years immediately prior to the election.

With respect to members of the Senate, the Commission considered Section 25 of the Constitution which provides for qualification of Senators. Section 25 (a) and (b) provide:

“Section 25: Subject to the provisions of Section 26 of this Constitution, a person shall be qualified to be appointed as a Senator if, and shall not be so qualified unless, he –

(a) Is a Commonwealth citizen who has attained the age of twenty-one years;

(b) Has been ordinarily resident in Saint Lucia for a period of five years immediately before the date of his appointment; and....”

There is therefore, no requirement that a Senator under the Constitution be a citizen of Saint Lucia. It is therefore very curious that one of the grounds of disqualification contained in Section 26 is the same disqualification as for a member of the House, which is *“by virtue of his own act, is under any acknowledgment of allegiance, obedience or adherence to a foreign power or state”*.⁹⁸ The Commission agreed that eligible nominees should be citizens and resident in the State for at least five years prior to their appointment, but the dual citizenship rule should not apply.

There was a minority view that the same restrictions placed on membership to the House of Assembly should be extended to membership of the Senate given that elected members have greater legitimacy than nominated members.

Recommendations

With respect to the provisions relating to citizenship and the Citizen of Saint Lucia Act, the Commission recommends the following:

(157) The definition, rights and obligations of a possible “regional citizenship” in acknowledgement of current regional integration arrangements should be properly determined through reciprocal treaty arrangements among the OECS or wider Caribbean before amendment to the Constitution or the Citizenship Act can be made to deal with this issue.

(158) There should be a Constitutional restriction on the grant of economic citizenship.

⁹⁸ Section 26 (1) (a)

- (159) The Citizenship of Saint Lucia Act should be redrafted and simplified and made more coherent by dedicating separate sections of the Act to deal with the individual grounds of citizenship. Therefore, the revised Act should have clear sections dealing with citizenship by birth, citizenship by descent, citizenship by marriage, citizenship by naturalisation (residency requirements) and citizenship in special cases, for example, adoptions, minors, stateless children, persons who have given service to the country and people who would have been entitled before 1979.
- (160) The provisions relating to the entitlement to citizenship of an applicant by descent which is now restricted to cases where one's parent is a Saint Lucian should extend to a person whose grandparent is a citizen.
- (161) With respect to citizenship by marriage, the current discrimination against Saint Lucian women who marry a non-citizen should be removed.
- (162) The Act should empower the Minister to deny the grant of citizenship in cases where a marriage is found to be a sham or marriage of convenience. Strong sanctions should be imposed against persons engaging in sham marriages.
- (163) There should be no restriction defining a period of time after marriage before an applicant is eligible to apply for citizenship.
- (164) The power of the Minister to refuse a grant of citizenship should apply in all cases of marriage or naturalisation. The power to deny an application must be on clearly prescribed grounds contained in the Act. However, the discretion of the Minister should be limited as much as possible as this privilege can be abused.
- (165) The procedure for the deprivation of citizenship obtained through fraud, false representation or concealment of any material particular should be clearly set out in the Act and refer to the procedure for initiation of the process, the process itself and what the Minister has to consider and find.
- (166) Matters concerning the investigation of eligibility requirements for the grant of citizenship should be removed from the purview of the Police Force to a civilian entity.

- (167) The Act should provide for the grant of temporary residence status as a precursor to the grant of citizenship by qualified applicants to ensure that their status is not in abeyance during the period between the filing of the application and grant or refusal of the grant of citizenship due the lengthy processing period.
- (168) The Head of State should be a citizen by birth or descent. In the case of citizenship by descent the individual should have been resident in the State for at least thirty (30) years.
- (169) Eligibility for election to the House of Assembly should be restricted to citizens by birth or descent. In the case of citizens by descent, the individual should have been resident in the country for a period of at least seven (7) years following the acquisition of citizenship and seven (7) years immediately prior to the election.
- (170) The existing rule which appears to disqualify the holders of dual citizenship in some cases from being eligible for election to the House of Assembly in accordance with Section 32 (1) (a) of the Constitution should be retained.
- (171) In relation to Senators, nominations should be restricted to Saint Lucian citizens resident in the State for at least five years.
- (172) The existing rule which appears to disqualify the holders of dual citizenship in some cases from being eligible for nomination to the Senate in accordance with Section 26 (1) (a) of the Constitution should not apply.

CHAPTER TWELVE

RELATED MATTERS

Elections and Political Party Financing

The Commission considered proposals for the regulation of elections and political party financing against a backdrop of increasing cost of elections and interference in national elections by foreign Governments. Noting that global best practice requires some form of regulation for political parties, the Commission acknowledged that the Caribbean is one of the last refuge for parties in the Western Hemisphere where the regime of elections and political party financing is virtually unregulated. Thus the Caribbean remains one of the few regions that have yet to pass strong and effective legislation to govern its political parties and elections campaign financing. The Commission therefore strongly felt that the continuing absence of such legislation and regulation would not only facilitate the possibility of state capture by criminal, international and or commercial interest but would also jeopardise the Caribbean's relationship with its international partners. Mindful of the difficulties that small size and a political culture that has increasingly become marked by patronage, victimisation and dependency would have on devising a system, the Commission reasoned that this should limit the ambitions of any proposed legislation. Thus, as a Commission we grappled with the issues of enforcement of a full declaration of contributions, the impositions of ceilings, exclusions from contributions, sanctions for violations of regulations of a reformed system, state financing of elections and political parties, abuse, transparency and oversight. Ultimately the Commission anticipated that the reformed system which aimed to limit the influence of money on elections would lead to the development of a democratic system premised on fair electoral competition and political equity.

With the ever increasing demands for goods and services on the part of the Saint Lucian voting public, the price for party loyalty has become more expensive. This has therefore led political parties both new and old to search for more lucrative sources of financing, particularly from the external private sector sources in exchange for investment opportunities as well as leverage on the

international scene.⁹⁹ Worst, is the entanglement and possibility of entanglement of parties and agents of parties with the international, domestic and regional criminal community.

As a Commission we accepted that any proposal for the establishment of a new regime would be meaningless without wider systemic changes. We certainly felt that our targeted efforts at retooling the procurement system, the recommendation to create an office of the Contractor-General among others, would certainly limit office holders especially those in Government from dispensing favours. We were consoled by the fact that combined with our many recommendations on limiting abuse, improving transparency; limiting political discretion and cultivating an environment build on greater accountability that this would ultimately lead to democratic consolidation in Saint Lucia. However unpalatable, our final recommendations on the issue would therefore be to some circles, we were compelled by the end game and the realisation that failure to act propitiously and meaningfully would lead to the continuing erosion and corrosion of democracy and the long held democratic values in the country.

Emerging out of our discussions was a concern about the use of state resources for election purposes. While we acknowledged the difficulty of acquiring such evidence there is a general feeling among the populace that incumbency has a clear electoral advantage not only with respect to the use of Government's physical resources but also with respect to the media. The media we agreed, is one of the most expensive election expenditure items.

The Commission's overriding concern with the potential impact of the failure to seize the opportunity presented to it amidst growing concerns of "presidential style" elections campaigns, with its glossy billboards, huge rallies and concerts, t-shirts, glossy magazines, public relations experts, pollsters and other elections paraphernalia was sufficient to mobilise the members into making strong recommendations. At a minimum level, the Commission felt that the Elections Act should be amended to include provisions relating to elections and political party financing. For sure, we reasoned that such tightening of the regime would have a positive impact on the public's growing disenchantment with politics, which was especially acute among the youth of the region. Secondly, we anticipated that there would be a positive correlation between such regime change and the de-escalation of the erosion of the credibility of elections and the political parties that

⁹⁹ View expressed by Dr. Vaughn Lewis. Former Prime Minister of Saint Lucia at a Regional Consultation on Political Parties and Elections which was held in Jamaica in September 2010.

compete in them. Finally, we strongly felt that a comprehensive Act which would also allow for the monitoring of the acquisition of financial resources by political parties, would arrest the possibility of criminal elements affecting the outcomes of elections, through their campaign contributions, and or intimidation of voters.

In its deliberations however, the Commission considered that the constraints of small size often circumscribed the ability of political parties to raise money and would expose its contributors to public scrutiny and consequently adversely impact the capacity of political parties to survive. We considered that this would be counterproductive as it would endanger the very system we were hoping would flourish. Thus, the Commission surmised that a proposal for full disclosure of contributions must also be balanced by a counter proposal for state funding. This would also simultaneously create greater equity for all parties and limit the influence of private special interest groups. The net effect would be to reduce the possibilities of political corruption and influence peddling.

Further, the Commission accepted that political parties were crucial for the survival of democracy and while there was heated debate on what some considered to be the dismal failings of parties, the adversarial nature of the political organisations, and their contribution to the growing political tribalism that characterises the society, nonetheless Commissioners felt that there was need to give due formal recognition to political parties whether constitutionally or legally. In that way too, the Commission was of the view that it would lend itself to the ability of the oversight body to monitor and evaluate the performance and behaviour of the institutions.

Recommendations

With respect to Elections and Political Party Financing, the Commission therefore recommends the following:

- (173) Saint Lucia should embrace the current global trend of creating a regulated environment for political parties and elections campaign financing.
- (174) Political parties should register for the purpose of elections.

- (175) A Political Party and Elections Campaign Finance Act should be enacted which would among other things provide for a system of both private and public funding.
- (176) The new Act should require full disclosure of all the financial contributions made to political parties. Non-disclosure should therefore be an offence.
- (177) Political parties should declare their assets and liabilities.
- (178) Appropriate sanctions should be placed on political parties that violate the provisions of the Act.
- (179) All foreign government contributions for election purposes should be banned.
- (180) All financial contributions from foreign companies to political parties should be prohibited.
- (181) A limit should be placed on contributions to political parties by companies and individuals.
- (182) A ceiling should be placed on contributions that would not be required to be declared.
- (183) All sources of anonymous contributions should be prohibited.
- (184) The State should provide some form of funding to political parties. However, State funding should not supplant or dominate private funding.
- (185) There should be greater equity in terms of the access of all parties to the State media.
- (186) The Act should clearly define political parties.

Diaspora Related Issues

In keeping with its mandate, the Commission consulted with Saint Lucians residing in Barbados, Martinique, St. Croix and St. Thomas (USVI), Virgin Gorda and Tortola (BVI) New York and Washington (USA), London, Manchester and Liverpool (UK), Toronto and Ontario (Canada) seeking their views on constitutional reform in Saint Lucia.

Whilst the people of the Diaspora shared many of the views and concerns expressed by Saint Lucians residing in Saint Lucia on the Governor General, the Prime Minister, the Civil Service,

politicians, Parliament and the like, there were a number of issues raised which were specific and of special interest to them.

There was the general desire to play a more meaningful and participatory role in the development and governance of their country. In particular, they wanted to participate in the democratic process of electing the Government of the country. At every meeting they submitted that due consideration should be given to establishing a mechanism whereby Saint Lucians living overseas could vote at elections. The Commission engaged them in debate on the costs and logistical problems associated with this proposal. Consideration needed to be given to the extent of the expansion of the number of countries which now constitute the Diaspora. These include Taiwan, China, Japan, India, Australia, among others.

After due consideration of the submission and an examination of the process involved in the arrangement of overseas voting, the Commission concluded that the submission could not be recommended.

In addition, members of the Diaspora were keenly interested in the issue of citizenship, in particular, the right to citizenship of persons who are of Saint Lucian descent and who are born overseas, any prohibition on dual citizenship, the current discrimination in respect of a woman marrying a man with Saint Lucian citizenship, any changes in the citizenship laws that would affect their or their children's rights to participate in the democratic process or public life.

In its deliberation of, and recommendations in respect to, the provisions of the Constitution dealing with citizenship and of the Citizenship Act, the Commission has taken into account the views and submissions coming from the Diaspora.

There were some issues, not necessarily constitutional in nature, which seem to be common concerns of members of the Diaspora. These include, the problems encountered in securing official documents such as passports and birth certificates, restrictions on their right to stay in Saint Lucia for those not holding a current Saint Lucian passport, securing their property whilst living overseas and the lack of consultation with them by consecutive Governments on important issues in or concerning Saint Lucia.

Financial Accountability (The Finance (Administration) Act)

In addition to the Constitution, the Commission was mandated to examine, study and make recommendations for amendments, reforms and changes to related laws, as are in the opinion of the Commission necessary and desirable for promoting good government in Saint Lucia, and in particular for strengthening the relevant Government machinery in order to ensure maximum transparency and strict accountability in the management of public funds, including appropriate sanctions for corruption. The Commission therefore felt it relevant and appropriate to examine the Finance (Administration) Act, (the Act).¹⁰⁰

The Commission noted that certain provisions of the Act had in recent times been the subject matter of litigation, judicial pronouncements and a Commission of Inquiry, all arising out of what has become commonly known as the “Rochamel Affair”. During its consultations the Commission heard a number of concerns and received a number of submissions on the subject of the management of public funds and holding those responsible for mismanagement accountable for their actions. The provisions of the Act also came up for discussion when submissions were made regarding the powers of the Prime Minister.

The Act deals with, inter alia, the control and management of public finance, payments into and from the Consolidated Fund, accounting for public monies, the authorisation of expenditure and public debt. The Act also provides for financial regulations and procurement and stores regulations to be made pursuant to the Act.

It is the responsibility of the Minister of Finance, (the Minister), to supervise the finances of the Government in order to ensure that a full account is made to the Parliament and for that purpose to have full responsibility for the management of the Consolidated Fund. The Minister is further mandated to give such directions and instructions as appear to him or her to be necessary or expedient for the advantage, economy and safety of public monies and public property.

The Act places on “the Director of Finance and Planning” (the Director), the responsibility to take all proper steps to ensure that any directions and instructions given by the Minister pursuant to the Act, the Rules or Regulations are brought to the notice of all persons directly affected thereby and

¹⁰⁰ Op. cit

are complied with. The Director must certify all withdrawals made or authorised from the Consolidated Fund.

The Commission noted that there is currently no position referred to as Director of Finance and Planning. The Act states that this title refers to the public officer duly appointed by the Public Service Commission to hold the office of Director of Finance and Planning and who is directly responsible to the Minister for the Administration of the Ministry of Finance.

The Chief Accounting Officer is the Accountant General who is charged with performing a supervisory function with respect to the collection, expenditure and accounting for, public funds. Permanent Secretaries and public officers who are heads of department or who perform the duties of a head of department, are Accounting Officers who are answerable to the Public Accounts Committee of Parliament for the efficient management of and accounting for public funds entrusted to them as accounting officers.

Further, there were concerns that there is currently a Director of Finance and not a Director of Finance and Planning. More importantly, concern was expressed that the person holding the position of Director of Finance, and therefore charged with responsibility to see that the directions of the Minister are complied with, also holds the position of Permanent Secretary in the Ministry of Finance, and therefore is an Accounting Officer in that capacity, answerable to the Public Accounts Committee of Parliament for the efficient management of and accounting for public funds entrusted to him or her. There is a view that one person should not function in both capacities and the Act should be amended to make this clear. The Commission observed that there is some overlap in the functions of the Director of Finance and Planning as prescribed by the Act and that of the Permanent Secretary in the Ministry of Finance as prescribed by the Constitution and that the relevant provisions of the Act should be revisited.

The Act provides that, subject to the Constitution and except as otherwise provided therein, all revenues and other monies raised or received for the purposes of the Government, not being revenue or other monies which are payable by or under any enactment into some other fund established for a specific purpose, shall be paid into and form part of the Consolidated Fund. In this regard, the Commission has noted some public concern suggesting that this provision of the Act

has not been complied with in recent times. However, the Commission was not able to determine the veracity of these suggestions or submissions.

The Accountant General is charged with preparing, certifying and submitting to the Director of Audit the accounts of Saint Lucia for the financial year showing the financial position of Saint Lucia on the last day of such financial year. These accounts are to be presented within three (3) months of the close of each financial year, unless the Minister grants an extension of time. Where an extension of time is so granted, the authorisation or direction is to be laid before Parliament at its next sitting.

The Act mandates the Director of Audit to submit to the Minister, not later than three (3) months from the date of receipt of certified copies of the financial statements from the Accountant General, those statements with his or her opinion on them. Section 84 of the Constitution outlines in greater detail the responsibilities of the Director of Audit and this we have discussed elsewhere in this Report. The Minister is mandated by the Act to lay a copy of every document submitted to him by the Director of Audit before Parliament at its next sitting following the date on which that document was received.

One of the greatest concerns of Saint Lucians as expressed in submissions, is the apparent power of the Minister to borrow or otherwise commit the resources of the State without prior approval from Parliament. The Act provides that the Minister may, by resolution of Parliament, borrow money from a bank or other financial institution by means of advances to an amount not exceeding in the aggregate the sum specified for that purpose in the resolution, to meet current requirements, and such resolution shall not have effect for any period exceeding 6 months. Additionally, the Minister may, by resolution of Parliament, borrow from any bank or other financial institution for any of the following:

- the capital or recurrent expenditure of Government;
- the purchase of securities issued by any Government or government agency;
- on-lending to any statutory body or public corporation; or
- making advances or payments to public officers as authorised by any enactment.

The Act further provides in Section 41 that a guarantee involving any financial liability is not binding upon Government unless that guarantee is given in accordance with an enactment or unless approved by resolution of Parliament. The interpretation and application of this section has been the subject of much public debate in recent times, especially when it became apparent from judicial pronouncements that it was possible for the Prime Minister to enter into a guarantee, and thereby commit the Country to financial obligations, without the prior approval of Parliament.

The Commission reviewed the findings and recommendations of the Ramsahoye Report as to the adequacy of Sections 38, 39 and 41 of the Act and also considered the numerous submissions to the Commission on this matter. After due consideration, the Commission concluded that the recommendations of the Ramsahoye Commission of Inquiry with regards to the Act and financial accountability in general, should be adopted and implemented. In particular, the Commission concluded that every guarantee given by the Government of Saint Lucia, if not given under an enactment, be put before Parliament for prior approval by resolution with full details of the amount to be guaranteed and the object and reasons for giving of the guarantee.

The Commission is cognisant of the fact that Parliament has recently enacted legislation to implement some of the recommendations of the Ramsahoye Report and welcomes this move.

The Commission received a submission that there should be a review of the Contingency Fund provision which allows the Minister to make advances from the Fund and then lay a supplementary estimate before the House after the fact, when he or she is satisfied that there has arisen an urgent and unforeseen need for expenditure. Whilst acknowledging the need for flexibility in these situations it was felt that there was a need to look at the methodology for assessing or creating the Fund as well as to safeguard against abuse of the provision. The Commission agreed with this submission.

There was a submission that the Act should contain provisions for the laying before Parliament of budgeted actuals as a methodology for accounting for expenditure incurred in the previous year. The Commission was of the view that such a practice would result in greater transparency and accountability regarding how the resources of the state are utilised.

Recommendations

With respect to Financial Accountability, the Commission recommends the following:

- (187) The Act should be revised so as to clarify the respective roles of the Director of Finance and Planning and that of the Permanent Secretary in the Ministry of Finance.
- (188) No one individual should function in the capacity of Director of Finance and Planning and that of Permanent Secretary in the Ministry of Finance simultaneously.
- (189) The methodology for assessing or creating the Contingency Fund should be reviewed be reviewed so as to safeguard against abuse.
- (190) The implementation of the recommendation of the Ramsahoye Report in respect to the Act should continue.

Regional Integration

The need for economic sustainability among Small Island Developing States (SIDS), particularly the reality of survival in an unfair competitive global environment, has placed the issue of regionalism at the very core of the Caribbean development agenda.

The integration movement has been on a forward march as early as 1948 when the common services of the University of the West Indies (UWI) was established and continued into the short lived Federation of the 1950's. This was followed by the Caribbean Meteorological Service in 1963, the Caribbean Free Trade Area (CARIFTA) in 1965, which evolved into the Caribbean Community and Common Market (CARICOM) in 1973.

The regional integration initiative helped to meet some key objectives through a collaborative and unified approach in many areas of functional cooperation. Some of these areas include strengthening of trade and such related issues in the region, the creation of an appropriate enabling environment for private sector development, the development of infrastructure programmes in support of economic growth and regional integration, the development of strong public sector institutions and good governance.

Another important area of regional integration is the OECS Economic Union Treaty which focuses on economic union for the purposes of providing one economic space (at this time) among member states. It allows participating states to retain their sovereignty and make decisions in a manner that does not require constitutional change. The Government of Saint Lucia has recently (1st February 2011) introduced legislation to give effect to the treaty.

In view of this the Commission noted the implications of regional integration in several areas including the free movement of labour, the Caribbean Court of Justice (CCJ), citizenship and harmonized legislation. These developments will from time to time have implications for our constitutional development.

CHAPTER THIRTEEN

THE NEW CONSTITUTION AND ITS EFFECT ON POLITICAL CULTURE

With the introduction of a new constitution for Saint Lucia, the major paradigm shift is one that moves away from the parliamentary model towards the presidential model but stops mid-way between the two. This represents a fundamental departure from the approach that was adopted at Marlborough House in 1978.

At Marlborough House, the approach was one of making piecemeal changes to the 1967 Constitution so that there was a continuation of a particular type of evolution along a continuum that would end at the parliamentary model.

The enactment of Statutory Instrument No. 50, 2004 gave a different mandate to the Constitutional Reform Commission of Saint Lucia. The Commission was asked to:

- 1) *“promote a meaningful expansion and widening of democratic participation by citizens in Government;*
- 2) *address possible weaknesses in the Constitutional framework which political practice has highlighted over the years;*
- 3) *re-fashion the Constitution so that it better accords with our changing social and political circumstances; and*
- 4) *promote better governance and greater equity in the constitutional framework generally.”*

It is hoped that the recommendations that the Commission have made will ultimately achieve those objectives. However, the change that will overcome the political culture of Saint Lucia if these constitutional proposals are accepted must be understood.

The creation of a parliamentary-presidential hybrid represents a further evolutionary step along the road of development. The political experiences of the post-independence period have left many

Saint Lucians wondering about the functioning of their Constitution and the implications for their democracy.

The political turmoil of the 1979-82 period, the political uncertainties associated with two general elections in April 1987, the political succession¹⁰¹ and retirement of John Compton in 1996 and his return to power in 2006 and his death in 2007 constitute what politics is all about. The reality is that Saint Lucia needs to enjoy prolonged political stability with a new political culture that will transform the zero-sum game of the Westminster-style model into a culture of scrutiny, transparency and oversight.

The challenges of hybridization present an opportunity to make real political changes that will require political parties to change the way they operate and force their nominees to observe standards of ethics and probity that the current system takes for granted.

The enhanced political responsibility that will be placed in the hands of the parliamentarians as committee members in a new parliament will force the system to accept different standards of political behaviour that are higher than those which currently exist.

There are too many people who complain about the process, but when faced with the real prospect of change, shy away to the safe corner of the parliamentary system with which they are familiar. Who will dare to change the way that political business is done and embrace it for all it is worth?

Further, the forces of regionalism are not as strong as they should be. The Caribbean Court of Justice is the living proof of that. What is it that some politicians and some people fear the most about the Caribbean Court of Justice? This is where the debate needs to go as only Barbados, Belize and Guyana have made the step to embrace the Court as the replacement for the Judicial Committee of the Privy Council.

The way to handle this is to try to understand the fear and not to get angry. There is a kind of unease among some politicians and people that needs to be explained and allayed. If this does not happen, the possibility of a counter-movement against the Court could emerge. Since 2005 there

¹⁰¹ John Compton was succeeded by Dr. Vaughn Lewis as Political Leader of the UWP and subsequently Prime Minister.

have only been three countries who have taken that step. St. Vincent and the Grenadines tried in 2009 but their bid failed at the referendum on the Constitution.

Saint Lucia has come through the ravages of Hurricane Tomàs which has exposed many weaknesses of Government systems, but none of human spirit. The resolve of the Saint Lucian people will always shine through, but their political will to make these changes and to demand them of their leaders will now be tested.

The media have an important role to play in making this quantum leap from a parliamentary system to the proposed hybrid. Linear thinking will not advance this cause very much. The challenge here is to engage these reforms on the basis of critical thinking so that the frequent criticisms of the existing system are not converted into defence mechanisms on how to keep the status quo or to analyse what is being proposed here by reference to the way that political business has been transacted for more than thirty years. A new framework of thought and analysis is required.

If accepted, Saint Lucia will face a new dawn of political responsibility and accountability for which it has yearned. The maturity of the politicians will be tested in their own consideration of this document which is the product of almost five years of hard work and widespread consultation both at home and in the Diaspora.

It is anticipated that a new political culture will emerge out of these proposed reforms. The excesses of the Westminster-style system that concentrates power in the hands of the Prime Minister is expected to be a thing of the past. So many people have been influenced by the Washington model that their sensitivity and yearning for reform has naturally taken them to that model.

This phenomenon can only be explained by the fact that people have been observing political events and theorising in their minds about how such a system could work in Saint Lucia. This has been prompted by many events, including but not limited to, the “crossing of the floor” by Neville Cenac in 1987, the succession of Dr. Vaughn Lewis as Prime Minister in 1996; the dismissal of Sarah Flood-Beaubrun in 2005, the death of Sir John Compton in 2007 as well as the election of Barack Obama as President of the United States of America in 2008 whose election has electrified the political interest of many average citizens in the workings of our system of Government. The

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fact that so many persons proposed reforms along those lines is revealing in its own right. As a Commission, we listened and we debated. The end product is now before you for your consideration.

CHAPTER FOURTEEN

RESERVATIONS

Commissioner Terrence Charlemagne

SENATE COMPOSITION REFORM, AN EFFECTIVE MEDIUM TO CHANGING A STAGNANT CULTURE AND PROMOTING GOOD GOVERNANCE

It is my view that the recommendation of the Commission, though commendable, does not address the critical role of promoting good governance, accountability and transparency in government. Based on that premise, I submit this reservation.

As expressed in our web site, the Constitution ... is the most supreme law of the land which defines in a social and political contract between the citizen and state, the procedure and scope for, and limits of lawful governance as well as the fundamental rights and freedoms of citizens. Veritably, such a law would have to be the foundation on which every other law pursuant to the governance of the State would be coded.

Over the recent past, the populace has witnessed the rapid deterioration of standards, ethics and disregard for the democratic principles that underpin our fundamental rights and freedom. Such an experience must therefore be a pivotal consideration as we engage in meaningful discourse in the process to reform our constitution.

Town hall meetings: During the various sessions, it was clear that people wanted a fundamental change to the Senate to effect review based on the “good of the people” rather than conscience of a political party.

While Commissioners concur with the sentiment that Saint Lucia requires an effective Senate, we were divided between the culture of “party political system”, in which the party in power enjoys the majority, and an authentic, effective and distributive Senate.

In our endeavour to reform our engine of good governance, we must engage our thinking to our mission to “deepen the process of democracy; enable the participation of all citizens wherever they

may reside, in the development of the country, as well as protect, defend and safeguard the interest and welfare of all Saint Lucians”.

Critical to this mission is to revisit the structure and function of the Senate as an integral component of governance in the authentic expression of a democratic state. The Senate must therefore, be a powerful house that is rife with impartiality that safeguards checks and balances, and promotes “good for country” as against good of individual and party. The Senate must not be viewed as a vestigial apparatus as seen presently.

The present structure of the Senate is skewed towards the governing party. That aspect can hardly give rise to an effective Senate where a high level of independence is required and conscience voting is promoted. As presently exists, foremost in the orientation and delivery of nominees, is the promotion of interest of the party as against the good of the country.

In the present situation, experience has shown that dissent has led to automatic dismissal, irrespective of the value that the individual brings in promoting the interest of the country and upholding the democratic principles that forms the fabric of our parliamentary system of Government.

Proposal by the Commission

The Commission, in its deliberations and recommendations proposed an increase in the number of Senators but maintained the majority in favour of the governing party. That orientation can hardly be regarded as an effective change that would safeguard the principles of good governance, accountability and transparency. What if the Senate is made of both elected and nominated or all elected members? Would a model that would guarantee a controlling majority by the governing party be dictated, if it was denied through the democratic process?

Increasing the number of Senators to 13 as proposed by a majority of Commissioners, with seven (7) appointed on the advice of the Prime Minister, three (3) on the advice of the Minority Leader and three (3) by the President in his own deliberate judgment, cannot ensure a balance and an effectively functional Senate. Any proposal that does not change the structure to give new meaning to that important organ of government, and hoping that there will be a change in mindset for

political acculturation, is an exercise in futility or what we term in our kwéyòl palance “èspwa mal papay”.

A New Dispensation

We must therefore adopt a deliberate posture to create real change, to give effect to that required culture of good governance through an effective Senate. Without reforming the Senate that would provide a functional change to effect an integral part of governance, the institutions of government cannot work better and will not do better than they do at present.

Further, the Senate should comprise expertise that can give Bills the scrutiny that they deserve, thereby, creating a functioning Senate” Since Senators are not subject to the vagaries of elections, they can track issues over a longer period of time than Members of Parliament.

Senators must also contribute to in-depth studies by Senate committees on public issues. The reports from these investigations can lead to changes in Government public policy and legislation.

Senators should provide a detailed review of all legislation, and the government of the day should always be conscious that a bill must get through the Senate where the "party line" is more flexible than in the House. It must be noted that this cannot be achieved with a rubber stamped Senate where the governing party has the majority votes.

During Senate question period, Senators must purposefully question and challenge the Leader of the Government Business in the Senate on government policies and activities.

In our parliamentary democracy we are to have two houses but not two houses of party rubber stamps. The senate therefore, must be a powerful house that is rife with impartiality that safeguards checks and balances and promotes “good for country” as against good of individual and party. Therefore, the notion that the majority party must control both houses of parliament is a fallacy and is tacit endorsement of elective dictatorship.

This model proposed as the reservation is based on a distributed majority rather than a party majority thus allowing independents to provide the equilibrium. The purpose of the Senate is not to provide the platform for voting in blocks but one to cultivate and demonstrate good governance

through open and intelligent discourse. The Senate must therefore guard its role as a 'stabilizing' influence on the expression of parliament.

Party majority is designed for a situation where Senators are elected and the expression of the democratic principle through the simple majority prevails. "Office by appointment", where nomination is the "over-riding factor" is fundamentally different. Practice has shown that the "rigidity of the party system has weakened the effectiveness of the Senate". The party system also impacts responsible government. The endorsement of the party based majority in the Senate is a functional alienation of Independents and minority in the Senate.

Passage of Bills

The constitutional text denies the Senate the power to originate or amend appropriation bills, thereby not being able to hold government to ransom in its use of funds for its development agenda. However, the Senate is still left with the power to reject other bills or defer their passage

The notion that not allowing the governing party a Senate majority will create gridlock in government is providing an excuse for political dictatorship. If bills that were denied in the first instance are re-introduced, and again fail to pass the Senate, the President may agree to a joint-sitting of the two Houses in an attempt to pass the bills. That is a new aspect for consideration.

Therefore, the model that represents both a change in structure and numbers as proposed should:

- Reduce rubber stamping.
- Provide greater accountability.
- Allow for greater debate and discussion.
- Ensure that the Senate incorporates more political diversity than the Lower House, which is basically a two party body.
- Demonstrates that the composition and structure of the Senate is different to that of the House of Assembly, contributing to its function as a house of review.
- Have the Upper House acting as a 'stabilizer' having a strengthening influence on the expression of popular democracy.
- Encourage conscience votes and debates and

- Take a more active legislative role.

Greater scrutiny of government activities by (non-government) Senators provides the opportunity for all Senators to ask questions of Ministers and public officials. This may occasionally include government senators examining activities of independent publicly funded bodies, or pursuing issues arising from previous governments' terms of office.

A functioning Senate, either directly or/and indirectly through its committees, is to scrutinize government's activities. The vigour of this scrutiny will be fuelled by the party in government not having the majority in the Senate. Whereas in the House of Assembly the government's majority has sometimes limited that chamber's capacity to implement executive and legislative scrutiny, the opposition and minor parties will be able to use their Senate numbers as a basis for conducting inquiries into government operations.

The existence of equality of 'parties' in holding the balance of power in the Senate will make decision making more important and occasionally more dramatic than in the House of Assembly.

Recommendation

A powerful Senate should therefore be an equal and effective. That is, the Senate should comprise of an equal number of Senators appointed by the Prime Minister, Minority Leader and the President. In that vein I wish to propose five (5) Senators from each of the contending parties.

This proposal is designed to establish an effective Senate that promotes greater adherence to the principles of good governance through accountability, transparency and responsibility. It will ultimately institute a critical role of Senators providing "sober, second thought" on the work done by the Lower House.

The Definition of Marriage

Making it a Constitutional Provision

This reservation is submitted over the non-inclusion of the definition of marriage as a constitutional provision.

The Preamble of the constitution is the fundamental principle and philosophy that guide the tenet of the social, political, economic, cultural and spiritual sustenance of the Saint Lucian society. The spiritual pillar of our society is clearly annunciated in the Preamble of the constitution which clearly states that we ... the People of Saint Lucia:

- “ a) affirm their faith in the supremacy of the Almighty God;*
- b) believe that all persons have been endowed equally by God with inalienable rights and dignity”;*

In recognition of its relevance, the Commission duly considered such fundamentals and made it even more inclusive to represent the majority of individuals in our society by rewording the section to read; “... *acknowledge the reality that the majority of Saint Lucians affirm their faith in the supremacy of Almighty God, they also commit to the principle of respect for other spiritual belief and persuasions*”, thus upholding the values inscribed in the provision.

Marriage is universally accepted as a moral fabric of our society. Marriage is not what we want it to be. It is defined as “*a union between a man and a woman*”. That therefore, provides a premise for it to be given absolute expression in the constitution. Further, inclusion of the definition, in no way infringes on the fundamental rights of individuals. Rather, it epitomizes our norms and values and resonates in the principles of procreation.

It was observed, that the consideration given to gender and sexual orientation by the Commission, though commendable, prejudices the bias against the inclusion of the definition of marriage (a union between a man and a woman) in the constitution and therefore engineered the potential abortion of this moral imperative. To a certain extent, behavioural trends are generally subsumed within the social proclivity of gender and sexual orientation and can possibly propagate the environment for a level of acculturation conducive for the decadence of the very norms and values we seek to uphold and which are intrinsically foreign to the St. Lucian society. Further, the associated behaviours are of no positive value to the social, economic, cultural and spiritual advancement of our country.

Our belief in the Creator or spiritual persuasions by others, strongly upholds and protects the fundamentals of procreation for the sustenance of the human race. By design, the male was never made to be a partner to

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a man or a female to a woman. Not inscribing the definition of marriage in our constitution, is subjects it to be changed by the whims and fancies of agents if placed in ordinary legislation, and represents a tacit endorsement of, or an accommodating valve to the act of same sex marriage. The abortion of the fabric of our norms, values and procreation, is the denial and death of any society. To devoid ourselves of such truth is ultimately therefore, an abortion of our spiritual existence.

I therefore strongly recommend that the definition of marriage as a union between a man and a woman be given expression in the revised constitution.

RESERVATION

Commissioner Veronica Cenac

INCLUSION OF SEXUAL ORIENTATION AS A GROUND OF DISCRIMINATION

Human Dignity as the Basis for Human Rights

The Preamble to the Constitution of Saint Lucia adopts the belief that all persons are endowed equally by God with inalienable rights and dignity. It further observes that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State. Human rights are premised on the inherent dignity of the human person. There is a positive duty on the State to take reasonable measures to protect the human rights of its citizens. This was clearly stated by Barrow J in *Francis v Attorney-General of Saint Lucia*¹⁰² where the court recognized the duty of the State to ensure that there was adequate protection against domestic violence.

Vulnerable populations to HIV and those already living with HIV face widespread discrimination in Saint Lucia. Although the Constitution protects against discrimination, this protection is limited to specified grounds; none of which include health status, disability or sexual orientation. It was recommended that:(a) the anti-discrimination provision be open-ended rather than closed so that protection against discrimination is not restricted to the grounds listed; one means of achieving this is the insertion of the phrase “other status” in the provision. and (b) the protection provided for in the anti-discrimination provision be extended to include discrimination on the basis of health status, disability and sexual orientation. While the Commission agreed to the extension of the grounds to health status and disability, there was no consensus on the basis of sexual orientation.

Protection from discrimination on the ground of sexual orientation

Protection from discrimination on the ground of sexual orientation is inherently tied to fundamental principles of equality, privacy and respect for human dignity. In Saint Lucia it is commonplace for

¹⁰² LC 2001 HC 16 (24 May 2001)

persons to openly display acts of hostility towards and discriminate against perceived and actual homosexuals, lesbians and transgendered persons. There is the perception that men who have sex with men are infected with HIV and the often misguided conclusion that men who are infected with HIV are homosexuals. The stigma attached to being homosexual deters many individuals from getting tested. Discrimination should not be condoned by the State. Sexual orientation should be included as a ground of discrimination in the anti-discrimination section.

In the Landmark decision of the Naz Foundation v. Government of NCT of Delhi and Others delivered by the High Court of Delhi on 2nd July 2009, the Court held that Section 377 of the Indian Penal Code (IPC), insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. In 2001, the Naz Foundation had filed a public interest litigation (PIL) petition with the Delhi High Court, challenging the constitutional validity of Section 377 under Article 14 of the Indian Constitution on equality, Article 15 on equality on the basis of sex, Article 19 on freedom of speech and expression, and Article 21 on the right to privacy and health.

S.MURALIDHAR, J Chief Justice in his written decision on behalf of the Court found, after reviewing extensive material placed on the record in the form of affidavits, authoritative reports by well-known agencies and judgments including affidavits filed by the Ministry of Health, that the criminalization of same-sex conduct has a negative impact on the lives of gay men and women who are reduced to “un-apprehended felons”, thus entrenching stigma and encouraging discrimination in different spheres of life. Apart from misery and fear, a few of the more obvious consequences are:

- harassment,
- blackmail,
- extortion, and
- discrimination.

He stated:

“The criminalization of homosexuality condemns in perpetuity a sizable section of society and forces them to live their lives in the shadow of harassment, exploitation, and humiliation, cruel and degrading treatment at the hands of the law enforcement machinery. The vast majority (borrowing

the language of the South African Constitutional Court) are denied “moral full citizenship”. Section 377 IPC grossly violates their right to privacy and liberty embodied in Article 21 insofar as it criminalises consensual sexual acts between adults in private. S.MURALIDHAR, J Page 43

The link between buggery laws and how they impede HIV prevention efforts was one of the compelling arguments by the Applicants in the Naz Foundation judgment which resonated with the Court and upon which the decision rests.

Justice Michael Kirby, a distinguished former Judge of Australian High Court, expressing in similar vein said that criminalization of private, consensual homosexual acts is a legacy of one of three very similar criminal codes (of Macaulay, Stephen and Griffith), imposed on colonial people by the imperial rules of the British Crown. Such laws are wrong:

- Wrong in legal principle because they exceed the proper ambit and function of the criminal law in a modern society;
- Wrong because they oppress a minority in the community and target them for an attribute of their nature that they do not choose and cannot change. In this respect they are like other laws of colonial times that disadvantages people on the ground of their race or sex;
- Wrong because they fly in the face of modern scientific knowledge about the incidence and variety of human sexuality; and
- Wrong because they put a cohort of citizens into a position of stigma and shame that makes it hard to reach them with vital messages about safe sexual conduct, essential in the age of HIV/AIDS.

Enforceability of the opening section to the Bill of Rights

The opening section to the Bill of Rights in Caribbean Constitutions is generally not viewed as giving rise to enforceable rights. In Saint Lucia, the opening section is not included in the redress clause. The High Court in *Girard and the St. Lucia Teachers Union v AG*¹⁰³ concluded that rights in the opening section were not amenable to redress. This section was said to be merely declaratory, providing a forerunner of things to come which are worthy of protection. The position is different in

¹⁰³ LC 1986 HC 24 (17 December 1986) unreported

Antigua and Barbuda and Belize, where the opening sections are specifically included in the redress clause. This approach should be adopted by Saint Lucia.

RESERVATION

Commissioner David Cox

Although I am in general agreement with many of the recommendations made in this report, there are some matters on which I must respectfully express my disagreement with the majority of my colleagues on the Commission (“the majority.”)

The Proposals on Prime Ministerial Power

The majority on the Commission recommends that the office of the PM (PM) be stripped of several of the powers currently enjoyed by the office. (See Chapters Five and Six of the report, for examples.) These reductions in the all-encompassing powers of the PM are appropriate and laudable. They also represent significant changes to the current constitutional framework which, if implemented, would bring about material changes in the way Government works.

Curiously, while the majority has stripped the office of many of its powers, they have also opted to retain the current rule which permits a parliamentary majority to essentially “fire” or change a PM, by withdrawing their support and replacing him with another House member of their choosing. (See Chapters Five and Six.) They have also gone further, by recommending the removal of the PM’s power to dissolve the House should this occur. Together, the result of these recommendations is that it is certainly conceivable that several PMs could be appointed during the term of any one Parliament.

By going this route, the majority has succeeded in radically and severely weakening the office of the PM. In the current system, every PM enjoys a degree of leverage over his Parliamentary colleagues, primarily through his ability to determine who becomes a Minister. This leverage operates in several ways. It allows him a reasonable discretion to “hand out” rewards for political success. It also enables him to establish the hierarchy of his Cabinet, by giving more senior posts to more seasoned or loyal colleagues and less high profile appointments to more junior or inexperienced members. Most importantly, it provides him an opportunity to exercise discipline over Cabinet through the threat of dismissal of any Minister.

This is an important element of the current system. The discretion to appoint and remove Ministers represents both a carrot and a stick. It ensures that the PM and his Cabinet exist in a state of dynamic tension – he is dependent on their support for his position as PM, while they are dependant on him as Party Leader to get elected, and for political rewards. This situation promotes a degree of stability in Government, although, as history has only recently shown in Saint Lucia, it is open to abuse.

Under the new dispensation however, a PM would essentially be unable to appoint his Parliamentary colleagues as Cabinet Ministers, without their having to resign their seats in Parliament first. While they could always resign their seats to serve in Cabinet, they would run the risk that the PM could dismiss them at his whim at some later point, with the effect that those very members would essentially be excluded from Government altogether. This is because, unlike in the current system, they would no longer be able to simply go back to being an ordinary backbencher. Once dismissed from Cabinet, they would be out of power, for the duration of that Parliament. Put another way, there would be very little incentive indeed for a member of the House to resign his seat in Parliament to serve in the PM's Cabinet.

Coupled with his inability to dissolve the House if his colleagues should withdraw their support, the consequence of these new proposals would be to decisively remove, any leverage a PM would enjoy over his Parliamentary colleagues. A PM would have nothing to incentivise loyalty, nor the ability to discipline or punish disloyalty. In fact, his only option to exercise discipline would be to have members fired from the party, but in doing so, he or she would potentially expose him or herself to losing his or her parliamentary majority.

Consequently, the proposals, if adopted, would result in an immediate and considerable shift in the balance of power between the PM and the rest of the members of his party, who were elected to the House. They would ensure that actual power would move dramatically away from the PM, toward those members of the House, who made up the majority party in Government.

With the greatest respect to my colleagues, the cumulative effect of the changes proposed by the majority in this regard goes beyond mere emasculation of the office of PM. With these proposals, the Commission has succeeded in pulling the pants down around the waist of the office; they have castrated it, tied a bag of hardened cement around its ankles and thrown it into the Castries

Harbour. By some as yet undiscovered constitutional magic, the majority on the Commission appear to expect the office to float, unscathed and alive, to the surface.

Nothing in my study of constitutional law or hard politics permits me to share this remarkable optimism. In the circumstances contemplated by the majority, PMs would be removed at the slightest whims and fancies of aggrieved, over-ambitious or unscrupulous elected members and frequent changes of PM would actually become an even *greater* risk than what exists under the current system. In fact, the Commission's proposals, if adopted, would probably *guarantee* several changes of PM in the life of any given Government.

In my view, the proposals would simply lead to an intolerable situation where there would be no continuity in government, and where Parliamentary discipline would be non-existent. Without an incentive to promote the success of the PM and his policies, elected members would essentially be left to a "free for all/every man for himself" scenario, in which the immediate needs of a particular constituency or member could never be prioritised over those of any other. Every PM would essentially become the hostage of every single member of the majority in Parliament and the office itself would be relegated to a game of musical chairs, as each member of the parliamentary majority vied to take his turn at the helm.

In addition to the foregoing, the recommendation also gives rise to broader, systemic concerns which are troubling. The task of reforming a Constitution is a delicate undertaking. It invariably involves redistributing power to make Government more accountable and responsive to voters, by addressing instances of over-concentration of authority in any one branch of Government. In other words, constitutional reform must involve redistributing power away from Government and toward the people, if it is to be meaningful.

In the current system, the overwhelming concentration of authority in the Cabinet is an unacceptable, intolerable state of affairs that is actually inimical to the development of a strong democratic ethos in Saint Lucia. The less empowered people are to exercise control over their Government, the more likely the case that Government can run roughshod over the people or the more likely that Government can simply run amok. The more frequently Government does this, the greater the public disenchantment with the institutions of Government and with the idea of democratic participation generally.

This concentration of authority in the hands of a PM and a Cabinet, is the defining feature of the so called Westminster model. Without appropriate checks and balances, this concentrated authority routinely gets out of control. It is for this reason that I fully support the majority of Commissioners in their view that the persons who constitute Cabinet and the House should be separated to the extent that this is possible.

Yet with the proposals to fundamentally strip the powers of the PM down to their barest minimum, without a corresponding restraint on the power of the parliamentary majority to remove him or her at their whim, the majority on the Commission has essentially exchanged one type of constitutional tyrant for another. They have not proposed to redistribute power in our system of Government to make all three branches of Government more equal, but instead have merely shifted the concentration of authority away from the Cabinet, toward the majority in the House. Instead of an almost tyrannical, super-powerful PM, looming large over the constitutional framework, we would be left with a situation where every member of a parliamentary majority was king, able to insist on the building of a major road or a school in every constituency, irrespective of the state of the treasury or the country's finances. Since the PM would know he could simply be removed if he did not comply with every request, no matter how unreasonable, how could he refuse?

In effect therefore, the Commission's proposals would simply exchange one type of constitutional monster for another. Instead of abuses caused by a powerful, reckless Cabinet, carrying out bad policy due to hasty decision-making, we would be left with a dysfunctional Parliament which could simply bully the Executive to the point where the very act of governing was impossible. Instead of a strong Executive overseen by a weak Legislature, we would have a weak Executive dominated by a capricious Legislature. Government would simply become the incapacitated hostage of the privileged majority.

In other words therefore, the majority hasn't solved the inherent problem of the over-centralisation of power; they have merely proposed to shift its locus. Consequently, while I can agree with the majority's recommendations that, for the sake of creating proper checks and balances on Cabinet authority, the Cabinet and Parliament should be largely separated, I can not support the recommendation that the majority of elected members should have the power to change PMs, without the imposition of a related rule requiring an automatic dissolution of Parliament.

In my view, if the PM's powers are to be so considerably diminished, then the ability of his colleagues to replace him should be similarly restricted. Since he is unable to discipline them without endangering his own position in Parliament, they should not be able to discipline him without also putting themselves at risk. Accordingly, if the majority of elected members should withdraw their support or vote against the PM in a vote of no confidence, my recommendation is that he should be entitled to dissolve Parliament and permit them all to face the electorate. While I recognise of course that such a situation would be novel in the context of our parliamentary systems, it is no less radical an innovation that what the majority on the Commission have proposed in respect of separating the Cabinet and Parliament, fixing dates for elections or appointing persons to Ministerial posts, after vetting and approval by Parliament.

At the very least, by requiring elections whenever the PM was changed, the Commission would ensure that the office, even with reduced authority, would continue to function as the "first among equals" and the "keystone of the Cabinet arch," it was always designed to be. It would ensure that the survival of the parliamentary majority would depend on the enforcement of parliamentary discipline, and would permit any person appointed as PM, sufficient leverage to actually fulfill the mandate he or she was elected, however indirectly, to fulfill. It would promote a reasonable degree of continuity in Government and ensure that the PM would not lose support, merely due to the irrepressible ambition of one or more of his elected colleagues. On the contrary, his or her support would be virtually guaranteed, except on the genuine grounds that he or she was truly incompetent, corrupt, or largely out of favor with the public. After all, which elected member would participate in a rebellion against a PM, when his or her position was at stake, unless that rebellion was founded on some genuine difference of principle?

Most importantly, tying the fate of the majority in Parliament to that of the PM in this manner, would also preserve the dynamic tension of the current arrangements, to the extent that the potential for re-election of the majority in Parliament would depend on the performance of the PM and his selected, largely technical Cabinet. Put in other terms, the success of the majority of elected members in the House would depend on the success of the policies of the PM and Cabinet and vice versa.

There is one further but actually equally important reason I am moved to disagree with the rest of the Commission on this issue.

As we went about the length and breadth of the country, it was not uncommon for many ordinary Saint Lucians, to complain that they were tired and disgruntled that “their” PM could be changed, by a group of people in a party, or by a rebellion in a Cabinet. It was clear that the status quo angered many Saint Lucians and that they felt deeply aggrieved by the fact, that the person to whom they believed they were handing over authority for managing the affairs of the country, could be changed without their consent or even consultation. They were suspicious and resentful of the “back door” machinations they believed were invariably involved, in cases where a sitting PM was to be replaced by one of his colleagues in Government.

What is obvious but nonetheless amazing from the frequency of this complaint, is that although Saint Lucians do not elect a PM directly in our current system, the public nevertheless regards the individual, as having been essentially elected by them. In fact, the frequency with which this concern was raised, confirms that elections in our system are largely decided on the basis of the charisma and electability of the political leader of the party seeking office. It also probably explains the frequency of the submission by the public that the PM should be directly elected; a submission that, like the majority on the Commission, I do not support.

Notwithstanding that many members of the public were intense in their views that the situation cries out for change however, the majority on the Commission has elected to maintain the status quo. They have chosen to do so, on the basis of what I consider to be overly legalistic, technical grounds, which do not address the substance of the public’s concerns.

This is very unfortunate. Given the intensity of the public’s feelings where this matter is concerned, the prevailing state of our political discourse and the highly tribal nature of our politics, I feel that it is frankly, only a matter of time before the change of a popular Saint Lucian PM, as a result of the unwitting stupidity or rampant ambition of an unscrupulous Cabinet majority, leads to widespread bloodshed in the streets of Saint Lucia.

Term Limits

The majority on the Commission has proposed in Chapter Six that term limits should be imposed on PMs, but only to prevent persons from serving more than three (3) consecutive terms at a time. Based on the recommendation, a PM who had served three (3) consecutive terms could be re-appointed to the office of PM, after one (1) term had elapsed since his or her last consecutive term.

With the greatest respect to my colleagues, the recommendation amounts in my view to a non-recommendation. This is because it would not deal with the mischief the public asked the Commission to address in the first place. If the majority's recommendations on term limits were adopted in their respective countries, they would not prevent, for example; an Owen Arthur, Keith Mitchell, Denzil Douglas, Roosevelt Skerrit, or Ralph Gonzalves from being elected to the office of PM six (6) times or more. Indeed, nothing in the majority's recommendations would have prevented the late Sir John Compton from being re-elected to however many terms he was able to win. And yet, whether right or wrong, the public was fairly vociferous in their calls for placing limits on the number of times a person could be re-offered to the electorate as PM and by their own reasoning, the Commission concedes that the arguments in favour of imposing term limits are more compelling than those against. What then is the Commission's true position on the desirability of term limits?

Put simply, the majority on the Commission has adopted a recommendation which does not achieve any purpose. But in trying to have its proverbial cake and eat it, the majority is also sending a mixed or confused message to policy makers and the public alike. The Commission should either recommend: (i) adopting term limits, or (ii) avoiding them completely.

This aside, my view is that the issue of term limits requires a principled decision. There will always be strong views in favour or against anything with significant consequences, and neither side will ever convince the other of the correctness of their views. However, if I ever harboured any doubts that term limits were an absolute necessity for any Government, recent events in Egypt have eradicated them to the point where I can no longer recall what they were. Of course, non-supporters of term limits will be quick to point out that the system of Government in Egypt was not democratic, and therefore, there was never an opportunity to vote Mubarak out. In truly democratic systems they would argue, Mubarak's presidency would have been ended by the people.

This would completely miss the point. The system in Egypt lasted as long as it did because it was *tolerated* or *embraced* by the people of Egypt, and before Mubarak became the reviled figure he is today, he was revered as a national hero and generally admired internationally. Ironically, this is also true of every popularly elected figure in democracies the world over. In support of this claim, one has only to ask a citizen of Zimbabwe. Long before Robert Mugabe became the hated figure he is, he was a popularly elected figure and very admired. In a democratic system without term limits therefore, Mubarak would probably have been re-elected as many times as Mugabe, before eventually being thrown out. The lesson here is that, just because you can elect someone to five (5) or six (6) terms, doesn't mean you should, and the best constitutional rules are sometimes designed to help protect people, from themselves. Term limits are just such a type of rule that at least, also has the benefit of avoiding the necessity of mass demonstrations and civil unrest to terminate a politician's time in office.

In sum, I believe term limits are an absolute necessity in any modern, responsible democracy and its absence in our system of Government is an evil we inflict upon ourselves.

Appointment of Rejected Candidates to Cabinet Posts

The majority have agreed that the PM should have the power to nominate as Ministers, persons who were defeated as candidates for general elections. They have taken this view on the somewhat dubious grounds that rejection at the polls does not mean that the public thereby also intends to express an opinion on whether that person should be made a Minister.

The logic of the majority on this matter, escapes me. Put bluntly, the majority is saying they did not adopt the recommendation because they did not believe it is what the public wanted, except that this was precisely what the public said they wanted, on almost every occasion we spoke with them. Indeed, the submission was among some of the most popular we received. Accordingly, how can we reject a recommendation on the basis that the public does not intend something to happen, when they were clear and unequivocal in saying over and over again, that the situation should be changed?

The majority have also suggested that the discretion of the PM should not be unduly hamstrung by placing a restriction on the PM's ability to select defeated candidates. This is not an unreasonable argument. However, it conveniently ignores the fact that, even if PMs are prevented from nominating defeated candidates to Ministerial office, the available pool of persons from which he or she would be able to draw will be wider than ever, in the context of the hybrid system the Commission proposes for adoption.

Perhaps more importantly however, I believe there is a deeper message, hidden in the popularity of the submission that the majority on the Commission may be ignoring. In my view, there is growing public contempt for the notion that executive positions should be an automatic entitlement for political success. Increasingly, the public is concerned about the quality of representation they receive from elected officials in the current system. They are resentful of their local concerns being relegated to once-a-week visits by members of Parliament, in favour of Ministerial duties. They abhor a culture in which the opportunity to serve as a Minister, sit in a Cabinet and thereby obtain a higher salary, or represent Saint Lucia overseas, is actually an inducement for entering into politics. On the other hand, it is also reasonably clear that the public is deeply contemptuous of the practice by various administrations, of appointing either defeated or prospective candidates to ministerial positions, in order to utilize state resources to advance their chances at the next elections. In other words, there is a widespread desire to elevate the position of district representative, promote a higher quality of representation and reduce or eliminate the opportunity for defeated or prospective candidates to utilize state resources to indirectly fund campaigns.

Taking all these matters into account, the message from the public seems to be that constitutional reform should help promote a culture, in which persons offering themselves for political office should be prepared to make the necessary sacrifices in the course of pursuing that objective. If their intention is to represent people in parliamentary politics, they should be focused solely on that, and moreover, political choices should have certain consequences. If a person wants to run for office, they should do so in the full knowledge of that fact that they are barred from becoming a Minister for the duration of the next Parliament. In other words, the public appears to want politicians to be forced to make a choice.

The majority's recommendations on this issue appear to miss this point."

The Use of Running Mates to Replace MPs Who Resign from the House to Take Up Cabinet Posts

The Commission has proposed in Chapter Five that political parties should be required to field “running mates” with every candidate for every constituency. They have made this recommendation on the basis that, where an elected candidate resigns from the House to take up a Cabinet position, it would potentially jeopardise the Government’s majority if a by-election were held and a candidate from a different party won the seat. Consequently, the Commission has proposed that the majority group in Parliament should simply be able to appoint the party’s “running mate,” so that a resignation will not have any effect on the number of seats on the Government’s or Opposition’s benches.

I am unable to support the majority’s recommendation on this matter. The idea of “running mates” for constituency elections is alien to Saint Lucia’s political culture. It will impose a serious burden on political parties to essentially field an additional candidate for every constituency. It will do this in circumstances where it is already difficult for political parties to find one quality candidate willing to run. It will also lead to a greater level of complexity in our electoral process that will be difficult for the majority of Saint Lucians to understand or manage.

Most importantly, the majority recommends making a major change in the way we conduct our politics, to deal with what will only be a very rare or occasional occurrence. This is because the majority ignores the probability that under the new system proposed, elected members will be able to enjoy fixed terms while Ministers can be dismissed at pleasure. Accordingly, which elected member would willingly give up the guaranteed tenure of a fixed parliamentary term, to expose him or herself to dismissal at the PM’s whim? So while resignation to take up a Cabinet post will certainly happen, the probability is that it will be quite rare indeed. Yet the majority proposes a major overhaul of our electoral system to deal with it.

Rather than going the route proposed by the majority, my recommendation would be that a by-election should be held when an elected member resigns for any reason. If the consequence of resignation could be a by-election which could endanger the Government’s majority, this should be

a matter for the political judgment of both the PM and elected member, who should make a calculated decision about whether the appointment to Cabinet, is really necessary. Further, if as a consequence of this alternative approach, appointments to Cabinet from among members of the House would be less likely, it is arguable, (for reasons explained in the preceding section,) that such a situation would probably be preferable in any event.

Proposals on the Right of Recall

The Commission has proposed that in order to secure the recall of a parliamentarian, a petition containing the signatures of at least 25% of voters registered to vote in the respective constituency should first be obtained or produced. Once produced, a recall referendum would be held, in which at least 60% of electors voting in that referendum must vote in favour of recalling the specific district representative to be successful. At that point, the member would be recalled and a by-election would then be held to determine who should replace the recalled member. In short therefore, the Commission has proposed that to recall an elected parliamentarian, there should be two elections, namely; an election to determine whether an elected member should be recalled (“the recall vote”) followed by another election to choose his or her successor (“the replacement vote”).)

This represents an awfully convoluted and expensive procedure that would probably have the likely effect of ensuring that no parliamentarian in Saint Lucia was ever recalled. In my view, the procedure governing recall of governors in the state of California in the United States, provides a good template for possible adoption or adaptation in Saint Lucia. In that system, the recall vote is simultaneous with the replacement vote, so that in addition to the question of whether the candidate should be recalled, voters are required in one sitting to choose his or her successor. In this case, recalling an elected official represents a seamless, fluid transaction which has the added benefit of being easier and less expensive to implement.

Alternatively, the threshold for the recall petition should be set at an appropriately high level and once reached, a by-election should be triggered in which electors are given the opportunity to re-elect the existing candidate or another contender.

Proposals on the Human Rights Commission, the Contractor-General, the Parliamentary Commissioner and the Integrity Commission

The Commission has made several recommendations to establish a number of bodies to scrutinise executive conduct and to promote accountability and good governance. They have proposed the creation of a new Human Rights Commission (“HRC”), called for the establishment of a Contractor-General, and recommended significant reforms of both the office of the Parliamentary Commissioner and the Integrity Commission. My concern is that the majority has not given adequate consideration to the implications of their recommendations.

If adopted, the effect of the majority’s proposals would be to exponentially increase the size of government and to place an even greater burden on the country’s finances, and by extension, taxpayers. Further, throughout the report, the Commission as a whole bemoans the fact that sufficient resources are not usually allocated to important constitutional offices like the office of the DPP, the Parliamentary Commissioner and the Integrity Commission. It therefore makes little logical sense that the majority should recommend the creation of new or additional offices that will have the inevitable consequence of increasing the demand on already limited public resources.

Some of the recommendations are also unnecessary or inappropriate in our specific political and historical context. HRCs are normally institutions established in countries with a history of widespread and persistent human rights abuses, against a backdrop of the collapse of legal and other state institutions. They are also often commonly established in countries with diverse ethnic populations, where internal strife has resulted in widespread discrimination and or persecution of an identifiable ethnic minority. In Saint Lucia, where none of these factors are present, where the legal system is obviously functioning and has demonstrated its independence from the Executive, and where citizens can and do routinely approach the Courts to hear their grievances against the state, the establishment of an HRC would arguably be an expensive constitutional extravagance. This is not to suggest that there will not and have not been abuses of fundamental rights of citizens by state organs in Saint Lucia. However, there are existing mechanisms to address those abuses and it would be preferable to ensure that such systems are made more effective, rather than to create new burdens on taxpayers.

Since the recommendations to establish these multiple bodies, are all concerned with monitoring executive performance, it would appear to make more sense to simply establish one institution which would have multiple functions. My recommendation would be to simply establish one institution charged with the Constitutional responsibility to: (i) prosecute breaches of integrity rules established by Parliament, (ii) monitor the award and performance of contracts involving the state, (iii) investigate claims by the public against public officers or inefficiency of the public service, and if necessary, advise dismissal of defaulting parties, and (iv) defend on behalf of deserving citizens, breaches of fundamental human rights guaranteed by the Constitution.

Reservations

Commissioner Flavia Cherry

In a young democratic state like St. Lucia with a painful history of bigotry and exclusion from slavery, any attempt at constitution reform will be fraught with expectations of moving towards the principles of unrestricted and inalienable fundamental rights to all of its citizens. With this in mind, I sought always, as a member of the Commission for Constitutional Reform, to consciously and consistently refrain from allowing any personal beliefs and prejudices from clouding this vision for ideals of inclusion and fundamental respect for the human person and equality for all. It is for this reason, that I feel duty bound to pen my reservations and objections to the firm view of the majority of Commissioners (despite my many objections), that the prohibition of discrimination on the basis of gender and individual preference as well as the right for gender equality is not necessary for inclusion in a reformed constitution.

I will explain the basis of my objections and will advance counter proposals for consideration (in some areas where I think relevant), but this does not in any way suggest that I am distancing myself to the general report of the Commission. My disagreement is limited mainly to the areas that I have chosen to focus on and is not meant in any way to give the impression that I do not appreciate, subscribe to and respect the hard work and long hours which went into the process of constitutional reform. In fact, I support (despite the targeted objections) many of the relevant and important recommendations in the report and humbly appeal for consideration of my comments and recommendations, for the benefit of all St. Lucians, no matter what their status, gender or personal/individual preferences. And I do so with the full understanding and experience (although it gravely disturbs me) of the tendency to demonize those who stand up for the rights of the minority and disadvantaged persons among us.

It is my firm conviction that in order to protect the right of every citizen, the recommendations to reform of a new Constitution for St. Lucia cannot deliberately exclude those important proposals relating to gender equality and prohibition of discrimination on the basis of gender and even more so, on the basis of individual preferences. However, every time the discussion on including gender equality was held, the issue was always put down by the majority as irrelevant and in many cases, there was an insistence that since sex is included, there was no need to include discrimination on

the basis of gender. Most Commissioners held onto that view because they felt that sex and gender was one and the same, despite my frequent, repeated and documented attempts to explain otherwise.

Democracy is about the rule of the majority but I believe that that very democracy will be compromised if the majority use their power to deny the rights of the minority. A democratic constitution must therefore incorporate various fundamental rights in order for it to be democratic. These fundamental rights are not determined by majority opinion (and in our case, the firmly held personal beliefs of Commissioners), but are regarded as inalienable and inherent. These rights have been integrated into all international human rights treaties, because it is generally accepted that man, by his very nature is self-serving and discriminatory. St. Lucia has ratified the International Covenant on Civil and Political Rights as well as the Convention on the Elimination of All Forms of Discrimination Against Women and has thus undertaken to respect the rights of equality and respect for the dignity of all.

The right to equality implies respect for difference, so no person should be deprived of opportunity solely on the basis of an irrelevant personal characteristic. Such a deprivation constitutes unfair discrimination. For example, to deny a job simply on the basis of a person's gender, when the fact is unrelated to the ability to perform the required work, is an affront to the person's dignity. Identity of treatment may also result in substantive inequality. To equally deny maternity leave to women as well as men results in equality through a failure to acknowledge a difference in circumstances and sex. Unfair discrimination thus results from the unequal treatment of equals and the equal treatment of unequals.

It is important to note that the International Covenant on Civil and Political Rights, 1966 (ICCPR) broadly referred to the inherent right to life and liberty and the right against arbitrary deprivation of those rights and its various aspects (Articles 6 to 14); privacy, family, etc. (Article 17); freedom of conscience and religion (Article 18); freedom of expression and information (Article 19); Right of peaceful assembly (Article 21); freedom of association (Article 22); rights of minorities (Article 27); etc. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) broadly referred to the "right to work" and its various aspects (Articles 6 and 7); right to form trade unions for promotion of economic or social interests and the right to strike (Article 8); right to social

security and social insurance (Article 9); family, marriage, children and mothers' rights (Article 10); adequate standard of living, right to food, clothing and housing, freedom from hunger (Article 11); physical and mental health (Article 12); education (Article 13); compulsory primary education (Article 14) and culture (Article 15). The treaty obligations under the covenant enjoined the State Parties to ensure these rights without discrimination and "to take steps" to promote them "to the maximum of its available resources", with a view to achieving "progressively" the full realization of these rights. The Directive Principles of State Policy in Part IV of the Constitution are indeed the precursor to economic, social and cultural rights specified in the ICESCR.

Following are my further comments and recommendations:

- The suggested inclusion of '**of identity**' in the wording (c) of the preamble (before Chapter 1) after 'of thought'
- The principle of equality of men and women is a basic requirement for the enjoyment of rights so the following should be included in the preamble: **gender equality, non-discrimination, unity and tolerance for diversity, inclusiveness, justice and peace** as basic principles.
- Under Fundamental Rights and Freedoms a provision specifying that '**women and men have equal rights and duties**' should be included. It should also state that '**the State may adopt specific measures to guarantee de facto equality in the exercise of rights and duties.**'
- In Chapter 1 (under section 13 – 3) the word gender needs to be added into this paragraph in order to recognize that gender should not be grounds for discrimination. If it is not amended, it contradicts the Constitutional Article which provides that all persons are equal before the law.
- Sex is biologically determined and refers to the physical composition of males and females. Gender refers to the socially constructed notion of man and woman (e.g. men as strong and women as weak; men as leaders and women as followers; men as breadwinner and women as homemakers). Both terms have to be included into the Constitution because women and men can be discriminated against on the basis of their sex AND gender. Put differently, because discrimination is about a different power relationship

between men and women and not just based on the physical make up of men and women (i.e. sex), it is necessary to include gender together with sex in this amendment. By using the word gender, it also helps to situate and understand the relationship between men and women and the fact that their relationship is based on different treatment which can result in either of them being disadvantaged in varying circumstances. For example, a man cannot be denied the right to nurture and raise his child on the basis of traditional and cultural practices which suggest that this is the role of women.

- Prohibition of discrimination is not enough as the state has to respect, protect and fulfill rights. There is therefore need for an amendment which will enable the fulfilment of rights. Women as compared to men, face many obstacles sanctioned by culture, religious practice, by entrenched male interests in key institutions such as political parties, trade unions, religious institutions, the courts, etc. There is a need to put in place enabling conditions or preferential rules to benefit women, even when discrimination has been prohibited, and thus facilitate their access to opportunities and accelerate de facto equality.
- I must also add that variations of historic or past discrimination requires the concept of corrective measures to overcome the effect of past discrimination that leaves women handicapped vis a vis the men. For example, if a development initiative is offered to women on the same footing as the men, according to the principle of equal rights or equal opportunity, it might still turn out that men benefit more than women, because men generally (and based on cultural practices) do not share the burden of nurturing children and caring for other relatives. Women may also be disadvantaged by issues of confidence or simply because the environment is male dominated and is more conducive to male participation. This is the effect of past discrimination. The constitutional amendment must also include **provisions for positive action** (through law or other measures) in favour of women (or other disadvantaged groups). This will pave the way for measures through which affirmative action and women centered development policy and budgeting measures can be legitimized to ensure de facto equality for women. This has been done in other countries such as India and South Africa.

- Some important rights are not provided and should be included, for example, **the right to decide regarding procreation, personal body integrity, to both maternity and paternity leave, to equality of the mother and the father in parenting and nurturing of their children.**
- Currently the constitutional provision for equality addresses the actions of the state via laws and policies. Much of the discrimination against women takes place through the actions of private actors (e.g. private enterprises, organizations or individuals). In the context of privatization, we therefore need to ensure that **the private sector in the fields of education, employment, health etc. also are bound by the constitutional guarantee of equality.**

For example, the South African Constitution makes provisions for this. " No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection 3"

Finally, as a general recommendation and in keeping with the spirit of respect for rights and inclusion, I would like to call for the national anthem to be revised to make it gender neutral.

Distinguished fellow commissioners, all, there is no better time but the process of Constitution Reform, for all of us to act like the humans God intended us to be -- one people, under God, with liberty, respect and justice for all. And may God grant us wisdom to collectively reach that level of consciousness and understanding. My sincere wish is that we keep maturing until as a plural society of equals, we truly appreciate and accept that a Constitution for the people means all the people, with no limitations or biases.

APPENDICES

Appendix I:

Statutory Instrument, 2004, No. 50

SAINT LUCIA

STATUTORY INSTRUMENT, 2004, No. 50

[16th July, 2004]

WHEREAS The Constitution of Saint Lucia (hereinafter referred to as "the Constitution") is a schedule to the Saint Lucia Independence Order (S.I. 1978 No. 1901), made by Her Majesty-In-Council, pursuant to the West Indies Act 1967(a) and received into Saint Lucia pursuant to a resolution passed in the House of Assembly on the 24th of October 1978 and came into operation on the 22nd of February, 1979;

WHEREAS the Saint Lucia Constitution is now approaching twenty-five (25) years old and there is a need to take stock and to examine what changes, if any, should be made in order to widen and to deepen democracy in Saint Lucia;

AND WHEREAS this review of the Constitution is in part a fulfilment of an undertaking by the present Government to engage in Constitutional Reform since its assumption of office in 1997;

AND WHEREAS in the Throne Speech of Her Excellency on March 21, 2000, Her Excellency announced that the Government intended to establish a Constitution Reform Commission to review and reform the Constitution of Saint Lucia in order to encourage effective governance, to ensure that the institutions of State remain strong and responsive and that the rights and freedoms guaranteed to all persons are respected;

NOTING THAT the objectives of the reform exercise are principally:

- (1) to promote a meaningful expansion and widening of democratic participation by citizens in Government;
- (2) to address possible weaknesses in the Constitutional framework which political practice has highlighted over the years;
- (3) to re-fashion the Constitution so that it better accords with our changing social and political circumstances; and

(4) to promote better governance and greater equity in the constitutional framework generally;

AND NOTING THAT to ensure popular legitimacy, the process of reform will necessarily have to be bi-partisan and accommodate broad based participation by citizens of Saint Lucia, at home and abroad;

BE IT RESOLVED that the House of Assembly and the Senate do approve the establishment of a Constitutional Reform Commission (hereinafter referred to as "the Commission"):

BE IT FURTHER RESOLVED:

1. That the Commission be guided by the following Terms of Reference:
 - (a) to examine, consider and enquire into strengthening Saint Lucia's democratic institutions and other related laws and matters. After due examination and study, to report in writing giving its opinions, making recommendations, and providing for consideration of any amendments, reforms and changes in the Constitution and related laws as are in the opinion of the Commissioners necessary and desirable for promoting the peace, order and good Government of Saint Lucia, and in particular for:
 - (i) strengthening democratic institutions, and ensuring that parliamentary and multi-party democracy is given such constitutional protection as may be necessary and desirable;
 - (ii) encouraging a wider and deeper participation by the citizens of Saint Lucia in the democratic processes of Government, both at the parliamentary and other levels;
 - (iii) strengthening the accountability of parliamentary representatives to their respective constituents;
 - (iv) the retention or abolition of a second Chamber of the Legislature; the method and means of increasing the representativeness of Parliament, not excluding such changes in the manner of electing representatives as may lead to a more equitable distribution of seats among political parties on the basis of votes received at general elections;

- (v) strengthening the fundamental and basic rights, liberties and freedoms of the individual and ensuring that there is no discrimination in the national life of the State;
 - (vi) maintaining and strengthening the independence of the judiciary at all levels;
 - (vii) strengthening the relevant Government machinery in order to ensure maximum transparency and strict accountability in the management of public funds, including appropriate sanctions for corruption;
 - (viii) reviewing the independence and impartiality of the Public Service, having particular regard to the need for the efficient and responsive administration of Government business;
- (b) Additionally, the Commission shall:
- (i) advise and make recommendations concerning the appropriateness or otherwise of maintaining Saint Lucia's links with the British Crown;
 - (ii) advise and make recommendations concerning a structure for the executive authority of Saint Lucia that is best suited to protect the independence and authority of Parliament and the fundamental rights and freedoms of its citizens;
 - (iii) advise and make recommendations concerning the patriation of the Constitution so as to ensure that it draws its authority and validity from an Act of the Parliament of Saint Lucia;
 - (iv) protect parliamentary democracy, the fundamental rights and freedoms of the citizens of Saint Lucia and to achieve effective and efficient Government so as to position Saint Lucia to meet the challenges of the twenty-first century and beyond;
 - (v) prepare and include in the written report, if the Commissioners so determine, draft legislation to effect any amendments, reforms or changes to the Constitution and related laws.

2. That the Commission be constituted as follows:
- (a) a Chairperson to be appointed by the Governor General, acting on the advice of the Prime Minister who shall consult with the Leader of the Opposition before tendering his advice to the Governor General;
 - (b) a Deputy Chairperson appointed by the Governor General, acting on the advice of the Leader of the Opposition who shall consult with the Prime Minister before tendering his advice to the Governor General;
 - (c) five persons appointed by the Governor General acting in accordance with the advice of the Prime Minister;
 - (d) two persons appointed by the Governor General acting in accordance with the advice of the Leader of the Opposition;
 - (e) one person from each of the following organizations, appointed by the Governor General, acting on the advice of the Prime Minister who shall consult with each organization:
 - (i) the Saint Lucia Christian Council;
 - (ii) the Saint Lucia Chamber of Commerce, Industry and Agriculture;
 - (iii) the Saint Lucia Medical and Dental Association;
 - (iv) the Civil Service Association;
 - (v) the Saint Lucia Bar Association;
 - (vi) a representative of Women's Organisations;
 - (vii) the National Youth Council of Saint Lucia;
 - (viii) the Saint Lucia Teachers Union;
 - (ix) a representative from Farmers' Organisations;
 - (x) a representative from the Credit Union League;
 - (xi) a representative from Sporting Organisations;
 - (xii) the National Workers Union;

- (xiii) the Saint Lucia Seamen and Waterfront Workers Union;
 - (xiv) a representative from Cultural Organisations;
 - (xv) up to two other representatives from non-Governmental organizations including those from overseas.
3. That in the performance of its functions, the Commission shall govern itself as follows:
- (a) no member or officer of the House of Assembly shall not [sic] be eligible for membership of the Commission;
 - (b) a member of the Commission may at any time resign his or her office by notice in writing to the Chairperson who shall notify the Governor General;
 - (c) if at any time any member of the Commission is for any reason unable to exercise the functions of his or her office, the Governor General shall in accordance with the provisions of paragraph 2 hereunder appoint a person to replace such member;
 - (d) the appointment of members of the Commission and the termination of office of any member shall be notified promptly in the *Gazette*;
 - (e) the Commission shall regulate its own procedure subject to the following:
 - (i) the Chairperson, or in his or her absence the Deputy Chairperson, shall preside at all meetings of the Commission;
 - (ii) the quorum shall be thirteen persons including either the Chairperson or the Deputy Chairperson;
 - (iii) the decisions of the Commission may be by consensus, but where consensus cannot be achieved the decisions shall be the votes of two-thirds of all the members present;
 - (iv) all documents and all decisions made by the Commission shall be signed by the Chairperson, or in his or her absence the Deputy Chairperson and the Secretary or in his or her absence, the Assistant Secretary of the Commission;

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- (f) the Commission shall meet at such times and places as may be necessary or expedient for the transaction of its business, and such meetings may be held in public or in private as the Commission itself may determine;
- (g) the Commission may delegate to any sub-committee or subcommittees the authority to carry out on its behalf such duties within the mandate of the Commission as may be appropriate;
- (h) no personal liability shall attach to a member or staff of the Commission in respect of anything done or suffered in good faith in the execution of his or her duties with the Commission;
- (i) the Commission shall be served by a Secretary and an Assistant Secretary both appointed to the Commission by the Governor General upon the advice of the Prime Minister;
- (j) the Prime Minister, after consultation with the Chairperson, may assign any Consultant or Technical Advisor to the Commission to assist in the carrying out of its functions or mandate;
- (k) such sum or sums of money as the House of Assembly may deem appropriate for the performance of the duties of the Commission shall be a charge on the Consolidated Fund;
- (l) the members and staff of the Commission shall be paid such stipends for services and reimbursement of expenses as the Government on the recommendation of the Commission may determine;
- (m) the Commission may from time to time make representations to the Government for the payment of allowances and expenses for such persons who have assisted the Commission in the performance of its duties as may be deemed / appropriate;
- (n) it shall be the responsibility of the Chairperson to account to the Government for all monies in accordance with the provisions of the Financial Regulations;
- (o) the Commission shall submit to the Speaker of the House of Assembly such Interim Reports as the Commission may determine on a quarterly basis and shall further

submit its Final Report to the Speaker of the House of Assembly no later than twenty-four months after the date of its first appointment;

- (p) upon receipt of any Interim Report or of the Final Report from the Commission, the Speaker shall forthwith cause copies thereof to be prepared and shall circulate such copies to all Members of the House of Assembly for consideration at the next meeting of the House of Assembly following such circulation;
- (q) the Prime Minister after consultation with the Leader of the Opposition may give appropriate operational directions to the Commission on its functioning, including the time lines, but not as to its recommendations on constitutional reform.

4. That in pursuing its Terms of Reference the Commission is also mandated to:

- (a) consult widely with the citizens and organizations of Saint Lucia whether in Saint Lucia or abroad, by such manner and procedure as the Commission determines;
- (b) receive and examine proposals from the general public;
- (c) prepare and disseminate such material as might be relevant so as to widen public knowledge and appreciation of the Constitution;
- (d) generate public interest in the subject matter by means of public meetings throughout the island, radio "callin" programmes, other public discussions, pamphlets and information kits, or any other methods of communication which the Commission deems appropriate in both English and Kweyol;
- (e) facilitate the arrangements for advertisements by the Government Information Service and other private media; and to plan and organize media briefings, seminars and other outreach programmes and activities;
- (f) interface with the Organisation of American States, United Nations Development Programme, University of the West Indies, OECS, CARICOM, Commonwealth Secretariat and other collaborators to the Constitutional Review Process;
- (g) set up sub-committees to :
 - (i) to assist with the organization and management of the public consultations;
 - (ii) to advise on the preparation of ad hoc documentation for keeping the

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general public and specific interest groups appraised of the Constitutional Reform activities, and overseeing the production of the same;

- (h) manage the overall budget and authorize payments as needed;
- (i) maintain the financial integrity of the Constitutional Review Process by reporting timely on all financial issues to the Government and the Speaker of the House of Assembly.

Passed in the House of Assembly this 17th day of February, 2004.

BADEN J. ALLAIN,

Speaker of the House of Assembly.

Passed in the Senate this 14th day of April, 2004.

HILFORD DETERVILLE,

President of the Senate.

Appendix II

CRC's Information Pamphlet.



Constitutional Review

St. Lucia

Constitutional Review Commission (CRC)

The Commission was set up by Statutory Instrument, No: 50 of 2004 dated 16th July, 2004.

The two main political parties, the St. Lucia Labour Party (SLP) and the United Workers Party (UWP), in Parliament took the decision to set up the CRC. It is an independent, nonpolitical body responsible to the Parliament of St. Lucia.

The Commission comprises twenty-five (25) Commissioners drawn from a wide cross-section of St. Lucian society, and includes nominees from various organizations representing civil society.

Extracts from the terms of reference of the CRC.

1. To do everything necessary to review the existing Constitution of St. Lucia and to submit recommendations to the House of Assembly.
2. To organize and manage public consultations, arrange meetings at home and abroad.

3. To generate public interest in the work of the Commission by implementing public education and information programmes;
4. To facilitate the arrangements for advertisements by the Government Information Service (GIS) and other private media; to plan and organize media briefings, seminars and other outreach programmes and activities;
5. To prepare and submit to the Speaker of the House of Assembly periodical reports on the work of the Commission.

What is a Constitution?

It is a body of fundamental principles governing a state or nation which may be written or unwritten. It is the Supreme Law of the nation and comprises a set of rules which regulates the relationship between the state and the citizens, as well as between citizen and citizen.

Our present Constitution

The Constitution consists of ten (10) chapters, which are in turn divided into one hundred and twenty (120) sections. The chapters are:

Chapter 1- Fundamental Rights and Freedoms

Chapter 2 - Governor General

Chapter 3 - Parliament

Chapter 4 - The Executive

Chapter 5 - Finance

Chapter 6 - The Public Service

Chapter 7 - Citizenship

Chapter 8 - Judicial Provisions.

Chapter 9 - Parliamentary Commissioner

Chapter 10 - Miscellaneous.

For purposes of electing a Government, the country is divided into constituencies. Candidates are nominated for each constituency and the candidate attaining the highest number of votes is declared the representative for that constituency. This is known as the "First Past The Post" system, and every citizen of the age of eighteen (18) and over is entitled to cast a vote.

Some Institutions and Organs established by the Constitution

The Constitution provides for a Governor General who is Saint Lucia's Head of State and represents Her Majesty the Queen. As such, the Governor General sits at the head of each branch of Government. The Constitution also establishes the Government, which is divided into:

- The Executive
- The Legislature
- The Judiciary

The Executive consists of the Cabinet of Ministers led by the Prime Minister.

The Legislature consists of the House of Assembly and the Senate.

The Judiciary consists of the Privy Council, Court of Appeal, the High Court and the Magistracy.

Why review our Constitution

Saint Lucia became independent in 1979 and since then the world has changed dramatically. Further, the people of Saint Lucia have never, as a nation, had the opportunity to comment on the content of the Constitution.

Additionally, the Saint Lucia Constitution, like that of most of the former British colonies, is a document of the British Parliament so that its source is therefore not the Legislature of our country.

Within our own region several significant events have taken place, such as the ongoing evolution of a Single Market and Economy and a Caribbean Court of Justice.

The environment and circumstances within which Saint Lucia today operates, are considerably different from those which obtained thirty years ago.

Some people have also expressed the following views:

- (i) There was insufficient public participation in the preparation of the present Constitution.
- (ii) Too much power resides in the position of Prime Minister.
- (iii) The present Constitution tends to hinder the proper governance of the country.

Objectives of a revised Constitution

A revised Constitution must:

- (a) emerge from the expressed wishes of the people and must reflect their aspirations and expectations;
- (b) enable all citizens to guard and enjoy their fundamental rights and freedoms;
- (c) make it easier for the people of our country to unite with others within the OECS and CARICOM;
- (d) be simple to read, understand and apply; and
- (e) deepen the process of democracy; enable the participation of all citizens, wherever they may reside, in the development of the country, as well as protect, defend and safeguard the interest and welfare of all St. Lucians.

How to Contact the Commission:

CONSTITUTIONAL REVIEW COMMISSION

POINSETTIA ROAD

VIGIE, CASTRIES

SAINT LUCIA

P.O.BOX CP – 6446

TELEPHONE: 758 453 2662

FAX: 758 452 7450

EMAIL: conreform@candw.lc

Appendix III

Secondary Schools and Tertiary Institutions Outreach Activities

DATE	SCHOOL	COMMISSIONERS PRESENT
5 th March 2007	Babonneau Secondary	Fr. Michel, Alexander, Poyotte
5 th March 2007	Sir Ira Simmons Secondary	Lay, George, Vargas
6 th March 2007	St. Mary's College	Lay, Chase, Charles
8 th March 2007	U.W.I. School of Continuing Education.	Barrow-Giles, E. Mathurin, George, Biscette
8 th March 2007	Choiseul Secondary	Justice d'Auvergne, Cenac, Alphonse, Seraphin.
12 th March 2007	Anse Ger Secondary	Lay, Charlemagne, Alphonse.
12 th March 2007	Micoud Secondary	Seraphin, Biscette.
13 th March 2007	Grande Riviere Secondary(Dennery)	Abenaty, Biscette, Charles, Seraphin
13 th March 2007	Gros Islet Secondary	Lay, E. Mathurin.
19 th March 2007	Sir Arthur Lewis Community College	E. Mathurin, Poyotte, Lay.
19 th March 2007	Corinth Secondary	Justice d'Auvergne, E. Mathurin,
20 th March 2007	Vieux Fort Comprehensive Campus	Fr. Michel, Alexander, Lay.
20 th March 2007	Castries Comprehensive School	George, Chase, Vargas.
21 st March 2007	Seventh Day Adventist Academy	Justice d'Auvergne, E. Mathurin,
28 th March 2007	Bocage Secondary	Lay, Poyotte, Chase.
28 st March 2007	Entrepot Secondary	Seraphin, Mathurin, Biscette.
29 th March 2007	St. Joseph's Convent	Justice d'Auvergne, Lay, Vargas.
30 th March 2007	George Charles Secondary	John, Poyotte, Lay.
30 th March 2007	Vide Boutielle Secondary	Justice d'Auvergne, Chase.
9 th October 2007	Soufriere Comprehensive Secondary	Lay, Outreach Coordinator (OC)
10 th October 2007	Vieux Fort Technical Institute	Lay, Alexander, Biscette, OC
17 th October 2007	Piaye Secondary	Justice d'Auvergne, OC
17 th October 2007	Clendon Mason Secondary	Alphonse, Charlemagne, George

Appendix IV:

Outreach Activities – Community Preparatory Meetings and Consultations

DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
20 th Feb., 2007	Overseas Outreach	Saint Lucians Living in St. Croix	Alphonse, Charlemagne
14 th May, 2008	Preparatory Meeting	Piaye Community	Seraphin, Lay
21 st May, 2008	Preparatory Meeting	Saltibus Community	Cox, Jude
May 28, 2008	Preparatory Meeting	Delcer Community (Choiseul)	Charlemagne, Lay
29 th May, 2008	Preparatory Meeting	Banse La Grace	Seraphin, Charlemagne
29 th May, 2008	Preparatory Meeting	La Fargue	Seraphin, Charlemagne
4 th June, 2008	Preparatory Meeting	Mongouge Community (Choiseul)	Charlemagne, Lay
30 th June, 2008	Preparatory Meeting	All of Micoud North	Biscette, Seraphin
3 rd July, 2008	Preparatory Meeting	Babonneau & Cabiche Community	George, E. Mathurin
3 rd July, 2008	Preparatory Meeting	Praslin	Alexander, Lay
7 th July, 2008	Preparatory Meeting	Des Barras	Vargas, P. Mathurin
7 th July, 2008	Preparatory Meeting	Mon Repos, Lumbard	Lay, Biscette

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DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
8 th July, 2008	Preparatory Meeting	Boguis, Savanne En Haut, Desablon	P. Mathurin
8 th July, 2008	Preparatory Meeting	Patience, La Pointe, Malgretoute	Lay, Biscette
10 th July, 2008	Preparatory Meeting	La Guerre, Americ, (Babonneau)	Abenaty, George
10 th July, 2008	Preparatory Meeting	Micoud Village	Cenac, Poyotte
14 th July, 2008	Preparatory Meeting	Plateau (Babonneau)	Vargas, E. Mathurin
16 th July, 2008	Preparatory Meeting	Paix Bouche, La Croix (Babonneau)	Chase, Cox
16 th July, 2008	Consultation	Mongouge (Choiseul))	Jude, Charlemagne
16 th July, 2008	Consultation	Praslin, Mamiku	Seraphin, Biscette
17 th July, 2008	Consultation	Rodney Bay	Justice d’Auvergne, E. Mathurin
17 th July, 2008	Preparatory Meeting	Fond Assau, Chassin, Talvan (Babonneau)	Vargas, Abenaty
17 th July, 2008	Consultation	Mon Repos, Lombard (Micoud North)	Biscette, Alexander
24 th July, 2008	Consultation	Patience, La Pointe, Malgretoute, Escap, (Micoud North)	Biscette, Lay
24 th July, 2008	Preparatory Meeting	Cocoa, Girard, Morne Monzie, Hill 20 (Babonneau)	Cenac, Poyotte
28 th July, 2008	Consultation	Micoud Village	Biscette, Seraphin

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DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
28 th July, 2008	Preparatory Meeting	Garrand (Babonneau)	E. Mathurin, P. Mathurin
31 st July, 2008	Preparatory Meeting	Balata, Ti Morne, Morne du Don	George, P. Mathurin
4 th Aug, 2008	Public Lecture	Faux-A-Chaux, Bananes, La Toc, Hospital Road	Vargas, P. Mathurin
4 th Aug, 2008	Consultation	Cabiche, Tete Chemin (Babonneau)	Cherry, Abenaty
4 th Aug, 2008	Consultation	La Fargue	Lay, Ulric
4 th Aug, 2008	Consultation	Praslin	Lay, Biscette
4 th Aug, 2008	Preparatory Meeting	Reduit, Cap Estate, Massade, Rodney Heights, Bonne Terre	Justice d'Auvergne, E. Mathurin,
5 th Aug, 2008	Consultation	Des Barras	P. Mathurin, Abenaty
5 th Aug, 2008	Preparatory Meeting	Grande Riviere, Piat, Monier, Marisule, Sugar City, Bois d'Orange (Gros Islet)	John, E. Mathurin
5 th Aug, 2008	Preparatory Meeting	Cicéron, Lower Morne	Vargas, Poyotte
7 th Aug, 2008	Preparatory Meeting	Coubaril, Upper Cicéron (Castries South)	George, Poyotte
7 th Aug, 2008	Preparatory Meeting	Riviere Mitant, Desrameaux, La Borne, Monchy (Gros Islet)	Justice d'Auvergne, E. Mathurin
7 th Aug, 2008	Consultation	Boguis, Savanne En Haut, Desablon (Babonneau)	Chase, Cox

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DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
11 th Aug, 2008	Preparatory Meeting	Marigot, La Croix, (Castries South) Caye Mangé	Cenac, Vargas
11 th Aug, 2008	Consultation	La Guerre, Americ (Babonneau)	E. Mathurin, P. Mathurin
11 th Aug, 2008	Consultation	Plateau (Babonneau)	Chase, Cox
12 th Aug, 2008	Preparatory Meeting	Ti Colon, Goodlands, Cul De Sac	George, Poyotte
14 th Aug, 2008	Consultation	Paix Bouche, La Croix (Babonneau)	Chase, Cox
14 th Aug, 2008	Consultation	Bananes, La Toc, Hospital Road (Castries South)	Vargas, P. Mathurin
18 th Aug, 2008	Consultation	Fond Assau, Chassin, Talvan (Babonneau)	Cherry, Abenaty
18 th Aug, 2008	Consultation	Cicéron, Lower Morne Road (Castries South)	Vargas, P. Mathurin
19 th Aug, 2008	Consultation	Cocoa, Girard, Morne Monzie, Hill 20 (Babonneau)	Cox, Chase
19 th Aug, 2008	Consultation	Coubaril, Upper Cicéron (Castries South)	Cenac, Alexander
21 st Aug, 2008	Consultation	Delcer	Jude, Lay
21 st Aug, 2008	Consultation	Garrand, (Babonneau)	E. Mathurin, George
21 st Aug, 2008	Consultation	Marigot, La Croix, Caye Mange (Castries South)	Poyotte, Cherry
26 th Aug, 2008	Consultation	Balata, Ti Morne, Morne Du Don	John, Abenaty

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DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
26 th Aug, 2008	Consultation	Cul-de-Sac, Ti Colon, Goodlands	P. Mathurin, Cenac
27 th Aug, 2008	Consultation	Faux-A-Chaux	
. 1 st Sept, 2008	Preparatory	Ti Rocher, Dugard (Micoud South)	Lay, Alphonse.
1 st Sept, 2008	Consultation	Belvedere, Anse La Verdure (Anse La Raye/ Canaries)	George, Alexander
1 st Sept, 2008	Consultation	Massade, Beausejour (Gros Islet)	Cox, E. Mathurin
11 th Sept, 2008	Consultation	Bouton	Jude, Lay
24 th Sept, 2008	Consultation	Millet	
7 th Oct, 2008	Consultation	Corinth, Marisule, Top of the World, Bois d'Orange	Poyotte, E. Mathurin
8 th Oct, 2008	Consultation	Monchy, Desrameaux, Riviere Mitant, La Borne	Abenaty, Poyotte
16 th Oct, 2008	Consultation	Desruisseaux, Anse Ger	Lay, Seraphin
16 ^h Oct, 2008	Consultation	Fond St. Jacques, Bois D'Inde	Alphonse, Jude
16 th Oct, 2008	Consultation	CDC, Lower Morne Road, Sans Souci and environs (Castries)	Vargas, Abenaty
17 th Oct, 2008	Consultation	Central Castries	Abenaty, Barrow-Giles, George. OC

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DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
21 st Oct, 2008	Consultation	Ti Rocher, La Cour Ville, Moreau (Micoud)	Lay, Seraphin
21 st Oct, 2008	Consultation	Blanchard	Lay, Seraphin
21 st Oct, 2008	Consultation	La Bayee, Sarrot and environs	George, P. Mathurin
21 st Oct, 2008	Consultation	Morne Fortune, Goodlands, Derriere Fort	Cox, Poyotte
21 st Oct, 2008	Consultation	Etangs	Alphonse, Jude
22 nd Oct, 2008	Consultation	Millet	George, P. Mathurin
22 nd Oct, 2008	Consultation	Bouton	Jude, Poyotte
22 nd Oct, 2008	Consultation	Entrepot	Cenac, Chase
23 rd Oct, 2008	Consultation	Dennery Village and environs	George, Seraphin
23 rd Oct, 2008	Consultation	Bexon, Odsan and environs	Cenac, P. Mathurin
23 rd Oct, 2008	Consultation	Monchy	Poyotte, Abenaty
23 rd Oct, 2008	Consultation	Jacmel	John, Lay, Cenac, OC
23 rd Oct, 2008	Consultation	Soufriere Town	Alphonse, Jude
23 rd Oct, 2008	Consultation	Ti Rocher, La Cour Ville, Moreau (Micoud)	Lay, Biscette

Constitutional Reform Commission – Saint Lucia

DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
28 th Oct, 2008	Consultation	Desruisseaux	Lay, Biscette
28 th Oct, 2008	Consultation	Dennery South	George, Seraphin
29 th Oct, 2008	Consultation	CDC, Lower Morne Road, Sans Souci and environs (Castries)	Cox, Abenaty
29 th Oct, 2008	Consultation	Entrepot	Chase, Cenac
30 th Oct, 2008	Consultation	La Bayee, Sarrot and environs	P. Mathurin, Cherry
30 th Oct, 2008	Consultation	Morne Fortune	George, Poyotte
30 th Oct, 2008	Consultation	Blanchard	Lay, Biscette
5 th Nov, 2008	Consultation	Parliament	All Commissioners
5 th Nov, 2008	Consultation	Entrepot, Marchand, Cedars	Lay, Chase
6 th Nov, 2008	Consultation	La Ressource	George, Seraphin
6 th Nov, 2008	Consultation	Castries	Vargas, Abenaty
6 th Nov, 2008	Consultation	Bexon	John
11 th Nov, 2008	Consultation	La Bayee, Sarrot and environs	George
11 th Nov, 2008	Consultation	Laborie Village	Lay, Charlemagne
11 th Nov, 2008	Consultation	Dennery Village	Seraphin, Poyotte
13 th Nov, 2008	Consultation	Blanchard	Lay, Biscette
13 th Nov, 2008	Consultation	Morne Fortune	Vargas, Poyotte
13 th Nov, 2008	Consultation	Banse	Charlemagne, Seraphin

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DATE	EVENT	TARGET GROUP/COMMUNITY	COMMISSIONERS
18 th Nov, 2008	Consultation	Bexon	P. Mathurin
25 th Nov, 2008	Consultation	Banse	Lay, Alphonse
26 th Nov, 2008	Consultation	Grace	John, Charlemagne
26 th Nov, 2008	Consultation	Vieux Fort Town	Lay, Alphonse
26 th Nov, 2008	Consultation	Vigier	Seraphin, Biscette
27 th Nov, 2008	Consultation	Pierrot	John, Alphonse
27 th Nov, 2008	Consultation	Laborie Village	Lay, Charlemagne
2 nd Dec, 2008	Consultation	Vieux Fort Town	Lay, Alphonse
2 nd Dec, 2008	Consultation	Augier	Seraphin, Biscette
2 nd Dec, 2008	Consultation	La Ressource VF	Charlemagne, John
4 th Dec, 2008	Consultation	Belle Vue	Biscette, Seraphin
4 th Dec, 2008	Consultation	Grace	John, Alphonse
4 th Dec, 2008	Consultation	Pierrot	Charlemagne, Lay
9 th Dec, 2008	Consultation	Augier	Biscette, John
9 th Dec, 2008	Consultation	Vigier	Charlemagne, Seraphin
11 th Dec, 2008	Consultation	La Ressource (Vieux Fort)	John, Alphonse
11 th Dec, 2008	Consultation	Belle Vue	Seraphin, Charlemagne
11 th Dec, 2008	Consultation	Blanchard	Lay, Biscette

Appendix V:

Outreach Activities – Groups and Associations

DATE	EVENT	TARGET GROUP/COMMUNITY
23 rd Oct, 2007	Consultation	Iyanola Council for Rastafarian
23 rd Oct, 2007	Consultation	Muslim Community
30 th Oct, 2007	Consultation	National Mini Bus Association
30 th Oct, 2007	Consultation	Taxi Association
31 st Oct, 2007	Consultation	Kiwanis Club
31 st Oct, 2007	Consultation	Lions Club Castries
1 st Nov., 2007	Consultation	Saint Lucia Hotel & Tourism Association
1 st Nov., 2007	Consultation	Saint Lucia Chamber of Commerce et cetera.
10 th Nov., 2007	Consultation	Saint Lucia Blind Welfare Association
10 th Nov., 2007	Consultation	Fellowship of Gospel Preaching Churches
4 th Dec, 2007	Consultation United Workers Party	Executive and members of the United Workers Party
6 th Dec., 2007	Consultation Saint Lucia Labour	Executive and members of the Saint Lucia Labour Party
. 29 th Feb., 2008	Consultation	Members of the Rotary Club of Saint Lucia
14 th April, 2008	Preparatory Meeting	Castries North Community Leaders
16 th April, 2008	Preparatory Meeting	Choiseul Public Forum
19 th April, 2008	Discussion	St. Lucia International Association
21 st April, 2008	Preparatory Meeting	Castries South Community Leaders
28 th April, 2008	Preparatory Meeting	Anse La Raye Basin Leaders
30 th April, 2008	Preparatory Meeting	Canaries and Environs Leaders
30 th April, 2008	Preparatory Meeting	Micoud South Community Leaders
9 th July, 2008	Consultation	United Workers Party Executive, Delegates, Candidates

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DATE	EVENT	TARGET GROUP/COMMUNITY
	Consultation	Saint Lucia Fire Service
	Consultation	Royal Saint Lucia Police Force
	Consultation	VBCC
	Consultation	Shamrock Sports Club

Appendix VI:

Panel Discussions and Public Lectures

DATE	EVENT	TARGET GROUP/COMMUNITY	RESOURCE PERSONS
8 th Nov., 2007	<p>Panel Discussion</p> <p>Topic:</p> <p>The Relevance and Importance of Constitutional Reform</p>	Castries and its environs	<p>See footnote¹⁰⁴</p> <ul style="list-style-type: none"> ■ Dr. Hamid Ghany ■ Dr. Francis Alexis ■ Justice Hugh Rawlins ■ Parnel Campbell ■ Prof. Albert Fiadjoe <p>Moderator: Commissioner John</p>
14 th Nov, 2007	<p>Panel Discussion</p> <p>Topic:</p> <p>Should Local Government be Entrenched?</p>	Soufriere and its environs	<ul style="list-style-type: none"> ■ Hilary Charlemagne ■ Jimmy Haynes ■ Jackie Francis ■ Eusebia Jn. Baptiste <p>Moderator: Commissioner Alexander</p>
18 th Nov., 2007	<p>Public Lecture</p>	Castries and its environs	Dr. Hamid Ghany

¹⁰⁴ Dr. Ghany - Dean of the (UWI), St. Augustine Campus, Faculty of Social Sciences; Dr. Alexis - former Attorney-General of Grenada, and a former UWI Senior Lecturer in Law; Justice Rawlins - Court of Appeal Judge with the Eastern Caribbean Supreme Court now Chief Justice of the of the Eastern Caribbean Supreme Court; Parnel R. Campbell, Q.C - Chairman of the Constitutional Review Committee, St. Vincent & the Grenadines; Prof. Fiadjoe - Professor of Public Law at the University of the West Indies, Cave Hill campus in Barbados.

DATE	EVENT	TARGET GROUP/COMMUNITY	RESOURCE PERSONS
21 st Nov., 2007	<p>Panel Discussion</p> <p>Topic:</p> <p>Should elections continue to be under the first past the post system, or should there be some form of proportional representation or a combination of the two?</p>	<p>Island wide.</p> <p>Broadcast live on NTN, DBS & HTS</p>	<ul style="list-style-type: none"> ■ Sarah Flood-Beaubrun ■ Dr. Robert Lewis ■ Matthew Hunte ■ Cybelle Cenac-Maragh <p>Moderator: Commissioner Seraphin</p>
28 th Nov., 2007	<p>Panel Discussion</p> <p>Should the Senate be abolished, be revamped or should a unicameral system be adopted?</p>	<p>Gros Islet and its environs</p>	<ul style="list-style-type: none"> ■ Armstrong Alexis ■ Stanley French ■ Trudy Glasgow ■ Petra Mendes-Nelson <p>Moderator: Commissioner Poyotte</p>
10 th Dec., 2007	<p>Panel Discussion</p> <p>Topic:</p> <p>Should the PM be directly elected? Should there be a fixed date for General Elections?</p>	<p>Mon Repos and its environs.</p>	<ul style="list-style-type: none"> ■ Patrick Augustin ■ Flora Joseph ■ Henry Mangal ■ Denis James <p>Moderator: Commissioner Seraphin</p>
Jan. 2008	<p>Panel Discussion hosted by Labowi Promotions</p>	<p>Laborie Boys' Primary School</p>	<ul style="list-style-type: none"> ■ Agatha Jn. Panel ■ Watson Louis ■ Dr. Donatus St. Aimée <p>Commissioners Present</p> <p>Justice d'Auvergne, E. Mathurin, Lay, Charlemagne, Alphonse.</p>

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DATE	EVENT	TARGET GROUP/COMMUNITY	RESOURCE PERSONS
6 th March, 2008	<p>Public Lecture</p> <p>Topic: West Indian Constitutional Reform: Some Philosophical Reflections</p> <p>NIC Conference Room</p>	Castries and environs	<p>Presenter:</p> <p>Prof. S.C.R. Mc.Intosh –Dean Faculty of Law UWI</p>
16 th March., 2009	<p>Public Lecture</p> <p>Topic: The OECS Economic Union and Some Constitutional Implications</p>	Island wide	<p>Presenter:</p> <p>Dr. The Hon. Ralph Gonsalves – P.M St. Vincent & the Grenadines</p>
3 rd April, 2008	<p>Overseas Outreach (Panel Discussion)</p>	Saint Lucian students of the Cave Hill campus of UWI	<ul style="list-style-type: none"> ■ Dr. Tennyson Joseph ■ Dr. Eddy Ventose ■ Dr. Don Marshall ■ Dr. Rosemarie Antoine <p><i>Barrow-Giles, Seraphin represented CRC</i></p>

Appendix VII

Consultation with the Diaspora

Date	City/Country	Venue	Commissioners
4 th Feb., 2008	Jamaica	Mona Campus UWI	
20 th – 25 th Feb., 2008	St Croix, USVI	The Drive-in Frederickstead	Ulric Alphonse & Terrance Charlemagne
2 nd – 4 th April, 2008	Barbados	Cave Hill Campus UWI	Cynthia Barrow-Giles & Urban Seraphin
12 th April, 2008	St. Thomas		Justice Suzie d’Auvergne
16 th April, 2008	Virgin Gorda (BVI)		Justice Suzie d’Auvergne, David Cox
17 th April, 2008	Tortola (BVI)		Justice Suzie d’Auvergne, David Cox
1 st – 2 nd April, 2009	Martinique	Lamentin	Gregor Biscette & Dr. Urban Seraphin
17 th Sept., 2009	New York	Saint Lucia Mission to the UN	Eldon Mathurin & Lawrence Poyotte
18 th Sept., 2009	Washington DC	Saint Lucian Embassy at OECS House	Eldon Mathurin & Lawrence Poyotte
27 th Sept., 2009	Toronto	Our Lady of Good Council, 867 College Street, Toronto	Veronica Cenac & Nicholas John
11 th Nov., 2009	London (UK)	West Ham Town Hall	Justice d’Auvergne & David Cox

Appendix VIII:

Outreach Activities – Media Activities

DATE	EVENT	TARGET GROUP/ COMMUNITY	COMMISSIONERS
November 2007	News Maker Live Live Radio Talk Show – Radio Caribbean hosted by Timothy Poleon	Island wide	Justice d’Auvergne & Cenac
1 st Feb, 2008	TTP Talk Show Live Radio Talk Show – Radio Caribbean - Timothy Poleon hosted the show.	Island wide	Lawrence Poyotte & David Cox;
20 th Feb, 2008	News Maker Live Live Radio Talk Show – Radio Caribbean hosted by Timothy Poleon show.	Island wide	Lawrence Poyotte & David Cox. .
March2008	News Maker Live Live Radio Talk Show – Radio Caribbean hosted by Timothy Poleon Theme: Capital Punishment	Island wide	David Cox & Veronica Cenac
31 st March, 2008	In the Public Interest (IPI) Live Radio Talk Show – RSL	Island wide	Lawrence Poyotte & Andie George.
3 rd June, 2008	Bring it On Live Radio Talk Show – Radio 100. Hosted by Russell Lake	Island wide	David Cox
4 th June, 2008	News Spin Radio Talk Show – Radio Caribbean.		Poyotte & Cox.

DATE	EVENT	TARGET GROUP/ COMMUNITY	COMMISSIONERS
2 nd Oct., 2008	Juke Bois Talk Show	Island wide	Seraphin & Biscette.
18 th Feb, 2009	The Agenda Live Radio Talk Show on RSL – Hosted by David Samuel.	Island wide	Biscette & Seraphin..
22 nd Feb, 2009	The Agenda Live Radio Talk Show on RSL – Hosted by David Samuel.	Island wide	E. Mathurin & Cenac..
10 th March, 2009	The Agenda Live Radio Talk Show – RSL Hosted by David Samuel	Island wide	Abenaty & Seraphin represented CRC.
11 th March, 2009	News Spin Live Radio Talk Show – RCI	Island wide	Cox & George.
12 th March, 2009	Live Radio Talk Show – HOT FM Hosted by Lisa Joseph	Island wide	Cenac & Barrow-Giles.
13 th March, 2009	Bring-it-on Live Radio Talk Show – Helen FM Hosted by Russell Lake	Island wide	Hilaire
13 th March, 2009	Interview on Radio PRAISE FM	Island wide	Seraphin
18 th March, 2009	Interviews on Radio Free Iyanola ¹⁰⁵	Soufriere and its environs	Seraphin and Jude

¹⁰⁵ Two Interviews were conducted by Commissioner Seraphin on that date 8: a.m. to 8:15 a.m. and the other from 1:00 p.m. to 2:00 p.m. Commissioner Jude joined Commissioner Seraphin on the latter interview.

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DATE	EVENT	TARGET GROUP/ COMMUNITY	COMMISSIONERS
March 2009	Straight Up Live Radio Talk Show –	Island wide	Justice d’Auvergne
March 2009	Talk Live interview on HTS; Hosted by Rick Wayne	Island wide	Cenac and George
9 th April, 2009	Live Interview on Voice of Barbados	Island wide	Barrow-Giles and Seraphin
10 th Feb, 2011	Talk Live interview on HTS; Hosted by Rick Wayne	Island wide	Cox
16 th - 20 th March, 2009	<p>During that week Commissioners recorded programmes at GIS for broadcast on Radio and TV at future dates</p> <ul style="list-style-type: none"> ■ 15 minute interview. One guest and a moderator ■ Issues & Answers; Three 30 minutes programmes ■ Konsit Kwéyòl; (two 30 minutes programme) 	Island wide	<ul style="list-style-type: none"> ■ John and George. ■ John & Abenaty ■ Vargas, E. Mathurin & Chase ■ Barrow-Giles & Lay ■ Jude & Biscette ■ Seraphin & Biscette

Appendix IX

Public Oral Presentations

The Commission held four public oral presentations between March 2009 and July 2010. The two in Castries were daylong activities while those in Soufriere and Laborie were held from 5:30 p.m. to 9:00 p.m. These were intended to allow members of the public to present on various aspects of the Constitution and to recommend changes to same.

DATE	ACTIVITY	COMMISSIONERS PRESENT
17 th March, 2009	<p>Day One – First Public Oral Presentations¹⁰⁶</p> <p>Venue: NIC Conference Centre</p> <p>Presenters:</p> <ul style="list-style-type: none"> • Justice Suzie d’Auvergne • Commissioner Nicholas John • Commissioner Ernest Hilaire • Henry Mangal – Concerned Citizen • McHale Andrew – SLHTA and Concerned citizen • Joan Didier – AIDS Action Foundation • Armelle Mathurin – Help-Age Saint Lucia • Juliette Braithwaite – Corner Stone Humanitarian Society • Pamela Devaux – Animal Protection Society • Claude Guillaume – Concerned Citizen • Orjan Lindberg – Movement Exploring New Democracy 	All Commissioners

¹⁰⁶ These presentations, though written versions were submitted, were presented orally at the symposium.

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DATE	ACTIVITY	COMMISSIONERS PRESENT
19 th March, 2009	<p>Day Two – First Public Oral Presentations</p> <p>Venue: NIC Conference Centre</p> <p>Presenters:</p> <ul style="list-style-type: none"> • Andrew George – NEMO • Bishnu Tulsie – Saint Lucia National Trust • Akim Larcher – Concerned Citizen • Kenita Placid – United & Strong Inc. • Gertrude George – UWP • Wilkie Larcher – Concerned Citizen • David Hughes – Concerned Citizen • Lucia Lee – Concerned Citizen • Gerald Saltibus – Concerned Citizen 	<p>Nation wide</p> <p>All Commissioners</p>

DATE	ACTIVITY	COMMISSIONERS PRESENT
20 th March, 2009	<p>Day Three – First Public Oral Presentations</p> <p>Venue: NIC Conference Centre</p> <p>Presenters:</p> <ul style="list-style-type: none"> • Kevin Lorde – Concerned Citizen • Modestus Louis – Concerned Citizen • Dr. Stephen King – Concerned Citizen • Imran Jean – Concerned Citizen from a faith based organization • Geoffrey Devaux – Concerned Citizen 	<p>Nation wide</p> <p>All Commissioners</p>
29 th June, 2009	<p>Public Oral Presentation</p> <p>Venue: Castries City Hall</p> <p>Main Presenters¹⁰⁷:</p> <ul style="list-style-type: none"> • Claudius Francis – Concerned Citizen • Margot Thomas – National Archives Authority of Saint Lucia. • George Goddard – National Workers Union • Mary Francis – Human Rights Advocate. • Urban Dolor – Concerned Citizen • Msgr. Patrick Anthony - Faith Based Community (Roman Catholic) • Amatus Edward – Concerned Citizen 	<p>Castries and its environs</p> <ul style="list-style-type: none"> ▪ Justice d’Auvergne – Chairperson CRC and Chair of this activity ▪ John – Deputy Chairperson of CRC ▪ Alphonse ▪ Biscette ▪ Seraphin ▪ Charles ▪ Cenac ▪ Poyotte ▪ Vargas ▪ Alexander ▪ Lay ▪ Chase ▪ P. Mathurin

¹⁰⁷ Peter Josie was unable to make his scheduled presentation but presented to the Commission on June 23, 2009 at the Commission’s Secretariat.

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DATE	ACTIVITY	COMMISSIONERS PRESENT
30 th June, 2009	<p>Public Oral Presentation</p> <p>Venue: St. Isidore Hall, Soufriere</p> <p>Main Presenters:</p> <ul style="list-style-type: none"> • Anthony Robinson – Soufriere Youth Council • Katalin Allain & Jannalia Lamontagne – Soufriere CYO • Gabriel Jude – Soufriere Action Theatre • Marvin Edgar – National Youth Council • Sonia Cazaubon – Soufriere Marine Management Area • Licia Jn. Paul and Eusebia Jn. Baptiste Yaticka Youth Group 	<p>Soufriere and its environs</p> <p>Commissioners present</p> <ul style="list-style-type: none"> ▪ Jude – Chairperson at this activity ▪ Justice d’Auvergne ▪ John ▪ E. Mathurin ▪ Lay ▪ Cenac ▪ Alphonse
1 st July, 2009	<p>Public Oral Presentation</p> <p>Venue: Laborie Parish Hall</p> <p>Main Presenters:</p> <ul style="list-style-type: none"> • Watson Louis – Concerned Citizen • Twain Edwards – Country Strikers • Augustin Barthelmy – Labowi Promotions 	<p>Laborie and its environs.</p> <ul style="list-style-type: none"> ▪ John – Chairperson at this activity ▪ Justice d’Auvergne ▪ Alphonse ▪ Biscette ▪ Charles ▪ Cherry ▪ Cox ▪ E. Mathurin ▪ George ▪ Lay ▪ Seraphin

Appendix X

Interviews with Constitutionally Established Functionaries (Past and Present)

Date	Functionary
25 th March 2009	Governor General – Dame Pearlette Louisy
11 th May 2009	Speaker of the House of Assembly (Dr. Rose Marie Husbands-Mathurin)
11 th May 2009	Leader of the Opposition (Dr. Kenny D. Anthony)
11 th May 2009	Deputy President of the Senate (Everistus Jn. Marie)
11 th May 2009	Former President of the Senate (Hilford Deterville Q.C.)
12 th May 2009	Parliamentary Commissioner (Madison Stanislaus)
12 th May 2009	Former Cabinet Secretary & Acting Governor General (Victor Girard)
12 th May 2009	Acting Governor General & former PS (Cornelius Lubin)
12 th May 2009	Chief Elections Officer (Carson Raggie)
13 th May 2009	Former Chairperson Integrity Commission (Canon Randolph Evelyn)
13 th May 2009	Chairperson Public and Teaching Service Commissions (Frank Myers)
13 th May 2009	Former Speaker of the House of Assembly (Matthew Roberts)
14 th May 2009	Clerk of Parliament (Kurt Thomas)
14 th May 2009	Director of Audit (Avril James-Bonnette)
14 th May 2009	Chairperson Public Service Board of Appeal (Vern Gill)

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Date	Functionary
14 th May 2009	Former Prime Minister (Lewis, Vaughn)
24 th June 2009	Director of Public Prosecutions (Victoria Charles-Clarke)
22 nd July 2009	President of the Senate (Gail Phillips)
22 nd July 2009	Former Prime Minister (Dr. Michael Pilgrim)
26 th Aug 2009	Chair Electoral Commission (Kenneth Monplaisir Q.C.)

Appendix XI

Summary of Submissions Received

1. The Constitution should make provisions for separate people to be appointed to the Executive, the Legislature and as Constituency Representatives.
2. Prime Minister and Deputy Prime Minister to be elected in direct elections by the entire country.
3. The elected Prime Minister would select his/her Executive (Cabinet) from professional individuals outside the Legislature.
4. Senators should be elected.
5. Senators be individuals with a sufficient educational, intellectual and expert capacity to independently analyse, review and refine proposals of the House or Lower Chamber and the Executive
6. The Senate should also have the right to propose and pass its own laws independent of the Executive.
7. Senators should possess minimum qualification of a University Degree or some professional expertise in specific areas.
8. Senators should be proficient in oral and written English and Kwéyòl.
9. There should be a Senate Majority Leader and Deputy Leader as well as a Minority Leader and Deputy Leader.
10. Constituency Representatives should continue to be elected directly by the people.
11. The House should continue to approve laws recommended by the Executive and should have the power to propose its own laws for debate in the House and approval by the Senate.
12. There should be a minimum qualification of an Associate Degree or an “A” Level Education for Parliamentarians.
13. Parliamentarians should be proficient in oral and written English and Kwéyòl.

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14. A Constituency Representative when elected should become the Chairperson or Mayor of the constituency.
15. A Constituency Representative when elected should be in charge of Local Government.
16. A Prime Minister, Senate Majority Leader, The House Majority Leader must not serve more than two consecutive terms.
17. There should be elections on a fixed day or date for General Elections, this should be held every 5th year.
18. Recall provisions be enshrined in our revised constitution to allow recall proceedings to be instituted against any elected official.
19. The subject areas for Ministries should be fixed.
20. There should be a fixed number of Ministries.
21. Direct elections or confirmation hearings to be instituted for members of the judiciary.
22. The Constitution should make specific provisions to insulate our Governor General from undue party political influence in his/her decision making.
23. The revised constitution must replace the Privy Council with the Caribbean Court of Justice as our final appellate court.
24. The Executive President along with a Vice President elected directly by the people of Saint Lucia in national elections.
25. There should be a unicameral legislature.
26. Local Government in a country of 238 square miles and 171,000 people is preposterous
27. Saint Lucia should include in its Constitution the right to health as an enforceable right.
28. The right to work should be included as a specific right in the Bill of Rights.
29. Included in the Bill of Rights should be a specific Right to Information.
30. The Constitution should include the right to education as an enforceable right in the Bill of Rights.

31. The right to privacy should be specifically included in the detailed section of the Bill of Rights.
32. Health status should be specifically included in the anti-discrimination section.
33. The anti-discrimination provision should specifically include disability as a prohibited ground of discrimination.
34. Sexual orientation should be included as a prohibited ground of discrimination in the anti-discrimination section
35. Saint Lucia should establish within its Constitution a Human Rights Commission.
36. The Constitution makes it mandatory and enforceable that children care for and cater to the needs of their aging parents relative to their needs and circumstances.
37. There should be free legal aid for older persons who need to seek redress in cases of abuse, violence, discrimination or exploitation.
38. The language of the Constitution should step away from “legalese” and become more easily understood, easier to apply, less ambiguous, clear and irrefutable.
39. The basic tenets of the UNCRC must be enshrined in the Saint Lucia Constitution.
40. A much larger House of Representatives, which eliminates the need for a second sub-tier of Local Government should be established.
41. Members of the House of Representative will be drawn from professional organizations.
42. Private land ownership should not be absolute, but should come with a social responsibility and mortgage.
43. Historic assets should be designated public property.
44. Position of Deputy Prime Minister be a constitutional position
45. A Line of Succession should be enshrined in Constitution to ensure continuity of Government in emergency or disaster situations.
46. The Executive shall consist of the Prime Minister, the Deputy Prime Minister and Ministers who will be nominated by the Prime Minister.

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47. A Minister shall be nominated by the Prime Minister but must be confirmed by the majority of members of both the Senate and the House at hearings held solely for this purpose.
48. A Ministry and its full designation shall be proposed by the Prime Minister but must be approved by the majority of both the House and the Senate at hearings called for this sole purpose.
49. There may be need for some Core Ministries to be named in the Constitution.
50. That the Parliament shall consist of the Senate and the House of District Representatives.
51. The President of the Senate shall be a Public Officer appointed by the Public service Commission to conduct the business of the Senate.
52. The Deputy President of the Senate shall be the elected member of the Senate who received the most votes in preceding national elections.
53. The District Representative shall also be the highest officer of Local Government and shall serve his Constituency daily on-site.
54. The Speaker of the House shall be a Public Officer and be appointed by the Public Service Commission.
55. The Deputy Speaker shall be elected from amongst the elected members of the House.
56. If for any reason the office of the Prime Minister should become vacant his place shall be taken over by the Deputy Prime Minister who then becomes the new Prime Minister.
57. Whenever the office of the Deputy Prime Minister becomes vacant, this shall be filled by the Deputy President of the Senate.
58. An Alternate Senator shall be elected by direct vote to replace a senator who has been elevated to the office of Deputy Prime Minister.
59. The ballots should bear only the candidate name and photo.
60. Voting should be done by finger print (finger dipped in ink) and not by X.
61. Abolition of the Office of Governor General.
62. Abolition of the Office of the Leader of The Opposition.
63. Abolition of Office of Parliamentary Secretary.

64. The Senate shall comprise of elected members chosen by the citizens during an election.
65. A District Representative shall not be (cannot be) a Minister.
66. Election for the Prime Minister and Deputy Prime Minister to be held every 6 years.
67. The two independent senators appointed by the Governor General should not hold office as President or deputy President of the Senate.
68. There should be an age limit for Parliamentarians; not younger than 21 years and not older than 70 years old.
69. Ministers of religion should not be barred from standing in elections.
70. A member of the House who no longer wishes to represent the party under which he/she was elected to the house and is desirous of joining another party shall vacate the seat and a by election called.
71. A Member of Parliament who resigns his/her seat other than to change party allegiance should not be allowed to contest the seat that he/she has just vacated.
72. The Prime Minister of Saint Lucia shall be a citizen of Saint Lucia of Saint Lucian parents by birth not naturalisation or registration.
73. The term of office of the Prime Minister should be not more than three consecutive terms.
74. Any person married to a Saint Lucia citizen should not automatically become a Saint Lucian citizen.
75. Categories protected under the current Constitution should be expanded to include protection on the grounds of race, gender identity, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
76. The Constitution must provide security, justice and equality for all St. Lucians including those who have different health status, religious beliefs, cultural practices, sexual orientations and gender expressions.
77. The constitution should ensure that all Saint Lucians have equal rights under the law.

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78. Any laws criminalising consensual same-sex intimacy should be repealed under the Criminal Code.
79. All provisions which criminalise sexual activity between consenting same sex adults should be repealed.
80. The right of all persons to equality before the law without discrimination on the basis of sexual orientation or gender identity should be provided for.
81. An equal age of consent should apply to both same-sex and different-sex sexual activity.
82. Provisions in the Constitution should be expanded to include the civil, political, economic, social and cultural rights of ALL Saint Lucians.
83. That the State should not criminalise sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.
84. Sexual orientation and gender identity form part of a new reformed constitution.
85. Provision be made in the Constitution to reprimand elected members who mislead or lie to the nation.
86. There should be a chapter dealing with the need to protect the organs and the symbols and emblems of the state.
87. That Saint Lucia favours retention of the monarchical form of Government with the Governor General as Head of State.
88. That there should be a Parliament of Saint Lucia which should consist of Her Majesty, a Senate and a House of Assembly.
89. There should be constitutional provision for Parliament to pass rules for the peace, order and good conduct of Parliament.
90. The Constitution should provide for the removal of an elected Member of Parliament should that need arise.
91. The process by which any section of the constitution can be amended should be stated clearly in the constitution.

92. In Parliament, the District representative will have oversight, through various Parliamentary committees, of the performance of the Cabinet of Ministers, besides the normal legislative functions.
93. In the event an elected representative is selected as a Minister, his Parliamentary seat would automatically become vacant necessitating a bye-election.
94. There be term limits for all elected officials.
95. A recall mechanism for all elected officials for clearly defined reasons of which non-performance must be one should be provided for.
96. There must be integrity legislation covering all aspects of public service life.
97. The Governor-General position should be replaced by the President.
98. Ministries and Ministers should be limited to allow synergy between departments and reduce administrative costs.
99. The Senate is not necessary and should be removed.
100. The Public Services Board of Appeal should be kept but should function as a board that hears appeals from any citizen or national institution that has an issue with the functioning or decisions of Government.
101. The Public Service Commission and The Teaching Service Commission should be abolished. The HR function of the Ministries should be handled by the respective Ministries.
102. The Constitution must be explicit about zero-tolerance for violence.
103. Capital punishment should be abolished.
104. A clause on the protection of the unborn needs to be inserted.
105. Section 8 (1) Provisions to secure protection of law. There is need to define the time.
106. Section 8 (2) (d) should change to legal counsel should be provided by a person or if the person is not able then one is provided by the state.
107. The Permanent Secretaries should have power to hire, discipline and dismiss.

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108. No one with a criminal record whether in St. Lucia or overseas should be allowed to vie for public office.
109. The Senate should be given the responsibility for the appointment of the Chief Justice and not the Prime Minister.
110. The first past the post system should be retained
111. All persons appointed to hold positions in Cabinet must receive the approval of the Senate.
112. Subsection 24 (2) of the Constitution be revoked or deleted;
113. All references to “appointed” or “appointment” pertaining to the position of Senator, except those appearing in subsection 24 (1) and Section 28, be changed to read “elected” or “election”;
114. Subsection 27 (e) be revoked or deleted;
115. Subsection 28 (4) be revoked or deleted.
116. Domesticated animals should have protection against cruelty, ill treatment and neglect.
117. No person shall cause harm to another through his/her actions, whether illegal or legal, or by his/her inaction.
118. A system of proxy voting be established to accommodate nationals living abroad during general elections.
119. Supports the Privy Council as the final court of appeal.
120. If a person is elected to the House of Assembly as a candidate of a registered political party or as an independent and changes the political affiliation through which he was elected to the House, his seat should be declared vacant and a by-election held for its representation.
121. An election candidate should be required to submit his credentials for consideration by the electorate
122. A system of elected Local Government should be established.
123. Senators should be appointed for a fixed term.

124. The Governor General should be elected and not selected by the Prime Minister
125. There should be a fixed tenure of office for the Governor General.
126. Prime Ministers should not be able to call election at will.
127. A Member of Parliament who is elected on the ticket of one party should not be able to cross the floor.
128. A recall of any Member of Parliament who brings the office into disrepute, crosses the floor, not happy with their performance or any other reasons the drafters of the Constitution deem necessary should be enforced.
129. There should be a ceremonial President instead of a Governor General.
130. If a Party cannot raise the necessary funds then the State should provide support.
131. There should be limits/ceiling on spending.
132. There is need for disclosure of the source of funding.
133. People are forced to work on their Sabbath day and this infringe on people's right to freedom of worship. Constitution should ensure that this does not happen.
134. No one should be allowed to hold dual citizenship.
135. Unless the Senate can fulfil its function of providing checks and balances on the Lower House, it must be gotten rid of.
136. Parties should be required to declare their sources of finance as per the Constitution. This declaration should be prior to elections.
137. There should be a review of finances after the elections
138. There should be limits as to level of individual contributions.
139. There should be laws compelling Parliamentary representatives to consult with their constituents.
140. At the risk of turning Saint Lucia into an elitist state, there should be set academic qualifications for persons wanting to become Parliamentary Representatives.
141. Right to life of an unborn child should be protected under the Constitution.

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142. Ruling Party should not have the majority in the Senate.
143. Governor General should be able to nominate more independent members.
144. Eleven Senators are insufficient.
145. Rejected Ministers should not be reappointed.
146. Provisions should be made in the Constitution to facilitate a public servant to run for parliamentary office.
147. Constitution should address accountability on the part of Members of Parliament.
148. Provisions for membership in regional and international organisations should be made.
149. Parliamentary Commissioner should have a legal background.
150. Making the Governor General a deputy Prime Minister would make the Office more effective.
151. Constitution should ensure greater participation at the local level.
152. Whether through the construction or the Education Act, it should be mandatory that all children of age 15 and below attend school; parents of offenders should be made liable; should be made an offence to contrive same.
153. Rights of children to social services and education should be enshrined in the Constitution as a means of protecting our future generation from emotional and sexual abuse.
154. A procedure for the selection of candidates to contest for Parliamentary office should be enshrined.
155. Powers of the Prime Minister should remain in order to be able to rule effectively.
156. If the Court makes it compulsory for parents to maintain their children financially or otherwise, it should be compulsory that children take care of their elderly & disabled parents if they are financially capable.
157. State should appoint a lawyer for persons who cannot afford one.
158. A line of succession for the leadership of Saint Lucia.

159. Instrument of appointment of the President must be signed by the Prime Minister, the Leader of the Opposition, leaders of other parties or Independents in the House and the Senate as evidence of collaboration in the selection.
160. President shall be appointed to serve for ten(10) years equivalent to two parliamentary terms. President will not be required to read a Throne Speech at the annual opening of Parliament but will instead obtain the appropriate information and address Parliament and the nation on matters relevant to the progress and direction of the country.
161. Persons who lost as candidates at the preceding general election should not be made Senators for the Parliamentary term following that election.
162. As regards births, marriage and divorce, death and rights of inheritance, Islamic tenets of Faith must be guaranteed under the Constitution.
163. Implementation of a National Land Use Plan with accompanying zoning regulations,
164. The 'first past the post system' should be re-examined and restructured in innovative, not necessarily replicated, ways to suit our uniqueness as Saint Lucians.
165. A clause giving recognition to the established institution of the Fire and Emergency Services under the authority of the Chief Fire Officer as detailed in the Fire Service Act and the Fire Service Regulations and Orders of 1976
166. The Fire and Emergency Services be recognised as an essential service
167. Local Government should be given constitutional protection; Appointment to Local Government should be by election by community.
168. Local Government should be given executive authority.
169. Capital punishment should be retained.
170. Marriage should be defined as a union between a man and a woman.
171. The Language of the preamble does not affect us as citizens of Saint Lucia and should therefore be simplified to meet the understanding of the lay person.
172. The Prime Minister or any Minister should be required to appear before the Court of Law for any wrongdoings they are accused of.

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173. A candidate should state his background to the people he wishes to represent before going to the polls.
174. Calculation of time for holding persons beyond the prescribed time without charge pursuant to an order of the Court should exclude weekends, Sundays and public holidays.
175. Persons who have prior criminal records should be debarred from applying for citizenship
176. Stop and search powers of Police should be wide enough to allow police to place barriers on roads and highways for the purpose of search without first having to have reasonable suspicion to justify research.
177. Public Service Commission should be accountable to Parliament
178. There should be mandatory delegation of disciplinary powers by PSC to Commissioner of Police, Fire, Chief and Director of Prisons.
179. Police Commissioners should be career public officers as distinct to contract officers.
180. Duties of Parliamentary Commissioner should be clearly stated so as to avoid an overlap with Police.
181. Name of Royal Saint Lucia Police Force should be retained.
182. Members of the Executive Branch of Government should have basic academic and other qualification that would justify their appointment as Minister for Ministry.
183. Doctrine of Collective Responsibility should be limited so as to facilitate debate in Parliament
184. The Preamble of the Constitution should continue to affirm the belief in and the supremacy of God.
185. An allied services commission with a full time chairman with the mandate to attend to the recruitment, appointment and discipline of Fire, Police & Prison Officers.
186. Establishment of a National Security Commission that deals with (a) Discipline (b) Promotion (c) Dismissal (d) Admission throughout the RSLPF, the Fire Service and the Prison Service.
187. Law against obscene language should be expanded and strictly enforced.

188. Law against truancy should be strictly enforced.
189. Specific provision should be placed in the Constitution to ensure protection from deprivation of property.
190. A Republican System of Government should be established.
191. The elections for the President should not be based on party lines.
192. The President should be responsible for the appointment of all the independent commissions and boards.
193. The President should be given term limits up to maximum of two consecutive terms, each of a five year duration.
194. Constitution should secure Government's responsibility for enacting additional and enforcing environmental laws that protect the natural environment
195. Constitution should secure Government's responsibility/obligation to protect and, if necessary, develop biologically diverse parks/ecological enclaves and corridors (common public properties) for present and future generations.
196. Constitution should secure Government's responsibility to use natural resources, or allow them to be used, in a sustainable manner.
197. Local elections should be held separately from national elections.
198. Plurality voting (first-past-the-post) should be provided for central Government, and a proportional representative system for local Government.
199. Prime Minister should not have any portfolios.
200. Kwéyòl (patwa) should be officially instated/recognised as the National Language of Saint Lucia.
201. Government should introduce antidiscrimination legislation to protect women.
202. The role of the Senate and the President of the Senate should be outlined in the Constitution
203. In an effort to separate the Legislature and the Executive one should restrict the number of Executive members in the Senate

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204. Because the GG is the Head of Parliament, it follows that her Deputy should emerge out of Parliament rather than outside of Parliament.
205. The Senate should comprise expertise that can give bills the scrutiny that they deserve.
206. The Deputy Speaker should have power to convene a sitting of the House under certain circumstances.
207. The rights, privileges, immunities, speaking powers of Parliamentarians should be addressed in the Constitution.
208. Parliamentary Assistant should be employed to assist Parliamentarians who are Ministers with duties in various constituencies.
209. Replace the GG with a President elected by the House by Electoral College.
210. A unicameral system where the Senators are appointed to the elected House based on a proportional system should be established.
211. Anyone with a criminal record should be compelled to disclose same before seeking to become a Member of Parliament.
212. All persons who have agreed to be candidates for election to Parliament should make a declaration of their liabilities and assets prior to elections.
213. The magistracy should belong exclusively to the Judicial and Legal Services Commission.
214. Parliament should have total control over the appointment of the Director of Audit.
215. The Chairman of the Electoral Commission should be appointed by a two-thirds majority in the House or that the GG should consult with the Leader of the Opposition and the Government on such appointments.
216. The Constituency Boundary Commission and the Electoral Commission should be amalgamated.
217. The Cabinet should be no larger than 10 members; 5 elected and 5 selected.
218. The sitting of Parliament should be regular.
219. The Queens' Chain be elevated to the status of a constitutional prohibition.
220. No Bill should go through all three readings at one sitting of the House.

221. The Crown should always have the right of appeal against sentences handed down by a judge.
222. The Constitution should make provisions to broaden the remit of the Ombudsman by placing Police oversight under his jurisdiction
223. The office of Parliamentary Secretary provided for in the Constitution be abolished.
224. Permanent Secretaries should not be contracted personnel.
225. The Senate should have the power to amend all Bills including Money Bills.
226. The same provisions for the appointment of the Electoral Commission should apply for the Boundaries Commission.
227. The title of the Officer in Chief be changed from Director of Audit to Auditor General.
228. That the specific age of retirement should not be prescribed in the Constitution.
229. The Constitution should make it clear that the Director of Audit is answerable to Parliament.
230. The budget of the office of the Director of Audit should be decided directly by Parliament.
231. The Attorney General should be a Civil Servant.
232. The Senate should be elected based on proportional representation by list.
233. The provision which requires consultation with the PM in the appointment of a DPP should be removed.
234. The office of the DPP should have the authority to sanction the police for failing to present evidence requested by that Office.
235. The Director of Public Prosecutions should be directly responsible for the expenditure of funds voted to her department by Parliament.
236. There should be a provision to allow the Director of Public Prosecutions to impose sanctions for non-compliance of officers re directives issued by the office of the DPP.
237. No one should be given a lifetime appointment such as a judgeship without hearings prior to confirmation.

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238. That Cabinet Ministers should face hearings prior to appointment
239. A Prime Minister should not be allowed to utilise members of the House as members of his Cabinet.
240. The House should also serve as an oversight committee regarding the appointment of judges, cabinet ministers, Public Service Commission and the like.
241. A reformed Constitution should address Prime Ministers succession.
242. Elected members ought not to be given the power to elect a Prime Minister from among them.
243. There should be constitutional provisions to allow for impeachment of elected members.
244. That the nationally elected Prime Minister should be allowed to nominate – not appoint – persons to serve in his Cabinet.
245. The Speaker would come from within the elected members of the House.
246. There should be more frequent meetings of the House and that such meetings should not be at the behest of the Executive but instead completely controlled by the Legislature.
247. The Electoral Commission should not be controlled by the central Government;
248. No Government should be able to influence the work of independent commissions via the budgetary provision.
249. A minimum set number of voters should constitute a constituency.
250. The provision which mandates that the head of a tribunal should be a lawyer should be revoked.
251. The Constitution should expressly forbid the Legislature from enacting retroactive laws.
252. All records created on whatever media or whatever format by any Government official, ministry, department or parastatal should be the property of the State.

253. The Constitution should provide for the privacy of information to protect the personal information of individuals particularly in the private sector and health sector.
254. Provision should be made in the Constitution to ensure that workers are guaranteed Trade Union representation without fear of reprisals.
255. There should be a State sponsored Legal Aid Programme in Saint Lucia.
256. The Prime Minister should have veto rights on any money, national security or foreign affairs bill.
257. The office of Parliamentary Commissioner should be given more teeth.
258. Provision should be made in the Constitution to ensure the participation of youth in national decision making.
259. Some statement about the preservation and protection of our culture be inserted in our Constitution
260. Disposal of national assets be it by the Government or otherwise, is so important to the life of the State that it must never be done without a referendum.
261. There should be a specific distance from which hotels should be built from beach fronts.
262. The age of consent should return to eighteen.
263. Members of the Teaching and Public Services should be allowed the freedom of association and participation in political activity without fear of victimisation.
264. The Teaching Service Commission should be subsumed under the Public Service Commission.
265. The Queen's Chain should include a buffer zone for the rivers.
266. A statement must be made requiring the provisions of the draft cultural policy of 1988 be implemented.
267. The use of cannabis in the religious rituals of the Rastafarian movement should be legalised.
268. Utilities such as WASCO and LUCELEC should be State owned.

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269. Areas of lands such as the sea bed, Queen's Chain, river bed, reclaimed lands should form part of the patrimony.
270. Citizenship should be granted on economic grounds.

Appendix XII:

Preparatory Activities of CRC

(List of Internal Training Activities Undertaken by the Constitutional Reform Commission November 2006 – November 2009)

By Statutory Instrument No. 50, 2004, (See **Appendix I**) the Government of Saint Lucia established a Commission to review and reform the Constitution of Saint Lucia. Pursuant to this, the Commission undertook the following preliminary activities:

- Conducted training workshops for Commissioners to familiarise them with the process;
- Hosted a series of public lectures by prominent regional personalities on the topic of constitution and constitutional reform aimed at sensitizing the public on the issue;
- Undertook a series of Community based education meetings to explain briefly, for the benefit of the citizenry, certain provisions of the existing Constitution, in the hope that, in doing so, their understanding of the document and of the central issues involved in constitutional review would be enhanced; ultimately redounding to their effective participation in the review process.

The Commission consulted widely with the citizens and organizations of Saint Lucia, at home and abroad, in its quest to maximise submissions from all interested parties.

There were regular weekly meetings of Commissioners at the Commission's secretariat; these were held on Wednesdays from 1:30 p.m.

Workshops for Commissioners

The following are lists of activities undertaken by CRC in order to prepare Commissioners for the task at hand.

DATE	ACTIVITY
30 th Sept., 2006	Team building retreat for Commissioners facilitated by Dr. Aubrey Armstrong – Management Consultant
6 th Nov., 2006	Introductory workshop for Commissioners
21 st Nov., 2006	Orientation workshop for Commissioners
28 th Nov., 2006	Preparatory workshop for Commissioners
29 th Jan., 2007	Workshop for Commissioners
6 th Feb., 2007	Workshop for Commissioners
24 th Nov., 2009	Workshop for Commissioners

Appendix XIII

List of persons/organisation making written submissions

	Individual/ Organization
01	Clement Prospere, Men's Christian Fellowship Methodist Church in Saint Lucia
02	Henry Mangal
03	McHale S.C. Andrew
04	Joan Didier, AIDS Action Foundation/Caribbean Vulnerable Communities Coalition
05	Armelle Mathurin, Help-Age St.Lucia (HASL) National Council of and for Older Persons
06	Juliet Brathwaite, Cornerstone Humanitarian Society
07	Pamela Devaux, St.Lucia Animal Protection Society
08	Claude Guillaume
09	Orjan Lindberg - MEND
10	Bishnu Tulsi, St.Lucia National Trust
11	Andrew George, NEMO
12	Gerard Saltibus
13	Lucia Lee
14	Akim Larcher

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	Individual/ Organization
15	Kentia Placide/United & Strong, Inc.
16	Wilkie Larcher
17	David Hughes
18	Gertrude George, United Workers Party
19	Kevin Lord
20	Modestus Louis
21	Stephen King, Dr.
22	Imran Jean
23	Geoffrey Devaux
24	Sylvanus Fontenard
25	Andrew Antoine
26	St. Lucia Solid Waste Management Authority
27	Mike Topp
28	Cyril Mangal
29	Bernice Clery, St.Lucia International Association
30	Maurice Laurencin, Jomo Primus
31	Stanley French
32	Maurus Faucher
33	Dawn French

	Individual/ Organization
34	Delrita Joseph
35	P. Watson Louis
36	Islamic Association of Saint Lucia
37	Ayodele Hippolyte
38	Paula Didier
39	Georgina Anthony
40	Ministry of Health and Labour Relations
41	Muriel Gill
42	Rainer Verhoeven
43	Titus Samuel
44	Lionel James
45	Robert Devaux
46	Knights of Columbus
47A	ALDET Centre
47 B	ALDET Centre
48	Paula Fitz
49	Anthony Henry
50	Matthew St. Paul
51	St. Lucia Chamber of Commerce, Industry and Agriculture

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	Individual/ Organization
52	Crispin d’Auvergne, Min. of Physical Development
53	St. Lucia Fire & Emergency Services
54	Regis, Edmund. National Printing Corporation(NPC)
55	Marcia Lesmond
56	E. George
57	Vigier Community
58	Royal Saint Lucia Police Force
59	St. Lucia Civil Service Association
60	St. Lucia Fire & Emergency Services
61	Dona Emmanuel
62	Velon John
63	Daniel [DelightTheWorld@aol.com]
64	Dr. B. M. Pilgrim
65	Peter Josie
66	Lydia Charlemagne
67	Rosanne Martyr
68	Folk Research Centre. Kwéyòl Language Committee
69	Flavia Cherry
70	Madison Stanislaus – Parliamentary Commissioner

	Individual/ Organization
71	Carson Raggie – Chief Elections Officer
72	Claudius Francis
73	Margot Thomas National Archives Authority of Saint Lucia
74	George Goddard
75	Urban Dolor
76	Amatus Edwards
77	Anthony Robinson, (Soufriere Youth Council)
78	K. Arlain, J. Lamontagne Soufriere CYO
79	Gabriel Jude, Soufriere Action Theatre
80	Eusebia Jn Baptiste/Lucia Jn. Paul Yaticka Youth Group
81	Marvin Edgar National Youth Council
82	Sonia Cazaubon Soufriere Marine Management Area
83	Watson Louis
84	Twain Edward Country Strikers
85	Augustin Barthelmy

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	Individual/ Organization
	(Labowi Promotions)
86	St. Lucia International Association 2
87	Iyanola Council for the Advancement of Rastafari (ICAR)
88	Sarah Flood-Beaubrun
89	Rudy Lubin
90	St. Lucia Ottawa Association
91	CRC Delegation to UK
92	Dr. James St. Catherine
93	Vanesta Moses-Felix

Appendix XIV

CRC's Internal Meetings and Training June 2006 – October 2008

Date	Type of Activity	Comments
5 th July, 2006	Internal Meeting	A sub Committee was formed comprising; the Chair and Deputy, David Cox and Eldon Mathurin to work on a Draft Work Program/Operational Plan for the next three months.
5 th July, 2006	Internal Meeting	General Meeting
10 th July, 2006	Internal Meeting	Special Committee Meeting - Operational Planning: (1) Press Conference (2) Lecture Series –Commissioners/public (3) Documentary (4) Internal training program (5) Series of Retreats/Workshops (6) Printing & distributing the following document:- -A layman's Guide to the Constitution
19 th July,2006	Internal Meeting	General Meeting
31 st July, 2006	Internal Meeting	Special Committee Meeting - Financing of Operational Plan
2 nd Aug., 2006	Internal Meeting	General Meeting - Reporting by Management Committee
16 th Aug., 2006	Internal Meeting	Special Committee Meeting - Planning for Aubrey Workshop, Pamphlets et cetera.
30 th Aug., 2006	Internal Meeting	Management Committee Meeting - Pamphlets,

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Date	Type of Activity	Comments
		Documentary, Radio Programs, Website.
6 th Sept., 2006	Internal Meeting	General Meeting - 1200 copies of the Constitution were received; 20000 pamphlets to be produced by the Voice Pub. Co.Ltd; Proposed lectures by the Bar; quotation from David Desborough; Quotation from Aubrey Armstrong for Commissioners' workshop; documentary; radio programmes; website.
30 th Sept., 2006	Workshop for Commissioners	Led by Dr. Aubrey Armstrong from Aubrey Armstrong and Associates; Commissioners were placed into three teams for the purpose.
4 th Oct., 2006	Internal Meeting	General Meeting - Glossary of Constitutional Terms; Report on Sept 30 2006 workshop; Outreach Programme; Membership; Radio Programmes; Logo and Letterhead.
11 th Oct., 2006	Internal Meeting	Management Committee Meeting - Pamphlets, Documentary Radio Programs, Website (updates).
25 th Oct., 2006	Internal Meeting	General Meeting - Logo, Chair's London visit; Proposed Work Programme; Workshop for Commissioners.
1 st Nov., 2006	Internal Meeting	Management Committee Meeting - More Workshops Planned; Website and Radio Programme Updates.
6 th Nov., 2006	Workshop	Led by David Cox and Dwight Lay.
15 th Nov., 2006	Internal Meeting	General Meeting - Public Launch; Kendall's Proposal; Glossary of Terms; Recent and next workshops.

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Date	Type of Activity	Comments
21 st Nov., 2006	Workshop	Led by Dwight Lay and Andie George: Constitutional Law - Separation of Powers, organs of the State, Conventions of the Constitution.
22 nd Nov., 2006	Internal Meeting	Management Committee Meeting - Documentary (Mr. Hippolyte), Ask visiting lecturers to assist the Commission.
28 th Nov., 2006	Workshop or Commissioners	Led by Ernest Hilaire: Political/sociological approach to Constitutional Reform.
4 th Dec., 2006	Internal Meeting	Management Committee Meeting - Observer Team for the General Elections; Hippolyte's Proposal; Lecturers' assistance; Documentary.
6 th Dec., 2006	Internal Meeting	General Meeting - Workshops Review; Work Plan; Glossary of Terms; Meeting with Leader of Opposition; Report from Management Committee on recent meetings.
20 th Dec., 2006	Internal Meeting	Management Committee Meeting - Public Launch; Hippolyte (Episodes1+2); Visiting Lecturers; Documentary.
10 th Jan., 2007	Internal Meeting	Management Committee Meeting - Draft Work Plan for 07/08; Hippolyte (Episodes 3,4); Budget Work Plan; Documentary; Website.
17 th Jan., 2007	Internal Meeting	General Meeting - Report on recent Management Meetings.
24 th Jan., 2007	Internal Meeting	Management Committee Meeting - Barbara Jacobs and

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Date	Type of Activity	Comments
		Public Launch; TV Episodes; Documentary.
29 th Jan., 2007	Workshop for Commissioners	Bay Gardens on the CRC: Structure; Work Programme; Julian Johnson's Booklet; Furnishing and staffing of the Secretariat; Terms of Reference Review by sub Committees (Groups A1,A2,B1,B2).
31 st Jan., 2007	Internal Meeting	General Meeting - Outreach Sub Committee Appointed (Biscette, Charlemagne, Seraphin); Group A1 and A2 Discussions on the Terms of Reference of the Commission.
5 th Feb., 2007	Internal Meeting	Management Committee Meeting - Discussion of Barbara Jacobs (Right Angle Imaging) Proposal for the Public Launch.
7 th Feb., 2007	Internal Meeting	General Meeting - Public Launch; Documentary, Work Programme; Report from Group A.
12 th Feb., /2007	Internal Meeting	Special Committee Meeting - Group A1,A2,B1: Revision of Roster Prepared by Dwight Lay; reassignment of some activities.
13 th Feb., 2007	Internal Meeting	Management Committee Meeting - Discussion of Barbara Jacobs (Right Angle Imaging) Proposal for the Public Launch; Documentation; Calendar of Activities.
16 th Feb., 2007	Internal Meeting	Special Committee Meeting - Group A1,A2,B1: Revision of roster prepared by Dwight Lay; reassignment of some activities.

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Date	Type of Activity	Comments
19 th Feb., 2007	Internal Meeting	General Meeting - Report by Group A1 et al; Right Angle Presenting Plans for Public Launch; Documentary.
26 th Feb., 2007	Internal Meeting	Management Committee Meeting - Essay Competition; Richmond Felix and the Website; Right Angle Imaging and Public Launch; Draft of Outreach Meetings.
4 th March, 2007	Internal Meeting	General Meeting - Media Launch; Documentary complete 2 DVDs in hand; Legal aspects of the Essay Competition (Proprietary Rights); Draft Format for Outreach Meetings - 21 schools visited to date, Guide Document for Commissioners on Outreach and Radio Programmes, BOSL, SLASPA,NIC,PSA Targeted for Outreach Meetings.
7 th March, 2007	Internal Meeting	General Meeting - Report of last Management Meeting; Constitutionally Speaking Episodes; Outreach Meetings Draft Roster.
27 th March, 2007	Internal Meeting	Management Committee Meeting - Public Lecture (Hunter Francois); Purchase of a Copier, Public Launch; Website Payment; Computer Infrastructure Proposal.
16 th April, 2007	Internal Meeting	Management Committee Meeting - Outreach Meetings with schools and communities; Meeting Planned with Lions Club for April 16 2007; Advertisement of the Position of an Outreach Coordinator; Proposal for an Outreach Sub Committee; Discontent with Website; Public Lecture possibly with Kenny D. Anthony.

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Date	Type of Activity	Comments
2 nd May, 2007	Internal Meeting	General Meeting - TV Episodes, Documentary and UNDP, Outreach Meetings.
9 th May, 2007	Internal Meeting	Management Committee Meeting - Topic for Essay Competition adopted; Outreach Meetings temporarily suspended; Applications for Outreach Coordinator (OC) Job received.
13 th May, 2007	Internal Meeting	General Meeting - Essay Competition, TV Episodes, OC selection, Documentary.
30 th May, /2007	Internal Meeting	Management Committee Meeting - Review of applications for OC. Four people were short listed for the Job.
28 th June, 2007	Internal Meeting	Management Committee Meeting - OC Selection; Request for the secondment of Lucius Doxerie; Community Development Officers (CDO) to be contacted; Proposal from Amatus Edwards; Purchase of Camcorder and Audio Recorder for Outreach Meetings.
4 th July, 2007	Internal Meeting	General Meeting - Glossary of Terms; OC, Documentary.
3 rd August, 2007	Internal Meeting	Special Committee Meeting - CDOs and OC on Planning for Community Outreach.
23 rd August, 2007	Internal Meeting	Management Committee Meeting - Presentation of Draft new Website by OC; Documentary, OC Constitutionally Speaking; Outreach Meetings
29 th August, 2007	Internal Meeting	Management Committee Meeting - Website, Essay

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Date	Type of Activity	Comments
		Competition, OC - Should Amatus Edwards be brought in on a temporary basis; Outreach Meetings - Get green light with Social Transformation for engagement of CDOs.
3 rd Sept., 2007	Internal Meeting	General Meeting - Update on CDOs collaboration, Panel Discussions, visits to schools; Plan for Lectures; Workshops for Commissioners.
5 th Sept., 2007	Internal Meeting	General Meeting - OC; Public Lectures, Documentary, Website (OC gave an intro to the New Website; Workshop for Commissioners.
7 th Sept. 2007	Internal Meeting	Management Committee Meeting - Website; Appointment of Amatus Edwards as interim OC, Essay Competition; Plan for a Public Lecture with Dr. Hamid Ghany, Francis Alexis et al.
24 th Sept. 2007	Workshop for Commissioners	The Way Forward for the CRC'; Short Comings of the OC were highlighted; Commissioners were unanimous about the slow pace of outreach activities citing that the people need to be fired up about the Commission's work; Calls for more TV and other media appearances. There was need for forging of alliances of NGOs such as the Mothers and Fathers' Groups and the US Peace Corps.
24 th Oct., 2007	Internal Meeting	Management Committee Meeting - Essay Competition; Website; Ocs new approach to the Outreach Programme; Collaboration with the CDOs; Consultations; Constitutionally Speaking TV Programmes.

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Date	Type of Activity	Comments
7 th Nov., 2007	Internal Meeting	General Meeting - OC Report on Outreach Programme; Possible OAS Financial Assistance; Commission's Public Image.
5 th Dec., 2007	Internal Meeting	General Meeting - Overseas meeting Planning (NY and St. Croix); OC meeting with Outreach Committee.
19 th Dec., 2007	Internal Meeting	Special Committee Meeting - (General Membership) To review and discuss the objectives of the consultations; Plans for the format of the Community Consultations that should start in January 2008.
9 th Jan., 2008	Internal Meeting	General Meeting - OC Outreach Report; Overseas Meeting in St. Croix; Demonstration of the Consultations Cataloguing System by OC.
23 rd Jan., 2008	Internal Meeting	Management Committee Meeting - Appointment of Amatus Edwards as Outreach Coordinator (OC); attitude of the Populace to the CR exercise; Meeting with Julian Johnson; Essay Competition; collaboration with the CDOs; Sources of Finance for the Commission.
13 th Feb., 2008	Internal Meeting	General Meeting - OC Report on Outreach Meetings for the month; St. Croix Overseas Meeting; McIntosh Lecture Plans.
5 th March, 2008	Internal Meeting	General Meeting - OC's Report; Report on St. Croix visit; Recording Equipment; Consultation Cataloguing System.
10 th March, 2008	Internal Meeting	Management Committee Meeting - OC Appointment

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Date	Type of Activity	Comments
		Acceptance; Kennedy Samuel's proposal for TV Ad; Meetings with CDOs by OC; Report on Rotary Club Meeting; Attitude of Populace to Constitutional Reform; Julian Johnson; Sources of Finance for the Commission; Overseas Outreach Meetings.
11 th June, 2008	Internal Meeting	General Meeting - Misplaced recordings from GIS; reactivation of Committees; meeting with students in Jamaica; Youth Month Programming and the CRC; OC Report; Format for reporting Community meetings.
17 th July, 2008	Report Committee	(Eldon Mathurin, Dwight Lay Veronica Cenac, Urban Seraphin).
18 th July, 2008	Internal Meeting	Special Committee Meeting - (Parliament's Office), Consultation with Parliament on their recommendations and also to share with them the status of the CRC's work. Agreed; two presentations to Parliament before the consultation (August and October).
6 th August, 2008	Internal Meeting	General Meeting - Julian Johnson document; Essay competition; meeting with Saint Lucians in Barbados; document on Constitutional Reform in Jamaica; meeting with Rodney Bay Residents association.
7 th August, 2008	Internal Meeting	Management Committee Meeting - To consider the invoice submitted by the developer of the Consultations Cataloguing system; OC Contract renewal; Independent assessment of the Cataloguing Software by Mr. Samuel

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Date	Type of Activity	Comments
		of the NIC.
18 th Sept., 2008	Internal Meeting	Management Committee Meeting - Meeting with Parliamentarians; Mrs. Giles Requests; Questionnaire; Invitation to the GG and other Key Public Servants to address the Commission; November Retreat.
5 th Nov., 2008	Internal Lecture/Discussion	Commissioner Barrow-Giles led a session on the topic: Models of Political Systems: Constitutional Governance and Engineering.
15 th April, 2009	Internal Lecture/Discussion	Commissioner Barrow-Giles led a session on the topic: Electoral Engineering: Issues of Efficiency, Representation and Good Governance.
30 th Sept., 2009	Internal Lecture/Discussion	Commissioner Cherry led a session on the topic: The New Constitution and Gender Equality.
12 th Oct., 2009	Internal Lecture/Discussion	Commissioner Barrow-Giles led a session on the topic: Provisions Related to Head of State: Consideration for Saint Lucia Constitution.
21/7/2010	Internal Lecture/Discussion	Commissioner Cox led a session on the topic: Altering the Constitution of Saint Lucia.
29 th July, 2010	Internal	Commissioner Charlemagne led a session on the Senate
8 th August, 2010	Internal Lecture/Discussion	Commissioner Barrow-Giles led a session on the topic: Recall as a Mechanism for Ensuring Accountability of Public Officers.
11 th August, 2010	Internal Lecture/Discussion	Commissioner Barrow-Giles led a session on the topic: Legal Framework for Political Party and Elections Financing for Saint Lucia: Issues under Consideration.

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Date	Type of Activity	Comments
6 th August, 2010	Internal Lecture/Discussion	Commissioner Barrow-Giles led a session on the topic: Modalities of Second Chambers.
25 th August, 2010	Internal Lecture/Discussion	Commissioner Cox led a session on the topic: Reform of the Magistracy.

Appendix XV

CRC Prayer

In an effort to evoke the support of God in the deliberation of the Commissions' task at hand, Commissioner Dr Urban Seraphin was asked to pen a prayer which would become the standard by which the work of the commission would commence. Commissioner Seraphin officially with the support of other members became the Chaplin to the Commission.

The following, therefore is the Constitutional Reform Commission's prayer as author by Dr Urban Seraphin:

Father God, we come to you in humble supplication;
create in us a pure and noble heart, confirm in us the mission
entrusted to the Commission, by thy grace.
Heavenly Father, provide the Commission and Commissioners
the strength to carry out our task.
Let peace and truth dwell in our deliberations at all times through
the aid of thy holy spirit.
Gracious Father, grant us always the will and desire which is most
acceptable to your cause and let your will be ours.
Merciful God, as we dispense the work of the Commission, guide our efforts
and provide in us, thoughts that would enlighten our minds with a spirit of piety
for the edification of others.
WE beseech you Father in the name of your beloved Son, our Lord and Saviour the only true God
world without end.

Amen

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