

Constitutional change – NOW OR NEVER



Lloyd Barnett



GUEST COLUMNIST

OVER AND over, our political leaders have promised us to implement the measures necessary for much-needed changes to our Constitution. In 202, Jamaica will celebrate its 60th anniversary of Independence. Unless we begin to implement the necessary measures for reform now, we will celebrate that anniversary while our Constitution still bears the vestiges of colonialisation and imperial domination. It is not beyond our capacity to effect important improvements in our constitutional system.

In 1972, the suffrage was expanded by reducing the qualifying age for voting from 21 to 18. In 1993, following on the First Report of the Constitutional Commission, the Chapter on Citizenship was significantly

reformed. In 2011, following on the Second Report of the Constitutional Commission, the Charter of Rights was brought into being. However none of those reforms required a referendum. The most important reforms that we now need to implement will either be out of necessity and/or principle which will require the holding of a referendum.

We now know that it is likely that national parochial and municipal elections will not be held until 2022. It is clear that as a result of the COVID-19 pandemic and the devastating floods, which have had an impact on our lives and livelihood, that the holding of elections, and by extension, a referendum in the near future is unlikely. The costs of holding a referendum will be as high, if not higher, than the costs of national elections. The opportunity should, therefore, be taken to have the constitutional referendum at the same time as the local and municipal elections.

An important factor that must be taken into account is that the experience of many countries is that it is extremely difficult to obtain a majority vote of the electorate in favour of constitutional changes where they are controversial,

especially if a major political party is opposed to the change. It is also the experience that where non-controversial as well as controversial issues are put to the electorate, there is likely to be a generally negative vote so that the non-controversial matters suffer as a result. We should, therefore, identify the essential issues on which there is consensus and proceed with these. In this context, I will, therefore, specify the major proposals that we should consider placing on the referendum ballot.

ABOLISHING THE MONARCHIAL FORM

It took a century after the abolition of slavery to obtain universal adult suffrage. Half a century has already passed since Independence, and we are still formally and ostensibly subject to the British monarchy. We must not let our 60th anniversary of Independence find us in this situation.

ENACTING THE CONSTITUTION IN JAMAICA

The Jamaican Constitution is at present an appendix to an Order in Council made by the Queen in England. It is thus a subsidiary instrument to

a British Order. It is signed by an Englishman who is unknown to Jamaica and who has made no contribution to our political or constitutional development. This situation is repugnant to our sovereignty and sense of national pride. Changing this should be one of our immediate aims.

ESTABLISHING THE CARIBBEAN COURT OF JUSTICE AS OUR FINAL APPELLATE COURT

One of our two major political parties, the Jamaica Labour Party, has advocated that this matter should be decided by a referendum although that party has not committed itself to supporting the change. The People's National Party has consistently supported the adoption of the CCJ as our final Court of Appeal and in fact attempted unsuccessfully, by a defective legislative initiative, to achieve this purpose. In any event, the entrenchment of our final Court of Appeal is a matter of fundamental principle, which the Agreement Establishing the Court expressly declares. We should, therefore, include the adoption of the CCJ as our final Court of Appeal in the referendum initiative.

ENTRENCHING THE ELECTORAL COMMISSION

There is very little doubt that the establishment of the Electoral Commission as part of our constitutional system is one of the most beneficial institutions we have ever created. It is an important safeguard against despotic government. Its value is beyond dispute, and its entrenchment in our constitutional system is an unquestionable priority.

THE MECHANISM FOR CONSTITUTIONAL REFORM

The constitutional process required for the changes mentioned is far from simple. We will not be able to achieve the necessary changes by 2022 unless we start the process now. An implementation committee should be established immediately to work out the technical and legal mechanisms that will be required to effect the proposed changes, including the holding of the necessary referendum.

■ Dr Lloyd Barnett is a distinguished attorney-at-law. He was a founding member of the Jamaican Bar Association, serving as its president on two separate occasions. Send feedback to columns@gleanerjm.com

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SPECTRUM CAP CONSULTATION

NOTICE OF CONSULTATION

The Spectrum Management Authority, an agency of the Ministry of Science, Energy and Technology invites you, our valued stakeholders, to provide comments on a Consultative Document regarding the Spectrum CAP.

This document can be found at sma.gov.jm under the tab Spectrum CAP Consultation.

Events	Deadline dates
Submission of comments on Position Paper - Industry.....	Dec. 10, 2020
Responses to Industry's comments - SMA.....	Dec. 18, 2020
Submission of final comments - Industry.....	Jan. 12, 2021
Submission of recommendation to the MSET - SMA.....	Jan. 27, 2021

Deadline for submission is December 10, 2020

Please submit your comments in writing to:

The Managing Director
Spectrum Management Authority
13-19 Harbour Street
Kingston
consultation@sma.gov.jm

The Spectrum Management Authority (SMA) is an agency of the Ministry of Science, Energy and Technology (MSET)

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