

Cayman Islands Constitution Modernisation

Opposition Position Paper

(Based on the Results of Consultation with the
People of the Cayman Islands)

September 2008





1. Introduction

The United Democratic Party, as the Opposition Party of the Cayman Islands, fully supports the modernisation of the Cayman Islands Constitution.

We have consistently held this position since 2002 when there were renewed efforts to advance the Cayman Islands Constitution. Clearly there have been many developments since then and it was important that there was a thorough consultative process which fully engaged the people of the Cayman Islands. In particular, it has always been clear to the Opposition that further efforts are required to arrive at a Constitution that fully addressed the needs of the Cayman Islands today and the foreseeable future and importantly, reflects the needs and wishes of the Cayman Islands people.

Indeed, the Opposition has been relentless in its efforts to ensure that the recently revised proposals, which were put forward by the PPM government, were adequately discussed with the people of the Cayman Islands, and that this important document was not rushed to finalisation against their will. Indeed this has been borne out by recent comments aired on the radio shows.

We therefore campaigned successfully for the need to ensure people had additional time to consider the issues, many of which have wide ranging and profound implications for the way we live and how our rights are treated in the Cayman Islands.

The Opposition has agreed to recommencing talks with the UK, PPM, and NGOs on the modernisation of the Cayman Islands Constitution. These talks will begin at the end of September of this year.

In preparation for these talks, and having secured the additional time for people to consider the various issues, the Opposition now presents in this document our findings based on our consultation with the people during various community meetings and numerous smaller forums which we held throughout the past year. In Section 2 we provide our findings in this regard.

Our approach to this consultative exercise was to:

- Review the document which was produced in 2002/2004 and agreed by the UK Government and which members of the PPM are familiar with
- Consider the PPM's recent revised proposals and how they differ or remain the same with the 2002/2004 document
- Consider any additional issues which have been raised since 2002/2004 and how they affect the Caymanian community
- Consider our position in each of the areas of disagreement and our proposed alternative, and where necessary as articulated by the people.



We felt it was important to start from the basis of the 2002/2004 drafts of the Constitution which was agreeable to the UK and as approved by the UK. At the same time we are aware that given the developments over the past six years, and taking into account feedback from the community, there are a range of additional issues which need to be addressed.

In addition, we also plan to continue to accept feedback from members of the public during our discussions with the UK and the rest of the Cayman delegation team.

We are confident that by listening to the community, a revised Constitution will be finalised for the betterment of the Cayman Islands and its people.

Faithfully Yours,

Hon. W. McKeeva Bush, OBE, JP, MLA
Leader of the Opposition



2. Summary of areas addressed within the PPM's Revised Proposal for Constitution Modernisation on which the Opposition received some feedback from the community

Proposal 1

That the Constitution should be modernized.

Opposition Position: Supported by the people.

We have found support for this proposal.

Proposal 2

That the Cayman Islands does not seek independence in the foreseeable future.

Opposition Position: Supported by the people.

Proposal 3

That the Constitution should include a suitable preamble.

Opposition Position: Supported by the people.

However, the Opposition wishes to draw attention to the fact that the people should be adequately informed of the limitations of a preamble. Members of the PPM Government have mentioned that certain issues (for example relating to human rights or religion) could be addressed within a preamble and we believe that it should be made clear to the people that the preamble of the document, while serving the purpose of outlining the broad background and principles, does not form part of the formal set of provisions of the constitution.

Proposal 4

To include a Bill of Rights.

Opposition Position: Supported by the people in principle, with additional observations

We have found support for the provisions outlined in this proposal. However, we have not found support among the people for the Bill of Rights to be established within the Constitution. Instead there is support for the Bill of Rights to be created by way of domestic legislation. Based on feedback, the community has made it clear that any Bill of Rights must not conflict with its morals and values.



Proposal 5

To upgrade the legislature and restrict the overriding legislative powers of the Governor.

Opposition Position: We have not found support for the provisions put forward in this proposal by the government. The feedback received is that the wider community remains largely supportive of the role that is currently played by the Governor and the United Kingdom.

Proposal 6

To continue with a single legislative body, i.e. not create a Senate.

Opposition Position: Not supported by the people.

Contrary to the position of the PPM, notwithstanding the Opposition fully supports creating a Senate body as it would add significant value to the legislative and policy making process in the Cayman Islands. The feedback which was received from the wider community is that people wish to see more involvement in the activities of the legislature by the wider community and that there is some support for the introduction of a Senate.

Our position is based on the premise that the Senate would provide a necessary oversight role on the work carried out by Members of the Legislative Assembly. It is also based on the recognition that the Cayman Islands having a fast growing economy with a corresponding increasing array of socioeconomic issues, requires enhancement in its social institutions to more effectively deal with increasing issues, particularly in the form of additional resources to better handle the important policy making and law making process.

At the same time, it is recognised that it would not be feasible or desirable to significantly or unnecessarily add to the number of elected members in the Legislative Assembly. The creation of a Senate is an effective way to add to the resources required in the area of policymaking and oversight of Parliament without incurring significant costs and while maintaining a number of elected members which is more appropriate to the size of the country.

Primary role of the Senate

A Senate would carry out duties such as the following:

- Review proposed laws and policies.
- Review other key issues as requested.



- Make use of public hearings on topics as required to enable the Legislature to arrive at a more fully informed position on issues as they would have gone through a rigorous procedure of research, debate and more importantly, public discussion and feedback which will be formally coordinated by the Senate.

How the Senate adds value to the policymaking process

The current process of consulting with various industry associations would be complemented by having a Senate who can be drawn on to better coordinate the efforts required in such consultation and provide impartial assessments of the issues at hand. It can also be argued that having the Senators, instead of the Ministers, directly engage the various industry bodies help to minimise the politicisation of issues. The reason for this is because the Senate, through a formally defined role, would be encouraged to take a more technical and objective approach to issues in order to add value to the work of the parliament.

Therefore a Senate enhances accountability and quality to laws and policymaking procedures by drawing on highly knowledgeable persons within the community.

A Senate, through well defined operational procedures will also ensure that more rigour is applied to assessing key issues, while taking some of the workload away from Members of Parliament.

The nomination of Senators can be organised in such a way as to minimise the dominance of any one particular political party in arriving at conclusions and recommendations by spreading the nomination across both parties as well as the Governor.

The resources and cost of a Senate

A Senate need not be a costly initiative to introduce in the Cayman Islands if the following measures are adopted:

- The number of Senators could be minimised.
- Any compensation to Senators could be kept to nominal amounts
- The Senate would make use of the existing staff and facilities of the LA with some minimal additions which is already evidently needed by the LA.

Conclusion

The above is not meant to be an exhaustive description of the entire framework for the introduction of a Senate. Clearly, appropriate research and additional expertise would



be required to set up the required laws and procedures for the Senate to operate effectively.

Instead, the Opposition has outlined above the rationale for creating a Senate as a value added institution in the Cayman Islands. Finally, it is worth noting that the value of having a Senate body has been recognised and implemented by most of the world's most successful democracies as a means to relieve the workload of elected members of the legislature as well as to more effectively tap into some of the many highly knowledgeable and qualified individuals from within the wider community.

Proposal 7

To upgrade the Cabinet to consist solely of elected members which will include a Premier, Deputy Premier, and five other ministers.

Opposition Position: Not fully supported by the people.

Consistent with our finding that the role of the Governor remains largely supported by the people, we have found that there is no support for the majority of the provisions outlined in this proposal. There does appear to be support for a few of the provisions namely:

- That the Chief Minister could chair Cabinet meetings, rather than the Governor
- That the Chief Minister (or Deputy Chief Minister) should set the agenda for Cabinet meetings, after consultation with the Governor.

In other words, there is no desire for the composition of the Cabinet to change, but there is some support for an elected member to have increased control over Cabinet meetings and its agenda.

In addition, we found support for the inclusion of a representative from the Sister Islands within the Cabinet. We therefore also support the stipulation that the Cabinet should always include an elected member from the Sister Islands. The unique situation of the Sister Islands warrants such exception and has the support of the people.

Proposal 8

To modernise the Governor's role and that his decisions should be subject to judicial review.

Opposition Position: We have not found support for this proposal by the people.



Proposal 9

More checks and balances on executive power.

Opposition Position: Partially supported by the people.

We have found support for some aspects of this proposed change to the constitution. The elements of the proposed revisions which are supported are as follows:

- A clear rule that Ministers and public officials must exercise their powers and responsibilities in the interests of the country, not for their private interests or benefit
- Constitutional backing for the Freedom of Information Law. So that its key features (including the whistleblower provisions) cannot simply be changed by the Government of the day
- People –initiated referendums

Proposal 10

That the UK Government and the Governor continue to be responsible for Defence and External Affairs but there should be restrictions on entering into international agreements and a provision for some delegation.

Opposition Position: Supported by the people.

We have found support for the proposed changes in this area. The significant implications of international initiatives over the years, particularly those relating to the financial services industry, has made the wider community sensitive to the need for the Government to be more involved in the process of handling these international issues. However, the people are concerned about any proposed delegation of the Governor's duties to elected members.

Proposal 11

That the Governor should continue to have responsibility for Internal Security and the Police and that a National Council should be established to advise the Governor.

Opposition Position: Not supported by the people.

We have not found support for the provisions outlined in this proposal. In addition the Opposition believes that there are already channels via which the Commissioner of Police and any other relevant authority makes representations to the Cabinet at the



request of the Cabinet and therefore the elected members who are accountable to the people are already involved on matters of national security.

Proposal 12

That there should be no change with regard to the Governor's responsibility for the civil service.

Opposition Position: Supported by the people.

Consistent with the people's support of the role of the Governor, we found that there is support for this position of maintaining the status quo. In addition based on feedback the Opposition would welcome the re-introduction of an invigorating and reformed version of the Public Service Commission to deal with the recruitment and dismissal of civil servants, rather than the current position whereby human resources are managed under the guidance of the Public Service Management Law.

Proposal 13

To establish a Judicial and Legal Services Commission.

Detailed aspects of the proposal:

- The Judicial and Legal services Commission should comprise the Chief Justice; the president of the Court of Appeal; one member nominated by the Law Society; one member nominated by the Bar Association; one non-lawyer member nominated by the Premier; and one non-lawyer member nominated by the Opposition.
- The Commission should have responsibility for appointments of judges and magistrates, and for related matters including the creation of divisions of the courts. The Commission should also have responsibility for appointing a Director of Public Prosecutions (Proposal 15)
- The Constitution should require the Cabinet to provide adequate financial support to the judicial administration

Opposition Position: Supported by the people.

Based on our feedback from the people, the Opposition agrees with the broad objective of establishing a Judicial and Legal Services Commission. However we have some concerns regarding the nomination process and by extension, the potential composition of this commission.

It is not clear why there should be a need to assign specific nominations from the Premier and Opposition. Instead it would seem preferable for the Commission to be



appointed independent of the political apparatus if possible. We would recommend instead that the Chief Justice and the two local legal associations nominate the members to the Commission under a well defined agreed procedure.

We have no concerns regarding the proposed participation of the President of the Court of Appeal.

We would like for it to be stipulated that the Commission should also be responsible for disciplinary matters relating to the judges and magistrates which it appoints.

Finally we would recommend that in the interests of independence and discipline, that the following measures be implemented with respect to the Commission and its role:

- That a Code of Best Practice is established for the members of the Commission
- That any executive staff of the Commission be subject to Code of Conduct
- That a Register of Interests be established for both the members of the Commission as well as any executive staff members
- That the Commission consists of respectable non-practising attorneys to minimise potential conflicts of interests.

Proposal 14

Limit the role of the Attorney General and change the rules for his appointment.

Opposition Position: Not supported by the people.

We have not found support for the provisions outlined in this proposal

Proposal 15

To create an office of Director of Public Prosecutions.

Opposition Position: Supported by the people.

We have found support for the provisions outlined in this proposal.



Proposal 16

To create an office of Cabinet Secretary.

Opposition Position: Supported by the people.

We have found support for the provisions outlined in this proposal

Proposal 17

To establish a Human Rights Commission.

Opposition Position: Supported, with additional observation.

We have found support for the provisions outlined in this proposal. However, we have not found support for the Human Rights Commission to be established within the Constitution. Instead there is support for the Human Rights Commission to be created by way of domestic legislation.

Proposal 18

To establish a commission for standards in public life.

Opposition Position: Supported by the people.

We have found support for the provisions outlined in this proposal

Proposal 19

To outline the responsibilities of the Auditor General.

Opposition Position: Supported, with amendment.

We have found support for the provisions outlined in this proposal. However, it is felt that the outline of responsibilities of the auditor general to be included in the Constitution must be agreed by consensus within the Legislative Assembly and not solely by the Government of the day.



Proposal 20

To harmonise the responsibilities of various oversight bodies such as the human rights commission, Auditor General, Complaints Commissioner and Anti-Corruption Authority

Opposition Position: Supported by the people.

We have found support for the provisions outlined in this proposal. Earlier this year, the Opposition tabled a motion for the creation of anti corruption legislation in the Cayman Islands. However this was rejected by the Government.

Proposal 21

To simplify the rules on eligibility to vote. No change to the rules on eligibility to stand for election.

Opposition Position: Supported by the people, with amendment.

We have found support for the provisions outlined in this proposal. However, the youth in particular are concerned that the deadline set out for the determination of the voting age dis-enfranchises those who may become 18 years of age between December 2008 and Election Day. We understand this concern and the Opposition feels that a revision should be made so that any Caymanian who will be 18 years of age by Election Day and can provide such proof, should be allowed to register beforehand to vote on Election Day. While we have given the 2008 and 2009 dates as an example of this issue it is clear that the status quo will continue to dis-enfranchise young voters and we would wish to see this important amendment made.

Proposal 22

To adopt the “one person, one vote principle, and have single-member constituencies throughout Grand Cayman.

Opposition Position: Not supported by the people.

We have not found support for the provisions outlined in this proposal

Proposal 23

To improve the representation of Districts by putting a provision in the constitution for MPs to make proposals to, and meet regularly with, cabinet concerning their districts. To put enabling provision for establishing District Councils.

Opposition Position: Supported by the people.



We have found support for the provisions outlined in this proposal. We have found that people would like to become more engaged in the policymaking process and the introduction of District Councils would improve the participation of the community in this regard.

Proposal 24

To provide for people-initiated referendums

Opposition Position: Supported by the people.

We have found support for the provisions outlined in this proposal

Proposal 25

That further changes to the Constitution require a referendum

Opposition Position: Supported by the people.

We have found support for the provisions outlined in this proposal