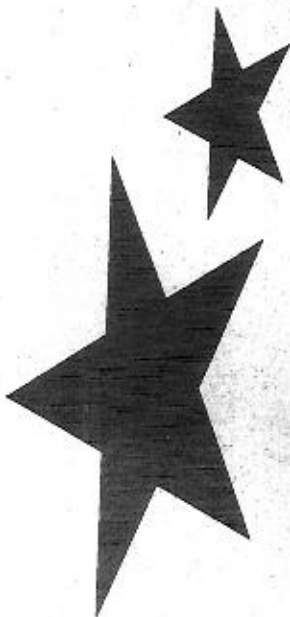


Position Paper

May 1998

The Road To **CONSTITUTIONAL REFORM** *"Embracing All"*



LABOUR

ST. KITTS-NEVIS LABOUR PARTY

The Road To CONSTITUTIONAL REFORM

“Embracing All”

SECTION 1 Introduction

Since the inconclusive General Election of 1993 in St. Kitts and Nevis, much have been said about our Constitution and more specifically about the constitutional relationship between St. Kitts and Nevis. However, as far back as 1982 during the Independence discussions for the two-island State, the St. Kitts-Nevis LABOUR Party had made specific proposals with respect to that relationship and also to the Constitution as a whole.

The LABOUR Party's clear position is that even though there are other aspects of our Constitution which can benefit from some revision, none is more urgent or critical at this time than the question of the relationship between the two islands. In fact it is precisely this problem which has caused the Federation to be intensely focused on Constitutional Reform, more so since 1993.

We in the LABOUR Party believe that the resolution of this constitutional problem is a pre-requisite step to ensure smooth, sustained development and stability in both islands. It is only in an atmosphere of peace and stability that we can attain our many goals and thereby ensure an improved standard of living for all our people.

The situation will always lend itself to some degree of instability if the politicians on the Sister Island ever so often can threaten Secession. It is this particular problem which has to be grappled with by all concerned so that we can reach a resolution as quickly as possible.

One can go further to say that unless this particular problem of our relationship is resolved, all else may be moot and we would not have moved one step closer to any form of Constitutional Reform.

The primary purpose of this paper is to focus intensely on the problem as it exists today and provide guidelines which would assist a process that will eventually lead to a situation where both islands are satisfied with the relationship ultimately agreed upon and the Constitution adopted.

SECTION 2 Commission of Inquiry on Constitutional Reform.

In its general election Manifesto of 1995, the St. Kitts-Nevis LABOUR Party promised that it will provide the framework and opportunity for the country to examine our present Constitution and thereby suggest a way forward with respect to reform.

The Party is heartened that the Government has indeed established a Commission of Inquiry thus providing the opportunity for widespread interaction of the general population on the issue of Constitutional reform. The Party also acknowledges that the occasion provides an opportunity for the review of the St. Kitts-Nevis relationship and of various other aspects of our Constitution. Many persons and organizations within St. Kitts and Nevis have already taken the opportunity to air their views on various aspects of the Constitution.

We in the LABOUR Party would also like to take this opportunity to reflect on some other aspects of the Constitution which we feel may be in need of some review.

As St. Kitts and Nevis is a member of the Commonwealth Caribbean, LABOUR feels that our adoption of the general tenets of the Westminster model was the right and correct thing to do as we advanced to Independence. In so doing we followed the well-trodden pathway of Democracy that most emerging Commonwealth Nations embarked on. However, the opportunity was missed in the 1982 Constitutional Talks to grapple with the problem of the relationship between the two islands in any mature and sensible way.

This is why the LABOUR Party opted **NOT** to sign the final document that eventually became the Constitution of St. Kitts and Nevis in 1983.

One of the LABOUR Party's aims and objects as outlined in its Constitution is *'to maintain a vigorous and conscious political vanguard for removing all forms of oppression and for the maintenance of a Democratic Government'*. In light of the above the Party, established in 1932, is well placed to propose the relevant changes to the present Constitution which will serve to enrich and strengthen the democratic process for all our people

SECTION 3 The Major Problem

The LABOUR Party is of the view that this exercise of Constitutional Reform must be carried out in the context of the burning aspirations of the people of St. Kitts and of Nevis as far as the relationship between the two islands is concerned. It would be counter-productive if in our deliberations on Constitutional Reform, we did not take cognizance of this pivotal issue.

The LABOUR Party is firm in its conviction that the *people of St. Kitts will settle for nothing less than to have their own government just as the people of Nevis have their own government.*

The LABOUR Party has maintained all along that it is immoral for the majority of voters in St. Kitts to vote for a particular Party only to be cheated out of their desires by the formation of a coalition between a minority party in St. Kitts and politicians in Nevis. We therefore believe that some formula *must* be found to safeguard the democratic rights of the voters in St. Kitts as well as those in Nevis.

We must be bold and tackle this problem that is in fact the root of our aspirations for a revisit to our Constitution after only fifteen years of Independence. This cannot be another academic exercise in constitutional revision and rewriting. Although it would be commendable to take this opportunity to revisit other aspects of our Constitution, the focus **MUST** be on respecting and satisfying the aspirations of Kittitians and Nevisians, that is, to achieve a government for St. Kitts and a government for Nevis.

SECTION 4 Historical Perspective

From a historical perspective, one is very cognizant of the fact that almost all the politicians of Nevis have always carried the banner of Secession. This is nothing new for Nevis. The cry for Secession in Nevis is as old as is the constitutional relationship between the two islands.

Since 1882 when this particular relationship was forged upon the people of the two islands, the residents and citizens of Nevis have always expressed a

burning desire to be governed from within and be responsible for their own affairs.

Every political party, which has ever raised its head in Nevis, had as its major plank, the issue of Secession. In fact it can be said that certain political parties in Nevis had been formed with basically one objective in mind, that is to achieve Secession for Nevis.

We are convinced that the people of Nevis are seriously committed to increased autonomy. We believe this to be true for four (4) main reasons;

1. We practice a system of democracy, where the elected politicians speak for and on behalf of the people of the country. Since all politicians and parties in Nevis have always spoken the language of Secession, we on the outside can only be guided that this (Secession) is in fact the will and aspiration of the people of Nevis.
2. All political parties and politicians in Nevis who have supported Secession during their campaign for political office have been successful. These parties range from The United National Movement, (UNM) to The Nevis Reformation Party, (NRP) and the present ruling party, The Concerned Citizen Movement. (CCM). Politicians such as Eugene Walwyn, elected in 1957; Nicholls, elected in 1957; Fred Parris, in 1966; Ivor Stevens, in 1971, Simeon Daniel and Ural Swanston 1970's to 1980's and Vance Amory, 1992, have built successful local political careers on the issue of Secession and Independence for Nevis.
3. Even when there was a coalition government between the Peoples' Action Movement Party of St. Kitts and the Nevis Reformation Party of Nevis from 1980 to 1995, the politicians in Nevis continued to call for Secession. In this period, politicians in Nevis held important portfolios in the Federal Government like Finance Ministry, the Trade Ministry, Tourism Ministry and Communications, Works and Public Utilities Ministry. But they (NRP and CCM) continued to call and rally their people for Secession.
4. In 1993, after the inconclusive general elections, both Leaders of the LABOUR Party and the PAM Party in St. Kitts went over to Nevis on the morning of the 30th November, 1993. Each formally invited the

Leader of CCM, Mr. Amory to form the Federal Government and each leader in St. Kitts had pledged to support him as Prime Minister. Premier Amory declined, and adopted a position of neutrality refusing to work with any of the two St. Kitts-based parties, thus plunging the country into a constitutional crisis with a minority coalition government that was illegitimate and without moral acceptability by the people.

We on the outside cannot therefore second-guess the people and politicians of Nevis with respect to their aspiration as far as the political and constitutional future is concerned.

Nevis' longtime quest for Secession and St. Kitts insistence on having its own local government, cannot be overemphasized in the resolution of our present constitutional crisis. If we attempt in 1998 to foist any solution onto the people of St. Kitts or the people of Nevis which does not take their well-documented position into consideration, we are doomed to be shackled by this selfsame problem for decades to come. This we cannot afford.

SECTION 5 The Crux of the Constitutional Problem

We have to recognize that the crux of the problem emanates directly from this historical quest of Nevisians to enjoy total autonomy and the regrettable omission of any mature formula to deal with the problem in our Constitution of 1983. The 1983 Constitution was therefore doomed to fail on this very important aspect of our existence.

It is instructive to note that even though a coalition government of St. Kitts and Nevis was formed between NRP of Nevis and PAM of St. Kitts (with three out of seven seats) in 1980, secession had never been removed from the Nevisians' agenda. The manifesto tabled by NRP for the election of 1980 declared categorically that NRP was interested in one issue, SECESSION for Nevis. In fact the manifesto of NRP was one sentence, *'The Nevis Reformation Party will continue to seek Secession for Nevis at all Cost'*.

Reflection on the NRP manifesto of 1980 is a critical exercise in understanding why the present constitutional framework that seeks to govern the relationship between St. Kitts and Nevis is UNWORKABLE.

Here was a party (the NRP) which had gone into the 1980 election with a manifesto which in content and spirit reflected only one issue, one concern – SECESSION. As fate would have it however, the result of the 1980 elections gave NRP an opportunity to be part of a coalition government of St. Kitts and Nevis. NRP quickly grasped this opportunity and it appeared that secession might have been put on the back burner.

However, the NRP participants in the Constitution/Independence Talks in London ensured that the right to secede was secured for Nevis in section 113 of the new St. Kitts and Nevis Constitution. Section 113 gives Nevis the unilateral right to secede from the Federation at any time it sees fit.

Section 113, from our appreciation of basic International Law, is a rather strange and unusual development of the British Government's attitude to our situation. And so we are forced to ask ourselves why did the British Government insert Clause 113?

It could not have been done to secure sovereignty or self-determination for a group of persons based on reasons of protecting ethnicity or safeguarding human rights, because none of these problems existed in the St. Kitts-Nevis situation in 1983. It could not have been for ensuring effective participation in government through finding appropriate levels of democratic self-government. Secession is not necessary to achieve this. Hence instead of the British Government dealing with the situation to achieve the latter objective, it has created a rather strange precedence in International Law where the "right" to secede is actually written into a Constitution at the birth of a nation. That right is now being pursued towards self-determination /sovereignty, irrespective of the right of the country from whom the seceding 'State' emerges.

But even before 1983, Her Majesty's government was forced to recognize the problematic nature of the relationship between the two islands. It can be recalled that in negotiations between Her Majesty's Government and the LABOUR Government of St. Kitts and Nevis during the 1970's, Her Majesty's government had agreed to allow St. Kitts and Nevis to go into Independence after first having a general election. Her Majesty's Government had also stated that if Independence came under these circumstances that the people of Nevis would have the right to hold a referendum eighteen months after to decide whether they wanted to stay in a unitary state relationship with St. Kitts, or to secede and go on their own.

SECTION 6 Dealing with the Problem

It is in these circumstances that the LABOUR Party, responding to the white paper tabled by the then government in 1982, issued the Green Paper outlining LABOUR'S policy position regarding the new Constitution of St. Kitts and Nevis. Back then in 1982, the LABOUR Party recognized that the burning desire of the people of Nevis over the decades could not be ignored in the framing of this constitutional instrument. Neither could we afford not to take the necessary measures to ensure the safeguard of the democratic rights of the people of St. Kitts.

The Green Paper aptly named 'In Place of Strife', was and is a concise formula that sought to grapple with the constitutional problem that confronts the two islands.

We have had the experience in 1993, no later than ten years after the installation of the present Constitution, of St. Kitts and Nevis being gripped in a tense impasse after the inconclusive general election of November and directly related to the constitutional relationship between St. Kitts and Nevis.

The turbulent days following the 1993 general elections provided firsthand the elements for an incisive lesson for the people of St. Kitts and Nevis. We can all still vividly remember the anxiety which was evident and which caused tremendous concern for our social life and our fledgling economy at that time.

SECTION 7 Scenarios for the Future

As we write, we are aware that there is an impending referendum in Nevis. This process will continue, as it is a "right" given to Nevis in our Constitution. This present state of uncertainty can also affect the economic development of St. Kitts and Nevis, and the Commonwealth Caribbean on the whole, if it continues much longer.

The possible scenarios are:

1. Nevis **votes** for Secession. This would mean that Nevis becomes a separate entity and that particular constitutional problem would have been resolved. No doubt negotiation would then ensue between the two islands to work out what type of relationship would exist.
2. Nevis **does not vote** for Secession. Nevis continues to be part of the Federation and the search continued to find a solution/formula for our problem of providing a government for St. Kitts and a government for Nevis.

It is obvious that ultimately the resolution of our problem will come about as a result of some constitutional change/reform although not necessarily as an alternative to Secession.

In other words, Secession and Constitutional Reform are not necessarily mutually exclusive of the other. That is, we do not have to squash Secession for constitutional reform to materialize or reject Constitutional Reform in favor of Secession. This is the challenge presented as we seek to find some device to herald in a new constitutional arrangement within the two islands, with separate government, but which would facilitate a harmonious existence between the peoples of the two islands that is acceptable to today's regional and international communities..

Some constitutional experts argue that if we were to pursue Constitutional Reform at the expense and demise of Secession, it will still not guarantee the success of Constitutional Reform or vice versa. It has been further argued that if we fail this time around, that Nevis, and indeed St. Kitts, may have then been robbed of one of the greatest opportunities to put behind us the question that has haunted this Federation since Independence. The question/problem that almost reduced our country to anarchy and confusion in 1993. It is therefore incumbent on the Commission to find a formula, which will avoid the problem that occurred in 1993.

In the context of the current trend of globalization, the LABOUR Party believes that it would be unfortunate if Secession were conceived of as an end in itself to solve our constitutional problem. The problem is simply much bigger than the mere separation of Nevis from St. Kitts. The Commission must therefore be aware that we are prepared to explore every possible means to emancipate ourselves from the present constitutional dilemma in the ***most timely manner and before the next general plebiscite.***

SECTION 8 Our Proposal for the Way Forward

Having looked at the historical perspective, and the present possible scenarios, the LABOUR Party is convinced that the Green Paper presented back in 1982 can form the basis of a new dispensation for the people of the islands of St. Kitts and Nevis.

We believe that the people of St. Kitts and the people of Nevis will settle for nothing less than acceptable levels of autonomy and as such will welcome a formula which points to a pathway to realistic and meaningful Constitutional Reform.

Thus we strongly recommend that the people of St. Kitts and the people of Nevis should possess the right of self-government, but within the context of current global realities.

In the light of this mutual aspiration and also the fact that the Nevis Island Assembly has already given legislative support for a local Referendum in Nevis on Secession, we feel that no hindrance should be put in the way of the people of Nevis in exercising this constitutional right, on the basis of proper education of the people on the implication of Secession

Thus specifically, LABOUR proposes:

1. That, in order to end the strife, distrust and acrimony, each of the islands of St. Kitts and Nevis should have their own separate governments. On that basis, the two islands should seek to strengthen the bonds of family and friendship between the people of the two islands and should put behind us all the misunderstanding and bitterness of the past 115 years.
2. The LABOUR Party further proposes that to give effect to the longstanding relationship and association between the people of St. Kitts and the people of Nevis, regardless of what formula is adopted it should embody **Friendship and Co-operation** between the two islands. Once this formula would have been agreed upon, a Task Force would be set up to work out the details of the proposed arrangements.
3. The LABOUR Party proposes that whatever formula emerges the integrity of the Entity of St. Kitts and Nevis is maintained within the International Community. It is role of Commissioners and experts to

examine comparative arrangements for Federalism, Confederation, territorial and functional autonomy or self-government.

4. The LABOUR Party proposes that St. Kitts and Nevis should each have separate independent governments. This position is well documented on page 35 of the Party's Election Manifesto of 1995, the same election in which LABOUR captured seven (7) of the eight (8) seats in St. Kitts. Quoting, "Labour feels that St. Kitts must have its own Government consisting of representatives elected in St. Kitts. The LABOUR Party has advocated a constitutional arrangement by which each of the islands of St. Kitts and Nevis would have full autonomy and its own separate administration. LABOUR believes that the two islands should go forward together on the basis of the principle of Mutuality."
5. The LABOUR Party proposes that the main provisions of the St. Kitts and Nevis Constitution shall be very similar to the Constitution granted to the associated State of St. Christopher, Nevis and Anguilla in 1967, as modified in the Draft Independence Constitution for the State which was prepared by the LABOUR Administration.
6. That the Constitution shall include entrenched provisions for the protection of fundamental rights and freedoms, namely-
 - a) life, liberty, security of the person and the protection of the law;
 - b) freedom of conscience, of expression, of assembly and of association; and
 - c) Protection for the privacy of the home and other property and acquisition, holding, enjoyment and disposition of property.
7. That the Constitution shall include provisions for the Public Service and the Police Service, with a Public Service Commission, a Police Service Commission, a Public Service Board of Appeal. It shall provide for protection of pension rights.
8. The Constitution shall make provision for an Ombudsman whose principle function shall be to investigate decisions, recommendations and actions of government departments and agencies.

9. The LABOUR Party proposes that there be an enlargement of the non-formal parliament with limited voting so that it includes representation from the Youth, the Private Commercial Sector, the Trade Union, the Church and other Non-governmental organizations with limited participation in voting on specific Bills/issues.
10. The LABOUR Party proposes that Section 27 be adjusted to reflect the following; that in order for an individual to run for parliamentary office that individual must be born in the Caribbean or one of his parents is a citizen. And further for a person to become Prime Minister he must be a citizen by birth or by descent.