

## Chapter Fourteen

### Where does our Democracy Stand

I have in the prior chapters of this part looked at some of the strengths and weaknesses of our democracy. I summarize these:

*Rule of Law*- exists but should not be taken for granted.

*Freely elected government*- meets basic standard.

*Separation of powers* -we have it in principle but in fact it is limited as there is minimal separation between executive and legislative. The judiciary is the only really separate of the three branches of government.

*Public service* -strong in some areas but weak and unproductive in many because of the political culture and the entrenchment of incompetent Civil Servants.

*Justice system*- the strongest component.

*Accountability and open Government*- growing but much improvement needed.

*Respect for democracy*- A long way to go because of the tribal politics and weak Civil Society and media.

*Freedoms*- relatively strong but growing insecurity because of violent crime and the challenges of disinformation, misinformation and malinformation.

*Elections*- free but far from fair.

*Unity of purpose*- non existent.

The main weaknesses are in areas affected by politics and negative attitudes. It will take a seminal change in the culture of political tribalism and a new political maturity to learn from the experience of 40 years of independence and to adapt and upgrade our constitution and governance system. This is particularly so because most of the key changes to the constitution will require approval by two thirds majorities in separate referenda in St. Kitts and Nevis.

I believe there is hope of generational change as the tribal politics wear off. The younger generations have more exposure to higher education and to the outside world, many are more aware and communicate with each other much more than most of their predecessors. They will not simply fall into line with the culture. The key will be whether they take their new culture into politics or simply fall into line with the existing culture.

### *International ranking*

One of the major world indices on the strength of democracy in countries across the world is the Rule of Law Index prepared and published by the World Justice Project. The World Justice Project is an international civil society organization with the stated mission of '*working to advance the rule of law around the world*'. The term rule of law is used in this Index to cover most of the essentials of democracy.

WJP has published its Index annually since 2009. The Index is prepared by an independent multidisciplinary team from across the world. It is subject to a rigorous methodology. It is the world's leading source for original democracy data. The Index is used by governments, multilateral organizations, businesses, academia, media, and civil society organizations around the world to assess and address gaps in democracy.

The factors used in the rating of each country covered by the Index are:

- constraint on government powers,
- absence of corruption,
- open government,
- fundamental rights,
- order and security,
- regulatory enforcement,
- civil justice
- criminal justice.

The 2023 Index covered 142 countries. The following conclusion of WJP on the state of the rule of law across the globe is worth quoting.

*‘The world remains gripped by a rule of law recession characterized by executive overreach, curtailing of human rights, and justice systems that are failing to meet people’s needs. People around the world are paying the price.’* That reflects the growing autocracy despite the advantages of technology in communication within and among nations.

In the Index St. Kitts and Nevis ranks overall 39<sup>th</sup> out of the 142 countries covered and regionally (Latin America and the Caribbean) 6<sup>th</sup> out of 32 countries.

The individual factor rankings are:

*Constraint on government powers- global 41/142 and regional 6/32*

*Absence of corruption- global 39/142 and regional 6/32*

*Open government – global 94/142 regional 26/32*

*Fundamental rights- global 36/142 and regional 8/32*

*Order and security- global 54/142 and regional 4/32*

*Regulatory enforcement- global 39/142 and regional 6/32*

*Civil justice – global 25/142 and regional 2/32*

*Criminal justice – 31/142 and regional 2/32.*

The rankings are mixed. Not surprisingly our justice system has the highest rankings. The lowest is in open government at 94/142. That reflects the real picture here and shows the great need for accountability and transparency in government. We will see whether the latest governance legislation improves our rankings in future years.

The ranking in order and security is not surprising either given the very high murder rate and the theory that prevailed until 2022 that a country can pay criminals to behave.

I expand on the foregoing:

1. *Constraints on Government Powers.* This is the first factor considered by WJP, for

good reason. It recognizes the human tendency to get carried away with power and the huge powers exercised by governments. Government power in St. Kitts and Nevis lies in effect with the Prime Minister. He controls two of the three branches of Government. He appoints and can fire members of the Cabinet. He recommends the Governor General. He is allowed to control the Civil Service and other public bodies. He controls most of the land on St. Kitts. As Government is majority shareholder he has leverage on the National Bank. Our system, and that of the other OECS countries, is referred to quite rightly by Simeon MacIntosh a constitutional scholar of blessed memory as '*dictatorship by Prime Minister*'.

As a result constraints on Government powers are in our case largely constraints on the Prime Minister. What are the constraints on the powers of the Prime Minister? The four main ones are meant to be the Motion of No Confidence, elections, the Courts and the media. We see what happened to the MONC. We know the flaws in our electoral system. These include the abuse of voter registration provisions, the absence of campaign finance regulation and the lack of any semblance of independence in the Boundaries Commission which invites gerrymandering. In these circumstances we are blessed that we have an independent justice system which has saved democracy and the rule of law time and time again, the last time being in 2015 when the Prime Minister of the day having trampled over the MONC tried and very nearly succeeded in doing the same with the electoral system. We are also fortunate to have a growing media and the availability of social media but there is still a way to go towards a strong, independent media. We see from the US the vital role played by the media.

We could do a lot better in constraining government power by (a) limiting the Prime Minister to two terms (b) converting to a Republic and providing greater entrenchment and powers to the office of the Governor General (c) enacting campaign finance legislation (d) strengthening the powers of the Auditor General and giving that office the resources to exercise its intended power to investigate the use of Government money (e) properly funding

The Electoral Commission to do its constitutional duty (f) making The Boundaries Commission more transparent. I suggest other changes in the next Chapter.

2. *Open Government* is the third listed WJP factor but it goes in tandem with Constraints on Government powers. Here our ranking is abysmal at 94. That is 5 places below Russia and the lowest OECS and Caricom country. That is a disgrace but not surprising given the facts.

The Open Government factor in the Rule of Law Index is the widest of the categories measured in the Index. It includes several of the essentials of democracy that I have discussed in this Part. I quote the definition of Open Government in the Index:

*Open Government (Factor 3 of the WJP Rule of Law Index) measures open government defined as a government that shares information, empowers people with tools to hold the government accountable, and fosters citizen participation in public policy deliberations. The factor measures whether basic laws and information on legal rights are publicized, and evaluates the quality of information published by the government (3.1). It also measures whether requests for information held by a government agency are properly granted (3.2). Finally, it assesses the effectiveness of civic participation mechanisms—including the protection of freedoms of opinion and expression, assembly and association, and the right to petition (3.3), and whether people can bring specific complaints to the government (3.4).*

It is not surprising that St. Kitts and Nevis ranks so low in this category. The low ranking of 94 out of 142 countries bears out the criticisms I have made of the way Government operates.

The ranking reflects the fact that Government is a closed shop. Government does not publish the vast majority of its policies. Reasons for decisions are hardly ever given. The Civil Service was designed by the British over a hundred years ago to keep the shop door

closed. Reform of the Civil Service is long overdue. It has been talked about regularly since independence but don't hold your breath. In breach of the fundamental rights of free speech and the right to information given by the constitution, Government monopolizes the state media. Those are some of the factors which account for our abysmal ranking.

Another international report just out- the World Press Freedom Index- is not very complimentary about us. That report assesses that the media in the OECS is '*under tight surveillance*'. The report warns of the potential for politicians to hijack the media. The OECS is ranked together at 93 out of 180 countries which is not very complimentary.

3. *Now to Absence of Corruption*. It is good that WJP thinks we are at number 39 in the world in Absence of Corruption. But the position of 94 in Open Government overlaps with this area. The more open a government is the more likely it is that corrupt practices will be disclosed. And one of the biggest sources of corruption across the world is in government contracts. Until recently we had a half-baked Procurement Act introduced by the Labour government in 2012 but never brought into full effect because neither that government nor its successor Unity government saw it fit to introduce the necessary regulations. Improved legislation has been promised. The jury is out on whether this will materialize and if so how it will be enforced.

4. Our ranking at 36 in *Fundamental Rights* is reflective of the relative strength of that part of our constitution which guarantees those rights and the court system which enforces them.

5. Our ranking of 54 in *Order and Security*, particularly in order, does not say much for the rest of the world. Disorder, ill-discipline and poor attitudes are too prevalent. Look around you every day and you see that. These stem in large measure from the entitlements mentality which has grown out of the tribal politics with governments routinely rewarding their supporters and disadvantaging their opponents. This reflects also in the attitude to work.

Productivity is low with the result that more and more foreigners are coming in to join the workforce.

The disorder, ill-discipline and poor attitudes have contributed to the gang culture and high murder rate. The community is not setting a good example to its young people. The community is expecting the security forces to work miracles without acknowledging its responsibility in the maintenance of law and order. Our society needs to take deep reflection on improvements in this area. If not the security situation will deteriorate even further.

6. *Regulatory Enforcement* is a mixed bag. It is strong in some areas and non-existent in others. In many areas regulations exist but are not enforced. The country has done well to rank at 39 in this area.

7. Not surprisingly our best ranking is at 25 in *Civil Justice*. Our courts deserve this credit. I am sure that our ranking will improve even more when the selection and terms of employment of Magistrates make that Court, like the Supreme Court, truly independent of Government.

8. We rank lower at 32 in *Criminal Justice*. The major factors here are weakness in crime detection contributed in large measure by the lack of co-operation by the public with law enforcement, delays in the criminal justice system and the very poor prison conditions.

The rankings for 2024 with comparisons to 2023 were:

Global ranking -38 (up 1)

Regional ranking – same at 6

Constraints of Government Powers – 40 global (up 1) and 6 regional (same)

Absence of Corruption- 38 global (up 1) and 6 regional (same)

Open Government - 82 global (up 12) 22 regional (up 4)

Fundamental Rights - 35 global (up 1) 7 regional (up1)

Order and Security - 55 global (down 1) 4 regional (same)

Regulatory Enforcement – 40 global (down 1) 6 regional (same)

Civil Justice - 22 global (up 3) 2 regional (same)

Criminal Justice – 31 global (same) 1 regional (up 1)

While there has been some improvement in the rankings in the category of Open Government the 2024 ranking is still by far the lowest of all the rankings of the country. My comments on the 2023 rankings remain the same for 2024.