

Godfrey Farrugia MP

7<sup>th</sup> January 2019

Your Excellency,

The Constitutional belongs to the people. Their informed consent is imperative. An adequate inter-active process of public consultation is paramount, if we are to have a healthy reformed constitution that serves a modern and mature democracy. Ours is broken and needs to be fixed.

Once started, the drafting of the new Constitution should be left to experts in the field, both local and foreign. Due consideration on what has worked and what has not, both locally and abroad has to be taken, and with continued feedback from all stakeholders and different sectors.

In my opinion, not to have a deformed Constitution Reform, it should not be left to politicians, though their input is vital too. I truly hope that it is not the plan. If it is, I foresee problems.

Partit Demokratiku has the political will to deliver.

Yours sincerely,

Hon Dr Godfrey Farrugia  
Leader of Partit Demokratiku

## Annex A

### **Steering Committee**

The primary objective of this committee should be to

a) to work out the parliamentary process so that a special mandate is granted by Parliament to set up a Constitutional Convention.

b) to prepare the terms of reference, time lines, and the resource to kick start the process of the Convention

A Technical Commission to the Constitutional Convention and the Steering Committee is important to be set up in parallel to these structures. This Technical Commission should include the Venice Commission.

This Committee must NOT be one that

-is seen as a backroom deal behind everybody's back. (We must not leave out, media, judges, lawyers, the chamber of advocates, NGOs, pressure groups, trade unions etc ... the common citizen)

-This committee is no peace conference or a bi-partisan one.

Annex B

## **Constitutional Reform**

A ) What is a constitution?

Constitution is a social contract between people about how a nation is organised so that there is peace, justice and fairness.

It's there to make sure whoever is in power cannot trample on the others. But rather to protect the weak from the strong.

It's there to ensure our basic rights, and to make sure we all have opportunities to get ahead and are not exploited or used by others who happen to have power.

It's there to make sure our government acts in the interest of the public, and not in its own interest or the interest of a few powerful people.

It's there to reflect the needs of society by cherishing democracy.

So we must ask

Do we have a democracy?

What kind of democracy do we want?

**An improved constitution should mirror the principles and values of a pluralistic civil society and the desires for Malta held by citizens of conscience. True separation of power through the four estates is paramount and these checks and balances must truly work.**

## Annex C

### PD POSITION ON CONSTITUTIONAL REFORM

#### **1. Clarity, Transparency and real commitment on Constitutional Reform needed**

PD is all for an all-round commitment to implement the suggestions of the Venice Commission which is the latest in a series of very important work on Malta's constitutional arrangements by the Venice Commission and other ad hoc committees on constitutional reform set up by various administrations. This would be a step in the right direction. "However, we do not just need a step: We need to get over the finishing line. Constitutional reform has been delayed and repeatedly delayed capriciously by both PN and more so by PL," stated Hon Dr Marlene Farrugia.

Partit Demokratiku has already stated that the conclusions of the report should form the blueprint of the upcoming constitutional reform. The recommendations should be taken alongside the recommendations of previous work of the Venice Commission and other work carried out by previous administrations but never implemented.

Partit Demokratiku welcomes and supports the conclusions of the Venice Commission report on rule of law, separation of powers and independence of the judiciary in Malta, however, "We do not agree with the decision of the government to ask the Steering Committee – a committee of political representatives with no clear terms of reference and with no basis at law – to debate the report in secret," stated MEP candidate Dr Anthony Buttigieg.

'This is not about PD or other political parties being left out, it's about civil society, trade unions, media, judges, lawyers, the chamber of advocates, NGOs, and a number of stakeholders being left out' states Hon Marlene Farrugia

Below are a number of reasons why Partit Demokratiku disagrees.

First, the so-called steering committee is simply a gathering of representatives of PL and PN. It is not a committee with broad enough representation to ensure comprehensive debate.

Second, the proceedings of the steering committee are secret. The issues raised in the Venice Commission report are too important to discuss in secret. We need to have a national conversation on how to ensure our judiciary is independent, our parliament functions properly, and our government respects the rules.

Third, the steering committee is not bound by any timeline of any sort. This means that the proposals of the Venice Commission may never see the light of day. This already happened in the case of the Bonello Commission.

The place to discuss the recommendations of the Venice Commission, and more, is Parliament followed by the Constitutional Convention.

We ask the government to present a law in Parliament to properly establish the terms of reference of the Constitutional Convention so that we set the ball rolling with a clear and specific mandate.

Partit Demokratiku asks for clarity, transparency and real commitment on constitutional reform

<https://www.facebook.com/drgodfreyfarrugia/videos/2076137672424629/>

The holistic end input of the reform will shape the form of democracy we wish to have.

**In the reform process PD will stand for clarity, transparency and a real commitment on constitutional reform.**

B) Rewrite or Amend?

The present constitution is a **'badly written essay'** as it does not fit the present democratic and good governance needs of Malta.

Whichever method is chosen the objectives should remain the same and the process should be a bottom up approach with a specialized and technical commission

A rewrite and a Constitution Convention assisted by a Technical Commission would be the best option. It is technically easier and would be more structured and neater, but only if it is done correctly. Theoretically we can do, but only if there is **genuine political will**.

A rewrite would mean an update where Constitution deficiencies exist whilst those Constitutional clauses that stood the test of time are kept.

From a practical aspect, PD doubts whether this is possible. We do not live in an ideal world. Reasons are:

- 1) Malta massively lacks expertise, and has problems using even the expertise it does have. We also need to involve foreign constitutional experts.
- 2) It is a mammoth undertaking; a rewrite would take a long time, years, and delay the solutions we need to urgent problems.
- 3) The project may end up an administrative monster, and one will end up with interminable delays arguing over all sorts of non-essentials (even to get this steering committee started it took 4 years). This is a High risk.
- 4) The more one opens up, the more risk to political toxicity, potential political hijack and capture. We have a situation where government and opposition are not equally strong. All that the government would need to do to entrench its position would be to have recourse to a referendum and use its huge political advantage to appeal to the 'will of the people'.

Due to the above reasons perfection may become the enemy of the good. The most practical solution is to amend and to focus on the problem areas.

## **2. Twelve (12) critical issues that the Reform should address.**

1. Supremacy of the Constitutional Court - Power of the Constitutional Court to annul unconstitutional laws must be installed. As is Parliament can override the Constitution
2. A rule of law control system - a system which constrains abuses of power, ensure equal treatment of citizens and ensure public interest.
3. An independent judiciary - international best practices must be in place to eliminate structural weaknesses and conflict of interests.
4. Media (4<sup>th</sup> estate) must be pluralistic and completely free of political parties. The true independence of the Broadcasting Authority and the Freedom of Information need redress. A media Ombudsman needs to be set up.
5. The set-up of an independent anti-corruption body - a body that can also investigate criminality within the police force or AG's office itself.
6. All Constitutional bodies ( eg Broadcasting Authority, Commission Against Corruption, Employment Commission, Public Service Commission, etc) must be above politics and truly independent. They

lack safeguards with regard to their personal, functional, institutional, financial and legal independence. These bodies are also subject to highly insufficient public accountability provisions (which are necessary for bodies that are independent, and hence removed from direct democratic control). Moreover they should not be led by boards whose majority is appointed by PM as this eliminates the necessary checks and balances.

7. An independent non-politically appointed Civil Service and Police- there should be political direction but not complete take over.
8. Attorney General's roles as a prosecutor and legal adviser to government must end with the creation of Prosecutor's office.
9. The highest institution in Malta is Parliament and its role must be strengthened both in House as a multi-party system and also, by extending proportional representation in a general election. Members should also have a full time status.
10. A healthy environment is a basic right to each citizen. The Executive will be held responsible to safeguard, improve and sustain the environment for present and future generations. The natural environment is to be granted the status of a citizen.
11. President's Office-PD is not for a powerful Presidential position: Office is to be appointed by 2/3 parliamentary majority (like Auditor General). The role of the office should be one that it checks on (not exercise) executive power. This should be limited to one estate: the executive. President should have an Advisory Council to State. The president's office must prepare an annual public report on the quality of democracy in the country and make recommendations.
12. It is imperative that we unify our nation and bear in mind that there are a lot of systemic issues, which also need address. (eg The Integrity System : Whistle Blower Act, Party Financing, Ombusman, Auditor General)

### **3. PD advocates a Constitutional amendment to appoint next President**

Partit Demokratiku calls for a Constitutional amendment in the appointment of the President of the Republic before the termination of office of Her Excellency Marie Louise Coleiro Preca.

“The President of the Republic should be a unifying figure and appointed in the national interest and not in the interest of the party in government,” stated party leader Hon Dr Godfrey Farrugia.

In his end of year speech, the Prime Minister has gone on the record saying that the next President will soon be appointed through a parliamentary resolution. Partit Demokratiku remarks that if the Prime Minister wants to walk the talk in strengthening the wellbeing of our democracy, then it is timely that the President of the Republic be appointed by at least a two-thirds majority vote of the members of the House of Representatives, and not by a majority of votes.

“Merit, integrity and competence should be the hallmarks of this office,” states Hon Marlene Farrugia. “The President’s oath is one to ‘preserve, protect and defend’ the Constitution and PD recommends that the next president should be backed by an Advisory Council of State which will give unbiased and fair expert advice. This had been advocated by Hon Dr Guido Demarco in 1988 and His Excellency Dr George Abela in 2009 and PD is repeating the call of these much respected gentlemen.”

“We need to pave the way to unify a much divided country by building bridges,” stated Hon Godfrey Farrugia. “Partit Demokratiku is committed to promoting and nurturing the wellbeing of democracy.”

#### PD position on the Venice Commission Report **The Venice Commission Report**

We note that government has stated that it passed on the report to the Steering Committee on Constitutional Reform.

Venice report: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e)

PD does not agree that the report has been sent to the steering committee as it makes political parties the gate keepers of the report.

This report has addressed the most critical areas of dysfunction in a apolitical agenda for Malta.

PD has publically stated that this report should be used as a blue print although PD notes that certain crucial points are under-mentioned or missing.’



### **Main findings of the Venice Report.**

- Malta does not have judicial independence.
- Malta does not have proper system of checks and balances.
- Malta does not have a proper separation of powers.
- Various violations of "essential requirements of the rule of law"

Suggestions:

**1) A panel from the Venice Commission should be invited to sit in a Technical Commission on Constitutional Reform**

**2) The role of the Venice Commission should be broader than the terms of reference on the basis of which it prepared this report. These were given by Parliamentary Assembly of Council of Europe (PACE).**