

SUMMARY OF RECOMMENDATIONS MADE BY THE JOINT SELECT COMMITTEE OF THE HOUSES OF PARLIAMENT ON CONSTITUTIONAL AND ELECTORAL REFORM

1. Background

- 1.1 A lengthy process of constitutional reform was embarked on in 1977 with the establishment of the Constitutional Reform Division and the appointment of a **Joint Select Committee on Constitutional and Electoral Reform** in 1991 (the JSCCER). The remit of the JSCCER was to review the Constitution and make recommendations for its reform. In order to canvass the views of the public, the Parliament established a Constitution Commission charged with responsibility to solicit the views of all Jamaicans and to provide a report of the outcome of its consultations. The Report of the Constitutional Commission was submitted firstly in 1993 and a final Report submitted in 1994 which included an examination of Chapter III (Fundamental Rights and Freedoms). "...the Report [of the JSCCER] presented in 1995 and subsequent deliberations have indicated a wide area of agreement that the assumptions that underlie the present Constitution no longer reflect the prevailing sentiments either in the political parties or the nation."¹
- 1.2 A Green Paper tabled in the Parliament in May 2007 proposed that following the next general election, there should be brought to Parliament a Bill establishing a new Constitution. It is important to point out that the Green Paper reflected the recommendations made by the JSCCER in its 1995 Report.
- 2.4 The establishment of yet another Constitutional Review exercise is therefore to be seen as the step towards implementation of JSCCER's recommendations. However it is necessary firstly for a review to be conducted having regard to the passage of time since the recommendations were made in 1995 and the fact that amendments have been made to the Constitution over the years particularly the replacement of Chapter III with the provisions of the Charter of Rights.

¹ Extract from Green Paper on Constitutional Reform Issues. Jamaica May 2007

2. **Summary of the Recommendations**

- 2.1 It is important to note that the JSCCER recommended that *a new Constitution* be drafted rather than amendments being made. In that regard every chapter was reviewed with a view to recommending its improvement consistent with the transition to a Republic;
- 2.2 In the "*Jamaicanizing*" of the Constitution, it was recommended that Parliament enact a Bill (at the appropriate time) entitled the Jamaica Republic Act. Contemporaneous with the enactment of the Jamaica Republic Act would have been the repeal the Jamaica Independence Act [the Act of Jamaica Parliament] and for a formal diplomatic request to be made to the UK for the revocation of the enactments by the UK Parliament pertaining to the Jamaica Independence Constitution.

In this regard, careful note is to be taken of the process adopted by Trinidad and Tobago, Mauritius, Kenya and Barbados to effect transition to a Republic. In all these countries the Order in Council was revoked by their Parliaments and the Independence Act was similarly repealed. It is interesting to note the comments of the editors at the legislation.gov.uk portal about the process adopted more recently by Barbados;

In order to become a republic, the Barbados Parliament had to amend the Barbados Independence Order 1966, something that required a two-thirds majority. Although [some questioned whether this was possible](#), as an independent country Barbados could amend or repeal any part of its statute book, including acts and orders passed by the UK Parliament before 1966.²

It is also to be noted that whilst the approval of the UK Parliament or Her Majesty in Council was not required in order for the Barbados Parliament to revoke the

² <https://commonslibrary.parliament.uk/barbados-becomes-a-republic/>

Order in Council and repeal the Independence Act, it is considered to be necessary for the UK Parliament to pass a law such as was passed in the case of Mauritius: The Mauritius Republic Act or Trinidad and Tobago Republic Act. Not because the validity of the enactments of the Barbados Parliament required these laws to be passed but purely because:

As an independent country since 1966, Barbados did not need the UK's authorisation to become a republic. However, Westminster will have to pass consequential legislation to avoid any confusion in its domestic law. When Mauritius became a republic in 1992, for example, the UK Parliament passed the [Mauritius Republic Act 1992](#). Section 1 of that act said that any relevant UK act or instrument would continue to operate as if Mauritius had not become a republic.

2.3 The proposed Jamaica Republic Act was also recommended to include schedules containing the National Anthem, The National Song for Schools, the National Motto, the National Pledge, the National Flag and all the National Symbols.

2.4 **Major Unresolved Issues**

It is to be noted that there were issues left unresolved by the JSCCER which will now require the attention of this Committee. On page 14 of the Report, these issues are as follows:

(a) the selection of the president. At paragraph 48 of the Report it is reported that "...there was disagreement between the Committee members as to whether the two-thirds majority should be obtained by a two-thirds majority of both Houses voting together or by a two-thirds majority of each House voting separately."

At paragraph 92-95 there was consensus on the recommendation that a new Jamaican constitution should create a Jamaican Republic with the Head of State being a President who would be above partisan politics;

The appointment of the president is recommended to be by the Prime Minister in consultation with the Leader of the Opposition "...**subject to**

parliamentary confirmation on a secret ballot by a two-thirds majority...”

(b) the process by which presidential appointments are confirmed by Parliament. There were divided views as to whether the appointment should be deemed to be confirmed unless it is rejected a two-thirds majority in favour of each House or whether the confirmation should be by virtue of a two-third majority in favour of each House;

(c) the method of appointing the two Senate seats not appointed by the Prime Minister or the Leader of the Opposition was not concluded as there was no consensus as to the approach to be taken to effect the appointment in relation to the two seats. One approach was for the leader of a group that contested at least 50% of the constituencies in a general election to appoint a senator for every 7.5% of the national vote secured by that group.

Where neither of the two seats are able to be so appointed, or if only one seat is dealt with, the seats for which senators are to be appointed should be shared equally by the government and the opposition.

Another point of view was that appointment to the two Senate seats should be done by the president in his own discretion;

(d) Whilst there was consensus on the recommendation for the membership of the Public Service Commission to be increased 9 members, the method to be adopted for the appointment of six of the nine members of the Public Service Commission was also undecided. The appointment of the six members were recommended to be: two members selected by the president from a panel of five submitted by the Jamaica Civil Service Association; one member selected by the president from a list of three submitted by the Permanent Secretaries Board; the remaining six appointed by the president either acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition or by the president after consultation with the Prime Minister and the Leader of the Opposition.

2.5 Recommendations were made in respect of each chapter as follows:

(a) Chapter II – Citizenship:

- the Chapter needed to be expressed in simpler language and more readily understandable form;
- section 8(2) empowering the deprivation of citizenship should be rescinded³;
- amend section 11(b) to enable enactment of ordinary legislation defining under what circumstances and by whose authority a Jamaican can lose citizenship⁴;
- the deprivation of citizenship on any ground be subject to judicial review;
- provision should be made for children born to diplomatic officers serving overseas to be treated as having been born in Jamaica and to have such births registered in Jamaica;

(b) Chapter III – Fundamental Rights and Freedoms

The recommendations in respect of Chapter III have been implemented with modifications by Act 12 of 2011.

The Committee had recommended that the Chapter include a provision for a body to be established to be known as the Citizen's Protection Bureau to be administered by the Public Defender. The establishment of the Bureau, its powers, functions and privileges were to be included in the chapter and provision was recommended to be made for the Public Defender to be accorded the same autonomy and protection as accorded to the Director of Public Prosecutions. That recommendation has not yet been implemented

(c) Impeachment Recommendations

³ This recommendation was adopted by Act 18 of 1999 which amended the provisions of the Constitution concerning citizenship

⁴ *ibid*

It was recommended that Impeachment Procedures be included with four main areas, namely, the definition of impeachable offences, the identification of the persons amenable to the process, the organisation of the decision-making mechanism and the procedure for the initiation and conduct of proceedings:

Hearings of the proposed Joint Select Committee on Impeachment and the proposed Impeachment Tribunal are to be public hearings and the impeachment process was recommended to be made subject to judicial review. These recommendations have not been implemented.

(d) Chapter IV – The Governor-General (to be replaced by The President)

Recommendations were made for the establishment of the office of President of the Republic of Jamaica as follows:

- the President to be the Head of State
- appointment should be on the nomination of the Prime Minister in consultation with the Leader of the Opposition subject to parliamentary confirmation however no consensus was reached on the process for such confirmation
- discretionary power to be given to make 'sensitive' appointments without recourse to the Prime Minister
- power to appoint the Chief Justice, President of the Court of Appeal, Members of Judicial Service Commission, members of the Police Service Commission, the public defender, the contractor general and the independent members of the Electoral Commission. Such appointments to be subject to parliamentary confirmation.

No consensus was reached as to the process for the confirmation by parliament of such appointments

- the overall retention of the provisions of Chapter IV was recommended save for the removal of the words Governor-General and the insertion of The President.
- Provision to be made for the appointment of an acting President

(e) Chapter V – Parliament

- Section 39 should be amended to remove the entitlement of Commonwealth citizens who are not Jamaican citizens to be parliamentarians
- Parliamentary privilege was recommended to be changed so that where “malice” is established relating to a false statement made by a parliamentarian against another person, that would constitute an abuse of privilege and the offending member should be subject to impeachment

Senate

- The existing bi-cameral structure was recommended to be retained
 - The Senate should be increased in size to thirty-six to facilitate the inclusion of wider interests both from within the political parties and from the wider society
 - Twenty seats to be appointed by the Prime Minister
 - 14 appointed by the Leader of the Opposition
 - 2 seats representative of wider society
- There was no consensus on the procedure for the appointment of the two members from the wider society
- It was agreed that the majority grouping in the House of Representatives should have a working majority in the Senate but the minority grouping in the House of Representatives should have sufficient seats in the Senate to effectively deny the governing party (by at least two votes) a two-thirds majority with which to pass the constitutional amendments that require such a majority.

The House of Representatives

- Sections 69 and 70 of the Constitution should be amended to limit the members of government who can hold executive office to be no more than 40% of the total number of parliamentarians and less than 50% of the members of each House;
- The first past the post system of electing members should continue

- The Prime Minister should not have power to call a General Election unless there is in existence a list of registered voters which has been completed for not more than six months prior to the calling of elections
- The list of registered voters must be current not less than five days before nomination day [this would require an amendment to section 71]

(f) Chapter VI – The Executive

- Individuals and organisations should be empowered to challenge executive actions: powers of the Attorney General to give consent to actions being brought in the public interest should be removed and legislation should be enacted to widen locus standi in relation to representative actions similar to amendments made in the English Rules of Court
- Abolish the office of Parliamentary Secretary and Minister of State and substitute with the office of Deputy Minister. Remove references in section 78 to the office of parliamentary secretary and replace with Deputy Minister. The Executive would comprise Ministers who are members of the Cabinet and Deputy Ministers who are not members of Cabinet.
- Provision should be made for judicial review of the decisions of the Director of Public Prosecutions
- Provision should be made for the appointment of the Leader of the Opposition immediately following a general election similar to those for Prime Minister. There should be a prescribed Oath for the Leader of the Opposition
- The name of the Privy Council should be changed to The President's Council and the members of the Council move from 6 to 8. Retain the present system of appointment
- The existing provisions for the prerogative of mercy should remain

(f) The Judiciary

- Appointment of the Chief Justice and the President of the Court of Appeal should be made by the Head of State after consultation with Prime Minister and Leader of the Opposition and the appointment should be subject to Parliamentary confirmation. The manner of such parliamentary confirmation is to be agreed
- The Chief Justice should have jurisdiction to sit in the Court of Appeal as of right and when sitting should preside. The right to be exercised only in cases of exceptional public importance and when there is a Full Court of not less than five judges

(g) Appeals to Her Majesty in Council

The present system of appeals to the Privy Council should continue "...subject to the introduction of a Caribbean Court of Appeal if and when such a decision is taken".

(h) The Judicial Service Commission

- Increase the membership from six to nine
- Include three ex officio members namely, the Chief Justice as Chairman, President of the Court of Appeal and the Chairman of the Public Service Commission
- Members other than the ex officio to be appointed by the Head of State after consultation with the Prime Minister and Leader of the Opposition: three to be from the Judiciary and the Bar and the other three from non-judicial or legal ranks

(i) The Public Service Commission

- Increase the membership to nine
- Include two members selected by the Head of State from a panel of five submitted by the Jamaica Civil Service Commission
- One member selected by the Head of State from a list of three submitted by the permanent Secretaries Board
- The Head of State appoints the remaining six either acting on the recommendation of the Prime Minister after consultation with the

Leader of the Opposition or after consultation with the Prime Minister and the Leader of the Opposition
No agreement was reached on the method of appointment

(j) The Police Service Commission

- The Head of State to appoint members after consultation with the Prime Minister and the Leader of the Opposition subject to parliamentary confirmation
- Increase membership from five to seven

(k) Institutions to be Enshrined in the Constitution

- The post of Contractor General⁵
- The Ombudsman (proposed to be incorporated into the proposed Citizen's Protection Bureau)
- The Electoral Commission⁶
- Local Government⁷

(l) Procedure for Altering the Constitution – Section 49

It was recommended that the provisions of section 49 should remain however it should be re-drafted to make it more understandable.

It was also recommended that the following new provisions be ordinarily entrenched:

- The Citizens Protection Bureau
- The Contractor General (The Integrity Commission)
- Local Government
- Impeachment
- The Electoral Commission

⁵ This recommendation has been overtaken by time as the Integrity Commission has since been established and the post of Contractor General has been absorbed into that body

⁶ Recommendations for the insertion of the Electoral Commission have been far advanced with steps having been initiated to prepare a submission to the Cabinet in short order

⁷ Amendments have made to the Constitution to give effect to this recommendation

(m) Miscellaneous

- Treaties negotiated by the Executive should be ratified by Parliament
- All national symbols should be displayed in Parliament to the Speaker's Right

(n) Recommended Chapter Headings for New Constitution

- It is recommended that the new Constitution be divided into the following chapters:

Chapter 1 – Preliminary

Chapter II – Citizenship

Chapter III – Fundamental Rights and Freedoms

Chapter IV – The President

Chapter V – Parliament

Chapter VI – Executive Powers

Chapter VII – The Judicature

Chapter VIII – Finance

Chapter IX – The Public Service

Chapter X – Impeachment

Chapter XI -Constitutional Offices

Chapter XII – Local Government

Chapter XIII - Miscellaneous