



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE PERMANENT SECRETARY

MINUTES

36th Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: April 24, 2024

Time: 9:30am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Confirmation of Minutes
7. Review and Adoption of the Report of the Constitutional Reform Committee
8. Any Other Business
 - a. Terms of Reference
 - b. Timeline for signing the Report and other connected matters
 - c. Update on matter raised by Committee in respect of meeting between the Prime Minister and the Leader of the Opposition
9. Date and Time of Next Meeting
10. Adjournment

*as amended

ATTENDEES:

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- Dr David Henry (Wider Society – Faith-Based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations)
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Mr Sujae Boswell (Youth Advisor)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) *via video link*

Secretariat

Ministry of Legal and Constitutional Affairs

- Mr Wayne O Robertson, JP, Permanent Secretary
- Ms Judith Grant, Chief Parliamentary Counsel
- Ms Nadine Wilkins, Director, Legal Reform Department
- Mrs Janelle Miller-Williams, Senior Director, Legal Education
- Mrs Cheryl Bonnick-Forrest, Senior Director, Strategic Planning
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Ms Julia Wedderburn, Senior Legal Education Officer
- Mr Makene Brown, Legal Officer
- Ms Yaniek Douglas, Legal Education Officer
- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel
- Ms Shaedane Facy, Strategic Planner
- Mr Winston Lowe, Public Relations Officer

1. CALL TO ORDER

- 1.1. The Chairman noted that some Members were present for the indicative 9:30am start time but advised that such time was set to provide Members with an opportunity to review the draft of the Report of the Constitutional Reform Committee dated April 24, 2024 (**Annex I**).

The meeting was therefore called to order at 12:01pm by the Chairman, the Hon Marlene Malahoo Forte following the completion of the preliminary review of the said Report.

2. PRAYER

- 2.1. Prayer was offered by Dr Elaine McCarthy.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE/LATENESS

- 4.1. Apologies for absence were received from Dr Derrick McKoy, Senator Ransford Braham and Senator Donna Scott-Mottley.
- 4.2. Apologies for lateness were tendered on behalf of Mr Anthony Hylton and Mr Sujae Boswell.

5. CONFIRMATION OF AGENDA

- 5.1. The Chairman proposed an amendment to the Agenda for the insertion of three sub-items namely, “Terms of Reference,” “Timeline for signing the Report and other connected matters,” and “Update on matter raised by Committee in respect of meeting between the Prime Minister and the Leader of the Opposition,” under “Any Other Business”
- 5.2. The amended Agenda was confirmed on a motion by Ambassador Rocky Meade and seconded by Dr Elaine McCarthy.
- 5.3. The Chairman also asked that the matters set out under Any Other Business be heard before the commencement of the review of the Report of the Constitutional Reform Committee.

6. CONFIRMATION OF MINUTES

- 6.1. Confirmation of the Minutes of the 35th Meeting of the Constitutional Reform Committee was deferred until the next meeting.

7. ANY OTHER BUSINESS

7.1. TERMS OF REFERNECE

7.1.1. The Chairman invited Members to recall Dr Barnett expressing, at all opportune times, that the Terms of Reference (ToR) was not clear. She noted that the work of the Drafting Strategy Sub-Committee brought clarity and stated that concessions were made. There was no disagreement on the point that it was never the intention to rewrite a new Constitution at phase 1 of the reform work. The point that was made was that if the goal of Jamaicanising was to be achieved, a new instrument would emerge. The issue, as framed, related to the use of the words “culminating in” at paragraphs 3.1 of the ToR. It was therefore proposed that paragraph 3.1 be edited by replacing the words “culminating in” with “with the charge to produce” to read as follows: “The CRC is required to help guide the constitutional reform process throughout all phases of the work (including during the referendum process), with the charge to produce a modern and new Constitution which reflects an appreciation and understanding of Jamaica’s cultural heritage, governance challenges, and development aspirations, and which embodies the will of the people of Jamaica.”

7.1.2. The amendment was endorsed for recommendation by the Committee and adopted by the Chairman.

7.2. TIMELINE FOR SIGNING OF REPORT AND OTHER CONNECTED MATTERS

7.2.1. The Chairman advised Members that the schedule for the Sectoral Debate had been issued and date allotted was one day earlier than initially communicated. The Committee was therefore on a strict timeline if it was to achieve its goals within the proposed time frame.

7.3. UPDATE ON MATTER RAISED BY COMMITTEE IN REPSECT OF MEETING BETWEEN THE PRIME MINISTER AND THE LEADER OF THE OPPOSITION

7.3.1. The Chairman invited Members to recall a proposal for a meeting between the Prime Minister and the Leader of the Opposition to avoid any stalling of the work

around the matter of the final court. She informed Members that on Tuesday, April 23, 2024, at the session of the Parliament, the Prime Minister and the Leader of the Opposition alongside herself and Mr Anthony Hylton engaged in a conversation behind the Speaker's Chair, on the matter of the final court.

7.3.2. The Leader of the Opposition expressed interest on obtaining a clear statement from the Prime Minister rather than appearing before the Committee. The Prime Minister, in response, stated that there was no agreement on the issue within his Party. He then gave a commitment to begin the formal process of canvassing the views among the Jamaica Labour Party (JLP) constituents, starting with the Members of Parliament caucus.

8. REVIEW AND ADOPTION OF THE REPORT OF THE CONSTITUTIONAL REFORM COMMITTEE

8.1. Mrs Davis Mattis commended the Chair and the Drafting Strategy Sub-Committee for the work done on preparing the Report. She regarded it as comprehensive and clear and noted that it demonstrated the volume of work that had been accomplished by the Committee.

8.2. The Chairman highlighted the contributions of Dr Barnett and the technical team from the Ministry. She noted that the Ministry conducted a full review for accuracy and correct attribution. She then thanked Dr Barnett and Professor Albert in particular for their work in advancing the Report.

8.3. The Committee then proceeded with their review of the draft Report, led by Dr Barnett. The Committee reviewed, corrected and accepted the following sections of the Report:

8.3.1. Establishment of the Constitutional Reform Committee;

8.3.2. Operations;

8.3.3. Jamaicanisation of the Constitution;

8.3.4. Replacement of the Monarchy by a Republic;

8.3.5. Retention of the Parliamentary Cabinet System;

8.3.6. Reform of the Parliament;

8.3.7. Composition of the Senate;

8.3.8. Parliamentary Nomenclature;

8.3.9. Citizenship

- 8.3.10. Incorporation of the Electoral Commission
- 8.3.11. Incorporation of the Office of the Public Defender
- 8.3.12. The Issue of the Final Appellate Court; and
- 8.3.13. The Amendment Process

Lunch break at 2:21pm

Meeting resumed at 3:12pm

- 8.4. The Committee continued its review of the draft Report, proposing amendments where necessary. The Report was projected on screen and corrections made as proposed and agreed.
- 8.5. The Chairman noted that the time to review had been exhausted and having regard to the remaining sections, she advised that the review continue at the next meeting of the Committee.

9. DATE AND TIME OF NEXT MEETING

- 9.1. The Chairman stated that the next meeting would be held on Friday, April 26, 2024.

10. ADJOURNMENT

- 10.1. Having agreed that no other business would be conducted, the meeting was terminated at 5:29pm on a motion by Dr Elaine McCarthy and seconded by Mrs Laleta Davis Mattis.

ANNEX I – Draft Report of the Constitutional Reform Committee dated April 24, 2024

FINAL REPORT OF THE CONSTITUTIONAL REFORM COMMITTEE

– PHASE 1

1. INTRODUCTION

1.1 Establishment

1.1.1 On March 1, 2023, a Constitutional Reform Committee (the “CRC”) was established to provide expert guidance and oversight to the Government and the people of Jamaica during a phased constitutional reform process, aimed, among other things, at implementing the Recommendations of the 1995 Joint Select Committee on Constitutional and Electoral Reform (JSCCER) for which consensus remains, while helping to build consensus where it has eroded or is non-existent on other relevant matters.

1.1.2 The CRC is composed of fifteen (15) members with varied training, experiences and associations as follows:

- i. Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- ii. Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)¹
- iii. Dr Derrick McKoy, CD, KC (Attorney General of Jamaica)
- iv. Senator the Hon Thomas Tavares-Finson, OJ, CD, KC (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- v. Senator Ransford Braham, CD, KC (Government Senator)
- vi. Senator Donna Scott-Mottley (Parliamentary Opposition – Senate)
- vii. Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- viii. Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- ix. Dr the Hon Lloyd Barnett, OJ (National Constitutional Law Expert)
- x. Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin)²
- xi. Dr David Henry (Wider Society – Faith-Based)
- xii. Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- xiii. Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations)
- xiv. Mr Sujae Boswell (Advisor on Youth Strategic Engagement)

¹ Since the establishment of the CRC, Ambassador Meade has been appointed as Permanent Secretary in the Office of the Prime Minister

² Professor Richard Albert is a Canadian of Jamaican and wider Caribbean ancestry.

xv. Dr Elaine McCarthy (Chairperson – Jamaica Umbrella Groups of Churches)³

1.1.3 The CRC has been supported by the Ministry of Legal and Constitutional Affairs and a Secretariat comprising public officers of special expertise and experience.

The members of the Secretariat are:

- i. Mr Wayne O. Robertson, JP - Permanent Secretary
- ii. Ms Nadine Wilkins - Director, Legal Reform Department
- iii. Ms Judith Grant - Chief Parliamentary Counsel
- iv. Ms Nastacia McFarlane - Director, Corporate Communication and Public Relations
- v. Mrs Janelle Miller-Williams - Senior Director, Legal Education
- vi. Mr Christopher Harper - Senior Constitutional Reform Officer and Liaison Officer to CRC
- vii. Ms Julia Wedderburn - Senior Legal Education Officer
- viii. Mr Makene Brown - Legal Officer
- ix. Mr Ivan Godfrey - Legal Education Officer
- x. Ms Yaniek Douglas - Legal Education Officer
- xi. Ms Christal Parris-Campbell - Assistant Parliamentary Counsel
- xii. Mr Winston Lowe - Public Relations Officer
- xiii. Ms Shaedane Facey - Strategic Planner
- xiv. Ms Georgette Campbell - Administrative Assistant

1.2 **Terms of Reference**

1.2.1 The CRC has been charged, as stated in its Terms of Reference (ToR), with the task of assessing how the passage of time has impacted the Recommendations of the JSSCER and advise what fresh perspectives should be considered in light of any new national, regional and international development between then and now, as well as recommend any necessary modification to update the Recommendations for implementation.

1.2.2 The CRC has also been requested to help guide the constitutional reform process, through all of its phases, with the aim of producing a modern and new Constitution, which reflects an appreciation and understanding of Jamaica's cultural heritage, governance challenges and development aspirations; and which embodies the will of the people of Jamaica.

³ Dr. Elaine McCarthy was named to the CRC after it was established and attended her first meeting on the April 5, 2023

1.2.3 The CRC has taken note that the Green Paper that was tabled in Parliament in May, 2007, stated that “there should be brought to Parliament a legislative instrument establishing a new Constitution which will reflect the consensus that exists, and which did not depart from the recommendations made by the JSCCER in 1995.” It further noted that although some amendments have been made to the Constitution over the course of the last three decades, certain issues on which recommendations for reform were made, have been left unresolved.

1.3 Acknowledgements

1.3.1 The CRC thanks the members of the Secretariat, the Stenographers and all staff members who have supported its work. We also extend our gratitude to everyone who has made written or oral submissions to the CRC and otherwise engaged with us via social and other media as well as through other means.

2. OPERATIONS

2.1 Sub-Committees

2.1.1 In keeping with the ToR, the CRC has, so far, established four (4) sub-committees to advance its work.

2.1.2 The **Public Engagement and Communication Sub-Committee** is mandated to facilitate, receive and examine questions, proposals and ideas from the Jamaican public on those matters for consideration in Phase 1 of the work; and to mobilise public interest in the work of the CRC.

This sub-committee is chaired by Dr Nadeen Spence (Civil Society Representative).

2.1.3 The **Youth Strategic Engagement Sub-Committee** is mandated to facilitate active and inclusive participation of young people in the constitutional reform process; and to ensure that their perspectives, needs and aspirations are considered in the formulation of Recommendations of the CRC.

This sub-committee is chaired by Mr Sujae Boswell (Advisor on Youth Strategic Engagement).

2.1.4 The **State Affairs Sub-Committee** is mandated to review the existing powers exercised by the Monarch and His personal representative – the Governor-General, under the Jamaica (Constitution) Order in Council, 1962 and the Constitution of Jamaica, 1962 and under any other relevant law or convention; and

to determine the appropriate powers that should be vested in the proposed Office of the President of the Republic of Jamaica.

This sub-committee is chaired by Mr Ransford Braham, CD, KC (Government Senator).

2.1.5 The **Drafting Strategy Sub-Committee** is mandated to guide and inform the preparation and review of the Report of the CRC and the draft Bills.

This sub-committee is co-chaired by the Hon. Marlene Malahoo Forte, KC, JP, MP (Chairman of the CRC) and Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)

2.2 Public Engagement and Communication

2.2.1 The CRC first met on March 22, 2023 and has subsequently held thirty-six (36) CRC meetings; five (5) town hall meetings and over eighty (80) other stakeholder engagement sessions facilitated both face-to-face and online.

2.2.2 Town Hall Meetings were held in each county within the parishes of St James, St Elizabeth, and Westmoreland (County of Cornwall), Manchester (County of Middlesex) and Portland (County of Surrey).

2.2.3 Stakeholder sensitization sessions were also convened in the parishes of St James, Manchester, Portland and Westmoreland. The stakeholders who attended these sessions were from various sectors of the society, including, but not limited to:

- i. Private Sector (Chambers of Commerce)
- ii. Ministers' Fraternal
- iii. Service Clubs
- iv. Community Groups
- v. Custodes Rotulorum and Justices of the Peace

2.2.4 The Legal Education Division of the Ministry of Legal and Constitutional Affairs has engaged approximately two-thousand one hundred and ninety-seven (2197) civil servants across thirty-eight (38) Ministries Departments and Agencies (MDAs) on constitutional reform, over a period of eleven (11) months, through forty-two (42) sensitization sessions.

2.2.5 Additionally, the Legal Education Division sensitised fifth and sixth form students at the Cedar Grove Academy, Waterford High, Jose Marti High and Cumberland

High, who have or would have achieved the age of majority within the current life of Parliament. The focus of the engagement was on Jamaica's transition from a Constitutional Monarchy to a Republic. A total of one hundred and eighteen (118) students and eight (8) teachers were engaged. An official Road to Republic School Tour is scheduled to commence in September, 2024.

- 2.2.6 Following different rounds of interface with the public, the CRC, through the Ministry of Legal and Constitutional Affairs, issued two (2) separate sets of publications in the Jamaica Gleaner and the Jamaica Observer, on **June 4, 2023** and **September 21, 2023**. The first was a Call for Submissions, to enable the CRC to consider any constitutional reform-related matter of particular importance to any member of the public or any group. The second was a list of all the issues raised in the submissions and other commentaries, which were considered by the CRC. It included a further invitation for additional submissions on any other issue not previously raised.
- 2.2.7 In its effort to achieve meaningful public engagement, information education and communication materials (IEC materials) on constitutional reform, the phases of the constitutional reform process and the transition from a Monarchy to a Republic were created and widely disseminated.
- 2.2.8 Members of the CRC participated in a number of Jamaican and overseas radio programmes that were aired on stations including RJR, IRIE, MELLO, KOOL, LOVE 101, FYAH, EDGE, POWER 106, FAME, GOSPEL JA and Rebel Radio Jamaica 1 (USA). It also supported the production of a 30-second Public Service Announcement and a Jingle.
- 2.2.9 The CRC received submissions from twenty-six (26) individuals and organisations⁴; and heard in-person presentations from eight (8) stakeholders, namely:
- i. Mr Carvel Stewart;
 - ii. The Jamaica Language Unit
 - iii. Jamaica Left Alliance for National Democracy and
 - iv. Socialism (Jamaica LANDS)
 - v. The National Democratic Movement (NDM)
 - vi. The Advocates Network
 - vii. We the People Republic JA

⁴ A List of the individuals and organisations who made submissions to the CRC can be found at Annex 1

- viii. Citizens Action for Free and Fair Elections (CAFFE); and
- ix. The Jamaican Bar Association (JAMBAR)

2.2.10 The CRC also established a dedicated website (www.roadtorepublic.mlca.gov.jm), social media pages on Facebook (Road To Republic Ja), Instagram (@RoadToRepublicJa), X, formerly Twitter, (@RoadToRepublic), a dedicated WhatsApp number (876-441-9097) and an email address (constitutionalreform@mlca.gov.jm) to facilitate the receipt of submissions from and responses to the public on matters related to constitutional reform.

2.2.11 For ease of public access, the written submissions of the eight (8) in-person presentations made to the CRC and the confirmed minutes of its meetings, to date, have been published on the [Road to Republic](#) website.

3 “JAMAICANISATION”⁵ OF THE CONSTITUTION

3.1 Repeal of the Imperial Instrument

3.1.1 The CRC is firmly of the view that after six (6) decades of sovereignty it is no longer acceptable that Jamaica’s Constitution, although drafted in Jamaica and debated in the Parliament of Jamaica, should be contained in a Schedule to a British Imperial instrument - the Jamaica (Constitution) Order in Council, 1962 - made at the Court at Buckingham Palace in England⁶ on the 23rd day of July, 1962, by virtue of subsection 1 of section 5 of the West Indies Act, 1962.

3.1.2 The CRC reaffirms the opinion in the Green Paper set out earlier at paragraph 1.2.3.

3.1.3 Accordingly, consistent with the goals being pursued in Phase 1, as set out in the Terms of Reference, **the CRC recommends that the constitutional reform programme should begin with the Jamaicanisation of Jamaica’s Constitution by repealing and replacing the present imperial instrument with**

⁵ In the context of this constitutional reform work the term “Jamaicanise” (coined by Dr Lloyd Barnett) has been adopted and adapted by the Ministry of Legal and Constitutional Affairs, as well as the CRC, to refer to the process to have the Constitution of Jamaica passed by the Parliament of Jamaica and approved by the People of Jamaica, in Jamaica. The “People of Jamaica” refer to those who are qualified to vote in general parliamentary elections (the electorate).

⁶ On a point of historical accuracy, it should be noted that the Independence Constitution was primarily formulated and drafted in Jamaica. See Hansard- Proceedings of the House of Representatives 1961-2 Vols 3 & 4; Proceedings of the Legislative Council 1961-2 Vol 3, Report of the Committees of the Legislature to Prepare Proposals for a Constitution to Take Effect on Independence dated 11th January, 1962 and Barnett, L. G. (1977). *The Constitutional Law of Jamaica*. Oxford University Press: Factors in Constitution Making (pp. 24-25).

a Jamaican instrument made by the Parliament and approved by the People of Jamaica, in Jamaica.

3.1.4 **The CRC further recommends that simultaneously with this historic change, the monarchical form of our Constitution should be abolished, the King of England removed as our Head of State and the Republic of Jamaica established.**

3.1.5 Consistent with the imperative to Jamaicanise our Constitution, the CRC is firmly of the view that the reforms must be deeply grounded in the cultural fabric of the nation, ensuring that it resonates with and is accessible to all its citizens. It is essential that the Constitution embodies the unique identity, values and aspirations of Jamaica, thus reflecting a truly home-grown document. Central to this endeavour is the understanding that a constitution should be a reflection of the collective will and vision of the people it serves.

3.2 Insertion of a Preamble

3.2.1 A Preamble is generally recognised as a useful introduction to a constitution that inspires national pride and unity. Many constitutions have Preambles which contain expressions of lofty aspirations, as well as assertions of moral codes and declarations of political objectives.

3.2.2 The present Constitution does not have a Preamble, as the Order in Council to which it is appended, begins with a technical recital of the monarchical authority.

3.2.3 **The CRC therefore recommends the inclusion of a Preamble which is “*in poetic and resonant tones which echoes the heritage of Jamaicans and proclaims the aspirations of the nation*”⁷.**

3.2.4 Several draft Preambles were submitted to the 1991 Constitutional Reform Commission for inclusion in the then projected new Constitution. Five (5) of these Preambles were appended to the Commission’s Report but no selection was made. The CRC has received [three (3)] additional drafts. The CRC has considered all but has not been able to arrive at a consensus that any of them should be adopted. They are all attached to this Report as Annex II.

3.2.5 **[The CRC therefore recommends that as a method of resolving this important question, an appropriate poll be taken in Parliament or the public.]**

⁷ See paragraph 9.1 of the Report of the Constitutional Commission Jamaica (August, 1993)

3.3 Insertion of National Emblems and Symbols

3.3.1 In furtherance of the imperative to Jamaicanise our Constitution and to ground our reforms in the cultural fabric of the nation, **the CRC recommends that the reformed Constitution includes, in a Schedule, the following iconic representations of Jamaica’s identity, history, people, aspirations and values, as creative expressions of Jamaica to imbue unity and patriotism among Jamaicans as well as respect from non-Jamaicans.** These include:

A. The National Emblems

- i. National Flag (image of the National Flag);
- ii. National Anthem (lyrics and music);
- iii. The Coat of Arms (image of the Coat of Arms);

B. The National Symbols

- i. National Tree (scientific and colloquial name);
- ii. National Flower (scientific and colloquial name);
- iii. National Fruit (scientific and colloquial name); and
- iv. National Bird (scientific and colloquial name).

C. The National Motto (quoted in full);

D. The National Pledge (quoted in full)

E. The National Song (lyrics and music); and

F. The National Prayer for Schools⁸ (quoted in full).

3.3.2 **The CRC further recommends that the intellectual property in the National Emblems be vested in the State in perpetuity at the level of the Constitution and that Parliament be empowered to pass laws to regulate the use of the said iconic representations of Jamaica and guard against their misuse.**

3.4 Reform of Presentation

3.4.1 It is a well-established drafting practice to place a general interpretation section at the beginning of a statute because it controls the meaning of the text that follows. The technical legal form in which the present Constitution is expressed places the general interpretation section at the beginning. The CRC acknowledges that this presentation is unfriendly to the ordinary citizen and makes it difficult for them to understand.

⁸ For the beginning and end of school term and all other special occasions.

3.4.2 **The CRC therefore recommends that the interpretation section (now section 1), be moved to Chapter X and be replaced with the proposed Preamble, [citation and commencement date to make the instrument more reader friendly.]** This reformat enables the commencement of the Constitution to meaningfully reflect the spirit and purpose of the text, the will and aspirations of the people and provide guidance on its values and ideals.

3.4.3 **[Proposed Arrangement of Sections]**

3.5 Inclusion of Jamaica Interpretation Act, 1968

3.5.1 In the current Constitution the reference to a general interpretation provision is to the UK Interpretation Act, 1889. This will no longer be appropriate in the reformed Constitution. Accordingly, **the CRC recommends that the Jamaica Interpretation Act, 1968 be adopted and adapted with appropriate modifications for its use in interpreting the Constitution as well as other Laws of Jamaica.**

3.5.2 **The CRC further recommends that the provisions of the Interpretation Act which are to apply to the interpretation of the reformed Constitution should be given a higher degree of protection consistent with the status of the relevant provision of the Constitution to which it applies.**

3.6 Words of Enactment

3.6.1 The words of enactment for Bills indicate the source of authority for the making of the enactment and whilst they are technical in nature, the enacting words are important to signify the supreme authority of the Parliament of Jamaica in legislative matters.

3.6.2 Section 61 of the Constitution prescribes the words of enactment that must accompany every Bill tabled in Parliament. In the case of most Bills, the prescribed words of enactment are:

“Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same as follows:-”

3.6.3 The need to reformulate the existing enacting words was considered by the Constitutional Commission of Jamaica in its 1993 Report and the following was proposed as a replacement for the existing words of enactment:

“The People and Parliament of Jamaica”

3.6.4 The change in the words of enactment mentioned above, was proposed in the context of Jamaica’s transition from being a Constitutional Monarchy to a Republic. Now that the CRC has finalised its recommendations as set out in this Report, **it recommends that an amendment to section 61 to provide for new words of enactment be pursued ahead of the tabling of the Bill that will give effect to the recommendations to enable that Bill to be presented to Parliament without the monarchical references.** In making this recommendation the CRC is aware that the Bill for the reformed Constitution will still have to be presented to the Governor-General for assent. This is because the legislative role of the Monarch to provide assent for the Bill to become Law remains unchanged until the reformed Constitution is approved in the referendum.

4 **REPLACEMENT OF THE MONARCHY WITH A REPUBLIC**

4.1 Removal of the British Monarch as Head of State and as part of the Parliament

4.1.1 It is no longer considered appropriate for our Head of State to be the hereditary Monarch of a foreign country. It is widely accepted that the Head of State should be chosen by a process that will enable the holder to symbolise sovereignty, nationality and unity of Jamaica.

4.1.2 Accordingly, **the CRC recommends that the British Monarch should be removed as Jamaica’s Head of State and a new Head of State established in the Office of President of the Republic of Jamaica.** The President would represent our nationhood and project our patriotism.

4.1.3 Accordingly, **the CRC recommends, as a major alteration to our constitutional provisions, the removal of all references to the British Monarch as part of the executive and legislative organs of the State.**

4.2 Creation of the Office of President

4.2.1 The abolition of the monarchy will lead to the establishment of the Republic of Jamaica and the creation of the new Office of President as the Head of State.

4.2.2 During discussions within the CRC, as well as in the public fora and across several debates, considerable attention was given to the type of Presidency that would be best suited for Jamaica's transition to a Republican form of Government.

- 4.2.3 Several persons advocated for the adoption of a President, who is directly chosen by the people in a national election. The CRC carefully considered the implications of this change and concluded that it is not in the interest of Jamaica, for reasons set out at section 5 of this Report.

4.3 Method of Appointment of the President

- 4.3.1 From the public consultations carried out, the CRC is of the understanding that the people's aspirations for the Office of President of the Republic of Jamaica are that it should be the embodiment of national identity, national unity and a neutral arbiter.
- 4.3.2 Guided by these values and ideals, and after considering provisions of the Constitutions of other Commonwealth countries, **the CRC recommends that the prospective President should be nominated by the Prime Minister after consultation with the Leader of the Opposition with a view to their joint nomination.**
- 4.3.3 The nominee should then be confirmed by the Parliament at a joint sitting of both Houses, with each voting separately by secret ballot. Confirmation requires a two-thirds ($\frac{2}{3}$) affirmative vote in each House. The CRC concluded that a supermajority vote would better sustain the apolitical nature of the Office and signal consensus on the selection of the President.
- 4.3.4 **The CRC further recommends that where there is no consensus between the Prime Minister and the Leader of the Opposition, it should be provided that both be authorised to propose a nominee and whichever of the two nominees obtained a simple majority vote would be confirmed as President.**

4.4 Required Qualifications

- 4.4.1 **The CRC considered the qualifications which should be prescribed for the holder of the office of President and recommends that he or she must:**
- i. **be a Jamaican citizen by place of birth or descent;**
 - ii. **be at least thirty-five (35) years of age;**
 - iii. **have been ordinarily resident in Jamaica for ten (10) of the last fifteen (15) years;**

- iv. **not be under a duty of allegiance to a foreign state or foreign power by his or her own act and not another person's; and**
- v. **not be disqualified for election to the Parliament.**

4.4.2 On the matter of descent, the CRC noted that section 3 of the Constitution currently provides that a person may obtain Jamaican citizenship by descent with no limit as to the degree of descent. Given the status of this Office and the span of a generation being approximately twenty (20) to thirty (30) years, there is a need for the nominee to establish a sufficient connection to Jamaica. It is necessary for the nominee to satisfy a stricter standard in representing the nation than mere citizenship by descent.

4.4.3 Consequently, **the CRC recommends that the qualification of citizenship by descent should be limited to two (2) generations. That is to say, that the entitlement to citizenship would be derived from a grandparent.**

4.4.4 On the matter of age, the CRC identified thirty-five (35) years as the minimum age at which an individual would be able to demonstrate a high sense of responsibility and a sufficient range of skills, exposure and experiences that would be required for the Office of the President.

4.5 Tenure of Office

4.5.1 **The CRC recommends that the term of office of the President of Jamaica be seven (7) years, renewable for a second term of up to five (5) years.** The periods are recommended to reduce the probability of the term of the President coinciding with the term of the full life of Parliament; and to allow for some continuity in the office of president, in the event of a change in political administration.

4.5.2 **The CRC recommends that the appointment for a second term should be confirmed by the Parliament in a manner similar to the original appointment.**

4.5.3 **The CRC further recommends that the process to select a new President should commence at least one (1) year prior to the end of the prescribed tenure of the incumbent.**

4.6 Immunities

- 4.6.1 **The CRC is of the opinion and recommends that the President should be granted immunity** in respect of:
- i. The performance of the functions of the Office or any act done by the President in respect of the functions of the Office; and
 - ii. Any act not involving fraud and/or violence committed during the term of office.
- 4.6.2 **The CRC also recommends that during a President’s term of office, no process, summons or warrant should be issued or executed against the President.**
- 4.6.3 **The CRC recommends that in granting immunity any period of limitation prescribed by law should not include the period served as President in calculating/determining the time within which proceedings may be brought against the Office Holder.**

4.7 Resignation

- 4.7.1 Section 137 of the Constitution provides for a general resignation process. However, this section does not specify the office of Governor-General. **The CRC therefore recommends that a section be inserted in the reformed Constitution to make specific provision relating to the resignation of the holder of the office of the President of the Republic of Jamaica.**
- 4.7.2 In accordance with the general rule in section 137 that “he who is appointed to any office may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed,” **the CRC recommends that the instrument of resignation of the President be addressed to the Speaker of the House of Representatives and President of the Senate of the Parliament with copies sent to the Prime Minister and Leader of the Opposition.**

4.8 Functions and Powers

- 4.8.1 **Nature of Current Powers.** The CRC has taken note of the fact that under the present Constitution, the Governor-General exercises a range of powers and duties. These may be divided into the following five categories:
- i. Constitutional powers exercisable in the Governor-General’s own discretion;

- ii. Constitutional powers exercisable on the advice of the Cabinet or a responsible Minister on the authority of the Cabinet;
- iii. Constitutional powers exercisable by the Governor-General on the advice of another functionary;
- iv. Constitutional powers exercisable by the Governor-General following consultation with one or more functionaries; and
- v. Specific statutory powers

4.8.2 Taking into account the Report of the State Affairs Sub-Committee, **the CRC recommends that the powers now exercised by the Governor-General by virtue of the constitutional relationship with the Monarch, statutory provisions or general custom should under the new republican Constitution be exercised by the President.**

4.8.3 **The CRC also recommends that the Jamaican Privy Council be renamed the President's Council in the reformed Constitution while retaining the same functions and powers.**

4.9 Termination of Appointment

4.9.1 While it is necessary to provide the Office of President with security of tenure so that it is not subject to the whims of the Parliamentary majority, there is a need to provide a means of removing an incompetent, corrupt or misbehaving President.

4.9.2 **The CRC recommends that there should be four (4) specific grounds upon which the holder of the Office of the President can be removed**, namely, if he or she:

- i. is unable to perform the functions of the office whether arising from infirmity of mind or body or any other cause;
- ii. behaves in a manner that endangers the security of the State;
- iii. misbehaves in a manner that brings the office into disrepute; or
- iv. pledges allegiance to a foreign state or power.

4.9.3 The process must be commenced by a motion to be tabled in Parliament setting out the ground alleged. Such a motion must set out full particulars of the ground on which the President's removal from office is proposed. If the motion is carried by an absolute majority vote in each House, an *ad hoc* Parliamentary Committee should be established to investigate the complaint and report on the facts to the Parliament.

- 4.9.4 On the approval of the motion by the Parliament, the holder of the Office of the President would cease to exercise the functions of President and a temporary appointment would be made to the office until the matter is finally determined.
- 4.9.5 The Parliamentary Committee should be empowered to:
- i. investigate and enquire into the allegations;
 - ii. call for evidence and hear witnesses; and
 - iii. make a recommendation to Parliament as to whether the President should remain in or be separated from the office based on the nature of the allegation and the findings of the Committee.
- 4.9.6 If the Report of the Parliamentary Committee recommends that the ground has been adequately established, a resolution supported by a vote of a two-thirds majority of both Houses of Parliament sitting jointly, voting separately by secret ballot would be required to remove the President from office. The CRC also recommends that the proceedings would not prejudice any other matters being dealt with external to the Parliament.
- 4.9.7 The Report of the Parliamentary Committee should be produced no later than six (6) months following the initiation of proceedings and if further time is required, Parliament may, by resolution, grant an extension of time for up to six (6) months.
- 4.9.8 Where the Parliament accepts the recommendation from the Committee which results in a vacancy, an interim President should be appointed by the Prime Minister after agreement with the Leader of the Opposition. If there is no agreement, the Prime Minister shall appoint an interim President from among the Custodes. The interim President would serve until a new President is nominated and confirmed by the relevant selection process set out at paragraph 4.3.

4.10 Temporary Vacancies

- 4.10.1 **The CRC recommends that the Constitution should make provision for an unscheduled termination of office or the temporary absence of the President from office due to illness or other cause.** In such a case, the appointment of an interim President should be done by the Prime Minister after agreement with the Leader of the Opposition. Members felt that this approach was ideal as it allowed for expediency and efficiency of process.

4.10.2 In the event that the Prime Minister and Leader of the Opposition cannot agree on who should be appointed, the Prime Minister shall appoint an interim President from among the Custodes.

5 RETENTION OF THE PARLIAMENTARY CABINET SYSTEM

5.1 Comparison of the Parliamentary Cabinet System and the Presidential System

2.1.1 A parliamentary cabinet system of government, on the other hand, is a system of governance in which the executive branch derives its legitimacy from, and is accountable to, the legislature (Parliament). In this system, the Head of Government, often called the Prime Minister, is typically a Member of the Parliament and is chosen on the basis of leadership or support of the Party or Parties which gain a majority in parliamentary elections.

2.1.2 A presidential form of government is a system of governance in which the executive branch is separate from the legislative branch. In this system, the President normally serves as both the Head of State as well as and the Head of the executive government.

2.1.3 The following table below outlines the key differences considered by the CRC between the two systems of governance:

Feature	Parliamentary Cabinet System	Presidential System
Executive Head	Prime Minister, who is typically selected from among Members of Parliament	President, who is elected separately from the legislature
Separation of Powers	No clear separation between executive and legislative branches	Clear separation of powers between executive and legislative branches
Selection of Executive	Chosen from the majority party or coalition in Parliament	Elected directly by the people or through an electoral college
Cabinet Composition and Accountability	Appointed from the Parliament and collectively responsible to the people through the Parliament	Appointed by the President and may or may not be members of the legislature
Term of Office	Prime Minister's tenure is not usually fixed, and can be determined by elections or party dynamics	President typically serves a fixed term in office

Feature	Parliamentary Cabinet System	Presidential System
Checks and Balances	Executive is accountable to the Parliament which can remove the government through a vote of no confidence	Executive and legislative branches have separate control with checks and balances include veto power
Stability and Decision-Making	Provides stability, offers flexibility and greater decisiveness	Often leads to gridlock

5.1.1 The poor record of the presidential system in the preservation of democracy and protecting the people against dictatorship is well documented. The true position is as the Editor of the “Presidential Studies Quarterly” stated in Part 4 of the 1987 issue “Other nations which have sought to emulate the American document have not succeeded”. Dr Simeon McIntosh, an eminent Caribbean constitutional law scholar, in a published article wrote:

“Professor Juan Linz of Yale University, in a monumental study on this very subject, has observed that, with the outstanding exception of the United States, most of the stable democracies of Europe and the Commonwealth are parliamentary regimes. In contrast, most of the countries with presidential constitution have been unstable democracies or authoritarian regimes⁹.”

5.1.2 There is no doubt that countries which have the parliamentary system are among the most stable democracies and are generally highly rated on the World Economic Indices. These include most Caribbean Community (CARICOM) countries notably Jamaica, Trinidad and Tobago and Barbados and others such as Australia, New Zealand, Japan, Denmark, Estonia, Finland, Germany, Iceland, Norway and Sweden.

5.1.3 In the Stone Committee Report¹⁰ that examined ways of strengthening the roles and performance of Parliamentarians, Professor Carl Stone recommended that Jamaica should replace the parliamentary cabinet system with the presidential system. Among the developing democracies which Professor Stone named to be treated as models for having operated the presidential system successfully are Venezuela, Chile, Brazil, Argentina, Uruguay and Peru. We have seen since then

⁹ Juan J Linz, “Democracy: Presidential or Parliamentary Does It Make a Difference” Yale University, July 1985

¹⁰ Carl Stone, Ministry Paper No. 11 (1990) Kingston: Office of the Prime Minister

that these countries that we were being asked to emulate have experienced severe political turmoil or constitutional crises.

- 5.1.4 Having carefully weighed the strengths and weaknesses of both systems of government, **the CRC recommends that the parliamentary cabinet system be retained.**

6 REFORM OF THE PARLIAMENT

6.1 Citizenship

- 6.1.1 The CRC considered the issue of whether Jamaican citizenship, and not Commonwealth citizenship, should be the citizenship criterion for membership in the Parliament of Jamaica.
- 6.1.2 Section 39 of the Constitution currently:
- i. entitles a Commonwealth citizen to be a Member of Parliament if he or she has been “ordinarily resident: in Jamaica for the twelve (12) months immediately preceding election or nomination; and
 - ii. requires a Jamaican citizen to be similarly resident.
- 6.1.3 The 1995 Report of the Joint Select Committee in its assessment of the provision recommended to Parliament that Commonwealth citizens, who are not Jamaican citizens, should no longer be entitled to be Parliamentarians and that the residential requirement should no longer apply to Jamaican citizens to enable them to be Parliamentarians.
- 6.1.4 The CRC considered the following basic questions:
- i. Whether the entitlement of Commonwealth as broadly defined should remain;
 - ii. whether Jamaicans living in the United States with US citizenship or citizenship of any other foreign country should be barred from being Members of Parliament because of their allegiance; and
 - iii. the type of citizenship qualification that would be required to serve in the Jamaican Parliament.
 - iv. whether Commonwealth Citizens who are not Jamaicans should continue to qualify for membership in the Parliament.
- 6.1.5 On the matter of Commonwealth citizenship, the CRC took into account that the Commonwealth of Nations is a free association of sovereign states comprising the

United Kingdom and a number of countries including its former colonies. These States have chosen to establish or maintain ties of friendship and practical cooperation and acknowledge the British Monarch as the symbolic head of the Commonwealth of Nations.

- 6.1.6 It was specifically noted that since 1949, independent countries from Africa, the Americas, Asia, Europe and the Pacific have joined the Commonwealth. The last four countries to have joined – Mozambique, Rwanda, Gabon and Togo – have no historical ties to the British Empire.
- 6.1.7 In today's context, relationships within the Commonwealth have evolved with reduced reference to the Monarch.
- 6.1.8 The CRC is of the view that the Constitution of Jamaica is not the appropriate place for dealing with Commonwealth citizenship. **The CRC therefore recommends that current references to Commonwealth citizens should be removed and that status be dealt with by ordinary legislation.**
- 6.1.9 **The CRC further recommends that Jamaican citizenship should be the essential qualifying citizenship criterion for membership in the Parliament.**
- 6.1.10 The CRC went on to consider whether Jamaicans who hold other nationalities should qualify for membership in the Parliament. In assessing this issue, the CRC was guided by the judgement of the Court in **Dabdoub v Vaz**. There, the Court defined "allegiance" as "as 'the obligation of fidelity and obedience to government owed by an individual in consideration for the protection that government gives.' ...It is a legal bond in which there are two (2) parties – the subject and sovereign. It is referred to as a mutual bond and obligation between the sovereign and his subject (a government and its citizens) because the subject has a duty to serve and be loyal and the sovereign a duty to protect¹¹"
- 6.1.11 Accordingly, **the CRC recommends that dual citizenship should not be an automatic disqualification but that the test should be whether the Jamaican citizen in question has voluntarily pledged allegiance to a foreign State.**

¹¹ **Abraham Dabdoub v Daryl Vaz, Carlton Harris and the Attorney-General of Jamaica** SCCA No. 45 and 47 of 2008 at paragraph 68

6.2 Disqualification

- 6.2.1 The CRC is strongly of the view that a person who is convicted of a serious criminal offence should be disqualified from sitting as a lawmaker.
- 6.2.2 The Constitution currently provides that a person who has a criminal record is not disqualified from Parliamentary membership unless the conviction is for an electoral offence. **The CRC therefore recommends that the provision be expanded to include convictions for any offence involving treason, fraud or violence.**

6.3 Impeachment Process

- 6.3.1 During its engagements, the CRC took into consideration the repeated concerns expressed by the public about the lack of accountability among Parliamentarians. The CRC discussed, at length, over multiple meetings, the related issues. In particular, the CRC acknowledged calls for the inclusion of a process of impeachment and examined the history and experiences of impeachment in other jurisdictions. The CRC further considered whether and how impeachment would work in the Jamaican context.
- 6.3.2 The CRC **recommends that there should be no inclusion of an impeachment process in the reformed Constitution** for the following reasons:
- i. it is dealing with what is essentially a legal matter through a political process as most impeachable offences are criminal in nature and properly triable in the Courts;
 - ii. it can easily be manipulated for partisan political purposes; it is difficult to ensure an impartial hearing by members of a Parliament that is divided along partisan political lines;
 - iii. the Parliament would have to be provided with its own investigative resources;
 - iv. where the matter being investigated involves the allegation of a crime, then the normal criminal proceedings would be invoked which creates the risk of competing and conflicting jurisdictions and outcomes; and
 - v. In cases where impeachable offences are not criminal offences, the definitions are generally vague and therefore the impeachment process is inconsistent with the principles of natural justice.

6.4 Fixed General Election Dates

- 6.4.1 The CRC is aware that some Jamaican political leaders, civil society organisations, political analysts and members of the public have advocated for fixed general election dates. The Constitution by virtue of section 64(2) now gives the Prime Minister the discretion to call the national general election at any time within the life of the Parliament. This discretion is often exercised to gain partisan political advantage.
- 6.4.2 While recognizing that there are good grounds for the proposal to adopt a fixed election date, the CRC is of the opinion that a precise and inflexible date may be problematic in a small country like Jamaica for a variety of reasons. However, it is still possible to introduce greater certainty as to when elections are held by having a fixed duration for the life of Parliament and a limited period in which to fix the actual election date.
- 6.4.3 Accordingly, **the CRC recommends that in the event there is consensus between the two political parties represented in the Parliament, the life of the Parliament be fixed as five years as currently obtains with provisions for the actual election date to be set by the Prime Minister on a day within a prescribed period not exceeding three (3) months.**

6.5 Extension of Life of Parliament in Cases of Public Disasters

- 6.5.1 The CRC considered that the ground on which the life of Parliament may be extended is limited to Jamaica being at war. However, it is recognized that there are other circumstances that could arise at a critical point in the life of the Parliament that may prevent the resumption of Parliament and make the holding of General Elections impracticable.
- 6.5.2 **Accordingly, the CRC recommends that section 64(3) be expanded to include disasters created by or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, infectious diseases or other calamity, whether similar to the foregoing or not¹².**
- 6.5.3 **The CRC further recommends that this extension should be limited to periods not exceeding six (6) months at a time for a maximum extension of two (2) years. Furthermore, where the circumstances persist, the first extension is to be approved by a simple majority vote in the House of**

¹² Adapted from section 20(2)(c) of the 1962 Constitution of Jamaica

Representatives and any extension thereafter must be by a two-thirds ($\frac{2}{3}$) majority vote respectively in both Houses of the Parliament.

7 [COMPOSITION OF THE SENATE]

7.1 Increase of Membership

7.1.1 The CRC took note of the recommendation of the JSCCER to increase the membership of the Senate.

7.1.2 It further noted that in the past there have been many other proposals for altering the composition of the Senate as well as the manner of appointing its members. The CRC does not consider that there is need for any radical alteration of its composition but agrees that some provisions should be made for the inclusion of persons who are not aligned with the Government or Opposition Parties and who would be able to exercise independent judgement on all issues.

7.1.3 Accordingly, **the CRC recommends that the size of the Senate be increased from its present membership of twenty-one (21) to twenty-seven (27) appointed by the President** as follows:

- i. Fifteen (15) members on the recommendation of the Prime Minister;
- ii. Nine (9) members on the recommendation of the Leader of the Opposition; and
- iii. Three (3) members in his or her discretion from among outstanding persons in the private sector, civil society, faith-based or community-based organisations or other sectors of society as the President considers necessary.

7.2 Vacancy in the Senate

7.2.1 Following on the recommendation to expand the membership of the Senate to include the appointment of persons who are independent of the political parties in the Parliament, the CRC examined other Constitutions which make provision for independent Senators and how the seat of a Senator may become vacant¹³.

7.2.2 The CRC also noted that the Jamaica Interpretation Act, 1968 specifically addresses the issue of the power to appoint and disappoint by providing that “... *the authority having the power to make the appointment shall also have the power*

¹³ Note: the process by which the seat of a Senator may become vacant has been the subject of litigation in Jamaica. See *Holness (Andrew) v Williams (Arthur) [2015] JMCA Civ 21*

to remove, suspend, reappoint or reinstate any person appointed in exercise of the power.”¹⁴

7.2.3 While this provision does not apply to the Constitution, in light of the recommendation set out at paragraph 3.5 above, for the inclusion of this Interpretation Act in the reformed Constitution, and in an effort to address the limitations in the current Constitution, **the CRC recommends the inclusion of a provision similar to what obtains in many other Constitutions in the English-speaking Caribbean¹⁵ to allow for the person who recommends the appointment of a Senator to also be empowered to recommend that his or her seat may become vacant.**

7.3 Retention of the Constitutional Amendment Safeguard

7.3.1 To maintain the constitutional amendment safeguard, **the CRC further recommends that the proposed composition would retain the normal power of the majority party to obtain the passage of measures by a simple majority as well as the restriction on the passage of constitutional measures without the support of at least one Opposition Senator.**

8 PARLIAMENTARY NOMENCLATURE

8.1 The CRC deliberated on proposals to change the nomenclature of “Speaker of the House”, “President of the Senate” and “Leader of the Opposition”. It took note of the common usage of all three terms in constitutional systems similar to the one being proposed for Jamaica. In particular, the CRC noted that the Republic of Trinidad and Tobago retained use of the title “President of the Senate” even though there is a President of the Republic. Regarding the title of Leader of the Opposition, consideration was given to a proposal made at one of the [town hall/stakeholder] meetings to rename it “Minority Leader”. However, recognising that the party from which the Leader of the Opposition is named may secure the popular vote without forming government in the first-past-the-post system, **the CRC makes no recommendation to change any of these titles.**

9 CITIZENSHIP

9.1 Modification of the Citizenship Provisions

9.1.1 In light of the recommendation made at paragraph X, **the CRC further recommends that any other matter that deals with the treatment of**

¹⁴ Jamaica Interpretation Act, 1968, section 35

¹⁵ [CARICOM Constitutions]

Commonwealth citizens should be provided for in ordinary legislation. [In making this recommendation, the CRC also noted that there were no reciprocal provisions for the Jamaican Commonwealth citizen to be eligible for membership in the Parliament in other jurisdictions].

- 9.1.2 **The CRC also recommends that Parliament be empowered to confer privileges on or make special provisions for CARICOM citizens by way of ordinary legislation.**

10 INCORPORATION OF ELECTION COMMISSION

10.1 Reason for Inclusion of the Electoral Commission

- 10.1.1 In modern constitutional development, new institutions which enhance democracy, increase accountability and protect human rights have emerged. Many modern constitutions expressly include these institutions and give them special protection.
- 10.1.2 Democracy depends on the preservation of free and fair elections. In Jamaica, the Electoral Commission of Jamaica (ECJ) has played a critical role in the achievement and maintenance of this standard. In 1993, the Constitutional Commission recommended that the ECJ should be enshrined in the Constitution. In 1995, the JSCCER repeated and reinforced this recommendation. In 2006, Parliament passed the Electoral Commission (Interim) Act which declared that the ECJ should be entrenched in the Constitution.

10.2 Appropriate Level of Entrenchment

- 10.2.1 The Committee considered the level of entrenchment proposed in section 3 the Electoral Commission (Interim) Act.
- 10.2.2 The CRC does not consider that the Electoral Commission of Jamaica should be granted a status which is higher than the superior courts. **The CRC therefore recommends that the Electoral Commission of Jamaica be granted the same level of entrenchment as the superior courts.**

11 [INCORPORATION OF THE OFFICE OF THE PUBLIC DEFENDER]

11.1 Background to the Treatment of the Office of Public Defender

11.2 The Public Defender (Interim) Act of 2000 provides:

This Act shall continue in force until provision is made in the Constitution of Jamaica for the establishment of a Public Defender in terms which preclude the alteration of that provision otherwise than in accordance

with the procedures prescribed by or in relation to section 49 (2) of that Constitution and shall then expire.

- 11.3 The implicit undertaking to incorporate this office in our Constitution was supported by express deliberations by our political parties. This office is charged with the responsibility to investigate and recommend remedies where members of the public have been subjected to injustice or any breaches of their constitutional rights.
- 11.4 The CRC further noted that since then, the 2011 Charter of Fundamental Rights and Freedoms replaced Chapter 3 of the Constitution and made drastic changes.
- 11.5 Under the Charter, not only is the State under an obligation to promote universal respect for, and observance of human rights and freedoms but all persons are now under a responsibility to respect and uphold the rights of others recognized under the Charter. Accordingly, the functions of the Office of the Public Defender are now of greater significance.
- 11.6 **The CRC therefore recommends that the undertaking be honoured and that the Office of the Public Defender be incorporated in the Constitution with the basic functions and appointment process as stated in the current Act and be afforded the same level of entrenchment as proposed for the Electoral Commission.**

12 THE ISSUE OF THE FINAL APPELLATE COURT

- 12.1 There have been considerable discussions on the question of whether Jamaica should, at this time, abolish appeals to the Judicial Committee of the Privy Council (JCPC) and substitute the Caribbean Court of Justice (CCJ) as its Final Appellate Court. Such a change is unlikely to be achieved unless the two political parties represented in the Parliament are in support.
- 12.2 At the commencement of its work, the CRC understood the Government's position to be that the issue of the final court would be considered at a later stage while the Opposition was pressing for it to be done in the first phase of the work.
- 12.3 Since then, the Leader of the Opposition has indicated on a political platform that he will not support the reform if it excludes a determination of the final Court at this time. The position of Government remains that it should be dealt with at a later stage and that the matter be fully debated in the public sphere.

- 12.4 The CRC is of the view that these conflicting positions pose a serious risk to the success of the reform work, as the intended alteration of the constitutional provisions cannot succeed without the support of the two political parties represented in the Parliament.
- 12.5 As a way of helping to resolve the dilemma, **the CRC recommends that a meeting be held between the leaders and if no consensus emerges, the issue of which final court should be placed on the referendum ballot.**

13 THE AMENDMENT PROCESS

13.1 Jamaica's Sovereignty and Legislative competence

- 13.1.1 The power of the Parliament to provide for a new constitution is set out in the Jamaica Independence Act, 1962 and in the Constitution of Jamaica 1962 itself.
- 13.1.2 The Jamaican Independence Act declared that as from the 6th August 1962, Jamaica attained full responsible status and the Government of the United Kingdom had no further responsibility for the government of Jamaica. The legislative powers of Jamaica are also referred to in the First Schedule to this Act, which include the power to make laws having extra-territorial operation. The Act states that laws made by the Jamaican Parliament shall not be void or inoperative because of conflict with Acts of the UK Parliament or any order, rule or regulation made under such Acts of the UK Parliament.
- 13.1.3 The powers of the Jamaican legislature are stated to include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Jamaica.
- 13.1.4 The Jamaica Parliament is also empowered by section 49 of the Constitution to alter any of the provisions of the Constitution and any of the provisions of the Jamaica Independence Act, in so far as it forms part of the laws of Jamaica.
- 13.1.5 The word "alter" is defined as including "amend, modify, re-enact with or without amendment or modification, make different provisions in lieu of, suspend, repeal or add to".
- 13.1.6 Section 3 of the Jamaica (Constitution) Order in Council 1962 brought the Independence Constitution into force. The Constitution is a Schedule to this Order. The Order itself provides that Parliament may alter the provisions of the Order. *(See section 21 of the Order in Council)*

- 13.1.7 Jamaica's sovereignty and legislative competence are therefore beyond question. Hence, the recommended reforms can be made legally by applying the procedure for constitutional amendment specified in the Constitution.

13.2 The Title of the Reformed Constitution

- 13.2.1 The CRC has considered various alternatives for the title of the reformed Constitution. These include:
- i. The Jamaican Constitution;
 - ii. The Constitution of Jamaica;
 - iii. The Constitution of the Republic of Jamaica; and
 - iv. The Republican Constitution of Jamaica

- 13.2.2 **The CRC recommends "The Constitution of Jamaica" as the title to be used.**

13.3 Preparation and Issuance of Drafting Instruments

- 13.3.1 The CRC considers that this Report, accompanied by such decisions as the Cabinet may make, will provide directly or indirectly adequate bases for the Drafting Instruments.
- 13.3.2 The CRC's work has already been facilitated by the presence and participation of the Attorney-General as one of its members, and the Chief Parliamentary Counsel and Director of Law Reform as members of the Secretariat.

13.4 Preparation of a Referendum Bill

- 13.4.1 The recommendations of the CRC, if accepted, will involve a reformed constitutional instrument and the replacement of deeply entrenched provisions of the present Constitution. These will require the approval of the electorate in a referendum.
- 13.4.2 Accordingly, the Drafting Instructions should also include the preparation of a referendum law.
- 13.4.3 The CRC expects that the process to hold a referendum will be fairly straightforward, since the Electoral Commission of Jamaica already has the statutory power to conduct referenda and under the constitutional provisions, the people entitled to participate in the referendum are the registered voters.

13.5 Public Education and Engagement

- 13.5.1 It will be essential for the successful completion of this phase of the constitutional reform project that the public be sensitised to its importance and persuaded to adopt a positive attitude to the proposed reforms.
- 13.5.2 The constitutional amendment process lays down a liberal time schedule/frame for the tabling, debate and passage of the reform Bill. As provided for by the Constitution, a period of three (3) months must elapse between the tabling of the Bill and the commencement of the debate in the House of Representatives. A further period of three (3) months must elapse between the conclusion of that debate and the passing of the Bill by the House of Representatives.
- 13.5.3 This timeline allows for full public education and engagement on the content of the Bill.
- 13.5.4 Accordingly, the CRC recommends that the public education and engagement exercises should be expanded and given the support of the political leaders of the nation and all Parliamentarians.

Dated day of 20

<p>.....</p> <p>Dr Derrick McKoy</p> <p>.....</p> <p>Senator the Hon. Thomas Tavares-Finson</p> <p>.....</p> <p>Senator Ransford Braham</p> <p>.....</p> <p>Senator Donna Scott-Mottley</p> <p>.....</p> <p>Mr Anthony Hylton</p>	<p>.....</p> <p>Mr Hugh Small</p> <p>.....</p> <p>Dr Elaine McCarthy</p> <p>.....</p> <p>Dr David Henry</p> <p>.....</p> <p>Dr Nadeen Spence</p> <p>.....</p> <p>Mrs Laleta Davis Mattis</p>
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Dr the Hon. Lloyd Barnett

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Mr Sujae Boswell

.....

Professor Richard Albert

.....

Honourable Marlene Malahoo Forte
(Chairman)

.....

Ambassador Rocky Meade
(Co-Chairman)

ANNEX I - LIST OF SUBMISSIONS FROM INDIVIDUALS AND ORGANISATIONS

- i. Emile Fraser
- ii. Canute Thompson
- iii. Camaria Spaulding
- iv. Joel Nomdarkham
- v. Marlene Demercado
- vi. Phillip James
- vii. Alexander Scott
- viii. Nashay Martin
- ix. Henry C. Morant
- x. Anthony Thompson
- xi. West Indian Tribal Society
- xii. Keanu Solan
- xiii. Oshane Wright
- xiv. Stephen Linton
- xv. Anthony Atkinson
- xvi. Howard McDonald
- xvii. Seymour Greys
- xviii. Jamaica Beach Birthright Environmental Movement
- xix. Patrick W Johnson
- xx. Norman Thompson
- xxi. Nathan Newman
- xxii. Jamila Richards
- xxiii. Jamaicans for Justice (JFJ)
- xxiv. Romaine Thomas
- xxv. Randolph Rossi
- xxvi. Michael Robinson

ANNEX II - DRAFT PREAMBLES

PREAMBLE SUBMITTED BY PROFESSOR EDWARD BAUGH

We, the people of Jamaica, do hereby inscribe and enshrine in this Constitution those principles by which we assume our place in the world community of free and self-respecting peoples.

The conviction and pride with which we espouse these principles derive from the knowledge that they have evolved out of a history of endurance, struggle and sacrifice, which began in bondage and exploitation for the majority of our ancestors, but which sw, in despite of these hardships, the gradual emergence of an independent, democratic nation.

By this Constitution, and believing in the inherent dignity of all persons, we affirm our commitment to those tried and proven principles of Democracy by which the freedom of the individual is guaranteed within the context of the general good; by which all men are considered equal before the law; by which equal opportunity and social justice exist for all; and by which, having regard to our national motto "Out of Many One People", no one shall be denied these freedoms and rights on the grounds of colour, class, religious belief. By these principles, we seek to promote the well-being, material, moral and spiritual, of all citizens, and to preserve a nation secure in its commitment to those ideals which reflect our best common hopes and aspirations, believing in the idea of the brotherhood of all men, and humbly acknowledging the supremacy and beneficence of God.

PREAMBLE SUBMITTED BY THE HON. DAVID COORE Q.C.

We the people of Jamaica affirm our commitment to the preservation and steadfast observance of those principles of individual freedom and democratic Government that are our inalienable heritage.

We enjoy this heritage and hold it in trust to pass on to future generations by virtue of the struggles and sacrifices of our forefathers. They came to this land at different times, in different circumstances and from different regions of the earth, but in the majority they came in bondage from the mother continent of Africa. From these harsh beginnings has been fashioned an independent democratic nation with an honourable place in the world community of free and self-respecting peoples.

In this long journey we have been blessed with leaders of courage and vision, with artists, writers, musicians and athletes who have carried the name of our country with honour and glory throughout the world but above all with an indomitable determination through centuries of hardship and struggle to create a nation of freedom and justice.

In this Constitution we give form and substance to those tried and proven principles of democracy whereby the fruits of that struggle can be guaranteed for ourselves and future generations. While preserving the essential features of those institutions that have served us well in the past, we are conscious of our obligation to make those changes that experience has shown will better promote the material, moral and spiritual well-being of all Jamaicans and the enjoyment of the beauty and fertility with which our land and surrounding seas have been so abundantly blessed by Almighty God.

Consistent with these purposes and convinced that the time is right for the full expression of our national identity we now by this Constitution and in the exercise of our sovereign will, establish the Republic of Jamaica.

DRAFT PREAMBLE SUBMITTED BY JEFFREY MORDECAI, ATTORNEY-AT-LAW

Conscious that final power and responsibility resides in the People, we agree this Constitution and create the Republic of Jamaica to build a better Jamaica for all.

Out of Many, One People, we take pride in our Constitution and the Representative Democracy it creates as evidence of how our People by their unity of purpose can transform centuries of sacrifice, endurance and struggle, into progress.

By this Constitution we affirm our commitment to those tried and proven principles of Democracy which guarantee the inherent equality, dignity and freedom of the individual with equal respect for others and for the general good.

We recognize the contributions of our ancestors, National Heroes, leaders, artists and authors, sportsmen and women and other stalwarts and hope their example will inspire a common commitment to and participation in Jamaica's development. We also recognize that Jamaica's development must be based on the promotion, protection and preservation of the environment.

We emphasise the role to be played by our organisations and institutions, supported by a Free Press and Media, and express our determination to develop a society based on the Rule of Law which guarantees the moral, material and spiritual well being of all in Jamaica and all of Jamaica by fulfilling the call for One Love, One Unity under God.

PREAMBLE SUBMITTED BY SENATOR RYAN G. PERALTO

“Out of many one people” describes most aptly the mixture of ethnic strains which have mingled and blended to create this island nation.

Cognizant of this rich heritage, which has sired and nurtured the Jamaican people, bonding us in our struggles to establish a just, free, fair and noble society;

Recognizing the variety of cultural social and economic origins from which our fore-bears migrated or were brought in bondage to this land;

Being ever mindful that these people become as one, united in the struggle to survive, which gave birth to this nation;

Reaffirming our pride in our history, of courage, vision, and commitment, displayed by our leaders and our people, with honor and dignity through centuries of hardship;

We, by this Constitution, do hereby declare certain fundamental principles and procedures, in order to preserve for this and future generations inalienable Rights and Freedoms which the dignity of man deserves as intended by the Creator, and for which generations of our people. Agitated, fought and died to create a homeland.

To this purpose, we the people do hereby declare this Constitution as our Sovereign Will, as we establish the Republic of Jamaica.

PREAMBLE SUBMITTED BY THE HONOURABLE SIR PHILIP SHERLOCK, O.J.

WHEREAS the passage of time and the cumulative experience in the management of the nation's affairs have made it necessary to amend, change and add to the Constitution of Jamaica, and

WHEREAS Jamaica is the second black country in the Western Hemisphere to achieve independence, and by reason of its history is closely and indissolubly linked with the West African people, and with the Afro-American people whose origins lie in the African diaspora, and

WHEREAS Jamaica's Freedom and independence were achieved in the course of three centuries of liberation struggles, civil rights uprisings, and the rejection of a racial ideology,

AND WHEREAS European domination was rooted in the doctrine of African inferiority, the denigration of Africa and the inculcation of self-contempt in people of African origin,

IT THEREFORE becomes necessary to set forth in this preamble to the reformed Constitution certain of the guiding principles enshrined therein, these being:

- (a) the affirmation that Jamaica is predominantly a black nation, that the great majority of its people are of African origin, and that their history dictates that national consciousness also means racial consciousness
- (b) the claiming likewise of a European heritage;
- (c) the cultivation of respect for, and appreciation of, the cultures of the Jews, Arabs, Indians and Chinese who have enriched and added quality to the Jamaican way of life
- (d) the recognition that for three centuries it was their black ancestors and not the European rulers, who preserved the passion for freedom and for justice, and that in consequence the Jamaican people are committed to the principle of preliminary democracy, accepted the importance and value of the individual human being,

regardless of race, colour, creed and gender and express this commitment through a system of universal adult suffrage in which every Jamaican citizen over the age of eighteen has the right to vote by secret ballot;

- (e) The recognition that by reason of their record of achievement and of triumph over the denial of the rights of personality, the Jamaican people set great value on protecting and preserving, by all means in their power, the principles of freedom, equal justice for all, equality of opportunity, freedom of conscience and association, freedom of speech, the right of access for all to educational and training opportunities, protection for children, the underprivileged and the handicapped.

Underlying these aims is the belief, validated by their history in the capacity of the Jamaican people to govern themselves as an independent nation. The Constitution memorialises these achievements and is the people's pledge to their ancestors. From tribulation the people harvested triumph.

PREAMBLE SUBMITTED BY DR THE HON. LLOYD BARNETT

We, the citizens of Jamaica, acknowledge the blessed gift of a beautiful island home of brilliant sun, verdant fields, meandering streams and lofty mountains,

We acclaim the sacrifice and struggles made by our National Heroes, freedom fighters and dedicated brothers and sisters to secure our achievement of liberty and nationhood,

We now proclaim, publish and promote this Constitution of the Republic of Jamaica as an instrument for the promotion of a society of law and justice, human rights, good neighbourliness and peace, the promotion of democracy and the advancement of human dignity,

Accordingly, as from now the following provisions shall have effect as the Constitution of the Republic of Jamaica.

PREAMBLE SUBMITTED BY RANDOLPH ROSSI

We the People of Jamaica, in order to form a more unified and just society, ensure domestic peace and prosperity, provide for the national defense, promote the welfare of our society, and secure the blessings of a Republic's Liberty and Sovereignty to ourselves and our posterity, proclaim Jamaica a Sovereign Nation, and hereby ordain this Constitution as the governing Constitution of Jamaica to enshrine the inalienable rights and fundamental freedoms of the individual, and of the People of the Nation as a whole.

This Constitution shall be the supreme law of Jamaica, and it shall abolish the *Order in Council 1962* and its form of Government. We the People of Jamaica declare Jamaica a Constitutional Democracy, instituting a Representational Democratic form of Governance; we Declare ourselves a Nation indivisible, indissoluble, and a Nation where the rule of law is the governing principles of the Nation. Any other law that is inconsistent with this Constitution, this Constitution shall prevail and the inconsistent laws, shall be null and void.