



## **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**

#### **37<sup>th</sup> Meeting of the Constitutional Reform Committee (CRC)**

**Venue: Ministry of Legal and Constitutional Affairs**

**Date: April 26, 2024**

**Time: 11:00am**

### **AGENDA**

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Minutes
6. Review and Adoption of the Report of the CRC (cont'd)
7. Any Other Business
8. Adjournment

## **ATTENDEES**

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- 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) *via video link*
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Mr Sujae Boswell (Youth Advisor) *via video link*
- 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 Cheryl Bonnick-Forrest, Senior Director, Strategic Planning
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Mr Makene Brown, Legal Officer

## **1. CALL TO ORDER**

- 1.1. The meeting was called to order at 11:00am by the Chairman, the Hon. Marlene Malahoo Forte.

## **2. PRAYER**

- 2.1. Prayer was offered by Dr David Henry.

### **3. NATIONAL PLEDGE**

- 3.1. The National Pledge was recited.

### **4. APOLOGIES FOR ABSENCE/LATENESS**

- 4.1. An apology for absence was received from Mr Sujae Boswell who indicated that he would be travelling.

### **5. CONFIRMATION OF AGENDA**

- 5.1. The Agenda was confirmed without amendment on a motion by Dr Henry and seconded by Dr McCarthy.

### **6. CONFIRMATION OF MINUTES**

- 6.1. Confirmation of the Minutes of the 35<sup>th</sup> and 36<sup>th</sup> Meetings of the Constitutional Reform Committee was deferred to provide Members with the time to efficiently review the draft Report of the Committee.

### **7. REVIEW AND ADOPTION OF THE REPORT OF THE CONSTITUTIONAL REFORM COMMITTEE (CONT'D)**

- 7.1. Led by the Chairman and assisted by Dr Barnett, the Members of the Committee reconvened their review of the draft Report appended hereto as revised and dated April 26, 2024, proposing amendments where necessary.

*Lunch Break at 1:50pm*

*Meeting resumed at 2:35pm*

- 7.2. Having reviewed each section, the Chairman then invited each Member to indicate whether he or she was in agreement with the recommendations.
- 7.3. On the proposal of the Chairman, the Members agreed that the revised Report of the CRC was to be printed as adopted by the Committee save for those matters on which positions were to be further considered.

**8. ANY OTHER BUSINESS**

8.1. There was no other business.

**9. DATE AND TIME OF NEXT MEETING**

9.1. The Chairman indicated that the next meeting of the Committee will be held on Wednesday, May 1, 2024 to facilitate the official signing of the Report.

**10. ADJOURNMENT**

10.1. There being no other business, the meeting was terminated at 5:11pm on a motion by Mr Anthony Hylton and seconded by Dr Elaine McCarthy.

# 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, K.C., JP, M.P. (Chairman)
- ii. Ambassador Rocky Meade, C.D., JP, PhD. (Co-Chairman – Office of the Prime Minister)<sup>1</sup>
- iii. Dr Derrick McKoy, C.D., K.C. (Attorney General of Jamaica)
- iv. Senator the Hon Thomas Tavares-Finson, O.J., C.D., K.C. (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- v. Senator Ransford Braham, C.D., K.C. (Government Senator)
- vi. Senator Donna Scott-Mottley (Parliamentary Opposition – Senate)
- vii. Mr Anthony Hylton, C.D., M.P. (Parliamentary Opposition – House of Representatives)

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

- viii. Mr Hugh Small, K.C. (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- ix. Dr the Hon Lloyd Barnett, O.J. (National Constitutional Law Expert)
- x. Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin)<sup>2</sup>
- xi. Dr David Henry (Wider Society – Faith-Based)
- xii. Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- xiii. Mrs Laleta Davis Mattis, C.D., JP (National Council on Reparations)
- xiv. Mr Sujae Boswell (Advisor on Youth Strategic Engagement)
- xv. Dr Elaine McCarthy (Chairperson – Jamaica Umbrella Groups of Churches)<sup>3</sup>

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

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<sup>2</sup> Professor Richard Albert is a Canadian of Jamaican and wider Caribbean ancestry.

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

- 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 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.

1.2.3 The CRC has taken note that the Green Paper<sup>4</sup> 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 JSSCER in 1995." It further

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<sup>4</sup> Green Paper 1/2007 on Constitutional Reform Issues dated May 29, 2007

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 the constitutional reform process; 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 (“the Constitution”) 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 (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 (Chairman of the CRC) and Dr the Hon. Lloyd Barnett (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 **In conjunction with the Townhall Meetings**, stakeholder sensitization sessions were ~~also convened~~ conducted 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~~ over two thousand (2000) civil servants across thirty-eight (38) Ministries Departments and Agencies 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 and television programmes that were aired on stations including RJR, IRIE, MELLO, KOOL, LOVE 101, FYAH, EDGE, POWER 106, FAME, GOSPEL JA **Nationwide News Network**, Rebel Radio Jamaica 1 (USA), **TVJ and CVM**. It also supported the production of a 30-second Public Service Announcement and a Jingle.

2.2.9 The CRC also partnered with the Jamaica Association for Debate for Empowerment (JADE) and the Advocates Network to host an inter-high school debate competition called “FiWi Republic” on the creation of the Jamaican Republic.

2.2.10 The CRC also partnered with several groups to facilitate workshops, plenaries, debates, consultations and presentations on relevant matters of constitutional reform. A list of these groups is attached as Annex #

2.2.11 The CRC received submissions from twenty-six (26) individuals and organisations<sup>5</sup>; and heard in-person presentations from eight (8) stakeholders, namely:

- i. Mr Carvel Stewart;
- ii. The Jamaica Language Unit, University of the West Indies
- 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
- viii. Citizens Action for Free and Fair Elections (CAFFE); and
- ix. The Jamaican Bar Association (JAMBAR)

2.2.12 The CRC also established a dedicated website ([www.roadtorepublic.mlca.gov.jm](http://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](mailto:constitutionalreform@mlca.gov.jm)) to facilitate the receipt of submissions from and responses to the public on matters related to constitutional reform.

2.2.13 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”<sup>6</sup> OF THE CONSTITUTION

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<sup>5</sup> A List of the individuals and organisations who made submissions to the CRC can be found at Annex 1

<sup>6</sup> 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

### 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 England<sup>7</sup> on the 23<sup>rd</sup> 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 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 Jamaican republic 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

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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).

<sup>7</sup> 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 11<sup>th</sup> January, 1962 and Barnett, L. G. (1977). *The Constitutional Law of Jamaica*. Oxford University Press: Factors in Constitution Making (pp. 24-25).

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 echo our heritage and proclaim the aspirations of the nation”<sup>8</sup>.**
- 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 III.

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<sup>8</sup> See paragraph 9.1 of the Report of the Constitutional Commission Jamaica (August, 1993)

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.]

3.2.6 [The CRC therefore recommends that:

- (a) An invitation be extended to the public to submit Preambles which they consider appropriate;
- (b) That the time for the submission of such proposed Preambles be limited to # days;
- (c) The selection of the Preamble be by means of a public poll]

### 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 common name);
- ii. National Flower (scientific and common name);
- iii. National Fruit (scientific and common name); and
- iv. National Bird (scientific and common 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 Schools<sup>9</sup> (quoted in full).

3.3.2 The CRC has taken note of the expressions of concern as to the suitability of the present Coat of Arms as representative of Jamaica's cultural identity. It therefore recommends that the Coat of Arms should be re-examined to assess its appropriateness for inclusion in the Constitution.

3.3.3 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.

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

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<sup>9</sup> For the beginning and end of school term and all other special occasions.



~~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. The CRC therefore recommends that the interpretation section (now section 1), be moved to the concluding section of the Constitution.~~

#### ~~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 [doctrine] of the UK Interpretation Act should not be retained but that the relevant and appropriate provisions of the Jamaica Interpretation Act, 1968 be adopted.**

3.5.2 ~~Accordingly, the~~ The CRC **further** recommends that the provisions of the Interpretation Act which ~~that~~ are to apply to the interpretation of the reformed Constitution should be given the same level of protection as is given to the provision of the Constitution to which they apply.

### 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:~~ in the context of Jamaica’s transition from a Constitutional Monarchy to a Republic. The phrase, “The People and Parliament of Jamaica” was proposed as a replacement for the existing words of enactment.

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.~~

3.6.5 The CRC considered that merely stating “The People and Parliament of Jamaica”, without more, would not allow for accuracy in the words of enactment. Accordingly, **the CRC recommends that where the Bill is one which requires the approval of the people in a referendum, the words of enactment should refer to “The**

**Parliament and People<sup>10</sup>". In other cases, the words of enactment would simply refer to "The Parliament of Jamaica".**

**3.6.6 The CRC further recommends that effect should be given to this recommendation by the passing of an Act prior to the tabling of the Bill for the establishment of the reformed Constitution.**

3.6.7 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~~ **Jamaica's form of government to be a constitutional Monarchy where our Sovereign is the King of England.** 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~~ **not be a hereditary Monarch from a foreign country. Instead, the Head of State should be chosen by a process which reflects unity and projects patriotism; and enables the holder to embody certain high ideals and values of nationhood.**

4.1.2 Accordingly, **the CRC recommends as a major alteration to our constitutional provisions that the British Monarch should be**

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<sup>10</sup> "The People" mean...

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 is to symbolise Jamaica's sovereignty, nationality and unity.

- 4.1.3 ~~Consequently,~~ **Accordingly,** the CRC further recommends ~~as a major alteration to our constitutional provisions,~~ **at this time,** 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~~ **result in** the establishment of the Republic of Jamaica ~~and the creation of the new Office of President as Head of State,~~ **and the President of the Republic as Jamaica's new Head of State.**
- 4.2.2 During discussions within the CRC, as well as in **other fora** in the public domain, considerable attention was given, ~~across in various debates,~~ to the type of President that would be best suited for Jamaica's transition to a republican form of government. Several persons advocated for the adoption of a President, who is directly chosen by the people in a national election.
- 4.2.3 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~~ **and weighed the arguments presented in the call for what would essentially be the adoption of the executive presidential system, while maintaining stability in Jamaica's democracy and ensuring that the holder of the Office of the President reflects and embodies the stated ideals and values. In the end, the**

CRC concluded that it would not benefit Jamaica, at this time, to adopt the executive Presidential System.

4.2.4 Accordingly, the CRC recommends the establishment of a non-executive President as the formal Head of State of the Republic of Jamaica where the holder does not only perform ceremonial functions but in whom is vested certain executive powers which do not involve the day-to-day administration of government.

4.2.5 This model for Head of State is above partisan politics, one with which Jamaicans are already familiar and would enable the officeholder to embody the stated ideals and values set out above at paragraphs 4.1.1. and 4.1.2. The factors taken into account in making this recommendation are summarised 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 the President of the Republic of Jamaica are that it should be the embodiment of national identity, national unity and a neutral arbiter for the nation.

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 selection of 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.** be done through a two (2) stage process of nomination and confirmation. Nomination is to be done by the Prime Minister, after consultation with the Leader of the Opposition

with a view to arriving at consensus. Confirmation is to be done by the Parliament, in a symbolic joint sitting of both Houses, where each House votes separately by secret ballot. The vote required to confirm the nominee is an affirmative vote of two-thirds ( $\frac{2}{3}$ ) majority.

**4.3.3 The CRC further recommends, as an exception, that where there is no consensus between the Prime Minister and the Leader of the Opposition, each should be empowered to make a separate nomination for confirmation by the Parliament in a joint sitting of both Houses where each House votes separately by secret ballot. However, instead of an affirmative vote of two-thirds ( $\frac{2}{3}$ ), the successful nominee would, in this case, be confirmed on the vote of the absolute majority of each House.**

4.3.4 This exception, which allows for separate nominations and confirmation without a supermajority vote, takes into account political realities in our democratic system of governance. While it makes an important concession, it takes the system back to its default of majority-rule which facilitates efficiency in decision-making and prevents gridlock.

#### 4.4 Required Qualifications

4.4.1 **The CRC having** considered the qualifications which should be prescribed for the holder of the Office of the President **recommends that the President he or she must:**

- i. **be a Jamaican citizen by 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~~ **be ordinarily resident in Jamaica and be permanently in Jamaica for at least ten (10) of the last fifteen (15) years preceding nomination;**

- 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~~ **In including the criterion of citizenship by descent as a qualification for selection as President of the Republic of Jamaica, 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 the Office **President as Head of State, which is the highest office in the nation, and given that** the span of a generation is approximately twenty (20) to thirty (30) years, ~~there is a need for the nominee to establish sufficient connection to Jamaica. It is necessary for the nominee to satisfy a stricter standard in representing the nation that mere citizenship by descent~~ the CRC considered it of vital importance that a nominee to this Office establish a stricter connection to Jamaica.

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.~~ **the CRC recommends that the criterion of citizenship by descent should be limited to three (3) generations.** In this case, the nominee would be considered the first generation, the parent of the nominee the second generation and the grandparent of the nominee the third generation. Therefore, the nominee's entitlement to citizenship by descent would be derived from the 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.~~ **Given the high sense of responsibility, sufficient range of skills, exposure and experiences that would be required for the Office of the President, the CRC recommends the age of thirty-five (35) as the minimum for eligibility for nomination to hold the Office.**

#### 4.5 Functions and Powers

##### 4.5.1 **Nature of Current Powers**

4.5.1.1 ~~The CRC has taken note of the fact that under the present Constitution~~ **noted that the Governor-General exercises a range of powers and duties not only performs ceremonial duties but exercises a range of functions specifically set out in the Constitution and other laws. These may be divided into the following five categories:**

4.5.1.1.1 ~~Constitutional Powers exercisable in the Governor-General's own discretion;~~

4.5.1.1.2 ~~Constitutional Powers exercisable on the advice of the Cabinet or a responsible Minister on the authority of the Cabinet~~

4.5.1.1.3 ~~Constitutional powers exercisable by the Governor-General on the advice of another functionary;~~

4.5.1.1.4 ~~Constitutional powers exercisable by the Governor-General following consultation with one or more functionaries; and~~

4.5.1.1.5 ~~Specific statutory powers~~

4.5.1.2 ~~The general rule under the present Constitution is that, in the exercise of the executive authority of Jamaica, the Governor-General acts in accordance with the advice of~~



the Cabinet or a responsible Minister acting under the general authority of the Cabinet in relation to his powers and duties under the Constitution or any other law<sup>11</sup>.

4.5.1.3 The Governor-General is also constitutionally empowered to act in his own discretion, or:

- i. on the recommendation of any person or authority other than the Cabinet and in accordance with such recommendation;
- ii. on the advice of any person or authority other than the Cabinet;
- iii. with the concurrence of any person or authority other than the Cabinet;
- iv. after consultation with any person or authority other than the Cabinet; or
- v. by or under any other law<sup>12</sup>.

4.5.2 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 be exercised by the President of the Republic of Jamaica under the reformed Constitution.**

4.5.3 **The CRC also recommends that in the reformed Constitution, the Jamaican Privy Council be renamed the “President’s Council”, while retaining the same functions and powers.**

#### 4.6 Tenure of Office

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<sup>11</sup> See section 32(1) and (6) of the Constitution

<sup>12</sup> “Law” is defined at section 1 of the Constitution as, “any instrument having the force of law and any unwritten rule of law.”

4.6.1 **The CRC recommends that the term of the Office of the President of the Republic 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 the President, in the event of a change in political administration.

4.6.2 **The CRC also recommends that the appointment for a second term should be confirmed by the Parliament in a manner similar to the original appointment using the same process for the original appointment as set out above at paragraph 4.3.2.**

4.6.3 **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 to complete the process of selection in sufficient time to ensure a smooth transition and formal hand-over.**

#### 4.7 Immunities

4.7.1 **In considering whether and to what extent protection from suit and prosecution should be granted to the President, within the Jamaican context, the CRC examined a number of provisions in other constitutions and concluded that such protection was necessary in specified circumstances to preserve the high standing of the Office.**

4.7.2 **The CRC is of the opinion ~~Consequently, the CRC recommends~~ that the President should be granted immunity from suit and prosecution 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 treason, treason, fraud and/or violence committed during the term of office.

4.7.3 **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. ~~The CRC recommends that in granting immunity~~ and any period of limitation prescribed by law should not include the period served as President in calculating or determining the time within which proceedings may be brought against the office-holder.**

#### 4.8 Resignation

4.8.1 ~~Section 137 of the Constitution provides for a general resignation process. However, this section does not specify the Office of Governor-General.~~ **makes provision for the resignation of any person who is appointed, elected or selected to any office established by the Constitution (including the Office of the Prime Minister or other Minister or Parliamentary Secretary); and specifies the process by which such resignation would take effect. Since the section does not specify the Governor-General, the CRC recommends that the provision be modified in the reformed Constitution to specifically provide for the resignation of the President of the Republic of Jamaica and the process by which such resignation would take effect.**

4.8.2 ~~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 further recommends that the instrument of resignation of the President be addressed to the Speaker of the**

**House of Representatives and President of the Senate with copies sent to the Prime Minister and Leader of the Opposition.**

#### 4.9 Temporary Vacancies

4.9.1 **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 with the concurrence of the Leader of the Opposition. ~~Members felt that this approach was ideal as it allowed for expediency and efficiency of process.~~ **The CRC is of the opinion that this approach allows for expediency and efficiency in making an appointment in the circumstances.**

4.9.2 ~~In the event that~~ **The CRC further recommends that where there is no concurrence between** 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.

#### 4.10 Termination of Appointment

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

4.10.2 **The CRC recommends that the President should be removed from Office where it is found that the President:**

- 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 foreign power.

**4.10.3 The CRC further recommends that the process to remove the President from office be as follows:**

- i. commenced by a motion setting out the full particulars on which the removal is to be grounded which is tabled in the Parliament at a joint sitting of both Houses, and carried by a vote of two-thirds ( $\frac{2}{3}$ ) majority of the Parliament at a joint sitting of both Houses with each House voting separately by secret ballot;
- ii. followed by the establishment of an *ad hoc* Parliamentary Committee drawn from members of both Houses to investigate the complaint and report on the facts to the Parliament within six (6) months after hearing witnesses and/or reviewing evidence;
- iii. the tabling of the report of the *ad hoc* Parliamentary Committee to the Parliament at a joint sitting of both Houses and debate to follow;
- iv. where it is reported that the ground for removal has been established, the President shall be removed on the passing of a resolution carried by a vote of two-thirds ( $\frac{2}{3}$ ) majority of the Parliament at a joint sitting of both Houses with each House voting separately by secret ballot.

4.10.3.1 On the approval by the Parliament of the motion referred to above at paragraph 4.10.3 i, **the President shall cease to exercise the functions of Office and an interim President appointed, in the manner set out below at**

**paragraph 4.10.3.4, until the matter is finally determined.**

4.10.3.2 *The ad hoc* Parliamentary Committee referred to at paragraph 4.10.3 ii shall 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 removed from the Office based on the nature of the allegations and the findings of the Committee.

4.10.3.3 **The time within which the Report of the *ad hoc* Parliamentary Committee referred to above at paragraph 4.10.3 iii is tabled may be extended for a further period not exceeding six (6) months on the passing of a motion carried by a vote of the absolute majority of the Parliament at a joint sitting of both Houses with each House voting separately by secret ballot.** The motion to extend the time shall be accompanied by an interim report.

4.10.3.4 On the acceptance by the Parliament of a recommendation validly made to remove the President, the Office of the President shall become vacant. Until the process to appoint a new President, as provided for above at paragraph 4.3.2, is complete, an interim President shall be appointed in the following manner:

- i. by the Prime Minister with the concurrence of the Leader of the Opposition; or

- ii. where there is no concurrence between the Prime Minister and the Leader of the Opposition by the Prime Minister from among the Custodes.

**4.10.4 The CRC further recommends that the proceedings related to the removal of the President from Office should not prejudice any other proceedings on the matter being dealt with external to the Parliament.**

## **5 RETENTION OF THE PARLIAMENTARY CABINET SYSTEM**

### **5.1 Comparison of the Parliamentary Cabinet System and the Presidential System**

5.1.1 A Parliamentary Cabinet System of government 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.

5.1.2 A presidential form of government, on the other hand, 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 the Head of the executive government. Matters of State and politics are usually intertwined.

5.1.3 The following table below highlights the key differences considered by the CRC between the two (2) systems of government:

<b>Feature</b>	<b>Parliamentary Cabinet System</b>	<b>Presidential System</b>
<b>Executive Head</b>	Prime Minister, who is typically selected from among Members of Parliament	President, who is elected separately from the legislature
<b>Separation of Powers</b>	No clear separation between executive and legislative branches	Clear separation of powers between executive and legislative branches
<b>Selection of Executive</b>	Chosen from the majority party or coalition in Parliament	Elected directly by the people or through an electoral college
<b>Cabinet Composition and Accountability</b>	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
<b>Term of Office</b>	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
<b>Checks and Balances</b>	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
<b>Stability and Decision-Making</b>	Provides stability, offers flexibility and greater decisiveness	Often leads to gridlock



5.1.4 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 constitutions have been unstable democracies or authoritarian regimes<sup>13</sup>.”

5.1.5 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.

5.1.6 In the Stone Committee Report<sup>14</sup> 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

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<sup>13</sup> Juan J Linz, “Democracy: Presidential or Parliamentary Does It Make a Difference” Yale University, July 1985

<sup>14</sup> Carl Stone, Ministry Paper No. 11 (1990) Kingston: Office of the Prime Minister

treated as models for having operated the presidential system successfully are Venezuela, Chile, Brazil, Argentina, Uruguay and Peru. We have seen since then that these countries that we were being asked to emulate have experienced severe political turmoil or constitutional crises.

5.1.7 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 Currently, section 39 of the Constitution:

- 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 JSCCER in its assessment of section 39 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 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<sup>15</sup>.**

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<sup>15</sup> See Para under citizenship

**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 protect<sup>16</sup>”

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.**

## 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

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<sup>16</sup> **Abraham Dabdoub v Daryl Vaz, Carlton Harris and the Attorney-General of Jamaica** SCCA No. 45 and 47 of 2008 at paragraph 68

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 because a fixed date introduces greater certainty as to when elections are held. However, 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.

6.4.3 Accordingly, **the CRC recommends that the life of the Parliament remains as is currently provided for. In the event there is consensus between the two (2) political parties represented in the Parliament, the life of the Parliament should be fixed at five (5) years 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 not<sup>17</sup>.**

**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 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 any need for 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.

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<sup>17</sup> Adapted from section 20(2)(c) of the 1962 Constitution of Jamaica

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 the President's 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 vacant<sup>18</sup>.

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 to remove, suspend, reappoint or reinstate any person appointed in exercise of the power.*”<sup>19</sup>

7.2.3 While this provision does not apply to the Constitution, the principle is clear. Furthermore, in light of the recommendation set out above

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<sup>18</sup> 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

<sup>19</sup> Jamaica Interpretation Act, 1968, section 35



at paragraph 3.5, 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 Caribbean<sup>20</sup> 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 (1) 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.**

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<sup>20</sup> [CARICOM Constitutions]

## 9 CITIZENSHIP

### 9.1 Modification of the Citizenship Provisions

9.1.1 In light of the recommendation made at paragraph 6.1.8, **the CRC further recommends that any other matter that deals with the treatment of 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 the 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 6<sup>th</sup> 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.





**ANNEX I**

## **ANNEX II - 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 III - 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.