



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

39th Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: May 3, 2024

Time: 10:00am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Opening Remarks
6. Signing of the **Report of the Constitutional Reform Committee on the Jamaicanisation of the Constitution, Transition to the Republic of Jamaica and Related Matters** (with photo op)
7. Any Other Business
 - a. Timelines
 - b. Media Engagement (PEC)
8. Date and Time of Next Meeting
9. Adjournment

ATTENDEES:

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)
- Senator Hon. Thomas Tavares-Finson, OJ, CD (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- Senator Ransford Braham, CD, KC (Government - Senate)
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- 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) *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 Nastacia McFarlane, Director, Corporate Communications and Public Relations
- Mr Makene Brown, Legal Officer
- Ms Winston Lowe, Public Relations Officer

1. CALL TO ORDER

- 1.1.** The meeting was called to order at 10:59am by the Chairman, the Hon. Marlene Malahoo Forte at 10:59am when quorum was achieved.

2. PRAYER

- 2.1.** Prayer was offered by Dr Lloyd Barnett.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE/LATENESS

- 4.1. An apology for absence was received from Mrs Laleta Davis Mattis.
- 4.2. Apologies for lateness were tendered on behalf of Senator Tom Tavares-Finson, Mr Anthony Hylton and Dr Elaine McCarthy.

5. OPENING REMARKS

- 5.1. The Chairman thanked Members for their contribution to the process and noted that the meeting was not intended to deal with substantive matters but to enable Members to sign the Report of the Constitutional Reform Committee (CRC) as adopted and dated May 3, 2024 appended hereto.

6. SIGNING OF THE REPORT OF THE CONSTITUTIONAL REFORM COMMITTEE ON THE JAMAICANISATION OF THE CONSTITUTION, TRANSITION TO THE REPUBLIC OF JAMAICA AND RELATED MATTERS

- 6.1. Prior to the signing of the Report, the Chairman noted that several concerns were raised regarding the title of the Report and the need to include transitional arrangements for the establishment of the Office of the President of the Republic. She also noted the concern raised by Senator Scott-Mottley in the CRC WhatsApp group regarding a proposal to include a provision enabling the person who recommended the appointment of a Senator to also be empowered to recommend that his or her seat may become vacant.
- 6.2. These matters were considered and robustly discussed after some Members either raised apprehension following further reflection or highlighted their absence during earlier substantive discussions.
- 6.3. Regarding transitional arrangements, it was agreed that a recommendation for the incumbent Governor-General to hold the Office of the President until a new President was selected should be included in the Report.

- 6.4. On the matter of the vacancy in the Senate, it was agreed that the proposal be removed from the Report and substituted with an express non-recommendation in the absence of consensus.
- 6.5. The Chairman then enquired whether there should be a long and short title to the Report. Following discussions, it was agreed that the title of the Report be changed to **“Report of the Constitutional Reform Committee on the Transition to the Republic of Jamaica and other matters.”**
- 6.6. The Chairman then conducted a poll among Members to determine whether there were any other matters to be considered prior to signing. There being no other matter, Members moved to sign the Report.

7. ANY OTHER BUSINESS

- 7.1. There was no other business.

8. DATE AND TIME OF NEXT MEETING

- 8.1. The Chairman indicated that the next meeting of the Committee would be held on Wednesday, May 8, 2024.

9. ADJOURNMENT

- 9.1. There being no other business, the meeting was terminated at 1:44pm on a motion by Dr Elaine McCarthy and seconded by Dr Nadeen Spence.

1. INTRODUCTION

1.1 Establishment

1.1.1 On March 1, 2023, a Constitutional Reform Committee (the “CRC”) was established to provide expert guidance to the Government and the people of Jamaica during a phased constitutional reform process. This process is aimed, among other things, at implementing the Recommendations of the 1995 Joint Select Committee on Constitutional and Electoral Reform (JSCCER) on 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, MP** (Co-Chairman - Minister of Legal and Constitutional Affairs)
- ii. Ambassador **Rocky Meade, C.D., JP, PhD.** (Co-Chairman – Office of the Prime Minister)¹
- 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 - Senate)
- vi. Senator **Donna Scott-Mottley** (Parliamentary Opposition – Senate)
- vii. **Mr Anthony Hylton, C.D., M.P.** (Parliamentary Opposition – House of Representatives)

¹ 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)²
- 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)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, as follows:

Ministry of Legal and Constitutional Affairs

- i. Mr Wayne O. Robertson, JP - Permanent Secretary
- ii. Ms Nadine Wilkins - Director, Legal Reform Department
- iii. Ms Judith Grant - Chief Parliamentary Counsel, Office of the Parliamentary Counsel
- iv. Mrs Janelle Miller-Williams - Senior Director, Legal Education
- v. Ms Nastacia McFarlane - Director, Corporate Communication and Public Relations

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

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

- 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

Ministry of Foreign Affairs and Foreign Trade

- xv. Ambassador Sheila Sealy Monteith, C.D., JP -
Permanent Secretary

1.2 Terms of Reference (ToR)

- 1.2.1 The CRC has been charged, as stated in its 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 on Constitution Reform Issues⁴ that was tabled in Parliament in May, 2007, stating that “*there should be brought to Parliament a legislative instrument establishing a new Constitution which will reflect the consensus that exists,*” 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 the Embassy of Jamaica in Washington, DC and the Jamaica High Commission in London for organising and hosting engagements with the Diaspora; and 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

⁴ Green Paper 1/2007 (May 29, 2007)

questions, proposals and ideas from the Jamaican public on the 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 the 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 Senator Ransford Braham (Government - Senate).

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-eight (38) 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 Alongside the Town Hall Meetings, stakeholder sensitization sessions were conducted in the parishes of St James, Manchester, Portland and Westmoreland, with participants 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 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. 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; and which also 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 materials⁵ on constitutional reform, the phases of the constitutional reform process and the transition from a Monarchy to a Republic were created and widely disseminated.

⁵ IEC materials

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. The CRC 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) to host a series of competitions, to include debates between the University of the West Indies (Mona) and the University of Technology (Jamaica); among high, preparatory and primary schools.

2.2.10 The Chairman of the CRC, with the assistance of the Ministry of Foreign Affairs and Foreign Trade, also engaged with members of the Diaspora in the United Kingdom and the United States of America.

2.2.11 The CRC collaborated with several groups to facilitate workshops, plenaries, debates, consultations and presentations on matters related to constitutional reform and governance.

2.2.12 The CRC received submissions from twenty-six (26) individuals and organisations⁶; and heard in-person presentations from eight (8), as follows:

- i. Mr Carvel Stewart;
- ii. The Jamaica Language Unit, University of the West Indies

⁶ A List of the individuals and organisations who made submissions to the CRC can be found at Annex I

- iii. Jamaica Left Alliance for National Democracy and Socialism (Jamaica LANDS)
- iv. The National Democratic Movement (NDM)
- v. The Advocates Network
- vi. We the People Republic JA
- vii. Citizens Action for Free and Fair Elections (CAFFE);
and
- viii. The Jamaican Bar Association (JAMBAR)

2.2.13 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.

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

3. “JAMAICANISATION OF THE CONSTITUTION”⁷

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

⁷ In the context of this constitutional reform work the phrase “Jamaicanisation of the Constitution” (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).

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 England⁸ 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 statement in the Green Paper set out earlier at paragraph 1.2.3. that a new legislative instrument should be brought to the Parliament.

3.1.3 Accordingly, consistent with the goals being pursued in Phase 1, as set out in the ToR, **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 government should be abolished, the King of England removed as our Head of State and the Republic of Jamaica⁹ established.**

3.1.5 Consistent with the imperative to Jamaicanise our Constitution, the CRC is firmly of the view that the reformed Constitution must be deeply grounded in the cultural fabric of the nation, ensuring that it resonates with and is accessible

⁸ On a point of historical accuracy, it should be noted that the Independence Constitution was primarily formulated and drafted in Jamaica with the assistance of the Colonial Office. 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).

⁹ For all intents and purposes the name of the State will remain as "Jamaica" and will mean, among other things, the "Republic of Jamaica".

to all 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. Many constitutions have Preambles which inspire national pride and unity; and 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 1991 Constitutional Commission called for a suitable Preamble to be included in the reformed Constitution “...*in poetic and resonant tones which echo our heritage and proclaim the aspirations of the nation*¹⁰”.

3.2.4 Five (5) proposed Preambles were appended to the 1995 JSCCER Report but no selection was made. The CRC has received an additional three (3).

3.2.5 The CRC has considered all of the proposals, but has not been able to arrive at a consensus that any of them should be adopted. As a method of resolving this issue, **the CRC**

¹⁰ See paragraph 9.1 of the Report of the Constitutional Commission Jamaica (August, 1993)

recommends that a committee of experts comprising Mr Vivian Crawford- the immediate Former Director of the Institute of Jamaica, Dr Olive Senior or Lorna Goodison, C.D. - a Poet Laureate and a Professor of the Language Department of the University of the West Indies be established and authorised to examine and adapt, where necessary, the preambles, to recommend the selection of the version to be adopted in the reformed Constitution. The proposed preambles considered by the CRC are all attached to this Report as **Annex II**.

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 as set out at Annex III.**

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 (updated and quoted in full)¹¹.

3.3.2 The CRC has also taken note of the expressions of concern as to the suitability of the present Coat of Arms as representative of Jamaica's cultural identity. **The CRC therefore recommends that the Coat of Arms should be examined to assess the appropriateness of its present form.**

3.3.3 **The CRC further recommends that, at the level of the Constitution, the intellectual property in the National Emblems be vested in the State in perpetuity; and that Parliament be empowered to pass laws to regulate their use and guard their misuse.**

3.4 **Reform of Presentation of the Constitution**

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 the concluding section of the Constitution.**

¹¹ This prayer is intended for use on special occasions. The update replaces references to "our Queen" and "our Governor-General" with "our President," "Ministers of State" with "Ministers of Government" and includes "the Leader of the Opposition" and "our Judges" covering all three (3) organs of the State.

3.4.3 Additionally, **the CRC recommends that provisions of the Constitution, as the highest law, should be referred to as “articles” instead of “sections”.**

3.5 Inclusion of the 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 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 CRC further recommends that the provisions of the Interpretation Act 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 in the context of Jamaica’s transition from a Constitutional Monarchy to a Republic. The phrase, “The People and Parliament of Jamaica¹²” was proposed as a replacement for the existing words of enactment.

3.6.4 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 People¹³”. In other cases, the words of enactment would simply refer to “The Parliament of Jamaica”.**

3.6.5 **The CRC further recommends the passing of an Act prior to the tabling of the Bill for the establishment of the reformed Constitution, to give effect to the recommended new words of enactment.**

3.6.6 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 a Bill to

¹² Report of the Constitutional Commission (1993) para 19.5

¹³ “The People” in this context means the electorate.

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 Jamaica's form of government to be a constitutional Monarchy where our Sovereign is the King of England.

4.1.2 The CRC formed the view that the ideal form of government is one in which there is a mixture of the elements of separation of powers, responsible government, accountability and respect for the rule of law.

4.1.3 Consequently, Jamaica's Head of State should not be a hereditary monarch but instead one chosen by a process, in a representative democracy, which affirms Jamaica's sovereignty.

4.1.4 Accordingly, **the CRC recommends as a major alteration to the Constitution of Jamaica:**

- i. **that the British Monarch be removed as the Head of State;**
- ii. **that the British Monarch be removed from the legislative and executive authority of the State; and**
- iii. **that a new Head of State for the Republic of Jamaica be established.**

4.1.5 **The CRC further recommends the removal of the British Monarch as part of the Parliament.**

4.2 **Creation of the Office of President**

4.2.1 During discussions within the CRC, as well as in other fora in the public domain, considerable attention was given, 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.

4.2.2 The CRC carefully considered 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 certain ideals. In the end, the CRC concluded that it would not benefit Jamaica, at this time, to adopt the executive Presidential System. The factors taken into account to arrive at this conclusion are summarised at section 5 of this Report.

4.2.3 The CRC also considered the non-executive Head of State; one with which Jamaicans are already familiar. It is above partisan politics and its adoption would enable the office-holder to embody the values stated at paragraph 4.3.1.

4.2.4 Accordingly, **the CRC recommends the establishment of the Office of President as the formal Head of State of the Republic of Jamaica where the holder performs ceremonial functions and in whom is also vested certain executive powers which do not involve the administration of government.**

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 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 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 of each House.

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 also provides a solution, through the application of the majority rule, to a problem where gridlock exists.

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 must:**

- i. **be a Jamaican citizen by birth or descent;**
- ii. **be ordinarily resident in Jamaica and be permanently in Jamaica for at least ten (10) of the last fifteen (15) years preceding nomination;**
- iii. **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**
- iv. **not be disqualified for election to the Parliament.**

4.4.2 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 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, 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 criterion of citizenship by descent should be limited to three (3) generations.** In this case, the nominee would be considered the third generation, the parent of the nominee the second generation and the grandparent of the nominee the first generation. Therefore, the nominee's entitlement to citizenship by descent would be derived from no further than the grandparent.

4.5 **Functions and Powers**

4.5.1 **Nature of Current Powers of the Head of State**

4.5.1.1 The CRC noted that the Governor-General performs on behalf of the Monarch ceremonial duties and exercises a range of executive functions specifically set out in the Constitution and other laws.

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 law¹⁴.

4.5.1.3 The Governor-General is also constitutionally empowered to act by the Constitution or under any other law¹⁵:

- i. in his own discretion;
- ii. on the recommendation of any person or authority other than the Cabinet and in accordance with such recommendation;

¹⁴ See section 32(1) and (6) of the Constitution

¹⁵ "Law" is defined at section 1 of the Constitution as, "any instrument having the force of law and any unwritten rule of law."

- iii. on the advice of any person or authority other than the Cabinet;
- iv. with the concurrence of any person or authority other than the Cabinet;
- v. after consultation with any person or authority other than the Cabinet; or

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**

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 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 of Office.**

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 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, 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, 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 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 and period in which such resignation would take effect.**

4.8.2 **The CRC further recommends that the instrument of resignation of the President must 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 the appointment of an acting President, from among the Custodes, by the Prime Minister after consultation with the Leader of the Opposition in circumstances where the President is incapable of**

performing the functions of Office by reason of absence from Jamaica, illness or any other cause. The CRC is of the opinion that this approach allows for expediency and efficiency in making an appointment in such circumstances.

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 Parliamentarians, 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:**

4.10.3.1 **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 by the Leader of Government Business 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 comprising, from the House of Representatives, four (4) from the Government side and three (3) from the Opposition; and from the Senate two (2) appointed by the Prime Minister, one (1) appointed by the Leader of the Opposition and one (1) of the Independent Members appointed by the President. The Committee is to be chaired by the Leader of Government Business in the House of Representatives. This Committee is expected 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.

4.10.3.2 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.

4.10.3.3 The *ad hoc* Parliamentary Committee, referred to, at paragraph 4.10.3.1 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.**

4.10.3.4 The time within which the Report of the *ad hoc* Parliamentary Committee referred to above at paragraph 4.10.3.1 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.

4.10.3.5 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.

4.11 **Transition to the Office of the President of the Republic of Jamaica**

4.11.1 In order to ensure a smooth transition from the current Constitution of Jamaica to the reformed Constitution of Jamaica, **the CRC recommends that the holder of the Office of Governor General at the time when the**

reformed Constitution of Jamaica comes into effect shall assume the Office of President of the Republic of Jamaica on a transitional basis until the selection process for the President of the Republic of Jamaica is expeditiously completed. The CRC is of the view that this could be completed within a three (3) month period.

4.11.2 Alternatively, the CRC recommends that the provisions which set out the selection process for the Office of the President of the Republic of Jamaica take effect three months ahead of the other provisions of the reformed Constitution to enable the selection of the President to take place in time for the transition.

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 and is not usually a member of the legislature.

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

Features	Parliamentary Cabinet System	Presidential System
Executive Head	Prime Minister, who is typically selected from among Members of Parliament	President, who is elected and is not usually a member of 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
Checks and Balances	Executive is accountable to the Parliament which can	Executive and legislative branches have separate

Features	Parliamentary Cabinet System	Presidential System
	remove the government through a vote of no confidence	control with checks and balances include veto power
Stability and Decision-Making	Provides stability, offers flexibility and greater decisiveness	Often leads to gridlock

5.1.4 The poor record of the presidential system in the preservation of democracy and protection of 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 regimes¹⁶.”

5.1.5 There is no doubt that countries which have the parliamentary system are among the most stable democracies

¹⁶ Juan J Linz, “Democracy: Presidential or Parliamentary Does It Make a Difference” Yale University, July 1985

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.¹⁷

5.1.6 In the Stone Committee Report¹⁸ 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. The CRC has noted that since then, these countries that Jamaica has been 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 The Citizenship Qualification

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.

¹⁷ See Archbishop Samuel Carter Lecture (2002) by Dr the Hon. Lloyd Barnett, O. J.

¹⁸ Carl Stone, Ministry Paper No. 11 (1990) Kingston: Office of the Prime Minister

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 abroad with United States (US) citizenship or the citizenship of any other foreign /country should be barred from membership in Parliament; 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.**

6.1.9 **The CRC further recommends that Jamaican citizenship should be the essential qualifying citizenship criterion for membership in the Parliament.**

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 offences involving**

treason; and convictions for any offence involving fraud or violence where the person has been sentenced to a term of imprisonment for a period of eighteen (18) months or more.

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 Elections Date

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 fixing the date for parliamentary general elections. The Constitution by virtue of section 64(2) now gives the Prime Minister the discretion to call the national general elections at any time within the life of the Parliament. This discretion is often exercised to gain 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. However, it is still possible to introduce greater certainty as to when parliamentary elections are held, by having a fixed duration for the life of the Parliament and a limited period in which to fix the actual election date.

6.4.3 During the deliberations on the issue of a fixed date for general parliamentary elections, it was suggested that the matter be referred to the ECJ which, by virtue of its mandate, is empowered to recommend changes to the electoral laws. At the same time, the CRC was reminded that the life of the Parliament is a matter provided for in the Constitution and

given the highest level of protection (i.e. it is a deeply entrenched provision).

6.4.4 Since the matter was repeatedly raised for consideration during public consultations and within the CRC itself; and falls within the work proposed for Phase 1 of the reform process, **the CRC recommends that 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 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 the provisions of section 64(3) of the Constitution 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**¹⁹.

6.5.3 **The CRC further recommends that this extension should be limited to periods not exceeding six (6) months at a**

¹⁹ Adapted from section 20(2)(c) of the 1962 Constitution of Jamaica

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.

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.²⁰

7.2.2 The CRC also noted that at section 35 of 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.*”²¹

7.2.3 While this provision does not apply to the appointment of Senators in the present Constitution, the basic principle is that the Senators are appointed on the basis of their support for the policies of the majority/government party or the minority/opposition party the leaders of which have recommended. In the application of this basic principle **the CRC recommends the inclusion of a provision similar to what obtains in many other constitutions in the English-**

²⁰ 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

²¹ *Jamaica Interpretation Act, 1968, section 35*

speaking Caribbean²² 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 or absolute majority as well as the restriction on the passage of entrenched constitutional measures without the support of at least one (1) Opposition Senator.**

7.3.2 In making this recommendation the CRC took into account the grave difficulty in answering questions about the ultimate accountability of independent Senators, who do not enjoy popular support through any affiliation with the political parties represented in the Parliament. In contrast, Senators who are appointed on the recommendation of the Prime Minister and Leader of the Opposition, whose parties have secured popular support through the general parliamentary elections, by extension, also enjoy that support.

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.

²² See for example, Constitution of the Republic of Trinidad and Tobago, section 43(2)(e); Constitution of Barbados, section 39(1)(e); Constitution of Belize, section 64(2)(e); Constitution of St Lucia, section 27(2)(e); and Constitution of Antigua and Barbuda, section 31(1)(f)

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 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.

8.2 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 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 ELECTORAL 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 **New Developments on the ECJ**

10.2.1 The CRC noted that there have been new developments in the institutional arrangements for the ECJ, where the law has recently been amended to provide for the functions of the Office of the Ombudsman to be carried out by the ECJ. The CRC considered whether these functions, which are to be performed by the Commissioners of the ECJ, should also be entrenched. Having regard to the divergence in views expressed, **the CRC recommends that the functions to be entrenched should not include the functions of the Political Ombudsman which should be left in ordinary legislation.**

10.3 **Appropriate Level of Entrenchment**

10.3.1 The Committee considered the level of entrenchment proposed in *section 3 the Electoral Commission (Interim) Act*.

10.3.2 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 included 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 considered whether the leaders would assist in building consensus and also, if there is no consensus, whether the issue of the 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 Parliament of Jamaica 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 *Section 49* provides that the process to alter the Constitution requires that a Bill be introduced in the House of Representatives after which a period of three (3) months must elapse between the introduction of a Bill in the House of Representatives and the commencement of the first debate. After that initial three months, a further three (3) months must elapse between the conclusion of that debate and the passing of the Bill by that House. The Bill must then be tabled in the Senate debated and passed. The Bill must be passed in each House by the votes of not less than two-thirds ($\frac{2}{3}$) of all Members of the House following which it must be submitted to the electorate to be approved by a majority not less than two (2) months nor more than six (6) months after its passage.
- 13.1.6 The word “alter” is defined as including “amend, modify, reenact with or without amendment or modification, make different provisions in lieu of, suspend, repeal or add to”.
- 13.1.7 *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*)
- 13.1.8 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 Instructions

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 Instructions.

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 Enactment of a Referendum Law

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 CRC recommends that 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.**

2.1.1 This constitutes the **Report of the Constitutional Reform Committee on the Jamaicanisation of the Constitution, Transition to the Republic of Jamaica and Related Matters, Phase 1.**

Dated day of May 2024

.....
Hon. Marlene Malahoo Forte
(Chairman)

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Ambassador Rocky Meade
(Co-Chairman)


.....
Dr Derrick McKoy

.....
Senator the Hon. Thomas Tavares-
Finson

.....
Senator Ransford Braham

.....
Senator Donna Scott-Mottley

.....
Mr Anthony Hylton

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Mr Hugh Small


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Dr the Hon. Lloyd Barnett

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Professor Richard Albert

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Dr David Henry

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Dr Nadeen Spence

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Mrs Laleta Davis Mattis

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Mr Sujae Boswell

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Dr Elaine McCarthy

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