



**MINUTES OF THE MEETING OF THE JOINT SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT ON A BILL SHORTLY ENTITLED,
“THE CONSTITUTION (AMENDMENT) (REPUBLIC) ACT, 2024,”
HELD ON WEDNESDAY, JANUARY 22, 2025, AT 10:15 A.M.**

ATTENDANCE

Present were:

Hon. Marlene Malahoo Forte, KC, MP - Chairperson
Miss Tamika Davis, MP
Miss Kerensia Morrison, MP
Senator Charles Sinclair, CD
Senator Sherene Golding Campbell

Absent were:

Mr Duane Smith, MP – Apology
Senator Donna Scott Mottley
Mr Mark Golding, MP
Mr Anthony Hylton, MP
Senator Ransford Braham, CD, KC – Apology
Senator Peter Bunting

Also present were:

Ministry of Legal and Constitutional Affairs

Mr Wayne O. Robertson, Permanent Secretary
Mr Philip Cross, Senior Constitutional Reform Officer
Mr Christopher Harper, Senior Director, Constitution Reform
Ms Shereika Mills, Constitutional Reform Officer
Ms Janelle Miller Williams, Senior Director of Legal Education
Ms Shawna-Kaye Taylor Reid, Administrative Assistant

Legal Reform Department

Ms Nadine Wilkins, Director
Mr Makene Brown, Legal Officer

Office of the Parliamentary Counsel

Ms Judith Grant, Chief Parliamentary Counsel
Ms Christal Parris-Campbell, Assistant Parliamentary Counsel

Houses of Parliament

Ms Ashleigh Ximines, Senior Legislative Counsel (Acting)
Ms Tracy Cohen, Committee Coordinator

CALL TO ORDER

The Chairperson called the meeting to order at 10:15 a.m.

PRAYER

The opening prayer was said by Senator Charles Sinclair.

APOLOGIES FOR ABSENCE

Apologies for absence were tendered on behalf of Member Ransford Braham. The Chairperson also stated that she had been advised by the Committee Clerk that Member Mark Golding and Member Anthony Hylton had indicated that they would not attend the meeting. She noted that the Leader of the Opposition had used the forum of the previous meeting of the Committee to pose questions to which he said he needed answers from the Head of Government, but the normal protocol had not been utilised in that there was no indication that the Prime Minister had been formally written to on the matter. She therefore concluded that it would be appropriate to use the same forum that had been used by the Leader of the Opposition, which is to say, a meeting of the Committee, though not the present one, to provide answers to the questions on behalf of the Prime Minister.

Member Sinclair sought further clarification regarding the absence of Members Golding and Hylton. The Chairperson stated that she had not tendered apologies on their behalf, but had communicated to the Committee information from the Memorandum that had been circulated in the House the day before, where both Members had signed the document in the slots indicating that they would not attend the meeting.

WELCOME AND OPENING REMARKS

The Chairperson stated that the focus of that day's meeting would be an examination of the provisions of the Bill and an explanation of the related policy approach. She emphasised the importance of punctuality and adhering to the times that had been established for the Committee's activities.

READING AND CONFIRMATION OF THE MINUTES AND MATTERS ARISING THEREFROM

Deferred.

CONSIDERATION OF THE CONTENT OF THE BILL

Presentation from the Ministry of Legal and Constitutional Affairs

After the members of the technical team introduced themselves, Mr Christopher Harper, Senior Director in the Constitutional Reform Division, made a presentation on the Bill on behalf of the Ministry of Legal and Constitutional Affairs. He began by reading into the record the Bill's Long Title, which appears below:

AN ACT to Repeal the Jamaica (Constitution) Order in Council 1962 and to provide for the legal recognition and operation of the Constitution of Jamaica notwithstanding the repeal of that Order in Council; to Amend the Constitution of Jamaica to provide for a non-monarchical Head of State, thereby establishing Jamaica as a republic; to make other amendments in respect of certain provisions of the Constitution of Jamaica; and to provide for connected matters.

He then indicated that he would not expound all the clauses of the Bill but would provide an overview of key areas of it, including the provisions relating to the Jamaicanisation of the Constitution; the establishment of the office of President; the expansion of the Senate; the modification of the alteration provision at section 49 of the Constitution; enhancement to the existing citizenship provisions in Chapter II; alteration of the provisions related to qualification and disqualification from membership in the Parliament; and incorporation of the Electoral Commission of Jamaica (ECJ) into the Constitution. The process of Jamaicanisation had begun officially with the tabling of the Bill and it was hoped that it would culminate in the creation of a new Constitution, and as such, a phased approach to the exercise was important.

Jamaicanisation of the Constitution

Mr Harper went on to speak on the manner in which the Bill would give effect to the Jamaicanisation of the Constitution. Firstly, it sought to repeal the Jamaica (Constitution)

Order in Council 1962 and provide for the legal recognition and operation of the Constitution of Jamaica. It would also insert a preamble, and incorporate the national symbols and emblems. Regarding the repeal of the Order in Council, he explained that after six decades of sovereignty, it was 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. He explained that this schedule was in fact the very Order in Council which had been made at the Court at Buckingham Palace in England, pursuant to the West Indies Act.

Clause 2 of the Bill would remove the imperial cloak by repealing the Jamaica (Constitution) Order in Council. It would also make provision to enable the Second Schedule to the Order in Council, which is to say, the Constitution itself, to remain in force and for it to be read and construed as one with the amendments set out in the Bill. Additionally, it would empower the Statute Law Commissioners to publish the Constitution of Jamaica as an Act comprised in Volume I of the Revised Laws of Jamaica.

Mr Harper then revealed that clause 3 of the Bill would amend the Constitution by inserting a Preamble which echoed Jamaica's heritage and proclaimed the aspirations of the nation in poetic and resonant tones. It had been proposed by a Committee of Experts comprising Professor Kwame Dawes, the 2025 to 2028 Poet Laureate; Dr Joseph Ferguson, senior lecturer in the Department of Language, Linguistics and Philosophy at the University of the West Indies; Mr Frankie Campbell, manager of show band Fab Five and BASIS; and Dr Nadine Spence, civil society representative on the Constitutional Reform Committee and Chairperson of the Expert Committee. It was set out within the Bill at clause three.

Mr Harper further explained the third element of the Jamaicanisation of the Constitution to be effected through the Bill, namely, the insertion of a new Fourth Schedule by means of the amendment contained in Clause 34. This new schedule would incorporate the national items, which included emblems and symbols, the former being the national flag, the National Anthem and the coat of arms, and the latter, the national tree, the national flower, the national fruit and the national bird. It would also include the national motto, the National Pledge, the National Song and the National Prayer.

Mr Harper noted that the Bill also sought to establish the office of President. He pointed out that the replacement of the present Head of State, which is to say the hereditary Monarch, with a Jamaican President who met certain criteria required the repeal of certain provisions in Chapter IV of the Constitution and their replacement with provisions related to qualifications for President, the procedure to appoint the President, the tenure of office of the President (including the procedure for his or her resignation and removal from office), and immunity in the exercise of functions by the President. These provisions were set out in clause 11 of the Bill, which addressed sections 24 to 29 of the Constitution.

As regards qualification for the office of President, Mr Harper stated that the proposed section 24(2) in clause 11 of the Bill stipulated that a person would not be qualified to be appointed as President unless that person was a citizen of Jamaica, whether by birth or descent, which in this instance had been limited to three generations so that a nominee's entitlement to citizenship by descent would not extend beyond qualification through a parent or grandparent. Additionally, he or she must have been ordinarily resident in Jamaica for a period of at least ten years immediately preceding the date of nomination and must not be one who was disqualified from membership of the House of Representatives or the Senate.

In relation to the procedure for the appointment of the President, Mr Harper stated that Section 25 proposed that it would occur in two stages, the first a process of nomination and the second, a process of confirmation. He alerted Members to a variation between the recommendation as set out in the Report of the Constitutional Reform Committee regarding selecting the

President and the method of selection proposed in the Bill. He explained that this change had been made in response to feedback received from members of the public and other critical stakeholders and because the issue had proven difficult to navigate during the deliberations of the Constitutional Reform Committee. He then stated that he would like to make it pellucid that the matter was still open for further discussion.

Mr Harper then provided details regarding the nomination process, stating that the proposed section 25 of the Bill empowered the Prime Minister to nominate a candidate for the office of President after engaging in meaningful consultation with the Leader of the Opposition during which all reasonable steps must be taken by both parties to agree to the nomination. If there was agreement, the Prime Minister was required to refer the nominee to Parliament for confirmation, but if there was no agreement, there were two options open to the Prime Minister: he could again refer that nominee to the Leader of the Opposition for reconsideration or recommend another nominee.

Where the same nominee was referred for a second time, the Leader of the Opposition could propose a different nominee, and if there was agreement, the Prime Minister was required to refer that nominee to the Parliament for confirmation. However, if there was disagreement, the Prime Minister was required to determine the nominee after a three-month period and refer the nominee to Parliament. Where the Prime Minister recommended a different nominee to the Leader of the Opposition and the Leader of the Opposition agreed to the recommendation, the Prime Minister was required to refer the nominee to Parliament for confirmation. If the Leader of the Opposition did not agree, the Prime Minister must determine the nominee after a three-month period and refer the nominee to Parliament.

Mr Harper explained that the three-month period was intended to allow a reasonable timeframe for further consultation between the parties before proceeding to Parliament. There, the nominee was to be confirmed at a joint sitting of both Houses where each House would vote separately by secret ballot. He indicated that the amendment relating to this procedure also represented the first instance in which provision was to be made in the Constitution for joint sittings of Parliament.

Mr Harper noted that the provisions in respect of the President's tenure of office also addressed his or her resignation or removal from office. The proposed section 26(1) indicated that the person appointed as President would hold office for a term of seven (7) years and would be eligible to be reappointed for a further term not exceeding five (5) years. It was further stipulated that the question of reappointment should be determined within a period of one (1) year immediately preceding the expiration of the person's first term as President in order to ensure that the selection process would not be undertaken hastily and that a reasonable timeframe was allotted to allow for a process of meaningful consultation as highlighted in earlier provisions.

Concerning the President's removal from office, Mr Harper stated that in its Report, the Constitutional Reform Committee had expressed the view that while it was necessary to provide the office of President with security of tenure so that it would not be subject to the dictates of parliamentarians, it was equally necessary to provide a means of removing an incompetent, corrupt or misbehaving President. Accordingly, the proposed section 26(5) at clause 11 of the Bill provided that at any time during the President's term of office, he or she may be removed from office on any of the grounds specified, namely, where a President was unable to perform the functions of office, whether arising from an infirmity of mind or body or from any other cause; where the President had behaved or was behaving in a manner that endangered the security of Jamaica; where the President had behaved or was behaving in a manner that brought the office of President into disrepute; or where the President, by his or her own act, was under a duty of allegiance, obedience or adherence to a foreign power.

Mr Harper further informed the Committee that the Bill set out the procedure for removing the President from office in the proposed section 26(7), which empowered the Leader of Government Business in the House of Representatives to table a motion in that respect at a joint sitting of both Houses of Parliament if the question of the President's removal on any of the grounds stated above arose. The motion must set out the ground or grounds relied on; the proposed members of the investigatory panel, including the person to be designated chairperson; and the time within which that panel must submit its report. If the motion was carried by a two-thirds majority of all the members of each House of Parliament voting by secret ballot, an investigatory panel consisting of three persons who held, had held or were qualified to hold office as judge of a court having unlimited jurisdiction in civil and criminal matters was to be established. If the investigatory panel reported that any ground for removal had been made out to their satisfaction, Parliament was required to vote on the question of whether or not to remove the President from office, this by secret ballot at a joint sitting of both Houses. Where each House by a two-thirds majority of all its members voted that the President should be removed from office, the office would be deemed vacant and an interim President appointed.

Mr Harper then apprised the Committee of the provisions relating to immunity in the proposed section 27 at clause 5 of the Bill which stipulated that a person holding the office of President or exercising the functions of that office should not be liable in any criminal or civil proceedings for any act done in respect of those functions; or, while in office or exercising the functions of that office, for any act not involving treason, violence or fraud.

Mr Harper indicated that the Bill proposed that the Senate be expanded to include fifteen senators appointed by the President, acting in accordance with the advice of the Prime Minister; nine senators appointed by the President, acting in accordance with the advice of the Leader of the Opposition; and three senators appointed by the President, in the President's own discretion, from among persons in the private sector, civil society, faith-based or community-based organisations, or other sectors of the society, having regard to the representation by any such person of the interests of Jamaicans who reside abroad. The Chairperson clarified the last stipulation by explaining that, in making the appointments, regard should be had to those persons being able to represent the interest of Jamaicans who reside overseas. She added that the provision could be found in the proposed section 35 at clause 17 of the Bill.

Mr Harper then informed the Committee that the proposed section 49(4)(b)(ii) at clause 22 of the Bill sought to restrict the ability of independent senators to vote on constitutional matters so as to retain the parliamentary safeguard requiring the vote of at least one member of the Opposition in such matters. Specifically, the proposed provision stipulated that constitutional matters must be sanctioned by a two-thirds majority of those members appointed on the advice of the Prime Minister and the Leader of the Opposition.

Mr Harper stated that provision for the modification of the alteration provisions at section 49 of the Constitution was made at clause 22 of the Bill which sought to amend section 49 to reflect certain changes. In particular, it would stipulate that Bills seeking to amend the Constitution must be introduced in the House of Representatives and not the Senate and entrench the interpretations set out in the Constitution itself and in the Jamaican Interpretation Act. It would also prescribe a fourteen-day period between the introduction of a Bill in the House of Representatives and the commencement of the debate and then a further period of fourteen days between the conclusion of that debate and the passage of the Bill, thereby removing the possibility of a Bill seeking to reform ordinary provisions of the Constitution being tabled and passed in a single sitting of the House without due consideration of the provisions contained therein. Furthermore, the period between the introduction of the Bill in the House of Representatives and the commencement of the debate and the period between the conclusion of that debate and the passage of the bill in the House were to be reduced from

three months to two months for entrenched and deeply entrenched provisions. He noted that this would increase the likelihood of legislative matters being dealt with within one legislative year and facilitate a faster pace of reform without compromising the relevant safeguards.

In addition, it was proposed that the waiting period for the passage of Bills that had been rejected by the Senate be reduced from seven months to four months in respect of the first occasion and from six to four months in relation to the second instance. It was also proposed that a Bill containing only such alterations to section 49(2) of the Constitution as would add to or correct any reference to its entrenched provisions would be deemed to have been passed if it secured a two-thirds majority vote in both Houses of Parliament, thereby removing the need for a referendum in respect of such amendments. The Chairperson commented that the proposed modifications to the alteration mechanism were an indication of the fixity of purpose of the present Administration in respect of achieving constitutional reform and ensuring that all the related work could be completed. She pointed out that Jamaica's constitution alteration mechanism was one of the most complex ones and the goal of the amendment, which would be further interrogated, was to facilitate more efficient use of parliamentary time while ensuring that the appropriate safeguards remained in place.

Mr Harper stated that the Bill sought to enhance the citizenship framework as set out at chapter 2 of the Constitution, which indicated how citizenship could be acquired and gave the State a discretionary power to grant citizenship to other people in certain specified circumstances and to deprive those persons of their citizenship. Clause 7 would repeal section 8 of the Constitution and replace it with a provision that retained the protection from deprivation of citizenship for Jamaicans who acquired citizenship by birth, descent or marriage. It would also stipulate that a person who has been aggrieved by the deprivation of that person's Jamaican citizenship may apply to the Supreme Court for redress. Clause 8 would repeal sections 9 and 10 of the Constitution and replace them with provisions which prescribe that any person who is a citizen of Jamaica may renounce their Jamaican citizenship in accordance with the provisions of a law specifying the procedure for renunciation. Furthermore, this clause would set out the powers of Parliament generally in relation to citizenship. Clause 9 of the Bill would repeal section 11 of the Constitution and replace it with provisions empowering Parliament to make laws in respect of countries that are members of the Commonwealth and the Caribbean Community (CARICOM).

Mr Harper indicated that clause 18 of the Bill would amend the provisions governing the qualification of electors for elections to the House of Representatives at section 37(1) of the Constitution by restricting it to citizens of Jamaica resident in Jamaica at the date of registration who have attained the prescribed age only. Clause 19 would amend the criteria for membership in section 39 of the Constitution to establish Jamaican citizenship, rather than Commonwealth citizenship, as the essential qualifying citizenship criterion. Also, section 40, which identifies the circumstances in which a person would be disqualified from membership in either House, was to be amended by means of clause 20 of the Bill to include among them convictions for fraud or violence where the penalty imposed was a sentence of imprisonment of 18 months or more and convictions for treason. Finally, Clause 21 of the Bill aimed to amend section 41 of the Constitution, where provision was made regarding the tenure of office of Senators and Members of Parliament, to stipulate that the seat of a member of either House would become vacant if he or she ceased to be a Jamaican citizen and to remove the reference to Commonwealth citizenship in that regard.

Mr Harper said that the amendment to Chapter V in clause 28 of the Bill would cause the ECJ to become enshrined in the Constitution by inserting a new Part 5 containing the new section 67A. This section would establish the ECJ, set out its objects and functions, and empower Parliament to make laws in relation to the constitution, staffing and resources of the Commission and quorum at its meetings. Accordingly, the Electoral Commission Interim Act would be amended to remove the word "interim" from the short title, among other things.

Member Golding Campbell sought to ascertain whether the Bill would bring about any changes to the law relating to the ECJ beyond enshrining it in the Constitution. The Chairperson explained that the model had been designed to establish the ECJ as a Constitutional Commission and a Commission of Parliament and to allow other matters to be dealt with in enabling legislation, which was already in place. She added that the existing model had worked very well and there was no intention to change the model, but where there was the need to improve, then that would be considered.

Overview of the Components of the Bill

The Chairperson emphasised that in reviewing the Bill, it would be important to examine its provisions to ensure that the language that was used in it accurately reflected what it was intended to convey. This way, future conflict in respect of interpretation would be minimised. She added that legislators were being called upon to hone their legislative skills and to understand the requirements of their role.

The Chairperson also indicated that every Bill was backed by a policy framework and the policy had to be clearly articulated, as it formed the basis of the related drafting instructions. She added that in this case, the work was being done in phases, but not in a piecemeal way since the broad picture and the end product had already been envisaged. However, the enormity of the technical work and the knowledge gap in the society were such that all the changes could not be made at once.

Long Title

The Chairperson further stated that every Bill began with a long title which sought to convey in concise form what the proposed legislation was seeking to achieve. In this instance, it showed that the imperial instrument, that is, the Jamaica (Constitution) Order in Council 1962, was to be repealed and provision was to be made for the legal recognition and operation of the Constitution of Jamaica contained in its second schedule notwithstanding the repeal of the order itself. She noted that this was the first critical step in the process of Jamaicanising the Constitution, which had nevertheless been made and debated in Jamaica, albeit within the colonial era and with assistance from the Colonial Office.

The Chairperson went on to say that the second part of the long title indicated that the Constitution was being amended to provide for a non-monarchical Head of State and to establish Jamaica as a republic. She stressed that it would not establish the Republic of Jamaica because consultations had revealed that Jamaicans were passionate about the name “Jamaica” and did not want it to be changed.

Clause 1

The Chairperson noted that, as a result of the considerations outlined above, the Bill’s short title did not include the words “Republic of Jamaica” but mentioned the term “Republic”, which represented a form of government rather than the name of the State. Member Davis expressed concurrence with this position.

The Chairperson then addressed the enacting clause, which reflected the new language prescribed by the Constitution (Amendment of Section 61) Act 2024. She explained that the passage of that Act had been a precursor step to the tabling of the present Bill and had signalled that laws passed by the Parliament of Jamaica would be passed under the power of the people who elected their parliamentary representatives. She further explained the new words, stating that the Parliament is tripartite and the phrase “the advice and consent of the Senate and the House of Representatives” called attention to the two Houses of the Parliament. In this case, the people of Jamaica were included as well, but the Bill would not be placed before them unless it was passed by both Houses.

The Chairperson indicated that there were provisions in the Bill that would not be included in the Constitution itself but would fall away. Miss Judith Grant, Chief Parliamentary Counsel, explained that the provisions that were to be included in the Constitution would be referred to as insertions or substitutions and would appear in quotation marks, while those that were part of the Bill itself but would not form part of the amendment to the Constitution would not be enclosed in quotation marks. Nevertheless, they were part of the Bill, would be passed and recognised as law, and would have legal effect.

The Chairperson explained the difference between an Act of Parliament and the Revised Laws of Jamaica, noting that there were many Acts of Parliament which were amending Acts that related to a single law or principal Act, and there was a law revision process that consolidated the law to enable users to find all the provisions in relation to each statute in one place. She added that the country's economic affairs had led to decisions that had done an injustice to the legal infrastructure, but since its establishment, the Ministry of Legal and Constitutional Affairs, which had responsibility for the state of the laws, had been working assiduously to assess and correct it. She went on to say that shortcuts taken in leaner times were now being manifested in the impaired capacity of the State to enforce and implement the law.

Ms Nadine Wilkins, Director of Legal Reform, concurred. She explained that in other countries, the consolidation of the laws was taken very seriously and when amendments were made, they were incorporated into the law with alacrity. Consequently, situations in which judges inadvertently made decisions on the basis of outdated provisions because the most recent edition of the law was not available to them did not arise.

The Chairperson indicated that the first clause of the Bill had two subsections, the second of which spoke to when it would come into operation, which was, in this case, on the appointed day. She noted that there were different methods by which a law could come into operation. It could be made to happen automatically once the procedural steps had been complied with, or it could be appointed to take effect on a specific date. She added that because of the variety of objectives that were to be accomplished during the reform process and the significance of symbolism in respect of this law, an appointed day provision had been utilised and consideration was being given to how the date would relate to the current Independence Day and Emancipation Day.

Member Golding Campbell sought to ascertain whether the use of an appointed day provision would affect or be affected by the constitutional requirement that certain periods of time be allowed to elapse between various stages in the passage of the Bill. Miss Grant responded that those waiting periods had to do with the procedure for enactment, which was separate from the process of coming into operation. She explained that the appointed day provision would delay the operation of the Bill, but at that stage it would have already been enacted in accordance with the relevant timelines.

Clause 2

The Chairperson stated that clause 2 of the Bill would repeal the Order in Council while saving the Constitution. She pointed out that the power of the Parliament to repeal that instrument was set out in the Constitution itself, but for that power to be exercised, the mechanism for amending deeply entrenched provisions, which included receiving approval from the people, must be activated, as the Order in Council was among the documents which were protected at section 49 of the Constitution. She went on to say that some of the provisions in the Bill could be passed by using the ordinary amendment procedure, while others could be passed using the procedure for amending entrenched provisions, but the majority required activating the procedure for amending deeply entrenched provisions. She stated that the guidance that had been received in respect of procedure was that it was acceptable for the various types of amendments to be done at the same time.

The Chairperson then addressed the second goal of clause 2 of enabling the continuation in force of the Constitution, to be read and construed with the amendments in the Bill. She also stated that clause 2(3) empowered the Statute Law Commissioners to publish the Constitution of Jamaica as an Act comprised in Volume I of the Revised Laws of Jamaica. She revealed that initially, reserving Volume I for the Constitution itself had been contemplated, but because of the other work that the Ministry was tasked with and the revision that would be required, other constitutional Acts such as the Jamaica Independence Act 1962 and the related regulations would be included. Miss Wilkins however indicated that it might not be possible to include subsidiary legislation in the volumes comprising the principal Laws of Jamaica. Miss Grant concurred and added that, for ease of reference, the Jamaican Interpretation Act would be placed in Volume I also. At the request of Member Golding Campbell, she explained that the Interpretation Act was an Act of Parliament that governed how some terms used throughout legislation in Jamaica were to be interpreted. The definitions of terms that were contained in that Act would apply to the interpretation of other laws unless those laws contained other specific provisions regarding the meaning of those terms. She noted, however, that the Jamaican Interpretation Act governed all of Jamaica's laws except the Constitution, which was governed by the United Kingdom's Interpretation Act, and therefore one component of the Jamaicanising of the Constitution would be to make the Jamaican Interpretation Act applicable to it as well.

Member Golding Campbell sought clarity regarding the placement of the Constitution and any related Acts and regulations in a single volume. The Chairperson explained that this would not be done immediately because Acts of Parliament, which constituted primary legislation, were published separately from subsidiary legislation. She stated further that there was ongoing dialogue regarding how laws were published. She revealed that in her experience as a Judge she had found that the laws were not published in a user-friendly manner, but in other jurisdictions, regulations were published alongside their principal legislation. She added that if such a practice had been maintained locally, there would be greater awareness in the society regarding the requirements of the law and its enforcement. Member Golding Campbell asked whether the manner in which the laws were published remained a significant issue since most persons no longer consulted the physical volumes but accessed them electronically. The Chairperson responded that the Ministry of Legal and Constitutional Affairs was developing a portal. She noted that while it was important for all Jamaicans to be able to read and understand the law and it was part of the work of government to facilitate this, using the laws also required special training and people had to be advised and counselled in respect of some matters that were provided for therein.

Member Golding Campbell enquired about making provision to ensure that the Laws of Jamaica were drafted in language that could be easily understood and the Chairperson explained that this would not be done in the Constitution, which contained broad principles. She advocated improving the level of education and understanding in the society, as she believed that the knowledge gap was a greater determinant of people's inability to interact with the nation's laws than was the language of the laws themselves.

Miss Grant informed the Committee that the Office of the Parliamentary Counsel had made a commitment to using plain language, but it might not be obvious, as there were constraints such as having to be faithful to the language of the original legislation when they drafted amendments, lest inconsistencies arise. However, for new legislation, every effort was made to use the simplest language possible, but again there were constraints relating to the technical nature of the subject matter of the Bill, or complexities introduced as a result of feedback received during the review of draft legislation. She proposed employing other mechanisms for increasing the ease of understanding the law, such as including explanatory memoranda as a feature of legislation. Member Golding Campbell asked whether these were to be published as part of the laws or separately and the Chairperson responded that both strategies were being contemplated, as part of the work of getting Jamaica to operate lawfully

was ensuring that people were able to understand the standard of conduct that was required of them. Member Golding Campbell then stated that she looked forward to the day when Jamaica would have a new Parliament with the capacity to prepare explanatory notes on the Bills that were before it for the guidance of Members and the general public, as occurred in the United Kingdom.

The Chairperson informed the Committee of a proposal to amend the Law Revision Act to include the Clerk to the Houses of Parliament as a Law Revision Commissioner.

Member Morrison told the Committee that Jamaicans were probably listening for particular areas of interest and so Member Golding Campbell's intervention requesting the use of non-technical language in the deliberations was appreciated. She added that there would have to be robust public education incorporating persons such as justices of the peace who interacted extensively with members of their communities. She then made reference to the provisions relating to qualification and disqualification for membership in the Senate and the House of Representatives, noting that persons often expressed curiosity regarding whether a person who had been convicted of a crime but had served the appropriate sentence or had the conviction expunged could then offer themselves to serve. She pointed out that sections 39 and 40 of the Constitution spoke very clearly to this issue and it would be helpful for them to be put in simple language for the benefit of the people.

The Chairperson called on Ms Janelle Miller Williams, Senior Director of Legal Education, to update the Committee on the work that was being done in that area. She responded that thus far there had been significant outreach to public sector entities and other groups such as educational institutions, churches, community organisations and clubs. They also intended to host webinars, produce recorded lectures and radio broadcasts, and engage in social media campaigns. She acknowledged that activities thus far had centred on the work of the Constitution Reform Committee, but added that, going forward, there would be greater emphasis on the content of the Bill. The Chairperson then indicated that it would become necessary to operate at the level of polling divisions, as the Constitution required that the Bill be voted on by those who voted in parliamentary elections.

The Chairperson noted that clause 2(4) required the preservation of citizenship privileges for those who enjoyed them by virtue of the existing Constitution. She added that the safe approach was to ensure that the changes would not be detrimental to them. Senator Sinclair concurred.

Clause 3

The Chairperson stated that while Clause two of the Bill spoke to the most consequential technical aspects of the Jamaicanisation of the Constitution, clause 3 addressed another facet of the process, namely, the incorporation of a new Preamble. She read into the record the equivalent section of the present Order in Council:

At the Court at Buckingham Palace, the 23rd day of July, 1962

Present,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, by virtue and in exercise of the powers in that behalf by subsection (1) of section 5 of the West Indies 10 a 11 Act, 1962 or otherwise in Her vested, is pleased, by and with 19. the advice of Her Privy Council, to order, and it is hereby ordered, as follows : -

She then read the Preamble proposed in the Bill:

WE, THE PEOPLE OF JAMAICA, affirm our place as a free and self-respecting people in the global community.

WE PROUDLY ACKNOWLEDGE that our history of struggle, sacrifice, endurance, and triumph led us to become an independent democratic nation.

WE RESOUNDINGLY ACCLAIM this heritage and hold it in trust to pass on to future generations.

WE JOYFULLY CELEBRATE our resilient spirit in the face of adversity, our outstanding achievements in different fields, and our contribution to the advancement of humanity.

WE HUMBLY PROCLAIM OUR GRATITUDE to the Almighty for the beauty of our island, the abundance of our natural resources, our talents, and the strong institutions we have built.

WE WHOLEHEARTEDLY COMMIT TO the protection and preservation of our culture and environment; to the principles of justice, equity, and truth; to the upholding of the rights of all, and to the enhancement of our moral, material, and spiritual well-being.

TO WHICH END WE SOLEMNLY DECLARE THIS CONSTITUTION to be the sovereign will of the people of Jamaica.

Member Davis commented, on listening to the Preamble being read, that it made one want to stand at attention. The Chairperson then highlighted that it effected a shift from the power of a hereditary Monarch to the power of the people, bringing together the journey that the nation had taken and appreciation for its present position and its aspirations. Member Golding Campbell asserted that its importance could not be overstated and it would have a positive impact when it was recited by schoolchildren. She further stated that she had always envied the closeness that Americans felt to their Constitution, which was taught in their schools. She affirmed the significance and the emotive and empowering quality of the words, “We the people of Jamaica” and the acknowledgement of the nation’s past, present and future and remarked that these words inspired a sense of ownership that appeared to be lacking at present since so many Jamaicans were seeking to emigrate. She added that on the day subsequent to the pardoning of the Right Excellent Marcus Mosiah Garvey by the outgoing President of the United States, the words of the Preamble were chilling and empowering and she hoped that in the education campaign, much attention would be given to sharing it along with the more technical provisions of the Constitution. The Chairperson then expressed the view that Garveyism should be taught in Jamaican schools.

Member Morrison said that the proposed Preamble had the potential to run parallel to the National Pledge. She added that the reading of the existing one evoked images of a lovely English lady with tea or in a ball setting, but the one in the Bill conjured fierce pride and patriotism. She stated further that it should not be read in a soulful manner but with drive and purpose and these values needed to be reawakened in the minds of the nation’s youth, some of whom did not seem to understand what it means to be Jamaican.

Member Sinclair said that the reading had brought to mind words such as history, pride and inspiration. He noted also that he had found that Jamaicans were quick to speak about their rights, but there was no corresponding recognition of their responsibilities, which had been succinctly captured in the following paragraph of the proposed Preamble:

WE WHOLEHEARTEDLY COMMIT TO the protection and preservation of our culture and environment; to the principles of justice, equity, and truth; to the upholding of the rights of all, and to the enhancement of our moral, material, and spiritual well-being.

He expressed support for its placement close to the start of the Constitution and emphasised the importance of reintroducing Civics as an area of study in its own right to help instil the values and responsibilities that were reflected in the proposed Preamble.

The Chairperson stated that there had been criticism in relation to the extent of the people's participation in developing the Preamble. She asked Mr Harper to remind the Committee of the persons who had been involved in the participatory process leading up to its finalisation. He indicated that they had included Professor Kwame Dawes, the 2025-2028 Poet Laureate; Dr Joseph Farquharson, Senior Lecturer in the Department of Language, Linguistics and Philosophy at the University of the West Indies; Mr Frankie Campbell, Manager of the show band Fab5 and Basis; and Dr Nadine Spence, civil society representative on the Constitution Reform Committee. He also stressed that the exercise had built on preambles considered by previous Commissions and joint select committees which had included persons such as Professor Edward Baugh, Honourable David Core, KC, Senator Ryan Peralto, the Honourable Sir Phillip Sherlock, OJ, the Chairperson herself and Dr Lloyd Barnett. They had also received a submission from a member of the public, Mr Randolph Rossi.

The Chairperson proposed having Member Morrison, who was known to have talent in speech and drama, record readings of the Preamble for the public education campaign in her capacity as a member of the Committee.

The Fourth Schedule

The Chairperson stated that the Fourth Schedule contained the National Items that were to be included in the Constitution. She asked Ms Grant to explain the procedure for amending it, given that concerns had been raised about the form of at least one of the items, namely, the Coat of Arms. Ms Grant responded that the amended procedure that had been proposed for ordinary provisions would be applicable. Consequently, the relevant Bill would have to be introduced in the House of Representatives and two fourteen-day periods must elapse during its passage through the House: one between its introduction and the opening of the debate and the other between the closing of the debate and its being passed by an absolute majority. The Chairperson added that this term referred to a majority of the total membership of the particular House and not just a majority of the persons who were present on the day of the vote. She then invited Miss Wilkins to guide the Committee through the Schedule.

Miss Wilkins indicated that section 31 of the Bill sought to amend the Constitution by inserting a new chapter to be numbered IXA which would contain the new section 134A. Subsection (1) of this provision would read as follows:

134A—. (1) Subject to the provisions of this section, all rights of intellectual property in the items (hereinafter referred to as the National Items) listed in the Fourth schedule shall vest in Jamaica.

She explained that the provision above would ensure that, the description of the national items being set out in detail in the Fourth Schedule, there would be no doubt concerning the rights to them and no one could lawfully make changes to them in the absence of the requisite process and authorisation. The Chairperson added that the amendment empowered Parliament to enact law for the management and regulation of the National Items since all the details concerning each of them would not be placed in the Constitution itself and some

matters would have to be resolved through consultation. She then asked Miss Wilkins to speak to the difference between the national items, emblems and symbols. Miss Wilkins said that the emblems were the flag, the anthem and the coat of arms, while the symbols were the national tree, the national flower, the national fruit and the national bird. The schedule also included the national song and the national prayer.

Member Golding Campbell said that she had not been aware that there was a designated national prayer. She made the observation that sometimes the people were separated from the national emblems because of the rules surrounding their use. She asked that at the appropriate time, consideration be given to avoiding the duplication of practices that had emanated from the nation's colonial heritage and adopting rules of use that would allow the people to engage with the Items in meaningful ways. She gave the example of persons who draped themselves in the flag as part of their celebrations, which, at that time, was not considered appropriate, and questioned the basis of this position. She pointed out that the proposed Preamble would set a new tone for how persons demonstrated and connected to their Jamaican identity and the emblems were not to be treated like living rooms that were reserved for guests and off limits to the members of the family.

The Chairperson then stated that in the reform process, care had been taken to preserve the parts of the legacy of the past that had served the nation well, while changing those things that needed improvement. She noted also that the parliamentary cabinet system was to be retained and the reasons for this had been set out clearly in the recommendations made by the Constitutional Reform Committee.

The Committee engaged in a detailed review of the national items set out in the Fourth Schedule, including a reading of the National Prayer by Member Davis and Member Sinclair. The Chairperson took the opportunity to acknowledge the prominent place of church services in Jamaica's culture. She later observed that an attribution in respect of the lyrics of the National Song had not been included in the Schedule. Miss Wilkins informed the Committee that the song had been presented in Ministry Paper No. 40 of 1962, tabled by the Minister of Education, and its author was Victor Stafford Reid.

Entrenchment of the Electoral Commission of Jamaica

The Chairperson directed Members to clause 28 of the Bill, which sought to amend Chapter V of the Constitution by inserting a new Part to be numbered 5 and titled "The Electoral Commission." She explained that the provisions established a Commission of Parliament to be known as the Electoral Commission of Jamaica, set out its objects and its broad functions, and made provision for activities necessary for the discharge of those functions. She stressed the importance of free, fair and regular elections to the quality of democracy in Jamaica.

Regulating the relationship between Parliament and Commissions of Parliament

The Chairperson also stated that clause 32 of the Bill made provision to allow the relationship between the Parliament and the Commissions of Parliament to be regulated in the Standing Orders of the House of Representatives, as there was need for an improved framework for that relationship. She commented that not everyone understood the significance of the Standing Orders, but they were regulations of the Constitution, and it was necessary to get to the stage where they were honoured in observance rather than in breach.

Miss Wilkins stated that it was important to note that the Electoral Commission of Jamaica differed from other Commissions of Parliament in that it dealt with the very composition of the Parliament. The Chairperson concurred, adding that this was one of the reasons that it was important to clarify the relationship. She then invited Members to consider whether the provision was sufficient. Member Golding Campbell expressed the view that it required

serious consideration. She noted that in the Standing Orders of both Houses, there was no specific committee to deal with the Commissions of Parliament besides the Integrity Commission Oversight Committee. She added that in the context of recent reforms that had made Senators ineligible for appointment to public boards, the question of the nature of a committee to oversee Commissions of Parliament must be considered thoroughly.

READING AND CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON JANUARY 15, 2025

The Minutes of the meeting held on January 15, 2025, were confirmed subject to the following amendments:

Page 2, paragraph 4; and page 7, paragraph 5:

Delete the words “terms of reference” and replace them with “Terms of Reference”

Page 2, paragraph 3:

Delete the second sentence and replace it with the following: “She stated further that while she understood the position taken by the Opposition in respect of addressing the three arms of government simultaneously, there were differences in the approach taken by the Government and the Opposition and the matter was extremely important.”

Delete the third sentence and replace it with the following: “She stated that some citizens perceived the CCJ as a People’s National Party supported Court and the Judicial Committee of the Privy Council as a Jamaica Labour Party supported Court, but in fact the judicial branch of government was independent and should not be viewed as being aligned to any side in the Parliament; the issue of the final court for Jamaica was about which final Court was in the best interest of the people of Jamaica, especially those who use the court to settle their disputes.”

Page 3, paragraph 2:

Insert the words “and nationality” at the end of the sentence: “The Chairperson stated that the Bill did not address all the pertinent issues but had two main goals, namely, putting the Constitution in its proper form and enabling the establishment of a Jamaican head of state who was reflective of the country’s identity *and nationality*.”

Page 3, paragraph 3:

Delete the third sentence and replace it with the following: “She also said that very important goals that had been set for the nation for some time were now being pursued, and they would have to decide how far to go in light of the importance of the issue of the final court, discussions on which were not closed since there were time gaps at different stages of the process.”

Delete the fourth sentence and replace it with the following: “She explained that their ability to progress beyond the passage of the Bill in both Houses of Parliament would be dependent on cooperation and could be affected by the stage reached in the life of the Parliament and the potential for it to be shortened.”

Page 3, paragraph 4:

Delete the first sentence and replace it with the following: “The Chairperson revealed that in the preceding week, the work had had the benefit of the views of international observers who studied constitutional reform globally and comparatively.”

MATTERS ARISING FROM THE MINUTES

The Chairperson stated that for future meetings, Members should be prepared to spend a full day on the Committee’s work.

The Chairperson requested an update on the letters sent to stakeholders. The Committee Clerk responded that not all of them had been sent, but a response had been received from one entity that had received a letter, namely, Jamaicans for Justice, in which they had requested an extension of the deadline. The Chairperson then indicated that the Committee would not refuse any paper that was sent to them and anyone who wished to send one should proceed to do so, but the Bill had been tabled on December 10, 2024, and she had announced then that submissions would be taken, thereby providing sufficient time for their preparation. She urged timeliness in this and all other matters relating to the work of the Committee. Member Sinclair supported this position.

ANY OTHER BUSINESS

Ms Ashleigh Ximines, Legislative Counsel at the Houses of Parliament, stated that Member Golding Campbell had sought clarification concerning the procedure for determining whether the Standing Orders of the House of Representatives or the Senate would be applicable during committee proceedings involving Members from both Houses. She reported that she had found that there was no written guidance on the matter for the Jamaican Parliament and that there appeared to be a convention that gave precedence to the Standing Orders of the House of Representatives in such circumstances, but it was not always observed. In the absence of definitive rules, she had investigated the practice in the United Kingdom and Canada and had found that a decision on this subject would be taken at the first joint committee meeting. She proposed that Jamaica could adopt this practice or that of having guidance on the matter incorporated into the resolution establishing the Committee and setting out its terms of reference.

DATE OF THE NEXT MEETING

The Committee agreed to meet on Wednesday, January 29, 2025, at 2:00 p.m., at which time the questions posed by the Leader of the Opposition at the previous meeting would be considered.

ADJOURNMENT

There being no further business, the Committee adjourned at 2:02 p.m.

Houses of Parliament
January 2025