



**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 THURSDAY, FEBRUARY 6, 2025, AT 10:18 A.M.**

ATTENDANCE

Present were:

Hon. Marlene Malahoo Forte, KC, MP – Chairman (Virtually)
Mr Duane Smith, MP
Miss Kerensia Morrison, MP
Senator Charles Sinclair, CD
Senator Sherene Golding Campbell
Senator Ransford Braham, CD, KC

Absent were:

Miss Tamika Davis, MP – Apology
Mr Mark Golding, MP
Mr Anthony Hylton, MP
Senator Peter Bunting
Senator Donna Scott Mottley

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 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 10:18 a.m.

PRAYER

The opening prayer was said by Member Charles Sinclair.

APOLOGIES FOR ABSENCE

Apologies for absence were tendered on behalf of Ms Tamika Davis and for lateness on behalf of Senator Sherene Golding Campbell.

WELCOME AND OPENING REMARKS

The Chairman noted that a number of submissions had been received from members of the public. She reminded everyone that at the previous meeting she had made it clear that while a timeline for submissions had been established, all papers received would be considered. She emphasised that she fully appreciated the need for public participation in the process and persons would not be deprived of the opportunity to make submissions.

The Chairman also stated that the Ministry would assist the Committee with the preliminary review of the submissions and placing them in thematic areas. She added that some submissions dealt with Chapter 3 of the Constitution, “Charter of Fundamental Rights and Freedoms”, which was to be addressed in the next phase of the reform process. She urged patience, cooperation and the discipline of timeliness in undertaking the reform process in an orderly way while taking into account the knowledge gaps in the society regarding the Constitution’s existing provisions.

CONFIRMATION OF THE MINUTES OF THE MEETINGS HELD ON JANUARY 22 AND JANUARY 29, 2025

On a motion made by Member Sinclair and seconded by Member Braham, the Minutes of the meeting held on January 22, 2025 were confirmed, subject to the following amendments:

- Page 3, paragraph 2, third sentence – Replace “the revised laws of Jamaica” with “the Revised Laws of Jamaica”
- Page 4, paragraph 2, first sentence – Replace “stating that section 25” with “stating that the proposed section 25”
- Page 7, paragraph 1, third sentence – Replace “and there was no desire to change it at that time” with “and there was no intention to change the model, but where there was the need to improve, then that would be considered.”
- Page 8, first complete paragraph, first sentence – Replace “The Chairperson provided an exposition of the difference between an Act of Parliament and the actual laws of Jamaica” with “The Chairperson explained the difference between an Act of Parliament and the Revised Laws of Jamaica”
- Page 9, paragraph 1 – Replace the first sentence with “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.”
- Page 10, first complete paragraph – Replace “The Chairperson informed the Committee that there was to be an amendment to have the Clerk to the Houses of Parliament included in the Law Revision Commission” with “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.”
- Page 11, first paragraph after the Preamble, first sentence – Replace “Member Davis commented that it made one want to stand at attention” with “Member Davis commented, on listening to the Preamble being read, that it made one want to stand at attention.”

On a motion made by Member Sinclair and seconded by Member Braham, the Minutes of the meeting held on January 29, 2025 were confirmed, subject to the following amendments:

Page 2, second paragraph of “Welcome and Opening Remarks” – Replace the last sentence with “She stated further that the Administration considered it critically important for information

presented to the public to be accurate and truthful. The reform Bill passed by the Parliament would have to be approved by the people.”

Page 2, fourth paragraph of “Welcome and Opening Remarks” – Replace the first sentence with “The Chairperson reminded everyone that the Standing Orders were Regulations of the Constitution and that Standing Order 75(1) required that, as far as possible, select committees should be so constituted as to ensure that the balance of parties in the House is reflected in the committee’s composition.”

Page 2, fifth paragraph of “Welcome and Opening Remarks” – Replace the second sentence with “She expressed the view that the emerging disagreements were probably related to a feeling that some persons would come out of the process as winners and others as losers, as against the perspective that national goals were being pursued.”

Page 3, first complete paragraph – Replace the first sentence with “The Chairman emphasised that while the context in which the reform goals were being pursued and the stage reached in the life of the Parliament had to be taken into account, the Administration was of the view that the business of the nation, including execution of the national goals, must continue.”

Page 3, second complete paragraph – Replace the first two sentences with “The Chairperson asserted that the Government’s approach to implementing the national goals being pursued in the Bill had been made clear from the start. She believed that the present disagreement had more to do with how the process was being led, but the question of the leadership of government was one that was decided at elections.”

Page 3, third complete paragraph – Replace the first two sentences with “The Chairman indicated that an examination of the signature page of the Constitutional Reform Committee’s Report showed that the members nominated by the Leader of the Opposition had not signed the Report. It was said that they were instructed by the Leader of the Opposition not to sign it because the Report contained matters that had not been agreed. However, the decision-making modality of the Committee was one of consensus. Only matters on which consensus was reached were included in the Report. Furthermore, on the day when the Report was signed, some matters were revised out of the Report to ensure that only matters on which consensus was reached were included.”

Page 3, third complete paragraph – Replace the fourth sentence with “She continued that the Terms of Reference for the Constitutional Reform Committee were set out and agreed to. Therefore, the phased approach and the treatment of the final court in a subsequent phase had not come as a surprise because the focus had been on the deeply entrenched provisions, which required a referendum, and any other matter on which there was consensus that could conveniently be achieved.”

Page 3, fourth paragraph – Replace the first sentence with “The Chairperson advised the Committee that she was presenting this information because of the issues that had been raised by the Leader of the Opposition.”

Page 3, fourth paragraph – Replace the second sentence with “She then explained that before the Report had been submitted to the Cabinet, it had been shared for the attention of the Leader of the Opposition. The Committee had requested his presence and that request had been conveyed through the Opposition members.”

Page 6, first paragraph – Replace the second sentence with “Ms Mills stated that the Westminster model, from which the parliamentary systems used in the Caribbean had originated, was one of several types of parliamentary cabinet systems. She defined it as a constitutional system in which the head of state was not the effective head of government; the

effective head of government was usually a Prime Minister presiding over a Cabinet composed of Ministers over whose appointment and removal he or she had a substantial measure of control; the effective Executive Branch of government was parliamentary inasmuch as Ministers must be members of the Legislature; and Ministers were collectively and individually responsible to a freely elected and representative legislature.”

Page 7, first paragraph – In the first sentence, insert the word “by” in the phrase “the proposed system described *by* Miss Mills”.

Page 7, third paragraph – In the first sentence, replace the word “expounded” with “explained”.

The Chairman noted that, in general, shorter sentences, fewer words, and greater emphasis on capturing the essence of statements rather than reporting them directly would make the Minutes clearer.

DISCUSSION ON THE BILL

The system of accountability in the Constitution

The Chairman said that the presentations made by the Ministry of Legal and Constitutional Affairs had been intended to give members of the Committee and the public a better understanding of two matters. The first was the provisions in the Constitution related to accountability, and the second, the parliamentary cabinet system in contrast to the executive presidential system. This information provided the context for retaining the parliamentary cabinet system.

Submissions

The Chairman stated that the review of the Bill would involve examining its provisions along with the submissions from the public. She confirmed with the Committee Clerk that a total of thirteen persons and groups had sent papers to the Committee and they had all been shared with the Members and the technical team. She also confirmed that a matrix of their content would be prepared by the Parliament’s Research Section. She then invited Members’ proposals for efficiently reviewing them. She expressed the view that while all submissions would be considered by the Committee, depending on their content, not all of them must be accompanied by a presentation at the Parliament. Member Braham noted that the basis for inviting some persons but not others could cause public distraction. He stated further that he would have to review them thoroughly before making a suggestion on how they should be handled.

Member Sinclair stated that some of the submissions were not related to the clauses in the Bill but to issues affecting the writers’ communities which were not impacted by its content. He suggested that there should be a screening process to allow persons with relevant submissions to appear before the Committee.

The Chairman noted that the Committee’s role was to review the provisions of the Bill, but some submissions raised issues that were not covered in it but would be dealt with at a subsequent stage in the reform process. She commented that the content of the Bill was a matter of policy. Therefore, the inclusion of additional matters would have to be done in accordance with the appropriate policymaking procedure.

Member Golding Campbell noted that some persons or entities that made submissions might not wish to appear before the Committee. She proposed establishing limits on the length and format of each presentation to ensure that only the salient points were covered.

The Chairman suggested deferring decisions regarding the persons who would appear before the Committee and the format of their presentations until the Members and technical team reviewed the submissions.

Review of the citizenship provisions at clauses 7 – 10 of the Bill

Ms Judith Grant, Chief Parliamentary Counsel, indicated that clause 7 of the Bill sought to repeal section 8 of the Constitution and replace it with the provision below, titled “Deprivation of Citizenship”:

8.—(1) No person who is a citizen of Jamaica by virtue of section 3(1)(a), (b) or (c) shall be deprived of Jamaican citizenship.

(2) A person who is a citizen of Jamaica other than by virtue of the provisions specified in subsection (1) may be deprived of Jamaican citizenship in accordance with a law made under section 10(a).

(3) A person who is aggrieved by the deprivation of that person’s Jamaican citizenship may apply to the Supreme Court for redress.

(4) The Supreme Court shall have original jurisdiction to hear and determine any application made under subsection (3), and any person aggrieved by any determination of the Supreme Court under this subsection may appeal therefrom to the Court of Appeal.”.

The Chairman noted that sections 3(1)(a), (b) and (c) of the Constitution made provision for the acquisition of citizenship by birth, descent and marriage, respectively. The proposed section 8 preserved the existing protection from deprivation of citizenship for those citizens. Ms Wilkins explained that in the existing Constitution, deprivation of citizenship was addressed in sections 8 and 11. The proposed redraft of section 8 would place those provisions in a single section.

The Chairman sought Members’ views on the provisions for redress and appeal in the proposed sections 8(3) and (4). Senator Sinclair asked whether it was intended that the possibility for appeals should end at the Court of Appeal. Member Braham then commented that citizenship was akin to a fundamental right and therefore he did not understand the policy reason for preventing or casting doubt on the possibility of appeals to the Third Tier. He stated further that had the Court of Appeal not been mentioned, the provision would probably be interpreted as allowing appeals to the Privy Council. The Chairman said that the Committee would revisit this subject.

The Chairman made the observation that the existing section 3(1) of the Constitution made provision for citizenship by birth, descent or marriage, while section 3(2) empowered Parliament to make provision for other avenues for the acquisition of citizenship.

Member Braham asked whether any thought had been given to circumstances in which it might be in the interest of the nation for persons who were citizens by virtue of section 3(1) to be deprived of citizenship. The Chairman said that in consultations with the public and the Diaspora, the need for clarity regarding the acquisition of citizenship by descent had been identified. The provisions in the Bill regarding the President explicitly limited citizenship by descent for aspirants to that office to three generations, but no general limit had been established. She also stated that the question of limits to citizenship in the national interest was worthy of further discussion.

Member Braham said that he had questions about whether the State should be empowered to act in cases where a person who had acquired citizenship by birth, descent or marriage committed an abuse. He also raised the possibility of requiring that citizenship by birth be limited to persons who had at least one parent who was a Jamaican citizen by birth, descent or marriage.

Ms Wilkins stated that the Ministry of National Security was actively considering the *Jamaican Nationality Act* and it might be useful to have them share their thoughts on the matter. The

Committee agreed that the Clerk should send an invitation to representatives of that Ministry to present their position to the Committee.

The Chairman noted that the Constitution set the limits for all other laws and therefore it was important to address the question in this law.

Ms Grant read into the record clause 8 of the Bill, which sought to repeal and replace sections 9 and 10 of the Constitution. The proposed section 9, titled “Renunciation of Citizenship,” read as follows:

9. A person who is a citizen of Jamaica may renounce that citizenship in accordance with the provisions of a law specifying the procedure by which Jamaican citizenship may be renounced.”.

The proposed section 10, “Powers of Parliament relating to citizenship”, appears below:

10. Parliament may make provision—
- (a) prescribing the grounds on which and the procedure by which a person who is a citizen of Jamaica other than by virtue of section 3(1)(a), (b) or (c), may be deprived of Jamaican citizenship;
 - (b) for the renunciation by any person of that person’s Jamaican citizenship;
 - (c) subject to the provisions of this Chapter, prescribing the grounds on which and the procedure by which a person may become a citizen of Jamaica by descent.”.

Clause 9 of the Bill “Repeal and replacement of section 11 of the Constitution, and transitional provision”, comprised subsections (1) and (2).

Subsection 9(1) sought to repeal section 11 of the Constitution and replace it with the new section below, to be titled “Powers of Parliament relating to recognition of participation in certain State groups”:

11. Parliament may make provision in respect of the countries that are members of—
- (a) the Commonwealth, and Jamaica’s participation in the Commonwealth;
 - (b) the Caribbean Community and Jamaica’s participation in the Caribbean Community.”

Subsection 9(2) stipulated that the countries mentioned in section 3 of the *Jamaican Nationality Act* were to be treated as members of the Commonwealth, unless other provision had been made in accordance with the new section 11 above.

Clause 10, titled “Amendment of section 12 of the Constitution” read as follows:

- 10.** Section 12(1) of the Constitution is amended by—
- (a) deleting the definition of “alien” and substituting therefor the following—
“ “alien” means a person who is not a citizen of Jamaica;”; and
 - (b) deleting the definition of “foreign country” and substituting therefor the following—
“ “foreign country” means a country other than Jamaica;”

The Chairman explained that at present the term ‘alien’ was defined in the Constitution as a person who was not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland. Also, the term ‘foreign country’ was defined as a country other than the Republic of Ireland that was not part of the Commonwealth. She stated that with the new definitions, a person who was not a Jamaican would be regarded as an alien and any country other than Jamaica would be regarded as a foreign country. She stated that the changes

resulted from ceasing to be part of the Commonwealth Realms, the subset of Commonwealth countries whose Head of State was the British Monarch.

She also noted that the Caribbean Community was being included in the Constitution for the first time. She spoke on the history of its establishment and that of its organs, including the Single Market, of which Jamaica was a part, and the Single Economy, which had not yet been finalised. She also spoke about the Caribbean Court of Justice, of which Jamaica was a member in respect of its original jurisdiction, which dealt with matters arising from membership in CARICOM, but not its appellate jurisdiction.

Member Braham asked whether the Commonwealth or CARICOM must still be mentioned in the Constitution since Commonwealth citizenship no longer featured in certain requirements and CARICOM was one of several international organisations that Jamaica could choose to join. He opined that both bodies could be dealt with in normal legislation. Member Sinclair and Member Golding Campbell concurred.

In responding, the Chairman cited paragraphs 6.1.4 – 6.1.8 of the Report of the Constitutional Reform Committee (CRC):

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;
- iii. the type of citizenship qualification that would be required to serve in the Jamaican Parliament; and
- 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.

Additionally, Ms Wilkins pointed to paragraph 9.1.2, which read as follows:

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

Member Braham asked if the recommendation in paragraph 9.1.2 had been captured in the Bill, adding that if the new section 11 had been intended to address citizenship, its wording might not be sufficient. Similarly, Member Golding Campbell noted that clause 9 of the Bill sought to replace section 11 of the Constitution, which dealt with the deprivation and renunciation of citizenship, with a provision concerning membership and participation in certain groups of States. Ms Grant informed her that the order of the provisions was being changed and the matters originally covered in section 11 were to be addressed in the proposed sections 8 and 9.

The Chairman highlighted the question of whether Parliament would be fettered in the absence of the provision recommended in paragraph 9.1.2 of the CRC's Report above, since Parliament had an overarching law making power. Member Braham opined that it might not be possible for Parliament to confer citizenship on a group such as CARICOM citizens since specific provision had been made regarding the categories of persons who could become citizens. The Chairman then mentioned the power given to Parliament in section 3(2) of the existing Constitution to make provision for the acquisition of citizenship by persons on whom it had not been conferred by Chapter II.

Member Golding Campbell opined that it was unnecessary to name specific groups of countries in the Constitution. She suggested that the clause be worded in more general terms. Ms Wilkins concurred that this change would satisfy Senator Braham's concern.

The Chairman asked whether Parliament would be prevented from making provision in relation to Jamaica's participation in the Commonwealth and the Caribbean Community without the proposed section 11. Ms Wilkins explained that Members' concerns could be addressed if the clause were drafted in more general language. The new wording should be guided by the wording of the marginal note, "Powers of Parliament relating to recognition of participation in certain State groups." It would not specify any organisation or group but would make it clear that the Parliament was empowered to enter arrangements that would include non-citizens.

The Chairman asked whether the Parliament would be prevented from passing laws for Jamaica's participation in state groupings if provision were not made for this in the Constitution. Ms Wilkins responded in the negative but noted that if for some reason matters that were being contemplated would confer on a person who was not Jamaican benefits which the Constitution guaranteed for Jamaicans, it might not be possible for the Parliament to pass the related law without amending the Constitution.

The Chairman indicated that the reference to CARICOM was a symbolic acknowledgement of Member States' proximity to each other, shared colonial past and aspirations. Additionally, the Commonwealth had been named because Jamaica was not exiting that grouping and the related law needed to be clarified. She said that the point was taken that there could be a general provision in respect of empowering Parliament to pass laws recognising Jamaica's participation in any state group and not just certain state groups. Ms Wilkins then stated that it might be necessary to consider whether the provision belonged in Chapter II, which dealt with citizenship, as this would contextualise how it was used in the future.

The Chairman asked whether the Committee was in agreement that any reference in the Constitution to Parliament's power to pass laws recognising Jamaica's participation in state groups should exclude the names of specific groups and that it need not be included in the chapter on citizenship. Members responded affirmatively.

The Chairman went on to speak on the Parliament's power to make provision prescribing the grounds and procedure for conferring citizenship by descent. She said that her understanding of the earlier discussion was that there was a desire to extend the proposed section 10(c) beyond descent to enable Parliament to make provision regarding the means by which a

person may become a citizen. She said that there was no intention to deprive persons who enjoyed citizenship at present. However, it was necessary to ensure that the State could respond speedily to deal with any matter that might pose a threat to it by virtue of who was allowed to acquire or retain Jamaican citizenship. She also noted that the CRC's recommendation did not include disturbing the present position.

Member Braham expressed a preference for deferring decisions on the matter until the Committee received input from the Ministry of National Security. The Chairman asked that the Clerk issue the related invitation to the Ministry immediately after the meeting, directing them to clauses 7, 8, 9 and 10 of the Bill.

Regarding the proposed section 8(4) in clause 7, which seemed to prevent appeals beyond the Court of Appeal for matters relating to citizenship, the Chairman said that if this was not intended, the wording might need to be revised. Mr Harper made reference to section 19(5) of the Constitution, which was within Chapter III, "Charter of Fundamental Rights and Freedoms." That subsection made provision for appeals to the Court of Appeal from decisions of the Supreme Court regarding alleged contravention of the provisions of the Charter. He also cited section 44(1), which excluded appeals to the Privy Council in respect of membership in Parliament and was reiterated in section 110(4). He proposed that if the intention was to allow appeals in respect of citizenship to the highest level of the local Court, an example existed. However, if they were to be allowed beyond that level, section 19(5) would be of assistance in interpreting the provision. Ms Grant concurred, adding that a reading of section 110 of the Constitution was crucial to the issue at hand, as it was governed by and covered under that provision. The Chairman noted that the matter must also be considered in the light of international prohibitions on statelessness. She added that the Ministry would provide further assistance in bringing clarity to the provision.

Decisions and Action Items

The Chairman highlighted the following decisions:

- ***The Ministry of National Security was to be invited to comment on clauses 7, 8, 9 and 10 of the Bill.***
- ***The power of the Parliament to make provision recognising Jamaica's participation in state groups should be broadly framed and should not be placed in Chapter II but elsewhere in the Constitution.***
- ***The procedural aspects of acquisition and deprivation, including renunciation, of citizenship should be revisited.***

DATE OF THE NEXT MEETING

The Committee agreed to meet on Wednesday, February 19, 2025, to hold discussions with the Ministry of National Security concerning the provisions in clauses 7 – 10 of the Bill. The Chairman also reminded Members of the prior decision to meet on February 20, 25 and 26, 2025.

Member Smith indicated that some Members of the Committee found it challenging to attend meetings on Thursdays. The Chairman said that his concern was noted and would be taken into account.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:57 p.m.

*Houses of Parliament
February 2025*