



**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, FEBRUARY 19, 2025, AT 10:24 A.M.**

ATTENDANCE

Present were:

Hon. Marlene Malahoo Forte, KC, MP – Chairman
Miss Tamika Davis, MP (Virtually)
Senator Charles Sinclair, CD (Virtually)
Senator Sherene Golding Campbell

Absent were:

Mr Duane Smith, MP – Apology
Miss Kerensia Morrison, MP
Mr Mark Golding, MP
Mr Anthony Hylton, MP
Senator Peter Bunting
Senator Donna Scott Mottley

Also present were:

Ministry of National Security

Ms Shountae Boothe, Senior Assistant Attorney-General
Ms Sandra Brown, Assigned Director, Citizenship Unit, Passport, Immigration and Citizenship Agency
Mr Howard Palmer, Policy Manager, Border Security Affairs

Ministry of Legal and Constitutional Affairs

Mr Wayne O. Robertson, Permanent Secretary
Mr Philip Cross, Senior Constitutional Reform Officer
Ms Shereika Mills, Constitutional Reform Officer
Ms Shawna-Kaye Taylor Reid, Administrative Assistant
Ms Julia Wedderburn, Senior Legal Education Officer

Legal Reform Department

Ms Nadine Wilkins, Director
Mr Makene Brown, Legal Officer

Office of the Parliamentary Counsel

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

Houses of Parliament

Ms Tracy Cohen, Committee Coordinator

CALL TO ORDER

The Chairperson called the meeting to order at 10:24 a.m.

PRAYER

The opening prayer was said by Ms Julia Wedderburn of the Ministry of Legal and Constitutional Affairs.

APOLOGIES FOR ABSENCE

Member Duane Smith sent apologies for absence.

WELCOME AND OPENING REMARKS

The Chairman welcomed everyone to the meeting. She indicated that, after confirming the Minutes, the Committee would hold discussions on clauses 7 – 10 of the Bill with representatives of the Ministry of National Security, which was responsible for citizenship.

CONFIRMATION OF THE MINUTES OF THE MEETING HELD ON FEBRUARY 6, 2025

Page 2 of the Minutes was to be amended by capitalising the word “minutes” in both places where it appeared. There were no other amendments. Confirmation was deferred

PRESENTATION BY THE MINISTRY OF NATIONAL SECURITY AND DISCUSSION

The members of the team introduced themselves. Those present were Ms Shountae Boothe, Senior Assistant Attorney-General; Ms Sandra Brown, Assigned Director, Citizenship Unit, Passport, Immigration and Citizenship Agency; and Mr Howard Palmer, Policy Manager, Border Security Affairs. Ms Boothe began the presentation.

Citizenship by descent or marriage

Ms Boothe advocated employing DNA testing as a supplement to the documentary process used for establishing citizenship by descent. She explained that not all foreign governments were able to authenticate records proffered by applicants as proof of their Jamaican connections. The Chairman asked whether the Ministry wished to see this placed in the Constitution. She replied that they had considered having it included in primary legislation or regulations, but favoured a constitutional amendment. However, they were willing to yield if this were not appropriate. The Chairman confirmed that detailed administrative matters were not usually placed in the Constitution. In this case, the proposed section 10(c) of the Constitution in clause 9 of the Bill would empower Parliament to make laws on the matter. Thereafter, the Ministry could develop the policy which would ultimately become law through the regular legislative process.

Member Golding Campbell sought further information on the existing protocol or practice in relation to DNA testing. Ms Brown said that she was not aware of any provision in law concerning the submission of DNA test reports to substantiate claims to citizenship by descent. Member Golding Campbell asked if a report would be accepted if an applicant submitted it voluntarily. Ms Brown responded that it was not the norm, but it might be used in exceptional circumstances where examination of the civil documents led to uncertainty regarding the legitimacy of the claim.

The Chairman indicated that concerns raised by Jamaicans at home and abroad had informed the inclusion of a proposed amendment to the Constitution to address the grounds and procedure for citizenship by descent. The relevant legal framework would have to be developed by the Ministry and established in primary legislation.

The Chairman also noted that the Ministry’s proposals regarding deprivation of citizenship obtained fraudulently by marriage would require an amendment to the Constitution, which prohibited deprivation of citizenship acquired by marriage, without exception. She enquired about the prevalence of such cases. Ms Boothe responded that the Ministry would like to see exceptions not only in relation to fraudulent marriages, but also where fraudulent documents had been used to support an application for citizenship by descent.

The Chairman stated that the Ministry wished for the law to include a generational limit on the grant of citizenship by descent to applicants who could prove that they had a Jamaican parent or grandparent. She commented that other jurisdictions allowed claims based on ancestry of up to five generations and enquired about the rationale for the Ministry's proposal. Also, Member Golding Campbell sought further clarity regarding the existing practice. Ms Brown explained that at present there was no generational limit, and authenticating supporting documents became more challenging with each additional generation of ancestry. She added that DNA testing might be helpful in such situations.

Mr Palmer added that persons presented very old documents which the authorities in Jamaica and overseas could not reliably verify. He asserted that with today's technology, Jamaica must adopt stringent and modern verification measures to protect its own borders and those of other countries to which a Jamaican passport might inadvertently facilitate access for transnational criminals. He said that a generational limit would help to mitigate these vulnerabilities.

Member Golding Campbell sought further clarity regarding the related risks, which she understood to have been lessened by the transition to modern birth certificates with improved security features in Jamaica. Mr Palmer responded that the documents from Jamaica's Civil Registry were usually available and secure. However, persons would use the information gleaned from them in forging documents purporting to be from the authorities in another jurisdiction to substantiate an alleged connection to the person identified by the Jamaican document. Member Golding Campbell reiterated the Chairman's request for prevalence data for these offences. She expressed support for amendments that would strengthen the provisions on citizenship by marriage and descent.

The Chairman requested an explanation of the national security implications of the benefits of citizenship and the State's obligation to its citizens. She said that this would enhance listeners' understanding of the importance of the related constitutional provisions and the Ministry's proposals. Ms Brown explained that citizenship conferred the right to apply for a Jamaican passport or the opportunity to receive an unconditional landing stamp in a foreign passport. The passport would assist the holder in establishing his or her identity, while facilitating travel and enabling entrance to countries which did not impose visa restrictions on Jamaican nationals. It would also enable him or her to apply for visas from other countries and to have those visas placed in a Jamaican passport. Also, if the holder lost the document or encountered other challenges overseas, he or she was entitled to consular services, and where there was no Jamaican Consulate, Embassy or High Commission, the Jamaican State must still protect him or her. Mr Palmer added that a Jamaican citizen had the right to freedom of movement within, out of and into Jamaica. The Chairman advised that this right was applicable to the extent that it did not impede others in the enjoyment of their rights.

Mr Palmer also indicated that a Jamaican citizen who committed heinous crimes in another country and was liable to deportation had the right to invoke his or her Jamaican citizenship and choose to be deported to Jamaica, even if that citizenship had been gained through descent and the person had no present connection to Jamaica. The Chairman highlighted the implications of this practice, particularly where Jamaica had never had the benefit of good citizenship from that person but would be required to expend resources for his or her benefit. Mr Palmer confirmed that there were numerous cases within the system where Jamaican citizenship was invoked for purposes of deportation. He pointed out that once a person gained citizenship by descent, all of his or her descendants also became entitled to Jamaican citizenship.

Ms Boothe stated that the Ministry was in favour of limiting the possibility of acquiring citizenship by descent to claims made through a parent or grandparent. This would address concerns around authenticating documents from previous generations and allow consistency

in the law since this limit was to be established for nominees for the office of President. The Chairman said that objections to this limit were likely, as the number of years between generations was declining, and therefore multiple generations of a single family could coexist, and persons prized their status as Jamaicans.

The Chairman later summarised her understanding of the Ministry's position on the issue. They had indicated that Jamaica's verification system was document-based and consideration should be given to limiting to three the number of generations of distance between the applicant for citizenship and the person from whom he or she could claim descent. The rationale was that verification became more difficult and the strength of the related claim more questionable with each additional generation. She reiterated that a three-generation limit was likely to be contested, but acknowledged that there seemed to be legitimate grounds for the position that the entitlement should not be limitless in that respect.

Definitions of 'alien' and 'foreign country'

Ms Boothe indicated that the proposed amendments to the definitions of "alien" and "foreign country" in section 12 of the Constitution would be in conflict with the Immigration Restriction (Commonwealth Citizens) Act (IRCCA). She explained that the IRCCA allowed for exemptions and special treatment for Commonwealth citizens in immigration matters, but this would be affected by their being designated aliens from a foreign country in accordance with the proposed amendments to the definitions of these terms.

Mr Brown asked whether the Ministry had considered having the IRCCA subsumed under the Aliens Act since there would no longer be a distinction between non-Jamaicans who were Commonwealth citizens and those who were not. The Chairman pointed out that once the Constitution was amended, any law that was inconsistent with it would be void to the extent of the inconsistency. Therefore, the Ministry would have to consider the nature and extent of any change that would be required for conformity. She added that changes made would have to be implemented and that the decision to adopt a phased approach took that into consideration.

Ms Boothe stated that the Ministry had in fact considered various strategies for bringing the legislation affecting their portfolio into conformity with the amended Constitution, including consolidating all the laws relating to immigration in a single piece of legislation. She noted that there were anomalies that needed to be resolved, including those relating to the status of citizens of the Republic of Ireland.

Mr Palmer informed the Committee that the Republic of Ireland had contested the imposition of visa requirements for their citizens on the grounds that the requirement was inapplicable, as they were neither aliens nor Commonwealth citizens. The Chairman said that they were, technically, correct. She however observed that Jamaica, as part of the Commonwealth Realm, was not a foreign country in relation to Britain, but Jamaicans needed a visa to enter that country, where their Head of State resided. Consequently, the special categorisation of the Republic of Ireland did not prevent their having to obtain a visa to enter Jamaica. Mr Palmer stated that the Attorney General had ruled that they must comply with the requirement.

The Chairman explained that once specific provision was made in the Constitution concerning a matter, that stipulation would stand unless amended, and the existing definition of *foreign country* in the Constitution was "a country (other than the Republic of Ireland) that is not part of the Commonwealth." Similarly, *alien* was defined as "a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland."

Member Golding Campbell asked whether the Bill had made provision in respect of the Republic of Ireland. The Chairman replied that while that nation had not been mentioned

explicitly, its status would be affected by the proposed clause 10, titled “Amendment of section 12 of the Constitution”, which 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;”

She indicated that it was customary for Commonwealth nations to give each other’s citizens special consideration, but over time, more and more nations had prioritised national security over this convention and imposed visa restrictions within the Commonwealth.

The Chairman quoted paragraph (iii) of the Ministry’s comments on the proposed provisions regarding deprivation of citizenship on page 2 of their submission:

“Similarly, an exception should be made for individuals born to Jamaican parents in another state who were not granted automatic citizenship based on birth, but are later deemed Jamaicans following the commission of crimes, particularly those warranting deportation. In line with the [proposed] conviction exemption clause, such individuals should be subject to deprivation of citizenship.”

She said that it implied that even where there was an entitlement to citizenship, if the claim was made by a person who had no connection to Jamaica only at the point where he or she became subject to deportation, a discretion not to grant citizenship should be reserved to the State. Mr Palmer concurred, adding that the Ministry was also requesting that this discretion be applicable in cases where deportation was not contemplated but the applicant’s police record suggested a public safety threat. The Chairman enquired whether the Ministry was seeking a carve-out to allow consideration to be given to the circumstances under which citizenship was being claimed and Mr Palmer confirmed this.

Appeals

Ms Boothe informed the Committee that the proposed section 8(4) of the Constitution as set out in clause 7 of the Bill seemed to contradict section 11 of the *Jamaican Nationality Act*. While the proposed provision would permit appeals to the Court of Appeal against decisions regarding citizenship, section 11 of the *Jamaican Nationality Act* provided as follows:

- 11.** The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act, the decision on which is at his discretion; and the decision of the Minister on any such application shall not be subject to any appeal or review in any court.

Mr Palmer stated that the proposed amendment would negate the Minister’s power to refuse to give a reason for denying an application on the grounds of national security. The Chairman responded that while it was appropriate to restrict disclosure of information for reasons of national security, Parliament must guard against arbitrary resort to this position. She added that the Constitution could empower Parliament to pass legislation on the subject, which must be thoroughly scrutinised.

Mr Cross noted that section 11 of the *Jamaican Nationality Act* had to do with the denial of an application for citizenship, while the proposed section 8(4) addressed a right of redress where a person had been deprived of citizenship. He asked that the Ministry consider whether there really was conflict between the provisions since they dealt with different circumstances. Ms Boothe responded that a creative attorney could attempt to convince the Court that deprivation

was essentially a means of denying something. The Chairman said that she was correct since it could be argued that, with the current formulation of the law, a person was entitled to citizenship and need only go through administrative processes to receive it. Where such a person was denied the opportunity to access those administrative processes in order to benefit from his or her entitlement to citizenship, it could be argued that this denial amounted to a deprivation. She added that the provision should be clarified. She further stated that if the recommendation concerning the propriety of reserving to the State a power to deprive or refuse citizenship was accepted, the entire framework would be affected.

Ms Boothe asked whether specialist treatment in respect of the Supreme Court's handling of immigration matters had been considered, given the case load of the Court and the urgency of some immigration cases. The Chairman responded that she was familiar with scenarios in which national security demanded rapid processing of persons who had entered the jurisdiction after being accused of committing heinous crimes. Nevertheless, she emphasised litigants' right to due process and the need to improve the relevant systems to ensure that they were not deprived of this right instead of viewing it as an inconvenience.

The Chairman commented that most of the matters raised by the Ministry would have to be addressed internally after the Bill was passed. She also said that the exchange had been useful. She asked that the Ministry's representatives provide the prevalence statistics in relation to the types of immigration cases mentioned in the discussion. She noted, however, that their response should not be limited to quantitative data but should address the gravity of the potential security, safety and other implications of each case. She mentioned the possibility of a number of persons who had committed serious crimes being sent to Jamaica as a result of executive orders in another country. She said that where these persons had no connections or support system in Jamaica, they would become the State's responsibility.

Denial and deprivation of citizenship

Member Golding Campbell reminded Members of an earlier reference to statelessness and the discussion regarding countries where citizenship was not granted at birth as of right but through a process undertaken on reaching the age of majority. She then enquired about the treatment of a person who was not granted citizenship in his country of birth, was to be deported from that country upon being convicted of a serious crime, but was also denied citizenship in Jamaica on account of his or her criminal record. The Chairman added that Member Golding Campbell's question had led her to consider whether Jamaica should be protecting itself and its people from the threat posed by these persons just as other countries did. She noted that deported persons with no connections in Jamaica could become pawns for organised crime.

Mr Palmer said that there were many of the types of cases that Member Golding Campbell had mentioned, as well as those involving persons who had in fact been born in Jamaica but had left at an early age. Often, the Ministry had no evidence beyond the documents presented by the person, and they were not able to identify anyone in any community who could attest to their connection to the island.

Concerning the treatment of stateless persons, Mr Palmer said that the United Nations afforded them certain rights and privileges for which they could apply through the State in which they were located.

Member Golding Campbell cited paragraph (ii) at the top of page 2 of the Ministry's document, which appears below:

"Under section 3(1)(b),(c), an exception should be made for deprivation in cases of persons of descent and marriage who are convicted of serious and heinous crimes,

and terrorism, allowing for the deprivation of Jamaican citizenship due to the threat to public safety and Jamaica's international reputation."

She asked whether the crimes contemplated there were those committed under Jamaican law in Jamaica, those committed outside of Jamaica but which were also recognised as crimes under Jamaican law, or those committed in another jurisdiction which were not recognised as crimes locally. Ms Boothe said that the Ministry's request related to heinous crimes and terrorism committed elsewhere. Member Golding Campbell asked whether the Ministry was seeking to be empowered to deprive a person who had obtained citizenship by descent or marriage of that citizenship for crimes committed in Jamaica. Ms Boothe responded in the negative, explaining that such crimes would be dealt with through the local justice system.

Ms Boothe further advised the Committee that the request mentioned above also covered cases where a person was found to have entered a marriage fraudulently or presented fraudulent evidence in support of an application for citizenship.

Mr Palmer cited section 4(1)(i) of the IRCCA, which appears below:

4.— (1) The following Commonwealth citizens (not being persons deemed to belong to the Island as defined by subsection (2) of section 2) are prohibited immigrants:

- (i) Any person who, not having received a free pardon, has been in any country convicted of an offence for which a sentence of imprisonment has been passed and who for this reason is deemed by the Minister to be an undesirable immigrant;

He pointed out that such a person could however claim citizenship by descent. He asked the Committee to consider whether the grounds identified here should also be recognised as justification for denial of a claim to citizenship.

Member Golding Campbell stated that while she appreciated the need to ensure that the nation was protected from threats, she could conceive of a number of scenarios where such a denial would be detrimental to individuals, families and, especially, children. She again requested prevalence data to aid her consideration of the issue.

The Chairman said that nationality and immigration issues were topical and were sometimes sensitive and there were many documented cases which evoked deep emotions. She also stated that Jamaicans were a migratory people, and the interest of the State must include the interest of the people. She further stated that the present Administration was sensitive to the related issues and wished to balance them with the obligation to protect Jamaica and its people. She emphasised that there were no easy answers to tough questions. She then indicated that there were three clauses in the Bill which sought to provide a clearer framework for Jamaica's nationality and immigration laws. These had been included in recognition of the complexity of the matter. The day's discussion highlighted the question of whether they needed to be augmented by reserving to the State the power to take action when appropriate. She noted that a strong case had been made, but the details would be important. Also, the related policies would have to be formulated and laws passed, with the requisite scrutiny, at the appropriate time.

Mr Palmer asked whether there was to be a restriction on a person's ability to claim citizenship by marriage after the death of their Jamaican spouse if they married someone else without having officially become a Jamaican citizen during the first spouse's lifetime. The Chairman

said that such matters would not be included in the Constitution itself but would be covered by the power given to Parliament to make related legislation.

Mr Cross asked whether the revocation of documents in cases where a person obtained citizenship on the basis of fraudulent papers or false statements could be considered deprivation of citizenship or a mere affirmation of the fact that the person had never become a citizen in the first place. The Chairman said that it would be the latter, as fraudulently obtained citizenship would have been void *ab initio* (from the beginning). She noted that it was important for those who administered processes on behalf of the Government to be thoroughly grounded in the related laws and principles so that they could do their jobs effectively and give the public clear and accurate information. Ms Boothe said that while she was aware of the invalidity that would arise from fraud, she was of the view that the law should explicitly provide for the treatment of such matters since there could be challenges in the Court regarding the strength of the related documentary evidence, given the aforementioned verification difficulties.

The Chairman stated that the question before the Committee was whether the framework in the Bill was to be further revised to allow the Parliament to prescribe the grounds on which, and the procedure by which a person could become a citizen of Jamaica or be deprived of citizenship alongside provisions specifying the procedure by which a person could renounce his or her citizenship. She noted that this would constitute a significant revision, as it would affect the absoluteness of citizenship acquired by certain means.

Decisions and Action items:

The Chairman highlighted the following decisions:

- It was to be recommended that the provisions in the Bill be expanded to allow Parliament to make provisions generally for the acquisition and deprivation of citizenship
- The Ministry of National Security was to submit a further memorandum with statistics illustrating the challenges faced in relation to persons seeking to acquire citizenship and the verification of documents. The cost to the State should be included.

DATE OF THE NEXT MEETING

The Committee agreed to meet on Wednesday, February 26, 2025, at 10:00 a.m., when they would consider the provisions relating to the office of President. The content of submissions on this issue would also be considered and, if necessary, the Committee would decide to solicit further input from specific individuals and entities.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:21 p.m. on a motion made by Member Golding Campbell and seconded by Member Sinclair.

*Houses of Parliament
February 2025*