

SUBMISSION TO THE JOINT SELECT COMMITTEE OF REVIEWING THE CONSTITUTION (AMENDMENT) (REPUBLIC) ACT, 2024

February 2025

SUBMITTED ON BEHALF OF:



Organisation's Contact:

Mickel Jackson (Ms)

Executive Director

Jamaicans for Justice

2 Fagan Avenue, Kingston 8

Tel: (876) 755-4524

mjackson@jamaicansforjustice.org

TABLE OF CONTENTS

1	INTRODUCTION	3
2	RECOMMENDATIONS FOR AMENDMENTS AND LEGISLATIVE REVIEW	4
3	PART 1. ESTABLISHING THE OFFICE OF THE PRESIDENT	4
3.1	PROCEDURE FOR NOMINATION OF PRESIDENT.....	4
3.1.1	OPTION 1:.....	5
3.1.2	OPTION 2:.....	5
3.2	AMEND THE ELECTION PROCESS TO EXPAND TO A SPECIAL ELECTORAL COLLEGE	6
3.3	INCLUDE CLEAR TIMELINES FOR THE HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OF PERSON ELECTED TO FILL CASUAL VACANCY	7
3.4	TENURE OF OFFICE OF PRESIDENT	7
3.4.1	REMOVE AMBIGUITY FROM TERM LIMITS	7
3.5	INSERT THE PROVISION “CONDITIONS OF THE PRESIDENT’S OFFICE”	8
3.6	LIMIT IMMUNITY OF THE PRESIDENT	8
3.7	EXPAND WHO CAN RAISE THE QUESTION OF REMOVAL OF PRESIDENT.....	9
3.8	RESERVED AND DISCRETIONARY POWERS OF THE PRESIDENT	9
3.8.1	ENACTMENT OF LAWS	10
3.8.2	APPOINTMENT OF KEY POSITIONS AND COMMISSIONS OF PARLIAMENT	12
3.9	MAINTAIN TWO-THIRD MAJORITY AT SENATE LEVEL TO INCLUDE PARLIAMENTARY OPPOSITION	13
4	ENTRENCHMENT OF KEY INSTITUTIONS.....	14
4.1	ENTRENCHMENT OF THE ELECTORAL COMMISSION OF JAMAICA	14
4.1.1	SAFEGUARD THE INDEPENDENCE OF THE ECJ.....	15
4.1.2	STRENGTHEN THE FUNCTIONS OF THE ECJ AS IT IS GIVEN ENTRENCHMENT	15
4.1.3	EMPOWER ECJ TO ADVISE DATE OF GENERAL ELECTION	15
4.2	ENTRENCHMENT OF THE NATIONAL HUMAN RIGHTS COMMISSION; COMING INTO EFFECT WITHIN TWO YEARS AFTER PASSAGE OF THE AMENDMENT	16
4.3	PROCEDURE FOR AMENDING THE CONSTITUTION.....	18
4.3.1	INCLUDE JOINT SELECT COMMITTEE AND PUBLIC DELIBERATIONS TO ALTER PROVISIONS OF SECTION 49(2) AND 49(3)	19
4.3.2	EXPLICITLY STATE INCLUSION OF NEWLY ENTRENCHED OR SPECIALLY ENTRENCHED PROVISIONS.....	19
5	PART IV. PUBLIC EDUCATION, REFERENDUM AND CONSENSUS BUILDING	20
5.1	IMPROVE PUBLIC EDUCATION.....	20
5.2	SECURE CONSENSUS WITH THE PARLIAMENTARY OPPOSITION	20
6	SUMMARY OF RECOMMENDATIONS AND CONCLUSION.....	22

1 INTRODUCTION

Jamaicans for Justice is pleased to make its written submission to the Joint Select Committee reviewing the Constitutional (Amendment) (Republic) Act (Bill), 2024. There are several areas of agreement with the Bill, noting that at least two of our recommendations made to the Constitutional Reform Committee have made it to the draft Bill. Those include amendments to section 49 which speaks to the procedure for amending the constitution to allow for new provisions to be entrenched and imposing a time limit to prevent a possible pocket veto by the President. We note with disappointment, however, that recommendations on the reserved and discretionary powers of the President did not make it to the Bill. Our proposals have repeated those calls.

JFJ agrees with a non-executive president to be indirectly appointed via secret ballot. However, given the understandable and shared concerns about legitimacy, JFJ recommends that the nomination process for the president be amended, as well as expanding the electoral college to include local government councillors as exists in India and Estonia, for example. While the organisation welcomes the amendment to section 49 and the time delay for ordinary constitutional changes, we also call for the constitution to make it expressly clear that for any Bill that seeks to amend an entrenched or specially entrenched provision, it must go to a joint select committee and allow for public deliberation.

As was expressed by way of an open letter dated May 17, 2023 that was signed by eleven (11) civil society groups and individuals, JFJ remains concerned about the levels of public engagement in ensuring that there is sufficient understanding of the governance systems and the proposed changes being made. While we welcome the opportunity in making a written submission, we remain concerned about the feasibility of the timeline where the Government is moving full speed ahead without consensus of the parliamentary opposition and effective comprehensive public education. It is our position that while there have been some improvements with engagement, there still has not been satisfactory comprehensive public education. This, we fear and caution, may very well result in a rejection at the ballot.

The organisation places on record that it strongly encourages the Parliamentary opposition to actively participate in the meetings of the joint select committee to ensure effective representation of its constituents and the people of Jamaica. On the other hand, the Government and ruling political party must state not only its positions but implementation plans on some critical matters that could possible derail the constitutional process given the very political nature of the discourse thus far. Therefore, the government is encouraged to answer the following questions and raised concerns:

1. The government has stated its preference for a local final court rather than acceding to the Caribbean Court of Justice. Has the government done any assessment of the effectiveness of the CCJ and the quality of its judgements, economic/financial feasibility of establishing a final court in Jamaica? Has the government examine a possible timeline for establishing a final court in Jamaica?
2. What is the proposed timeline for the current phase to end and future phases begin and their duration?
3. Given public statements from at least two ministers that some areas will not be touched or there being some personal discomfort on some controversial matters [abortion and buggery], is the former the official position of the Government of Jamaica and how will the process unfold given the matters to be raised in phase two?

The organisation notes that the above questions are important to be answered to ensure that there is legitimacy to the current process being undertaken. Further, given the process of phase one is being done close to a constitutionally due general election, what efforts are being made to have consensus with the opposition? This consensus is important in ensuring that if there is a change in administration of governance, there would be no need for a restart but a mere resumption of plans underway.

2 RECOMMENDATIONS FOR AMENDMENTS AND LEGISLATIVE REVIEW

This submission is made on behalf of Jamaicans for Justice (JFJ) to the Joint Select Committee reviewing the Constitution (Amendment) (Republic) Act, 2024.

Key human rights issues and a rights-based approach must be incorporated into the legal framework and organizational arrangements for the elaboration of new constitutional provisions. From this perspective, JFJ is concerned about the following:

- *Expansion of the rights and freedoms in the constitution, and ensuring that the Charter of Fundamental Rights and Freedoms is strengthened and not weakened;*
- *Expansion of the protected characteristics that provide for freedom from discrimination;*
- *Greater access to justice with Jamaica adopting the Caribbean Court of Justice;*
- *Greater protection and promotion of human rights from state abuse, and those by non-state actors, through the establishment of constitutionally entrenched National Human Rights Institution;*
- *Balancing of powers between the executive and legislature to offer greater checks and balances;*

Whilst the focus of the submission is primarily around the establishment of the Office of the President, JFJ's recommendations seek to ensure that the President is the arbiter of the constitution and assumes a critical role in maintaining the independence of critical bodies and commissions of Parliament.

3 PART 1. ESTABLISHING THE OFFICE OF THE PRESIDENT

3.1 PROCEDURE FOR NOMINATION OF PRESIDENT

The proposed method for nominating a president in Jamaica's constitutional reform process may result in the dominance of prime ministerial influence given the guaranteed confirmation. With the current system where the PM's nominee only requires a majority in a joint sitting of the House, there's a high likelihood that the ruling party's majority will secure the PM's choice, given our Parliamentary, winner takes all, two party model and the invariable party control in the House. This setup significantly diminishes the opposition's influence if they cannot agree with the PM's choice, giving the PM considerable control over the presidency.

If the presidency is seen as an extension of the ruling party's will rather than a position nominated through a process involving broader consensus, it might affect the perceived legitimacy and independence of the office. This could lead to public distrust or cynicism towards the new republican system.

JFJ therefore suggests two options for consideration:

- 1) Similarly to what exists in India and Trinidad, the House of Representative can nominate candidates for election **OR**;
- 2) If there is a disagreement between the Prime Minister and the leader of opposition on the Prime Minister's nominee and there cannot be a consensus reached, the Leader of the Opposition shall nominate an individual and both nominees will be put to the special electoral college for voting. Notably, the CRC made a similar recommendation as a measure of last resort.

In JFJ's estimation, a system where the House of Representatives nominate a candidate **or** both the PM's and opposition's nominees are voted upon introduces a more democratic and balanced approach. This would potentially:

- i. *Reduce PM's Dominance*: By giving an equal chance for both nominees, it would decrease the likelihood of the presidency being a direct extension of the PM's power.
- ii. *Foster Consensus*: It would encourage the selection of a candidate with wider acceptance, possibly leading to a less partisan presidency.
- iii. *Enhance Legitimacy*: A president chosen through such a method might be viewed as more legitimate, representing a broader spectrum of Jamaican society rather than just the ruling party.

In summary, the challenge lies in balancing power between the executive (Prime Minister) and ensuring the presidency can serve as a unifying national figure, not just a political appointment. The system proposed in the republic bill might secure the PM's choice but at the potential cost of national unity and the symbolic role of the presidency.

3.1.1 OPTION 1:

Legislative Proposal – Amend Clause 11 – section 25

- (1) A person shall not be a candidate for election as President unless he is nominated for election by a nomination paper which—
 - (a) is signed by him and by twelve or more members of the House of Representatives; and
 - (b) is delivered to the Speaker at least four months before the Election
- (2) The Speaker shall submit the names to the Commission no later than seven days after receiving the names.
- (3) The nominations referred to the Electoral College under subsection (4) shall be put to a vote conducted by secret ballot.
- (4) On a vote under subsection (3), the nominee shall be appointed as President if the nomination secures the vote of electoral college, by a majority of all its members voting pursuant to subsection (3).
- (5) If there be more than one who have an equal number of votes, then the House of Representatives shall immediately choose by ballot and absolute majority one of them for President.

3.1.2 OPTION 2:

Legislative Proposal – Amend Clause 11 [s 25(4)(d)(ii)]

And if the Prime Minister –

(ii) does not agree with the proposal and not less than **two months** has elapsed since the Prime Minister first made a recommendation to the Leader of the Opposition in respect of a nominee to fill the vacancy—

- (A) the Leader of the Opposition shall determine a second nominee and, after informing the Prime Minister as to the second nominee, in writing inform the Speaker and the Senate President as to the nominee; and
- (B) the Speaker and the Senate President shall refer the two nominees to the special electoral college for a vote.

(5) The nominations referred to the Electoral College under subsection (4) shall be put to a vote conducted by secret ballot.

(6) On a vote under subsection (5), the nominee shall be appointed as President if the nomination secures the vote of the electoral college by a majority of all its members voting pursuant to subsection (5).

(7) If there be more than one who have an equal number of votes, then the House of Representatives shall immediately choose by ballot by an absolute majority of all its members voting.

3.2 AMEND THE ELECTION PROCESS TO EXPAND TO A SPECIAL ELECTORAL COLLEGE

It was agreed in the 1990s that the President would be nominated by the Prime Minister after consultation with the Leader of the Opposition but would be subject to confirmation by a two-thirds majority of Parliament voting by secret ballot, however there was disagreement as to how that two-thirds majority should be counted. The then PNP Government argued that the vote should be taken with both Houses voting together. The then JLP Opposition insisted that the vote should be taken separately in each House to ensure consensus on this crucial appointment, no matter how overwhelming the government majority in the lower House may be.

The organisation disagrees with the approach proposed by both political parties, whether then or now.

JFJ also does not support a direct election by the people of the president. While one may argue that this process enables the President to claim a personal mandate and achieve legitimacy by the people, direct election is also more likely to result in an overtly party-political presidential campaign that might harm the position of the president as a supposedly impartial and apolitical figure.

JFJ proposes that the president be elected by a special electoral college, via a secret ballot. This special electoral college would include members of both Houses, as well as local government representatives. Based on review of our earlier recommendation, and the initial response of implications for the standing orders and implications for logistics for a joint sitting, JFJ makes the recommendation that the voting process should be managed by the Electoral Commission of Jamaica.

An expanded electoral college achieves a middle ground of direct and indirect election given increased representatives voting on behalf of the people. It also reduces executive control given the possibility that a ruling party may have control of the House but not necessarily local government.

Legislative Proposal – Insert the below provision to account for the Electoral College
(note that numbers are not aligned with Bill given they are proposed new insertions.)

(1) (i) The nominees referred to the Electoral Commission under subsection (4) of section 4 shall be put to a vote by the Electoral College under subsection (ii) of this section conducted by a secret ballot.

(ii) The President shall be elected by the members of an electoral college consisting of-

1. the elected members of both Houses of Parliament; and
2. the elected members of the local government.

(iii) Fixing place and time of polling for Presidential election.—

At every Presidential election where a poll is to be taken, the Electoral Commission shall— (a) fix a place of polling across parishes at locations deemed suitable; (b) specify with reference to each such place of polling the group of electors who will be entitled to vote, and the hours during which the poll will be taken, at such place; and (c) give due publicity to the places so fixed and the groups of electors and the hours so specified.

(iv) Procedure of elections and counting of ballots. –

The procedure of elections and counting of ballots shall be determined by the Electoral Commission in keeping with established procedures. After all the ballot boxes and sealed covers (if any) have been opened and the ballot papers have been scrutinised and arranged, the Returning Officer shall proceed to determine the result of the voting in accordance with established instructions by the Commission. If at the end of any count, no candidate can be declared elected, then section 25(7) shall apply.

3.3 INCLUDE CLEAR TIMELINES FOR THE HOLDING ELECTION TO FILL VACANCY IN THE OFFICE OF PRESIDENT AND THE TERM OF OFFICE OF PERSON ELECTED TO FILL CASUAL VACANCY

While the tenure of the President is clear, no more than two terms – seven years for the first and no more than five years for the second if so reappointed, the period within which nominations and elections must be held are unclear. It is only inferred at section 26(2) which speaks to reappointment commencing at least one year prior to the expiration of the first term. JFJ has recommended this time be reduced to four (4) months per our recommendations at 3.1 and 3.2, if option 1 is chosen. If option 2 is chosen, reduce the timeline to six (6) months. While it is important to have a smooth transition, the intended timeline seems exceptionally long.

To provide clarity, JFJ recommends four or six months before the expiration of a President's term in office, the process of nomination of a President must be done in accordance with section 25, whether it is for a new appointment or a reappointment if a second term so applies. The election would be held two months before the expiration of the term.

Legislative Proposal – Amend Clause 11 section 26(2)

Where a vacancy occurs in the Office of the President, the filling of such vacancy shall be determined by an election.

- (a) In the case of impending expiration of term, an election to be held not later than, and not earlier than two months before, the date of the expiration of the term of office of President.
- (b) In the case of vacancy by reason of his death, resignation or removal, or otherwise an election shall be held as soon as possible after, and in no case later than two months from, the date of occurrence of the vacancy; and
- (c) The person elected to fill the vacancy under subsection (b) shall, subject to the provisions of section 26, be entitled to hold office for the full term of seven years from the date on which he enters upon his office.

3.4 TENURE OF OFFICE OF PRESIDENT

3.4.1 REMOVE AMBIGUITY FROM TERM LIMITS

JFJ agrees with the term limit where a President can serve no more than two terms. The seven year duration of a single term is to ensure that the life of Parliament and the term of the President do not coincide. This ensures the office is not drawn into any politics of the day and the ensures continuity of the office during an administrative and governance change. However, JFJ finds issue with the language of 'not exceeding' five years for the second term. If the proposal is indicating that the President shall serve no more than two terms, it is easier to have the terms be the same period or indicating that the

President shall serve two terms of seven years or two terms, seven for the first and five years for the second.

The 'not exceeding' suggests that there may discretion as to the number of years given in the second term. This is especially concerning given the proposed nomination that guarantees Prime Ministerial dictate. For example, if the President has the reserved powers as JFJ is proposing and even some existing discretionary powers regarding appointment of key posts in the commissions of Parliament, such discretion, presumably by the Prime Minister could possible see executive control and interference regarding the second term of appointment.

Legislative Proposal – Amend Clause 11 s26(1)

26.—(1)(a) Subject to the provisions of this section, a person appointed as President shall hold office as President for a term of seven years from the date on which he enters upon office and is eligible to be re-appointed in the manner specified in subsection (2) for such further term of five years, as shall be specified in the instrument of re-appointment.

(1)(b) The question of re-appointment of a person who holds the office of President shall be determined within the period of three months immediately preceding the expiration of the person's first term as President, by the procedure of a nomination and vote conducted in the same manner as a nomination and vote under section 25.

3.5 INSERT THE PROVISION “CONDITIONS OF THE PRESIDENT’S OFFICE”

The existing provision at section 40(2)(c) requires members of the Senate and Parliament to disclose to the Head of State, or through a gazette respectively, any involvement they may have as a party to, partner in a firm, or director or manager of a company that is engaged in a contract with the Government of Jamaica for public services. JFJ recommends that a similar provision should be established for the President as a condition for holding office.

Legislative Proposal – Amend section 40 (2) of existing Constitution

Amend 40(2) – No person shall be qualified to be appointed as the President, a Senator or elected as a member of the House of Representatives who –
(c)(iii) In the case of the elected President, by placing a notice in the gazette within one month before the day of election.

3.6 LIMIT IMMUNITY OF THE PRESIDENT

JFJ agrees that the Constitution must grant the President sufficient level of immunity to ensure the President can perform duties without undue interference. However, the language must be clear that the President can be impeached for acts involving sexual harassment; and for those that involve any possibility of breach of any constitutionally guaranteed rights of any citizen done outside of the parameter of official actions. While noting the exceptions of fraud and violence already provided for in the Bill, these additional inclusions make it clear that no absolute immunity exists for other offenses that may be overlooked. Therefore, while the President enjoys certain protections to perform official duties, these do not extend to a blanket immunity covering certain criminal offenses or human rights violations. The legal system is structured to ensure accountability, particularly after the President's term ends, although the practical application can be complex and politically charged.

Legislative Proposal – Amend Clause 11 Section 27 (1) (b)

(b) while in office, or exercising the functions of the office, any act not involving treason, violence, fraud, sexual harassment or a breach of any rights guaranteed by this Constitution.

3.7 EXPAND WHO CAN RAISE THE QUESTION OF REMOVAL OF PRESIDENT

In the procedures for the removal of the president, it is unclear why the question of whether the President should be removed from office on any ground may be put to Parliament only upon the motion of the Leader of Government Business. This is especially concerning considering the current draft provisions have the office de facto appointed by the Prime Minister. Coupling the ambiguity in the second term limits and this new limitation as to who may motion to remove the President, the government control of what is to be neutral office is ostensibly high. JFJ therefore recommends that subsection (7) be expanded to include the Leader of the Opposition or a member so directed to act on his behalf.

Legislative Proposal – Amend Clause 11 Section 25

7) The question of whether the President should be removed from office on any ground specified in subsection (6) may be put to Parliament upon the motion of the member of the House of Representatives who is responsible for leading the business of the Government **or the Leader of Opposition, or a member so directed to act on his behalf**, under the Standing Orders of that House, tabled at a joint sitting of both Houses and setting out—
(a) the ground relied on;
(b) the proposed members of the investigatory panel to be established pursuant to subsection (8) and naming the member who will be the chairperson of the panel; and
(c) the time within which the investigatory panel shall submit the report required under subsection (8), which shall not in any event exceed six months from the date on which the investigatory panel is constituted under subsection (8).

3.8 RESERVED AND DISCRETIONARY POWERS OF THE PRESIDENT

JFJ maintains that though the president as the Head of State is essentially non-executive, this office-holder should exercise certain reserved and discretionary powers as was then and continues to be the case with the governor general. This position is non-partisan, apolitical and acts as a safeguard of the constitution in times of crises.

The organisation is very clear in its position that the change from governor-general to a non-executive President ought not to simply be treated as 'switch out' process guided mostly by conventions. Rather, we believe that core principles, roles and powers must be expressly written. For example, section 60 of the constitution as currently written states that the governor-general of Jamaica in assenting laws can assent same or withhold it, without clear procedures guiding whether this is a veto power or merely the GG returning a Bill to Parliament for reconsideration but must assent thereafter. The current draft Bill seeks to remedy this further to JFJ's urgings in its written and oral submission to the CRC. However, this remedy leaves the role largely ceremonial, rather than codifying what could be useful managed powers, they have been discarded completely for a mandatory assent.

JFJ believes that the President should be an should be utilised as the 'guardian of the Constitution' while respecting parliamentary sovereignty. Our history has taught us that parliamentarians will sometimes act on the basis of political expediency without respect for rule of law or the Constitution.

JFJ has taken note of views that may state that the courts are there to rule on the constitutionality of laws should that come into question so there is no need for the president's intervention in that respect. However, though the supreme court will ultimately rule on the constitutionality of any law, a person is needed to approach the courts for such declaration as the court cannot intervene on its own. If the parliamentary opposition falters in its constitutional role as an effective check against an executive, whether it be due to dereliction of duty, by Westminster parliamentary design or not having the money to challenge a questionable law, it leaves an under-resourced civil society to find those funds to mount a legal challenge. The parliamentary opposition itself has an to secure funds over the years to challenge several legislation that were incompatible with the Constitution. Therefore, the president, while respecting parliamentary sovereignty as the elected voice of the people, can and should be seen as a source of checks and balances against elected politicians.

Below we detail recommendations of the reserved powers a President may have while preventing the office from becoming too powerful and ensuring the non-executive nature of the presidency.

3.8.1 ENACTMENT OF LAWS

It is JFJ's recommendation that the President of the Republic promulgate acts of Parliament within thirty days of their final adoption and transmission to the Government. Before this period expires, the President may request Parliament to reconsider the act or specific sections, and such a request shall not be refused. For clarity, the President's authority is limited to a single reconsideration, consistent with practices in other jurisdictions, and does not constitute a veto power. By including a time limit in Section 60, the proposal ensures the President's role does not undermine Parliament or the will of the people.

Additionally, the President should be able to refer legislation to the Supreme Court for a ruling on its constitutional validity before assent. Based on the Court's ruling, Parliament may amend the act, after which the President must assent within the stipulated time. If no amendments are needed, assent must be granted within the same period. It is therefore recommended that Clause 26 (Section 60) be amended accordingly. It is important to note that the referral to the Supreme Court still does not undermine Parliament as the Court is limit to only making a declaration of incompatibility as exist in the United Kingdom – it is merely providing advice to the President as the Court cannot strike down what is not yet law.

To effectively assume the reserved and discretionary powers so recommended by JFJ, the Office of the President must be effectively staffed with senior attorneys and necessary support staff in this respect.

Legislative Proposal – Amend section 31(1) by inserting (1) (b) [personal staff of the President]

The personal staff referred to in subsection (1)(a) must include at least one attorney who is qualified to be appointed to a judge at the Supreme Court and who is also supported by personnel as necessary.

Legislative Proposal – Amend clause 26, section 60(3)

(3) If the President does not signify assent, **following the expiration** of thirty days after a Bill is presented for assent under subsection (1), the Speaker shall signify assent.

Legislative Proposal – Amend clause 26 section 60 - Reserved Powers for Reconsideration

Insert section 60(4):

- (4) If the President has reservations about the constitutionality of the Bill, with the exception of Money Bills, he may, in his discretion, once refer that recommendation back for reconsideration by the House
- (a) The standing orders of the House of Representatives and the Senate shall provide for the procedure for the reconsideration of a Bill by the House.
 - (b) Where a Bill is sent for reconsideration under subsection (4), the President may return the Bill to the Houses with a message.
 - (i) The message may request the Houses to reconsider the Bill or any specified provisions and, in particular, to consider the desirability of introducing any amendments recommended by the President.
 - (c) The House of Representative must participate in the reconsideration of a Bill that the President has referred back to the House if-
 - the President's reservations about the constitutionality of the Bill relate to a procedural matter; or
 - section 7, 49, 56 and 57 was applicable in the passing of the Bill.
 - (d) If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either-
 - assent to and sign the Bill; or
 - refer it to the Constitutional Court for a declaration on its constitutionality.

Legislative Proposal – Insert subsection 5 at section 60 - Reference of Bills to the Supreme Court

- (5) The President may refer any Bill, except Money Bills, to the Supreme Court for a decision on the question as to whether such Bill or any specified provision or provisions of such Bill is or are inconsistent with this Constitution or to any provision therein.
- (a) Every referral under subsection 5 shall be made no later than the seven days after the date on which such Bill was presented to the President for assent.
 - (b) The President shall not assent to any Bill the subject of a reference to the Supreme Court under this section until the pronouncement of the decision of the Court.
 - (c) The Supreme Court consisting of not less than three judges shall consider every question referred to it by the President under this provision for a decision, and, having heard arguments by or on behalf of the Attorney General and by counsel assigned by the Court, shall pronounce its decision on such question in open court as soon as may be, and in any case not later than sixty days after the date of such reference.
 - (d) The decision of the majority of the judges of the Supreme Court shall, for the purposes of this section, be the decision of the Court and shall be pronounced by such one of those judges as the Court shall direct.
 - (e) If the Supreme Court decides that any provision of a Bill the subject of a reference to the Supreme Court under this provision is incompatible with this Constitution or to any provision thereof, a declaration of incompatibility shall be made. This declaration is not binding on the parties to the proceedings in which it is made. In matters where the Supreme Court makes a declaration of incompatibility, the Bill shall be referred back to the House of Representatives.
 - (f) The Houses of Parliament shall decide whether to proceed with the Bill in its original form or whether to make amendments. If Parliament makes amendments based on the declaration by the Courts, the President must assent to and sign the Bill. If the President does not signify assent within thirty days after a Bill under subsection 6, the Speaker shall signify assent.

- (g) In every other case the President shall sign the Bill within thirty (30) days after the date on which the decision of the Supreme Court shall have been pronounced.

3.8.2 APPOINTMENT OF KEY POSITIONS AND COMMISSIONS OF PARLIAMENT

The following reserved powers are proposed, some of which were submitted for consideration in the 1990s deliberations:

- Appointment of the Chief Justice and President of the Court of Appeal upon the advice of the Judicial Services Commission following a transparent and open recruitment process.
- Appointments to certain critical positions would be made by the Head of State, after consultation with — but not necessarily on the advice of — the Prime Minister and the Leader of the Opposition following a transparent and open recruitment process. The positions to which these arrangements would apply are:
 - members of the Judicial Service Commission
 - members of the Police Service Commission
 - the commissioner of the proposed National Human Rights Institution
 - the commissioners of the Integrity Commission ;
 - independent members of the Electoral Commission.

While it was also agreed that appointments to certain critical positions would be made by the Head of State, after consultation with — but not necessarily on the advice of — the Prime Minister and the Leader of the Opposition, there was disagreement as to the role of Parliament in relation to these appointments. The then JLP Opposition proposed that the appointments be subject to a two-thirds majority in each House of Parliament, whereas the then PNP Government argued that the appointments should be deemed to be confirmed unless there is a resolution to the contrary approved by a two-thirds majority in either of the two Houses of Parliament.

JFJ submits that where appointments are made by the Head of State after consultation with — but not necessarily on the advice of — the Prime Minister and the Leader of the Opposition, if there is a disagreement on the appointment, there can be a veto by way of two-thirds majority vote at each House of Parliament.

Legislative Proposal – Insert 32 (6) – renumber existing (6) to (7) accordingly

(6) (a) Where the President is directed to exercise any function after consultation with — but not necessarily on the advice of — the Prime Minister and the Leader of the Opposition the following steps shall be taken : -

- (i) the President shall consult both the Prime Minister and the Leader of the Opposition who will thereafter tender his recommendation to the President;
- (ii) the President shall then inform both the Prime Minister and the Leader of the Opposition of the final recommendation.
- (iii) the President shall then exercise said function

(b) Where a function under subsection (a) is an appointment and there is a disagreement on the appointment, there may be a veto by way of two-thirds majority vote at each House of Parliament.

Legislative Proposal – Increased discretionary powers of the President in the appointment of the Chief Justice and the President of the Court of Appeal; extension of the tenure of the Director of Public Prosecution

- Section 98 (1) The Chief Justice shall be appointed by the President by instrument under Broad Seal upon the advice of the Judicial Services Commission following a transparent and open recruitment process.

- Section 104 (1) The President of the Court of Appeal shall be appointed by the by the President by instrument under Broad Seal upon the advice of the Judicial Services Commission following a transparent and open recruitment process.
- Section 96(1)(b) The President, acting on the recommendation of the Public Services Commission... have been agreed between them.

Legislative Proposal – Increased discretionary powers of the President in the appointment of Judicial Services Commission, Public Services Commission and the Police Services Commission

Repeal “*the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition*” [or such similar language at section 111(3)] and replace with “*the President, after consultation with, but not necessarily on the advice of, the Prime Minister and the Leader of the Opposition*” or any such similar replacement word as appropriate.

Amend at the following sections:

- Section 111 (3); 111(4)(d)
- Section 124(1); 124(2); 124(5)(d); 124(6)
- Section 129(1); 129(5)(d); 129(6)

3.9 MAINTAIN TWO-THIRD MAJORITY AT SENATE LEVEL TO INCLUDE PARLIAMENTARY OPPOSITION

The concerns raised by Jamaicans for Justice regarding the proposed changes to the Senate seat count in Jamaica reflect significant implications for the balance of power and legislative process within the country's Parliamentary system. The Jamaican Senate currently consists of 21 members, with 13 senators appointed by the Prime Minister and 8 by the Leader of the Opposition. This structure aims to maintain a level of balance where no single party can unilaterally control legislative processes requiring a two-thirds majority without some form of opposition or cross-party agreement.

According to the proposal, the Prime Minister would appoint 15 senators, the Leader of the Opposition 9, and the President (nominated by the Prime Minister) would appoint 3. This shift would significantly alter the power dynamics. With 15 government-appointed senators plus 3 from the President achieves the two-thirds majority (18 out of 27) needed for certain key decisions without the need for opposition support.

Entrenched provisions, the constitutional amendments still require a two-thirds majority including opposition support, meaning these changes wouldn't affect those specific votes. However, for non-entrenched provisions, for actions like extending a state of emergency or the life of Parliament, which require a two-thirds majority but are not entrenched provisions seeking amendment, the government could now pass these measures without opposition consent. This change could significantly weaken checks and balances, potentially leading to concerns about the concentration of power. While these changes might streamline government action in times deemed necessary, they also pose risks to the democratic fabric by potentially sidelining opposition voices in critical legislative matters.

JFJ questions what mischief the proposed Bill is trying to solve by differentiating between amending entrenched/specially entrenched provisions **versus** other possible constitutional matters. If there is no mischief, then the arithmetic for one provision over the other is simply not necessary. The organisation

therefore recommends that the senate appointment simply be adjusted to have the two third majority always attained by at least one opposition member.

Legislative Proposal – Amend Clause 17 to Repeal and Replace Section 35

35.—(1) The Senate shall consist of twenty-seven persons who, being qualified for appointment as Senators in accordance with this Constitution have been so appointed in accordance with the provisions of this section.

(2) Fourteen Senators shall be appointed by the President, acting in accordance with the advice of the Prime Minister, by instrument under the Broad Seal.

(3) Ten Senators shall be appointed by the President, acting in accordance with the advice of the Leader of the Opposition, by instrument under the Broad Seal.

(4) Three Senators shall be appointed by the President, in the President's discretion, from among persons in the private sector, civil society, faith-based or community-based organisations, or other sectors of the society, and in making any appointment under this subsection, the President may have regard to the representation, by any such person, of the interests of Jamaican citizens who reside abroad."

4 ENTRENCHMENT OF KEY INSTITUTIONS

JFJ notes that only few agencies and bodies are constitutionally protected with their independence safeguarded in the Constitution. These include the Director of Public Prosecution and the Auditor General, the Judicial Service Commission, Public Service Commission and Police Service Commission.

The organisation urges the Government to ensure that the new constitutional design safeguards public agencies that exist to protect and defend human rights and ensure accountability. The involves strengthening their constitutional autonomy through entrenched provisions. The offices include:

- The National Human Rights Institution, proposed to replace the Office of The Public Defender
- The Electoral Commission of Jamaica
- The Office of the Political Ombudsman (*if role isn't merged with the electoral commission, a proposal not supported by the organisation*)
- The Integrity Commission

Governments, globally, have been concerned about too many constitutionally protected bodies that are independent of Parliament. JFJ opines, however, that determination of which bodies ought to be constitutionally independent must consider the powers, authority and relationship between the executive and legislative branches of government; the historical past of the country and current contexts. Further, the organisation submits that independence to execute duties do not negate possible administrative oversight of the Parliament of some bodies. This can be achieved by way of:

- Parliamentary oversight committees where questions can be posed
- Horizontal accountability measures such as being subjected to auditing by the auditor-general
- Judicial review of decisions
- Removal from office by way of a Review Tribunal instituted by the President as currently provided for under section 94, for example.

4.1 ENTRENCHMENT OF THE ELECTORAL COMMISSION OF JAMAICA

Jamaicans for Justice supports the entrenchment of the Electoral Commission of Jamaica. However, the organisation believes that the constitutional provision should make it expressly clear that the ECJ acts under the direction and control of no one.

The organisation has also made recommendations regarding the constitutional functions of the ECJ, while acknowledging aspects by already exist in the governing statute. In lieu of the fixed election date,

which JFJ still supports, given the seeming lack of political hesitation in this regard, JFJ welcomes the proposal by the CRC at paragraph 6.4.4 of the CRC report for the election to be called within three months before the constitutionally due date. However, JFJ proposes that the calling of that election date should be within the remit of the ECJ.

4.1.1 SAFEGUARD THE INDEPENDENCE OF THE ECJ

Legislative Proposal – Safeguard the independence of the ECJ

In the exercise of its powers and performance of its functions under this Act, the Commission

- (a) shall not be subject to the direction or control of any other person or authority other than the Supreme Court by way of judicial review;
- (b) shall act independently, impartially, fairly and in the public interest; and
- (c) shall have the power to do all such things as it considers necessary or expedient for the purpose of carrying out its functions.

4.1.2 STRENGTHEN THE FUNCTIONS OF THE ECJ AS IT IS GIVEN ENTRENCHMENT

Legislative Proposal – Amend Clause 28 [Section 67A to strengthen process for amending electoral districts]

Include 67A(3):

- Review the number of constituencies and boundaries thereof and make such recommendations to the Standing Committee of Parliament as are appropriate as provided for in section 67;

The following amendments are suggested for section 67:

1. Amend 67(6) to include

- All reports shall consider the opinions and recommendations of the Electoral Commission of Jamaica

2. Amend 67(10)

- If any draft made under this section is approved by resolution **carried by two-third majority agreement** of the House, the Minister shall submit it to the President who shall make an Order (which shall be published in the Gazette) in terms of the draft; and that Order shall come into force on such day as may be specified therein and, until revoked by a further Order made by the President in accordance with the provisions of this section, shall have the force of law: Provided that the coming into force of any such Order shall not affect any election to the House of Representatives until a proclamation is made by the President appointing the date for the holding of a general election of members to the House of Representatives or affect the constitution of the House of Representatives until the dissolution of the Parliament then in being.

4.1.3 EMPOWER ECJ TO ADVISE DATE OF GENERAL ELECTION

Legislative Proposal – Empower the ECJ to call dates of general elections

Amend section 65(1)

A general election of members of the House of Representatives shall be pronounced by the Electoral Commission of Jamaica to be held on a day within a period not exceeding three (3) months prior to the expiration of the life of Parliament.

- (a) The Commission shall advise the President of the date of the general election and the President at such time shall announce the dissolution of Parliament by Proclamation published in the Gazette.

4.2 ENTRENCHMENT OF THE NATIONAL HUMAN RIGHTS COMMISSION; COMING INTO EFFECT WITHIN TWO YEARS AFTER PASSAGE OF THE AMENDMENT

JFJ recommends that the Bill be amended to include the entrenchment of the National Human Rights Institution. This would replace the current Public Defender (Interim) Act.

In the 1990s Commission report, there was a proposal for a Citizens Protection Bureau headed by the Public Defender to assist ordinary citizens in the protection of their constitutional rights. There was also the recommendation from interest groups that provisions would be made to enable individuals and organisations to challenge, on public interest grounds, actions of the Government without having to obtain the consent of the Attorney General and to widen locus standi to facilitate class action suits.

JFJ reminds the Government of its promises and commitment to international standards by establishing the National Human Rights Institution (NHRI), which was promised as far back as 2014, perhaps earlier. In doing so, ensuring the NHRI is constitutionally safeguarded as it replaces the Office of the Public Defender.

In its 2020 Universal Periodic Review of the United Nations Human Rights Council, the Government of Jamaica reiterated its objective of establishing a NHRI, stating that there has been collaboration with various public and private stakeholders, with a view to determining the best approach for Jamaica. The proposed model seeks to expand the role and functions of the existing Public Defender model.

"Given that Jamaica already has an effective and extensive network of institutions mandated to protect the rights of Jamaicans, the plan is to establish a National Human Rights Institute [sic] by expanding the role and functions of an existing entity," - Honourable Mark Golding, in his capacity as Minister of Justice in May 2015.¹

JFJ notes that while existing legislative provisions do empower the Public Defender to carry out important functions, they simultaneously limit the breadth of the office's mandate, fail to consider violations of rights by private bodies and contain no mandate regarding human rights promotion. In these and other ways, the OPD falls short of international best practices and cannot be deemed an NHRI.

The OPD falls short in the range of rights it seeks to protect. The rights which come within the scope of its mandate are those which are constitutionally enshrined, largely consisting of civil and political rights. There is limited protection of property rights and no protection for second generation economic, social and cultural rights. On the contrary, the NHRI's mandate should be "interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and domestic instruments, including economic, social and cultural rights."²

In May 2024, the report of the Constitutional Reform Committee (CRC) was released, outlining its recommendation to entrench the Office of the Public Defender (OPD) within Jamaica's Constitution. We note, however, that same has not been translated to the draft Bill. JFJ supports the proposal with

¹ <http://jamaica-gleaner.com/article/news/20150526/govt-roll-out-national-human-rights-institute>

² GANHRI SCA General Observations as adopted in Geneva in May 2013, GO 1.2.

the crucial caveat that the OPD must not be entrenched “with the basic functions and appointment process as stated in the current Act,” as was recommended by the CRC. Instead, we recommend that the National Human Rights Institution be entrenched as a commission of Parliament.

JFJ suggests that a transitional clause be included in the constitution with the new act coming into effect two years after the constitutional amendment. This delay allows for:

- Public education on the new institution.
- Establishment of the necessary infrastructure and staffing.
- Transition from the interim measures to the permanent institution.

The new act should clearly define the roles, powers, and independence of the human rights institution. This would include investigating human rights abuses, promoting human rights awareness, and advising the government on human rights issues.

Several jurisdictions may be instructive to assist in developing the wording of the entrenched provision. JFJ recommends a similar structure to that used in South Africa, as other Commonwealth jurisdictions tend not have supplemental legislation to support their commission, but rather all the functions of the commission are detailed within the Constitution itself (e.g. See New Zealand, Legislature Act 1908).

Legislative Proposal – Entrench the National Human Rights Institution

- (1) There is hereby established a Commission of Parliament which shall be known as the National Human Rights Institution (in this Part referred to as the Commission).
- (2) The objects of the Commission shall be to promote and protect human rights in Jamaica.
- (3) The President shall appoint the members of the Commission.
- (4) **Functions of the National Human Rights Institution**
 - (i) The national human rights institution must –
 - (a) Promote respect for human rights and culture of human rights;
 - (b) Promote the protection, development and attainment of human rights;
 - (c) Monitor and assess the observance of human rights in the Republic.
 - (ii) The national human rights institution has the powers, as regulated by national legislation, necessary to perform its functions, including the power –
 - (a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;
 - (b) To take steps to secure appropriate redress where human rights have been violated;
 - (c) To participate in legal proceedings
 - (d) To carry out research; and
 - (e) To educate
 - (iii) Each year, the national human rights institution must -
 - (a) submit an annual report to the Parliament outlining the number and types of human rights violations observed and complaints received
 - (b) require relevant organisations of the state to provide the Commission with information on the measures that they have taken towards the addressing any rights that were found to have been breached. The summary of this should be included in the annual report.
- (5) Subject to this section, an Act of Parliament shall make provision in relation to the constitution, staffing and resources of the Commission.
- (6) The Government shall, within two years after Parliament first meets after the coming into force of this Constitution, enact legislation governing the National Human Rights Institution replacing the Public Defender (Interim) Act. The Public Defender (Interim) Act

shall remain in force until the enactment of the National Human Rights Institution legislation.

4.3 PROCEDURE FOR AMENDING THE CONSTITUTION

The procedure for constitutional change must strike a balance. It should not make it easy for the legislature or the executive to do away with constitutional limitations on governmental power at their whim. At the same time, it should not impede necessary or desirable change. The concern with the constitutional amendment process is that it creates an unexpected challenge for the inclusion of new provisions. Specifically, since section 49 is specially entrenched, it requires a public referendum to include any new provisions, failing to acknowledge that a two-thirds majority is adequate for including new provisions in subsection (2), which ironically necessitate only two-thirds majority for amendment.

In explaining the concern, a most glaring example is that the act that governs the Electoral Commission remains an interim act. It should be entrenched by including it in subsection (2), but to do so would require an amendment to section 49, which cannot be done without a referendum. The same potential risk remains for the Office of the Public Defender, a body that is critical in maintaining and upholding the fundamental rights and freedoms of the Jamaican citizenry. The bodies mentioned within, notably so, are all bodies that were recommended for entrenchment in the 1995 JSCCER report.

JFJ therefore welcomes the inclusion at paragraph twenty-two of the Bill which speaks to section 49(10)(a)(b) - a new distinct section that provides for including new entrenched provisions into the constitution **separate from section 49(2)** that would speak to an amendment process for existing entrenched provisions.

JFJ nevertheless expresses concerns about section 49(1)(a) which suggests that any Bill to alter any provision of the Constitution must first be introduced in the House of Representatives. This may prove challenging as the Ministers that tend to drive such Bills tend to be the minister with responsibility for Justice or Legal Affairs who may not always be in the Lower House. The organisation therefore asks: is this a de facto provision now that such positions would now be restricted to being members of Parliament as one must consider that the Bill being introduced ought to be done by the minister with responsibility?

The inclusion of 49(1A) is a welcomed one. The organisation is in strong support of the proposal. This section now demands that any Bill for an Act of Parliament that alters ordinary provisions of the Constitution shall not be assented unless a 14 day period has elapsed between the introduction of the Bill and the commencement of the first Debate and another 14 days have elapsed from the conclusion of the Debate and the passage of the Bill by each of the Houses of Parliament.

JFJ does foresee a challenge with the reduction of the periods of three months to two months from when a Bill is first introduced to commencement of its debate and the further period of conclusion of debate. These periods do allow for scrutiny of the Bill prior to passage given it speaks to entrenched and specially entrenched provisions. The organisation therefore questions how the reduced period may affect public participation and robust discussions at a joint select committee. JFJ recommends that the amendment includes that a select committee should be established to review any constitutional amendment being made to section 49(2) and (3), as well as public deliberation. These provisions may be waived by way of two-third majority vote. For avoidance of doubt, the organisation is not in support of the reduction of the first three months from tabling of the Bill to the commencement of debate but could support the reduction from three months to two months from the commencement of the debate to the passage of the Bill, subject to the proposals made within.

4.3.1 INCLUDE JOINT SELECT COMMITTEE AND PUBLIC DELIBERATIONS TO ALTER PROVISIONS OF SECTION 49(2) AND 49(3)

Since a constitution should express the broad agreement of the people of a country, the special procedures for its amendment must be such that it cannot be achieved in haste. The procedures must give rise to publicity as well as time for public consideration and debate. They must ensure that individuals and groups are given the opportunity, either in person or through their representatives, to participate in any discussion and decision on constitutional change. They should also require a significant number of people to consent to any change either individually or through their representatives. There may be a requirement for proposed amendments to be circulated for public consultation before the final vote is taken. This recognizes that constitutional change, because of its fundamental nature, is a matter for deeper and more considered public engagement than ordinary law-making. Such provisions exist in Kenya and South Africa. However, clear wording is important to ensure enforceability.

Legislative Proposal – Include recommendation to refer any Bill amending subsections 2 and 3 to a Joint Select Committee

- (1) Any Bill or Act of Parliament that seeks to alter any provision in subsections 2 and 3, must go to a select committee in keeping with the standing orders.
- (2) Requirement under subsection (1) may be waived by at least two third votes in both Houses of Parliament.

Legislative Proposal – Include recommendation for public deliberation for any amendments under subsection 2 and 3

- (1) At least 30 days before a Bill amending section 49 subsection 2 and 3 of the Constitution is introduced in either House of Parliament, the person or committee intending to introduce the Bill must publish in the Gazette, and in accordance with the standing orders, particulars of the proposed amendment for public comment;
- (2) The person or committee introducing the Bill must submit any written comments received from the public via a compiled report to the Speaker for tabling in the House of Representatives at least 30 days prior to the commencement of debate on the Bill.
- (3) Requirement under subsection (1) and (2) may be waived by at least two third votes in both Houses of Parliament.

4.3.2 EXPLICITLY STATE INCLUSION OF NEWLY ENTRENCHED OR SPECIALLY ENTRENCHED PROVISIONS

JFJ strongly supports the proposed amendment at section 49 (10) given its legislative intent to allow for future matters to be entrenched. Nevertheless, the organisation proposes a clause that expressly prohibits the possibility of implicit and hidden amendments. In several countries, a constitutional amendment can be made only by a bill that must clearly specify that its purpose is to amend the constitution. This also allows the Courts to make pronouncements in keeping with legislative intent. Such rules are found in South Africa, Ghana and in Sierra Leone, where for example, 'No Act of Parliament shall be deemed to amend, add to or repeal or in any way alter any of the provisions of this Constitution unless it does so in express terms.' The intention of these rules is to ensure that constitutional amendments are given their due importance, are properly debated, and are not made by furtiveness.

Legislative Proposal – Section 49(10)(a)(b)

Include: -

- (c) Where an alteration is being made, there must be a clear written statement on the legislative intent for the alteration. A Bill amending the subsections (1A), (2) or (3)

may not include provisions other than the stated constitutional amendments and matters connected with the amendments.

5 PART IV. PUBLIC EDUCATION, REFERENDUM AND CONSENSUS BUILDING

5.1 IMPROVE PUBLIC EDUCATION

JFJ has raised concerns about the lack of comprehensive public education on the constitutional reform process, especially as the bill to transition Jamaica to a republic moves closer to a referendum. For the referendum to be successful, it is imperative that public education happens well in advance, ensuring citizens have ample time to understand and engage with the issues at hand. It is clear that this process must be conceptualised differently than previous public education efforts. With a Bill tabled and referendum possibly soon, it is imperative that targeted public education focused on the specific issues provisions of the bill be prioritised.

This education must begin by explaining the relevant sections of the constitution, including how they function, their historical context, and why specific provisions are being proposed for change. A clear understanding of the current framework is essential to evaluate whether the new provisions effectively address its shortcomings or risk introducing unintended consequences. Without this foundational knowledge, voters may struggle to grasp the significance of the reforms, leading to confusion, misinformation, or apathy.

Furthermore, improved public education must be sustained through the later planned phases of the process to maintain transparency, foster ongoing engagement, and ensure continued public understanding and support as the reforms are implemented.

JFJ is guided by the wisdom of Professor Trevor Munroe in several publications and therefore strongly recommends that the public education process considers the below:

- Sensitivity to existing public alienation from democratic institutions;
- Need for public awareness of the dangers of authoritarian alternatives to democratic dissatisfaction;
- Strengthening civic engagement and assertiveness in defence of existing rights and freedoms to ensure the constitutional reforms do not fall short of strengthening democracy.

5.2 SECURE CONSENSUS WITH THE PARLIAMENTARY OPPOSITION

The current procedure for constitutional reform requires two third majority vote in both Houses of Parliament before advancement to the people in a referendum . this is to ensure that there is bipartisan agreement on the more important matters. The constitution does allow for the government to proceed without opposition support in the Senate, but a three-fifth majority vote by the people in a referendum is needed to have the Monarchy removed as Jamaica's head of State. Achieving a three-fifths majority in a referendum is indeed challenging. It requires not only clear communication of the benefits and implications of the reform but also widespread acceptance among the populace.

Even if the government can proceed without opposition support in the Senate, securing some form of agreement or at least not active opposition from major political parties could significantly sway public opinion in a referendum.

As noted by Jamaicans for Justice, consensus is crucial. This involves dialogue with all political parties, civil society, and other stakeholders to ensure the reform is seen as a national project rather than a partisan one.

Therefore, if the matter of the Caribbean Court of Justice is what separates the two political parties at this time, then JFJ is of the opinion that the matter must be settled where both political parties definitely state its position and way forward if a consensus cannot be reached. It is important to note that the consensus is not necessarily about having shared view on the final court but how to move forward even with the absence of shared view. While the organisation is not in agreement with the Parliamentary opposition not attending the meetings of the joint select committee, the organisation shares its concerns that the ruling political party has not given a definitive response to the Jamaican citizenry on why the Jamaica Labour Party has not agreed to acceding to the Caribbean Court of Justice and the reason for their position of a local court as the final appellate court.

In furtherance of the point, the two political parties must clearly articulate to the Jamaican people:

1. *For the parliamentary opposition:* The opposition must articulate clearly why replacing the Privy Council with the CCJ is beneficial, addressing concerns about judicial independence, regional integration, and legal accessibility.
2. *For the ruling political party:* They must indicate how the final court would be funded and when such establishment is likely.

The importance of consensus in avoiding a politically divisive approach cannot be overstated. Even when political parties hold differing views, it is crucial to establish a clear and unified position to address the fundamental question: Where do we go from here? This requires decisive clarity on the mechanism for moving forward, such as whether the process will involve a binding referendum, a non-binding one, or an alternative approach. Without a clear direction from political parties, uncertainty and division can deepen, eroding public trust and hindering progress. A well-defined path, agreed upon through consensus, is essential to ensure transparency, legitimacy, and a cohesive way forward for all stakeholders involved.

6 SUMMARY OF RECOMMENDATIONS AND CONCLUSION

Subsequent to reviewing the Constitution (Amendment) (Republic) Bill, JFJ welcomes the Bill for its overall strength. However, the reserved powers must be strengthened to ensure that the President can assume a critical role as the arbiter of the constitution. JFJ cautions that without the two political parties reaching consensus, the road to the republic will be derailed.

The following is a summary of our recommendations:

1. **Amend the Procedure for Nomination of President** to improve balance.
2. **Amend the Election Process** to expand to a special electoral college.
3. **Include Clear Timelines** for:
 - (a) Holding elections to fill a vacancy in the Office of the President.
 - (b) Defining the term of office for a person elected to fill a casual vacancy.
4. **Clarify Presidential Term Limits** to remove ambiguity.
5. **Insert a Provision:** "Conditions of the President's Office."
6. **Limit Presidential Immunity.**
7. **Expand Who Can Raise the Question of Removal of the President.**
8. **Define Reserved and Discretionary Powers of the President**
 - (a) **Enactment of Laws.**
 - (b) **Appointment of Key Positions and Parliamentary Commissions.**
9. **Maintain a Two-Thirds Majority at the Senate Level**, including Parliamentary opposition.
10. **Entrench Key Institutions:**
 - (a) Strengthen the ECJ to safeguard independence and expand its oversight of other election procedures.
 - (b) Entrench the National Human Rights Commission, ensuring its establishment within two years after the passage of the amendment.
11. **Include a Joint Select Committee and Public Deliberations** for altering provisions of Sections 49(2) and 49(3).
12. **Explicitly State the Inclusion of Newly Entrenched or Specially Entrenched Provisions.**
13. **Improve Public Education on These Amendments.**
14. **Secure Consensus with the Opposition**