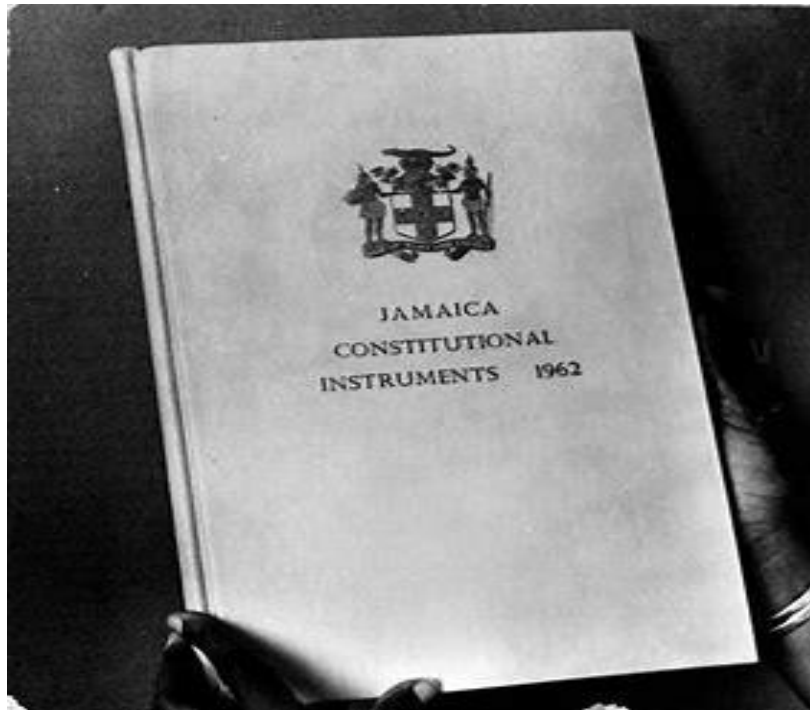


# MonaLaw Submission

## Constitution (Amendment) (Republic) Act, 2024



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# Introduction

The Constitutional (Amendment) (Republic) Act represents a significant step in shaping the nation's governance structure to reflect contemporary needs and democratic principles. This paper provides key recommendations based on an in-depth examination of critical clauses within the proposed Amendment Act, addressing essential areas of governance, representation and citizenship.

First, the recommendations consider **Clauses 7 to 10** (Citizenship), focusing on eligibility, rights and obligations under the revised framework. Second, the submission assesses **Clause 11** (Office of the President) to determine the impact of proposed changes on executive authority and accountability. Next, it examines **Clause 17** (Expansion of the Senate), evaluating how increasing the number of senators may enhance legislative representation and effectiveness. The submission reviews **Clauses 18 to 21** (Qualification and Disqualification for Membership in Parliament), assessing the criteria set for parliamentary participation and their implications for democratic representation. Finally, the proposed **Alteration Mechanism of the Constitution** under **Clause 22** is analyzed to ensure a balanced and democratic approach to constitutional amendments.

Through this examination of key clauses, this submission provides recommendations to ensure that the proposed amendments align with democratic principles, institutional efficiency and national interests. By implementing these recommendations, the proposed amendments can contribute to a more robust constitutional framework that enhances governance, strengthens democratic institutions and safeguards the rights and responsibilities of all citizens. This submission therefore aims to offer well-founded recommendations that enhance democratic governance, safeguard constitutional integrity and promote inclusivity within the Republic's legal framework.

# Constitutional Amendment Bill 2024

## General comments

For consistency, it is advised that the drafters review the numbering of new sections since there may be incorrect or misleading numbering.

For example, see s.27 replaced with s.24; or s.49 use of capitalised and common letters simultaneously (s.49(1)(A) and s.49(1)(a)).

# Clauses 7-10 (Constitutional Amendment Bill 2024)

## - Citizenship

Clauses 7-8 on the Matter of Citizenship is considered hereunder. These recommendations are specifically given considering Jamaica's position in CARICOM under The Revised Treaty of Chaguaramas<sup>[1]</sup> and other broader legal and policy concerns.

### General comments

Under s.8(2), not rendered stateless needs to be explicitly mentioned. The Constitution should define "citizenship by descent" whereby there are no generational limits on how far descent goes and it should be granted both maternally and paternally. The Constitution of Jamaica should include a provision that upholds the freedom of movement and ability to work for all CARICOM states as set out in the Revised Treaty of Chaguaramas. See example in the Constitution of Trinidad and Tobago.

### **Summary of the existing Constitutional Provisions regarding the matter of Citizenship (Clause 7)**

Chapter II of the Constitution of Jamaica outlines the various ways in which a person may become a citizen of Jamaica. Citizenship may be acquired by birth, descent, or registration through marriage to a Jamaican citizen. Parliament has the authority to make additional provisions for acquiring citizenship beyond these categories. Persons who were entitled to Jamaican citizenship before 1993 retain their rights. Individuals born in Jamaica, including those on Jamaican-registered ships or aircraft, are automatically citizens, except in cases where parents have diplomatic immunity or are enemy aliens. Those born outside Jamaica may also acquire citizenship by descent if at least one parent was a Jamaican citizen by birth, descent, or registration at the time of their birth.<sup>[2]</sup>

Chapter II also allows for registration of citizenship for individuals married to Jamaican citizens, provided the marriage is genuine and not solely for immigration purposes. A

person may be denied registration if there is evidence of fraud or if they have been convicted of a serious criminal offence.[3]

Additionally, Jamaican citizenship acquired through naturalization or registration may be revoked under certain conditions, but citizenship by birth or descent cannot be taken away. Commonwealth citizens and citizens of the Republic of Ireland enjoy special privileges under Jamaican law, and Parliament holds the power to regulate citizenship matters, including deprivation or renunciation of citizenship.[4]

Finally, key definitions are provided to clarify terms such as "alien," "British protected person," and "foreign country." Special provisions address cases where a person is born aboard a registered ship or aircraft, determining their place of birth based on registration. The Constitution ensures that individuals born to Jamaican parents after their death still inherit their parents' nationality.[5]

### **Summary of the Proposed Constitutional provisions regarding the matter of Citizenship (Clause 7)**

The proposed amendments to Chapter II of the Jamaican Constitution refine citizenship provisions. They ensure that citizens by birth or descent under section 3(1)(a), (b), or (c) cannot be deprived of their nationality, while others may lose it based on laws enacted by Parliament.

Affected individuals may seek redress in the Supreme Court, with the right to appeal. The amendments also set procedures for renouncing citizenship, acquiring it by descent, and Jamaica's engagement in the Commonwealth and CARICOM. Additionally, the definitions of "alien" and "foreign country" have also been revised to reflect a Jamaica-centric perspective.

## **Recommendations**

### **1. Strengthening Protection Against Statelessness**

The proposed Section 8(2) allows for the deprivation of citizenship for those who are not Jamaican by birth, descent or registration as a citizen based on marriage to a citizen of Jamaica. However, to align with international human rights obligations, such as the **1961 Convention on the Reduction of Statelessness**,[6] there should be an

explicit provision stating that **no person shall be deprived of Jamaican citizenship if it would render them stateless.** This is because according to the United Nations Treaty Collection, Jamaica ratified the treaty in 2013 placing the country under an obligation to uphold the terms of the treaty.

- Parliament should also clarify the safeguards against arbitrary deprivation of citizenship, ensuring that decisions adhere to principles of **due process and proportionality**.

## 2. Alignment with CARICOM Free Movement Provisions

- Under the **Revised Treaty of Chaguaramas**,<sup>[7]</sup> Jamaica is obligated to **facilitate free movement** of CARICOM nationals, particularly those who qualify for the **CARICOM Skills Certificate**.
- The law should specify whether revocation of Jamaican citizenship affects a person's **right to reside and work in Jamaica under CARICOM obligations** and, if so, to what extent will it abridge the provisions laid out under Articles 45 and 46.<sup>[8]</sup>
- If a person is deprived of Jamaican citizenship but remains a CARICOM national, the government should **ensure procedural clarity** on whether they can still reside in Jamaica under free movement rules.
- The government could also consider implementing under the proposed Bill, a section which speaks to CARICOM nationals and citizens, cementing its duty under Article 46 (2) (b), separate and apart of Jamaicans citizens. This could perhaps take the approach outlined in the Constitution of Trinidad and Tobago concerning Commonwealth Citizens.<sup>[9]</sup>

## 3. Clarification on 'Citizenship by Descent'

The new Section 10(c) allows Parliament to prescribe the grounds and procedure by which a person may become a citizen of Jamaica by descent. However, the term "**descent**" should be **clearly defined** in legislation:

- Does it apply **only to first-generation descendants** of Jamaican citizens?
- How is citizenship by decent given/determined? Maternally, Paternally etc?

- Are there any **generational limits**?
- What documentary evidence is required to establish descent?

#### 4. Ensuring Due Process in Citizenship Deprivation Cases

Section 8(3) allows for Supreme Court review of citizenship deprivation cases, which is a **positive safeguard**. However, Parliament should consider:

- **Setting clear procedural timelines** for such appeals to prevent undue delays.
- Whether the affected individual **retains certain rights (such as residence or employment) while their appeal is pending**.
- If deprivation of citizenship should be **suspended pending the outcome of the court appeal**.

#### 5. Clearer Language & Drafting Improvements

- **Section 8(1)** states that no person who is a citizen by virtue of section 3(1)(a), (b), or (c) shall be deprived of Jamaican citizenship. However, this should be **reworded for better clarity**:
  - Instead of referencing specific sub-sections, it should **explicitly state** that Jamaican citizens by birth, descent, or registration under certain conditions cannot be deprived. Otherwise, the provisions could refer to “the former Constitution” or this Constitution, for optimum clarity.
- The phrase “**any person aggrieved**” in Section 8(4) should be clarified to specify whether it includes **legal representatives or family members** acting on behalf of minors or incapacitated persons.

#### 6. Addressing Dual and Multiple Citizenship Issues

- Many Jamaicans hold **dual or multiple citizenships**, particularly in the UK, USA, Canada, and CARICOM states.
- The law should specify **whether renunciation of Jamaican citizenship automatically affects Jamaican-born persons who later seek to reclaim it**.
- There should be a clear **reacquisition process** for former Jamaicans who wish to regain citizenship.



## 7. Public Dissemination & Administrative Efficiency

Any **citizenship law changes should be widely publicized**, with accessible explanations for:

- How Jamaicans abroad may secure their status.
- What rights dual citizens retain, if any.
- The process and implications of renunciation and reacquisition.

### Additional commentary

The proposed amendment to section 8 of the Constitution makes it so that any person who is a citizen may be deprived of their citizenship in accordance with a law made under section 10(a). While the principle of constitutional supremacy, as expressed in *Fisher v Minister of Home Affairs*, notes that Acts of Parliament are illegitimate if they infringe constitutional rights, it would be ideal for the committee to specify the instances in which citizenship may be revoked. An example may be where the person accorded citizenship has committed treason.

# Clause 11 (Constitutional Amendment Bill 2024) - Office of the President

This section considers **Clause 11** on the replacement of the Office of the Governor-General with the Office of the President. It focuses on five integral aspects that we believe are necessary for enhancing the democratic and representative nature of the Office of the President:

1. The President being the Formal Head of State
2. A fixed term of Presidency
3. Appointment of the President by both Houses of Parliament
4. Presidential Immunity
5. Non-Eligibility of Jamaicans who are not ordinarily resident in Jamaica

## General comments

There are two options:

- i. a Presidential Republic without a PM or
- ii. a ceremonial President, who serves as a symbol of nationality, as a non-partisan leader.

The Constitution, s24(b) reference to “any other law”, should include an obligation to be debated by both Houses of Parliament and agreed by affirmative resolution:

- s24(2)(b) exceptions for governmental work abroad, study abroad and medical treatment abroad. See s54 Guyanese Constitution.
- s24(3) to refer to citizenship via parent, grandparent, including via marriage.
- s26(7) half the elected members of the Assembly. See s180(1) Guyanese constitution.
- s27(1) extension should be 7 years, therefore of equal length.

- s27(1)(b) add theft, corruption, gross misconduct. See s.1(a)(t) Trinidad and Tobago constitution.
- s28 bipartisan support for appointment.

## Recommendations

### 1. Formal Head of State

The Office of the President serves a crucial role as a representative of the State who should be able to represent all citizens of the nation. Indeed, the President will be present at official national events and represent the country overseas. There are therefore two main options:

#### a. A Presidential Republic without a PM

As Jamaica transitions to a Republic, adopting a Presidential Republic without a Prime Minister could enhance executive accountability and separation of powers, ensuring that the head of state is directly elected by the people.

United States: The President serves as both Head of State and Head of Government, ensuring a clear separation of powers between the executive, legislature, and judiciary. This model strengthens accountability by making the President directly answerable to the electorate.

Mexico: Operates under a unitary presidential system, where the President is elected by popular vote and has full executive authority, reducing political fragmentation and ensuring stable governance.

Brazil: The presidential system provides direct legitimacy to the President, who is elected separately from the legislature, ensuring clearer executive leadership and decision-making.

Ghana: As a fellow Commonwealth nation, Ghana transitioned to a Presidential Republic, eliminating the role of Prime Minister and consolidating executive functions under the President, leading to a more streamlined governance structure.

If Jamaica moves toward this model, it would promote greater political stability, reduce executive-legislative conflicts, and ensure that leadership reflects the direct will of the people.

**b. A President with a predominantly formal role with few executive functions.**

**Former Position:**

There shall be a Governor-General of Jamaica who shall hold office during her Majesty's pleasure and who shall be Her Majesty's representative in Jamaica.

**Proposed Position:**

There will be a formal Head of State of Jamaica.

**Supporting Evidence:**

**The Value of a Ceremonial Head of State:** The main argument in favour of a formal Head of State is that it provides a means for expressing national unity. This is rendered difficult if Head of State functions are left to the Prime Minister or an elected representative who is the leader of a particular political party and has gained the office of head of executive government after divisive or hotly contested elections.

**Practical Example:**

**Trinidad and Tobago:** There is a Ceremonial Head of State who is also the Commander-in-Chief of the Armed Forces. The Chief Justice is appointed by the President after consultation with the Prime Minister and Leader of Opposition.<sup>1</sup>

**Recommendations:**

**A Formal Head of State with Limited Executive Functions:** A ceremonial Head of State is a positive step for national unity. Indeed, a leader who represents the nation,

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<sup>1</sup> *Ibid*, s 102

while not participating in political decisions should be embraced as a positive national figurehead.

**Public Education through Civil Society Engagement:** Civil society should be enlightened to the benefits of a purely formal Head of State. This is paramount to ensure citizens appreciate the value of this role, rather than viewing the establishment of the Office of the President as a mere cosmetic alteration to the nation's constitutional landscape.

## **2. Term of Presidency**

For the President to effectively serve as an apolitical national figure, there must be minimal political interference in the period of the President's tenure in Office. Consequently, the President's tenure in office should endure 5 years or longer period. This ensures that the President's tenure outlives the life of Parliament and is not rendered an unduly politicized role.

### **Former Position:**

The Governor-General of Jamaica serves for an indefinite term.

### **Proposed Position:**

The President term of the President should be fixed, for example 7 years

### **Supporting Evidence:**

Continuity and Stability - A non-executive President separates the representative embodiment of the permanent institutions of the State from the leader of the incumbent government. This may provide additional continuity and stability and may enable more inclusive representation.

### **Practical Example:**

**Dominica:** The President holds office for a term of 5 years.

**Recommendation:**

**Fixed term of Presidency:** This tenure of presidency should be embraced as it reduces the threat of undue influence in the office of the President. Indeed, this can overcome the whims and fancies of the political directorate. The President will not be removed from office due to a change in political leadership in the island.

**3. Appointment of the President**

For the President to effectively serve as an impartial, apolitical symbol of nationality unity, he or she must be appointed by way of a non-partisan process. As such, both the Government and the Opposition must have a say in the appointment of the President. However, this support must not be required in a manner that, potentially, stalls the activities of Parliament.

**Former Position:**

There shall be a Governor-General of Jamaica who shall be appointed by Her Majesty.

**Proposed Position:**

The Prime Minister and Leader of Opposition must agree on a nominee for President, who must be confirmed by a secret ballot vote of the majority of each of the Houses of Parliament.

**Supporting Evidence:**

**Benefits of Bipartisan support:** One of the key benefits of bipartisanship is that agreements which transcend political boundaries may be met.

**Strengthens participatory government initiatives:** Deficiencies in governance revealed the narrowly representative nature of a bipartisan parliamentary system in which extreme partisan beliefs and actions are dominant. This partisanship makes it more difficult to strengthen and sustain participatory government initiatives that give meaningful space and voice to the legitimate concerns of marginalized social groups, regardless of party affiliation.

### **Practical Example:**

**Trinidad and Tobago:** A person is nominated by a nomination paper which is signed by him and by twelve or more members of the House of Representatives - Ten senators, the Speaker of the House of Representatives and 12 other Members of the House of Representatives. The nominee with the greatest number of votes from both Houses of Parliament is elected President.

### **Recommendations:**

**Removal of the Prime Minister Choosing the Nominee:** It is submitted, with respect, that the proposed amendment to the Constitution grants the Prime Minister an excess of power. Solely the Prime Minister is empowered to decide a suitable nominee for President. This is problematic because the role of the President should be non-partisan. Consequently, other individuals from both the Government and the Opposition should be granted the opportunity to select a nominee for President.

**Removal of the Need for Agreement between the Prime Minister and Leader of Opposition:** While the President should warrant the support of both the Government and Opposition, it is advanced, respectfully, that the proposed approach may become problematic. The proposal grants the Leader of Opposition a veto power in the selection of the nominee for President. This accompanied by the need for a majority vote in both Houses of Parliament creates the risk of delays in the selection process of the President. It is suggested that the candidate who earns the majority vote from both Houses of Parliament is appointed as President.

## **4. Presidential Immunity**

Due to the President's integral role as the Head of State and a non-partisan symbol of national unity, he or she must support stability and certainty in the society. Accordingly, the President should not be facing the courts frequently, as this may undermine civil society's confidence in the credibility of the Office. Notwithstanding this, in order to cement Jamaica's break with a constitutional monarchy to a parliamentary democracy characterized by the presence of the rule of law, the President must be subject to the civil and criminal proceedings in exceptional cases of wrongdoing.

**Former Position:**

The Governor-General of Jamaica enjoyed no constitutional immunities.

**Proposed Position:**

The President should not be liable in any criminal or civil proceedings while in office, except for an act involving treason, violence or fraud.

**Supporting Evidence:**

***Joseph v AG:*** No one, not even the Queen nor her Governor-General is above the law.

***AG v Reynolds:*** An action was brought against the Governor of St. Kitts, Nevis and Anguilla, who was the local representative of the Monarch as the colony's constitutional Head of State.

**Practical Example:**

**Guyana:** The President shall not be answerable to any court for the performance of the functions of his office or for any act done in the performance of those proceedings and no civil or criminal proceedings may be instituted against him in his personal capacity in respect thereof during his term of office or thereafter.

**Recommendations:**

**Civil and Criminal Proceedings for Serious Offences:** To promote respect for the rule of law and illustrate to the citizenry that the President is not above the law, the President should be liable to civil and criminal proceedings for serious allegations of theft, corruption, violence, fraud and treason.

**Strong Provisions for Immunity:** Due to the President's important role as the Head of State, the President should be entitled to immunities from the courts for most actions. This enables the President to effectively fulfil his or her functions, while establishing himself or herself as a stable symbol of national unity.



## 5. Non-Eligibility of Jamaicans who are Not Ordinarily Resident in Jamaica

Due to the importance of the Office of the President in Jamaica, there should only be restrictions on eligible candidates where they are of the utmost necessity. Indeed, there should be a large pool of talent from which the President may be chosen. Accordingly, qualifications on who may be selected as President ought to be defined with sufficient clarity.

### **Former Position:**

There are no qualifications to serve as the Governor-General of Jamaica.

### **Proposed Position:**

A person shall not be qualified to be appointed as President unless the person has been ordinarily resident in Jamaica for a period of at least ten of the fifteen years immediately preceding the date of the person's nomination for appointment, *inter alia*.

### **Supporting Evidence:**

**Large Numbers of Jamaicans are Abroad:** Over two million Jamaicans, including persons born in Jamaica and third generation descendants live abroad.

**Financial Contributions to Jamaica:** Statistics indicate that, in 2020, remittance inflows to Jamaica constituted over 20% of Jamaica's Gross Domestic Product.

### **Practical Example:**

**Trinidad and Tobago:** A person is qualified to be nominated for Election as President if he is a citizen of Trinidad and Tobago who at the date of his nomination has been ordinarily resident in Trinidad and Tobago for ten years immediately preceding his nomination. A person shall be deemed to reside in Trinidad and Tobago if he holds an office in the service of the Government of Trinidad and Tobago and lives outside Trinidad and Tobago because he is required to do so for the proper discharge of his functions.

**Dominica :** A person is qualified to be President if he has been resident in Dominica for five years immediately preceding his nomination.

## **Recommendations:**

**Further Clarification of ‘Ordinarily Resident’:** It is paramount that the expression ‘ordinarily resident in Jamaica’ be explicitly defined. Indeed, if this expression can be interpreted broadly to include Jamaicans who are living abroad for the purpose of exercising their employment functions, for example, it could dramatically increase the pool of talent and expertise from which the President may be selected.

**Reduce the timeframe to the last 5 years:** Reducing the time frame for ordinary residency in Jamaica would widen the pool of eligible candidates for the Office of the President. This would be integral to ensuring the most highly qualified talent and expertise needed for this position are available.

## **Additional commentary**

### 1. New section 27

The new section 27 will speak to the functions of the President. It provides that the President of Jamaica shall be the Head of State and “perform the functions assigned to the President by this Constitution or any other law”. The manner and mechanisms for adding new functions to the office of the President “under any other law” is not specified and this approach lends itself to apparent arbitrariness in this regard. Not all functions need be enshrined in the constitution. However, the term “any other law” is very broad and could perceivably include Regulations. Any addition to the functions of the very eminent office of the President should at least be subject to affirmative resolution in both houses.

Section 89 of the Constitution of Guyana provides that The President shall be Commander-in-Chief of the Armed forces (same in the Republic of Trinidad and Tobago) , the Head of State and supreme executive authority. Will that be the case in Jamaica? Will the Chief of the Defence staff be retained? If not, then the Defence Act should be amended. It is noted that the provision numbered as the proposed new section 35 (1) provides as follows:

s.35 (1) The President shall, unless otherwise prescribed by Parliament, have all the functions attributable, immediately before the appointed day, to the Governor-General on behalf of the Crown, in respect of the defence forces.

The marginal notes state that this is a transitory period. The intention is not clear as to whether or not the President should be commander in chief. The Defence Act sets out the functions of the Governor - General in relation to the defence force. It does not include the role of Commander-in -Chief. It is noted that section 170 of the Defence Act provides that The Governor-General shall appoint an officer, being a member of Her Majesty's forces, in whom the command of the Jamaica Defence Force shall be vested and subject to the terms of such appointment such officer shall have the command of that Force.

## 2. New section 27(2)

The provision numbered 24(2)(b), as drafted, which deals with the qualifications for appointment as the President, does not appear to disqualify non-residents. It reads—“(2) A person shall not be qualified to be appointed as President unless the person— (a) is a citizen of Jamaica, whether by birth or descent; (b) has been ordinarily resident in Jamaica for a period of at least ten of the fifteen years immediately preceding the date of the person's nomination for appointment under this section;” “by descent” means by virtue of having a parent or grandparent who is a citizen of Jamaica by birth. (a) Based on this wording, the President could conceivably be a person whose grandparent is a citizen of Jamaica and does not currently reside in Jamaica and did not reside in Jamaica for the five years immediately preceding the appointment (e.g. a person who migrated within the 5 years immediately preceding the person's nomination but was called back for nomination). This is not the approach taken in Trinidad and Tobago and Guyana. The Committee should be prepared to clarify the policy rationale for this provision.

It does not appear that the United States (US) Constitution has a residency requirement. However, it does not appear that US citizenship by descent extends to grandchildren. It is noted that section 94 of the Guyanese Constitution makes allowances for people who happen to be abroad for the purposes of study, medical treatment or work for the Government of Guyana. (b) Section 3 of the constitution

currently allows for citizenship by marriage. This begs the question regarding the non-inclusion of this condition as a basis for the qualification for the Presidency? The US Constitutional requirement pertains simply to a “citizen”. It is unclear why this area of qualification is restricted while the residency requirement appears to be more liberal.

### 3. (a) New 27(1)

Numbered as 26(1): Why is the period of appointment 7 years while the period of reappointment only 5 years. The rationale is unclear. S.35 of the Interpretation Act states that the power to appoint includes the power to dismiss. Applying this logic, the process for resignation appears to be acceptable. It is noted that under the proposed new section 35 in the Bill, the person who holds the office of the Governor-General will hold the office of the President to facilitate the transitory process until a new President is appointed. Is there a time limit for the appointment of the new President?

The new 27(6)(d)- Numbered as 26(6)(d) does not appear to be in line with the rest of the provision from an editorial standpoint.

In Guyana “gross misconduct” is included. Although it may appear trite, death should be included in terms of reason for vacancy of office. This is a usual drafting practice.

The process for removal is unclear. How does the issue come before the member of the House of Representatives who is responsible for leading the business of the Government under the Standing Orders of that House, tabled at a joint sitting of both Houses for him or her to start the process by way of a motion. Is it purely that person’s decision if the motion is put forward?

Section 180 of the Guyanese Constitution provides -- The members of the investigatory panel should be bi-partisan with equal representation. The provision says “proposed members of the investigatory panel”. How then is membership confirmed. How can the chair be named if the membership is a mere proposal? -The principles of fairness should and reasonableness should be employed. - If only a majority is needed for appointment, why are two thirds majority needed for removal? -Subsection (14) requires a more robust approach such as the appointment of an interim president.

#### 4. New section 28.

Again the numbering of this provision should be reconsidered. It appears that the President is essentially nominated by the Prime Minister. The role could be politicized. In the US there is no Prime Minister. In Trinidad and Tobago the President is nominated by the 12 members of the House of Representatives. Perhaps a bi-partisan “Nomination Committee” of both Houses could be established. The new section 28 will provide for the nomination on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

The new 28(3) requires “all reasonable steps to be taken to attain agreement. However, in the event that there is no agreement, the Prime Minister should move forward with the nomination. There is case law on the issue of what constitutes fair consultation sufficient to guide the process. There is no legal requirement for the Prime Minister to agree with the recommendation of the Leader of the Opposition. A decision of the Prime Minister to reject any counter-proposal by the Leader of the Opposition would have to be fair, rational and reasoned in keeping with principles of administrative law.

In the case of *Air Services Ltd et al v AG of Guyana et al* [2021] CCJ 3 (AJ) GY Justice Jamadar JCCJ explained from a constitutional perspective that- “....Accommodation, as the willingness of decision makers to change or modify decisions, is thus the fourth principle of Guyanese consultation... These four foundational principles can lead to some guidelines, not by any means prescriptive, but ones that provide basic pointers for both application and assessment. And, consultation must also be carried out in accordance with the rule of law good faith principle. A principle which in the context of consultation encompasses a willingness to share all relevant information, genuinely engage in the process, give real consideration of relevant stakeholders’ views and concerns, and to reasonably change and modify initial positions. The principle in the context of consultation also includes values such as transparency, openness, clarity, inclusivity, accountability, and timeliness in relation to both the process and relevant stakeholders. Good faith dealings are a cornerstone of good governance. It thus supports public trust and confidence. In relation to the common law- This Court has explained its take on this approach in *Basdeo v Guyana Sugar Corporation Ltd*. 25.

The Court found that the common law duty to consult was relevant in interpreting the meaning and extent of the requirement that a party be consulted prior to a final decision being taken.

The Court referenced the basic principles set out in *R v Brent London Borough Council ex p Gunning* as being the criteria to determine whether there was sufficient consultation, those principles being: (i) Consultation when the proposals are still at a formative stage. (ii) Adequate information on which to respond. (iii) Adequate time in which to respond. (iv) Conscientious consideration by an authority to the consultation. In *Basdeo*, the Court recognized the Gunning principles as being widely accepted and applied and highlighted that the process of consultation embraces more than just affording an opportunity to express views and receive advice. The Court opined that '[i]t involves meaningful participation and overall fairness'.<sup>27</sup> Thus, the views of relevant stakeholders, including those actually and potentially affected, ought to be taken into consideration even though these opinions may ultimately not be accepted or acted on. These factors need to be borne in mind so as not to politicize the process.

Currently the Governor-General is appointed by the Monarch of the United Kingdom, and so on paper, this issue does not arise. (But consider how "Her Majesty" determines who to appoint?) It is noted that the Bill provides- [If the PM...does not agree with the proposal and not less than three 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 Prime Minister shall determine the nominee and, after informing the Leader of the Opposition as to the 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 nomination to Parliament for a confirmation vote conducted by secret ballot at a joint sitting of the Houses of Parliament (In Trinidad this is referred to as an Electoral College) (6) On a confirmation vote under subsection (5), the nominee shall be appointed as President if the nomination secures the vote of each House, by a majority of all its members voting pursuant to subsection (5). The New section 28(1), Numbered 27(1), should the words "*bona fide*" be included so as to make it a condition for immunity? In Guyana, the President is granted similar immunity under section 182 but subject to section 180 of the Constitution which relates to gross misconduct. Should provision be made for the salaries and allowances of the

President? Section 24 (2) of the T&T Constitution with regards to remuneration and immunity.

# Clause 17 (Constitution Amendment Bill 2024) - The Expansion of the Senate

Clause 17 and the expansion of the Senate is discussed below with four recommendations for enhancing democracy and representation in the Upper House of Parliament:

1. An Alteration of the proportions of appointed Senators
2. Restructuring the method of selecting independent senators
3. Diaspora Representation in the Senate
4. Consultation with Civil Society for Independent Senate Appointments

## General comments

Under s.35, diaspora representation within the Senate should be included. See Senegal and Gambia models (dedicated parliamentary seats for its overseas citizens, including diaspora consultation mechanisms). S.35 should establish a process for consultation with Civil Society for Independent Senate Appointments. See South Africa (National province model), Canada (Independent Advisory Board), Italy (Civil Society consultations) for possible models. A recommendation could be considered under s.35 to increase and adjust the number of appointed Senators.

## Recommendations

### 1. An Alteration of the proportions of appointed Senators

The current Jamaican Constitution grants the Prime Minister the power to appoint 13 government senators, while the Leader of the Opposition appoints only 8<sup>2</sup>. This structure guarantees an automatic government majority in the Senate, regardless of public opinion or election outcomes. Since senators are appointed rather than elected, this imbalance undermines democratic principles by limiting genuine debate and oversight. It allows the ruling party to push through legislation without sufficient

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<sup>2</sup> s.35 Jamaica Constitution



scrutiny, reducing the Senate's role as a check on executive power and weakening the democratic process.

### **Supporting Evidence:**

Impact on Legislative Process – Section 55 of the Constitution states that unentrenched Bills require only a simple majority to pass in the Senate. With the current system the government always has more senators, and therefore can push legislation through without any opposition support. This diminishes the Senate's role as a safeguard against rushed or controversial laws.

Global Democratic Standards – In many democratic systems, upper houses are either directly elected or structured to prevent automatic government majorities. The Jamaican model lacks this balance, undermining genuine debate and scrutiny.

### **Practical Examples:**

United States – Senators are elected by the public, with party control shifting based on election results, preventing an automatic majority for the government.

Australia – Senators are elected using proportional representation, making it rare for any single party to have a majority in the Senate.

Germany – The Bundesrat (upper house) represents state governments, and its composition depends on regional elections, preventing a fixed government majority.

### **Recommendations:**

Increase the Number of Independent Senators – We propose proportions of 15 Government-Appointed Senators, 9 Opposition-Appointed Senators, and 6 President-Appointed or 'Independent' Senators. This would create a more balanced and independent upper house, as Bills would require some form of non-government support to be passed.

Introduce Proportional Representation – Instead of the Constitution setting out the allocated seats in the Senate, seats could be allocated based on the percentage of votes each party received in the general election. This would ensure a more balanced representation that reflects public opinion.

## **2. Restructuring the method of selecting independent senators**

We have some concerns with the proposed method of appointing ‘Independent’ Senators. Unlike elected representatives who are directly chosen by the people, independent senators are selected based on criteria determined by a single individual—President—who is, in turn, appointed on the advice of the Prime Minister. Since these senators do not answer to a constituency, they lack direct accountability to the electorate, which can make their decision-making less reflective of public opinion. Instead of fostering true independence, this system could create a Senate that is influenced by elite interests or a small political circle, rather than the broader will of the Jamaican people.

### **Supporting Evidence**

**Risk of Political Influence and Partisan Politics** - In countries where ‘independent’ senators are appointed by a single authority, there have been concerns about political favoritism. For example, in Canada, Senate appointments were historically criticized for being partisan despite the claim of independence. Reforms were introduced in 2016 to use an independent advisory board to recommend senators instead of direct prime ministerial appointment.

**Protection of Democratic Principles** - It is often argued that independence is best maintained through institutional safeguards, and checks and balances on the various branches of government. If a single leader (the President) determines the criteria for ‘independent’ senators, the process risks becoming an extension of executive power rather than a check on it.

## Recommendations:

Establish a Non-Partisan Selection Committee - Rather than giving the President (a non-elected executive) to have full discretion on selecting members of the judiciary by determining independent senators, a bipartisan or nonpartisan selection committee could be formed. This committee could include representatives from civil society, faith-based community, trade unions and the private sector to ensure a fair and transparent selection process.

The Use of Functional Constituencies - This would allow Senators to be elected or selected through functional constituencies. These constituencies would represent sectors of Jamaican society, ensuring that independent senators reflect the interests of civil society, professional groups, and economic sectors rather than just political elites. For example, persons from the private sector could elect or select a representative to be appointed to the Senate.

## Practical Example

**Canada:** An Independent Advisory Board now recommends Senate appointees based on merit rather than political affiliation.

## 3. Diaspora Representation in the Senate

The Jamaican diaspora plays a significant role in the nation's economy, culture, and global presence. With an estimated **1.3 million Jamaican-born individuals** living abroad, constituting approximately **36.1%** of Jamaica's population, the diaspora represents a vital segment of our national identity. This large, diverse, and influential population deserves a direct voice in the legislative process, especially as it relates to the Senate's role in shaping national policies.

## Supporting Evidence:

**Remittances:** In 2020, remittances to Jamaica accounted for **22.2% of the nation's GDP**, underscoring the significant economic contributions made by the Jamaican diaspora. For instance, **net remittance inflows** for July 2024 alone were reported at **US\$269.4 million**, illustrating the continuing economic importance of Jamaicans abroad.

**Global Distribution:** The diaspora is heavily concentrated in countries like the **United States, Canada**, and the **United Kingdom**, where Jamaicans account for a significant portion of the Caribbean diaspora. This global presence positions them as an influential constituency with a vested interest in the future of Jamaica.

#### **Practice Examples:**

**Senegal:** Senegal is a pioneer in diaspora engagement, having introduced dedicated parliamentary seats for its overseas citizens. The country's diaspora is represented by elected members in the National Assembly, ensuring that their voices are heard on matters directly impacting their communities and interests abroad. This structure has been successful in building stronger ties between the diaspora and the homeland while ensuring that the diaspora's concerns are given proper weight in the legislative process.

**Gambia:** Gambia, similarly, has incorporated diaspora participation through advisory bodies and diaspora representatives within the Parliament. Gambia's approach is characterized by consultation and collaboration with diaspora organizations, ensuring that the diaspora is not only represented in the legislative process but also actively engaged in shaping national policy. The Gambian government has leveraged technology to ensure that diaspora representatives remain accessible and involved in key decision-making.

Given these facts, it is critical to ensure that the Jamaican diaspora has a meaningful voice in the Senate. By appointing diaspora members as independent Senators, Jamaica would strengthen its connections with the global Jamaican community, recognize the vital contributions of diaspora members, and promote policies that reflect their interests and needs.

#### **Recommendations:**

**Appointment of Diaspora Senators:** We propose the appointment of at least one or more independent Senators from the diaspora to ensure that their perspectives are represented in the Senate. This would be a step toward further integrating the diaspora into the decision-making process, enhancing the relevance and inclusivity of Jamaican governance.

**Diaspora Engagement:** The process for appointing these Senators should be transparent and involve input from diaspora communities to ensure that their contributions are reflected in the selection process.

#### 4. Consultation with Civil Society for Independent Senate Appointments

The appointment of independent Senators must be a transparent, inclusive process that reflects the needs and interests of the Jamaican people. Civil society organizations (CSOs), including professional associations, community groups, and advocacy organizations, are crucial stakeholders in this process. Their input will help ensure that appointments are based on merit, represent diversity, and align with national development goals.

##### Supporting Evidence:

- **International Practical Examples:** Several countries, including **South Africa**, **Canada**, and **Italy**, have successfully integrated civil society in the Senate appointment process. For example, Canada's **Independent Advisory Board for Senate Appointments** involves public consultation and recommendations from civil society groups to ensure that appointments are merit-based and reflect societal diversity. Similarly, South Africa's **National Council of Provinces** consults with civil society to appoint members who represent the broad interests of the country.

##### Practical Examples:

- **South Africa:** Civil society consultations are a key part of selecting members for the National Council of Provinces, ensuring that regional and community interests are represented.
- **Canada:** An independent advisory body reviews candidates for Senate appointments, ensuring that public input is considered and that appointees reflect a broad range of expertise and diversity.
- **Italy:** The President consults civil society groups and political entities before appointing life Senators, ensuring that appointments reflect societal values and expertise.

##### Recommendations:

- **Formalized Civil Society Consultation:** We recommend establishing a **formalized civil society consultation process** for the appointment of independent Senators. This process should include public forums, online submissions, and direct engagement with community organizations, advocacy groups, and professional associations.
- **Independent Advisory Body:** An independent body, similar to Canada's **Advisory Board**, should be created to review nominations and make recommendations for appointments to ensure that the process is depoliticized and based on merit and diversity.
- **Transparent Appointment Criteria:** The government should establish clear and publicly available criteria for selecting independent Senators, which civil

society groups can help define. These criteria should include factors such as **merit, experience, and community contributions.**

# Clauses 18 to 21 (Constitutional Amendment Bill 2024) - Qualification and Disqualification for Membership in the Parliament

This section considers Clauses 18 to 21 regarding qualifications and disqualifications for membership in the Parliament. The existing structure governing the requisite standards as well as disqualifications for membership to the House of Representatives is already very robust. The proposed changes address the following issues and the role they play in determining qualifications and disqualifications to serve as a member in the House of Representatives:

1. Dual Citizenship
2. Academic Requirements

## General comments

Under s.40, dual citizenship should be permitted, except for the role of the President and leaders of Parliament. (See *Dabdoub v Vaz* case<sup>3</sup> – citizenship does not necessarily equal allegiance, involuntary citizenship *per se* does not disqualify one from serving as a Member of the House of Representatives but voluntary acknowledgement of allegiance to a foreign state).

## Recommendations

### Dual citizens

The matter of dual citizenship is a contentious issue and has often been used as a political weapon by members of both political parties. In all things there must be a balancing act that aims to meet the needs of all the parties involved. It seems to be far too draconian of a measure to allow only Jamaicans to be eligible for election to the House of Representatives. Doing so would ostracize other members in the population who have dual-citizenship but otherwise live, work and contribute to Jamaica's

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<sup>3</sup> *Dabdoub v Vaz* (JM 2008 CA 77, SCCA Nos 45 and 47 of 2008)

development on an equal level with others. It unduly restricts the pool of eligible citizens and will in the long run rob the country of some qualified and viable prospects that may be needed to serve as cabinet leaders in the more technical Ministries such as Health or Finance. However, the caveat is that the Prime Minister and Leader of the Opposition as the potential future Prime Minister, must be Jamaican citizens only. These offices represent the highest political leadership of the land and the Prime Minister is expected to represent the nation as a whole and embody undivided allegiance to its people. Dual citizenship at these levels will undermine these roles. This compromise is inline with current viewpoint of the Jamaican populus as the Jamaica Observer reported that almost one in every seven Jamaicans (70%) have no issue with dual-citizens serving in the House of Representatives. Contrastingly an equal number of persons take issue with a dual-citizen serving as Prime Minister

### **Academic requirement**

It would be inherently beneficial for there to be a basic level of traditional educational attainment that is necessary for one to be elected to the House of Representatives. While citizens have the right to freedom of choice in terms of who they wish to elect as their representative, it is nevertheless imperative for there to be basic minimum standards. The previous consideration of base literacy is inadequate in a modern society. This is further contextualized with governmental programs that mandate students to be involved in some form of educational (sixth form) /vocational training once they have graduated from high school. Therefore, it stands to reason that if these mandates are thrust upon the students then the leaders of the land who bear much greater responsibility at present should have a commensurate level of qualifications. Especially considering that these individuals are not only advocates that are responsible for representing their constituency but have responsibilities that include but are not limited to, law-making, serving on committees of parliament, fulfilling roles within ministerial bodies and voting on matters of National Importance.

### **Practical Examples**

**Kenya:** the constitution of Kenya specifically outlines that candidates who aspire to be considered for an elected post must have a university degree recognized in Kenya. This represents one of the highest levels of educational attainment. It is important to



note that this high threshold has resulted in there being some challenges to this provision but in Jamaica, the proposed threshold would not be as high.

**Nigeria:** it is also outlined in the Nigerian constitution that for individuals to hold certain political offices, there must be a minimum level of educational qualification. In comparison to Kenya, the bar is much lower and is commensurate with the level of education proposed as only a secondary level of education is required.

## **Additional commentary**

This note reviews Clauses 18-21 of the Constitutional (Amendment) (Republic) Bill 2024. Each clause is considered in turn with the following sub-headings:

- Nature of the clause;
- Relevant portions of the content of the current constitutional provision that the clause intends to alter;
- Nature and effect of the change brought about by the proposed alteration; and
- Comments on the nature and effect of said change.

### Clause 18

#### Summary of Clause 18

This clause addresses the requirements to be an elector for elections to the House of Representatives. It seeks to amend section 37(1) of the Constitution.

#### **Current Provision:**

To be an elector for elections of the House of Representative one must be:

a Jamaican citizen and resident in Jamaica at the time of registration; or

a Commonwealth citizen (other than Jamaican) and resident in Jamaica for at least 12 months preceding registration; and

has attained the prescribed age.

#### Nature and Effect of Change

Clause 18 removes the possibility of a Commonwealth citizen other than a Jamaican to be an elector for elections to the House of Representatives.

### **Comment**

No objection to the proposed amendment.

### **Clause 19**

#### **Summary of Clause 19**

This clause addresses the qualifications for membership of the House of Representatives and the Senate. It seeks to amend section 39(a)(1) of the Constitution.

#### **Current Provision**

A citizen of a Commonwealth country other than Jamaica may be appointed a Senator or elected a Member of the House of Representatives.

#### **Nature and Effect of Change**

The clause removes 'Commonwealth citizen' and replaces it with 'Jamaican citizen.' The result is that Jamaican citizenship is the only citizen requirement for qualification for appointment to the Senate or election to the House of Representative.

### **Comments**

The proposed amendments appear to intend to limit the pool from which Parliamentarians may be selected. If this is correct, how much limitation is truly intended? Currently, the limitation is to exclude Commonwealth citizenship but it does not say the qualifying feature is Jamaican citizenship only. It appears, then, that a person may be qualified to become a Parliamentarian if he or she has Jamaican citizenship in addition to some other citizenship. If this is true, the proposed amendment may not offer the level of limitation as may be apparent at first glance.

If further limitation is intended, there could be language similar to that found at the end of section 41(d) of the Constitution that deals with instances where a House or Senate seat becomes vacant. That section refers to the circumstance where a person becomes 'a subject or citizen of a foreign Power or State'. If that language is adopted with respect to disqualification, then that would provide a higher degree of limitation on who can serve. Is this the intention? In any event, there may need to be some alignment with respect to the ground of citizenship between the disqualification provision in section 40(2)(a) and the vacation of seat provision in section 41(1)(d).

However, one cannot ignore the judicial pronouncement that citizenship per se is not necessarily disqualifying under the current constitutional regime. The Jamaica Court of Appeal held that in the case where citizenship was not voluntary, that by itself does not disqualify a person from membership of the House. In light of this, there may need to be consideration of Jamaica's overarching position with respect to the intended degree of limitation on who is qualified or disqualified from serving on the basis of citizenship. How much limitation is intended? Should there or should there not be reference to mere citizenship of a foreign State or Power as a disqualifying element? In any event, should there be alignment with section 41(d)?

Other countries have included citizenship of another State or Power as a ground of disqualification for membership in their legislatures. For example, the Indian Constitution s 102 and the Australian Constitution s 44 do so. The Indian provision is clear that disqualification is triggered where one has voluntarily acquired citizenship of a foreign State. The Australian provision does not address voluntarism.

Additionally, other Commonwealth Caribbean States that have provisions akin to Jamaica's provision on disqualification include Barbados and Guyana. Of note, these two States have attained Republic status and so had the opportunity to provide clarity on the effect of citizenship of foreign States on membership in their legislatures. While they did what Jamaica now proposes to do, that is, to remove reference to Commonwealth citizenship, they did not address the issue of further limitation on qualification or disqualification for membership, that is, what role does citizenship of a foreign State play in the determination of qualification or disqualification for members in Parliament. Jamaica has an opportunity to do so now.

## Clause 20

### Summary of Clause 20

The clause addresses disqualification from appointment as Senator or election as Member of the House of Representatives. It seeks to amend section 40 in 2 places: subsection (2) by deleting sub-subsections (d) and (e); and subsection 3.

### Subsection 2

#### Current Provision:

Subsection 2(d) addresses a number of issues. These are disqualification in circumstances where: a person is sentenced to death by court of competent jurisdiction in any part of the Commonwealth; serving a sentence of imprisonment of or exceeding 6 months or serving some other sentence substituted by a competent authority imposed by a court in any part of the Commonwealth; and is under a sentence of imprisonment of or exceeding 6 months that has been suspended.

#### Nature and Effect of Change:

The clause simplifies the text by enumerating the disqualification elements in subsection 2.

It also removes references to a court in any part of the Commonwealth and instead refers to Jamaican court or a court elsewhere. This change expands the list of competent courts.

It also includes an additional ground of disqualification. A person is disqualified if he or she was convicted of an offence by a competent court in Jamaica or elsewhere involving treason or involving fraud or violence for a which a penalty of imprisonment of or exceeding 18 months has been imposed.

### Subsection 2(e)

#### Current Provision

Subsection 2(e) prescribes that a person is disqualified if he is adjudged or declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged.

#### Nature and Effect of Change:

The clause replaces reference to a law in any part of the Commonwealth with reference to a law in Jamaica or elsewhere. This change limits the circumstances under which a person may be disqualified with respect to a declaration of bankruptcy.

### Subsection 3

#### Current Provision

This subsection elaborates on the issue in subsection (2)(d) concerning sentences of imprisonment. Where 2 or more sentences are imposed and are to be served consecutively, a person shall be regarded as serving a sentence of or more than 6 months if one of the sentences amounts to or exceeds 6 months. The subsection also states that a person is not disqualified if a sentence of imprisonment is imposed as an alternative to or in default of payment of a fine.

#### Nature and Effect of Change

The clause includes language that accounts for the inclusion of an additional ground of disqualification, ie., with respect to the imposition of a sentence or imprisonment exceeding 18 months for conviction of an offence of fraud or violence.

The clause provides that where a person is serving 2 or more sentences of imprisonment and does so consecutively, he shall be considered as serving a sentence of or exceeding 18 months if one of the sentences amounts to or exceeds

18 months. It also indicates that a person is not disqualified if a sentence of imprisonment is imposed as an alternative to or in default of payment of a fine.

#### Comment

No objection to the proposed amendment.

#### Clause 21

##### Summary of Clause 21

This clause lists the events that trigger the seat of a Member of the House of Representative or Senate to become vacant. It seeks to amend section 41(1)(d) of the Constitution.

#### Current Provision

The seat of a Member of the House of Representative or the Senate becomes vacant if the holder ceases to be a Commonwealth citizen or takes an oath or makes any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Power or State or does anything with the intention so that he shall be a subject or citizen of any foreign Power or State.

#### Nature and Effect of Change

The clause removes the word 'Commonwealth' and replaces it with 'Jamaican' so that if a person ceases to be a Jamaican citizen, not a Commonwealth citizen, the seat becomes vacant. This change aligns with the proposed change to amend qualification requirements to remove Commonwealth citizenship and limit it to Jamaican citizenship.

#### Comments:

It may be helpful to include a definition of 'foreign State or Power' in the definition section. This may be 'any State or Power other than Jamaica'.

The word 'citizen' is retained in the constitutional provision. This does not appear in section 40(2)(a) that speaks to disqualification for membership. The result appears to be that one is not disqualified from appointment to or election for the seat if he or she

is a citizen of another State but if she or she did not have citizenship of a foreign State and seeks to obtain such citizenship subsequent to appointment or election, he or she vacates the seat. This may need to be further considered.

An overarching question is, what is the position on mere citizenship of a foreign State with respect to qualification and disqualification for membership and vacation of a seat?

# Clause 22 (Constitutional Amendment Bill 2024) - Alteration Mechanism of the Constitution

Our recommendations for Clause 22 and its alteration mechanisms concern the following:

1. The Requirement of a Referendum for Alterations
2. The Structure of the Clause
3. The Delay Mechanisms for Alteration.

## General comments

Recommendations include:

- s49(1)(A) fourteen days amended to one month.
- s49(2)(B) two months amended to three months.
- s49(3)(b) to include s110 on the Privy Council.
- s49(3)(i) and (ii) amended to reflect deeper entrenchment.
- s49(3)(d)(ii) a minimum of 3 months and no more than 12 months. Thereafter the 12 month period, a two-thirds majority vote is needed including at least one member of the opposition voting in favour of an extension.

## Recommendations

### 1. Requirement of Referendum

In the current Jamaican Constitution, for there to be any new law which alters certain provisions in the constitution, a vote needs to be put to the electorate. The same can be said for the Constitutional Amendment Bill. Referendums are manifestations of the general will of a country's citizens and allow the citizens' views to be represented. However, referendums in the Caribbean are very problematic as there is low voter turn-out and the specified majority necessary for the passing of the law or Bill is rarely met.



## **Supporting Evidence**

### **The Failure of Referenda in Grenada in 2016**

Here, the Constitution Amendment Bills did not meet the required two-thirds majority of the electorate necessary to amend the constitution. Of several Bills, none even attained a simple majority.

## **Recommendation:**

### **Increased Campaigning and Information**

To increase voter turn-out and votes in favour of the proposal, citizens need to know what they are voting for, as well as the advantages and disadvantages that the new law will pose. A similar approach as that taken in General and Local elections should be taken. In these elections, there is a plethora of campaigning done and the information is easily accessible.

## **Practical Example:**

The level of campaigning done in Jamaica in 2020 for General Elections.

## **2. The Structure of Clause 22.**

In its substitution of the current section 49, there exists both subsections (1)(a) and (1A). This may lead to confusion when reading and trying to understand what the Constitution is saying.

## **Supporting Evidence:**

- Subsection (1A) relates to section (4) which is located 2 pages after 1A.
- The Constitution and the Language of the Law.

## **Recommendation:**

### **Re-format the section.**

Laws should be clear so that anyone can understand them. The importance of this is even more pronounced for the Constitution as the Constitution is the supreme law of the land. TO ensure that people can be granted effective redress for breaches of their rights, they need to be able to first understand what their rights are. This is difficult with the existence of such technical and legal language that only politicians and lawyers

can understand. Therefore, the Constitution should both be easily read and understood, and the formatting of sections must be straightforward.

### **3. The Delay Mechanisms Imposed.**

The Constitutional Amendment Bill serves two functions very well. First it increases the security or entrenchment of sections which in the current Jamaican Constitution have less protections. The proposed requirement of a period of fourteen days between the introduction of the Bill in the House of Representatives and the commencement of the first debate on the whole text of that Bill in that House followed by another fourteen days elapsing between the conclusion of the debate and the passage of the Bill, best highlights this. In the current constitution, no time period is affixed to those sections that (1A) covers. Secondly, the Constitutional Amendment Bill speeds up the process of passing other laws.

#### **Recommendation:**

##### **Implement a longer required period of delay.**

Instead of the fourteen days followed by another fourteen days, there should be the implementation of a required period of a month followed by another month. This will provide further protection for laws and ensure that laws cannot be so hastily altered.

#### **Supporting Evidence:**

##### **The “Rushed Director of Public Prosecutions” Bill.**

The section that deals with the tenure of office for the Director of Public Prosecutions was left out of sections which were of deeper entrenchment. This led to what some argue as “the rushing of the Bill” to amend the maximum age of the Director of Public Prosecutions to become law.

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- [2] The Constitution Amendment Bill of Jamaica, 2024, s 24 (1)
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[14] *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy*, signed 5 July 2001, entered into force 1 January 2006.

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[16] *Dabdoub v Vaz* (JM 2008 CA 77, SCCA Nos 45 and 47 of 2008)