



Government of Jamaica

SECTORAL PRESENTATION

2022



MARLENE MALAHOO FORTE, QC, MP
Minister of Legal and Constitutional Affairs

2022 JUNE 07
Gordon House



@MalahooForteQC



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PRELIMINARY REMARKS

1. **Madam Speaker**- although this is my 7th consecutive contribution to these Sectoral Debates it is my maiden, as a Minister. My deep gratitude for the Prime Minister's vote of confidence which elevated me to his Cabinet with full portfolio responsibility, takes second place to the commendation I must pay him for the bold step he took, to establish this Ministry of Legal and Constitutional Affairs, to bring unprecedented, focussed attention to the government's legislative and constitutional reform aspirations. It is no secret that I have a sacred passion for the law and an abiding interest in the subjects of the portfolio, even though I am always prepared to serve wherever I best add value to my team.
2. All of us who serve the public - especially from elected political offices - bank on the support and kind understanding of our constituents, colleagues, friends and families, because it is no exaggeration to say that life in representational politics is hellacious. As such, I acknowledge, with profound gratitude, the many - especially my family and close circle of friends - who have helped and held me along the way, who have stood and continue to stand in the gap with me. Although it is not possible within the context of this presentation to name them all, you will understand if I single-out my husband, the Hon. Justice (Ret'd) Ian X. Forte, OJ, CD, JP. I cannot thank him enough for his love, support and wise counsel. May he always know how much I truly love, admire and respect him.
3. I should also like to once again place on record my thanks to the team at the Attorney General's Chambers (AGC); and to wish my successor in the office of Attorney General – Dr. Derrick McKoy, QC, CD, a satisfying tenure. I remain grateful for the co-operation and support of the cadre of professional civil and public servants, fellow parliamentarians on both sides of the aisle, the parliamentary staff and the ministers of government, in particular, the Hon. Dr. Horace Chang, CD, MP, Deputy Prime Minister and Minister of National Security and the Hon. Delroy Chuck, QC, MP, Minister of Justice, with whom I continue to work closely and have always enjoyed a collegial relationship. Very special thanks to my secretary, Personal Assistant (Mr. Desmond Neysmith, JP) and the Close Protection Officers assigned to me (Corporal Shard Walters and Constable Edwin Calloo, Jr.) who so often go beyond the call of duty.
4. **Madam Speaker**, permit me to use this occasion to pay homage to my St. James West Central constituents, as their duly elected representative in this Honourable House. I should like to also acknowledge my constituency office staff (including Constituency Development Fund (CDF) officer, Mr. Gregory Brissitt, JP; Constituency Secretary, Ms. Ava Gordon; Divisional Secretary, Ms. Angella Braham; and groundsman, Mr. Dwight "Bigga" Livingston); the constituency executive and management teams (including Councillor Dwight "Debo" Crawford, JP of the Spring Garden Division; Divisional Chair and Divisional Co-ordinator Mrs. Rena Forbes, JP and Mr. Bryan House of the Mt. Salem and Granville Divisions, respectively; Messrs. Robert Russell, JP, Dale Delapenha, JP, Robin Russell, JP, Neil Baugh JP and Ms. Ann

Marie Chin). I warmly greet those who are tuned in, watching and listening attentively to this address.

5. Our constituents are depending on all of us to do right by them. Many have no privilege of office or any connection in high places. They need every part of government with which they interact to be more responsive, more efficient and more accountable to them. We must therefore be relentless in our representation to have a strong and effective government to better serve them, because a weak and ineffective government is easily manipulated to produce unjust and corrupt outcomes that harm the people.
6. Doing right by the people includes exercising greater care in how we manage campaigns when running for office. So often we give the impression that we can be all things to all men and end up relieving others of their share of responsibility for the work. Unrealistic expectations are set, which cannot be met, leading to disappointment and distrust. Furthermore, we make the grave mistake in thinking that it is okay to engage in the most despicable acts and illicit activities on the campaign trail but then expect integrity in the affairs of government when those who so engaged are put in charge of any part of government. My generation of political leaders must consciously eschew the evil practices done in the name of partisan politics and then deliberately practise politics in a more constructive and indubitable manner.
7. **Madam Speaker-** I take my responsibility to my constituents very seriously. My style of politics is not the up-in-your-face, rambunctious style. My preference is to, without fanfare, quietly go about the business of the people, spending time to get first-hand knowledge on what is happening on the ground and speaking with constituents directly. It truly irks me when I make the necessary representation to have issues addressed and then the appropriate part of government with responsibility is unresponsive or delivers sub-standardly.
8. We desperately need all parts of government to work together, with each part doing its fair share of the work. What happens in one part impacts what happens in other parts. While the MP is often the first point of contact with government for many constituents it is vitally important that they understand that government is much bigger than the political directorate. The belief that the MP has the power and authority to take action to fix whatever is wrong in government is a mistaken one, because government is not a one-man show. The Ministries, Departments and Agencies (MDAs) are staffed by administrative, professional, technical and other officials. We sometimes forget that although the boundary lines between the political directorate on the one hand and the civil and wider public service on the other hand sometimes blur, they are in fact sharply drawn in most areas.
9. I have always maintained that the face of government we see at any given time is, invariably the face of the individual or the institution we interact with. In our quest for improved governance, the relevant office holder(s) whose conduct is in question is to

be held to account. Roles and functions are formally and legally assigned to various offices across government. It cannot be over-emphasized that the place to spot a fault is where it occurs. The persistent failure to hold individuals to account, or to do so in a timely manner, and the tendency to broad-brush an entire cohort have tarnished individuals and institutions, and compromised systems.

10. The complex legal and political governance issues I deal with daily expose the underbelly of the society and bring the inner workings of government into sharp focus. How Jamaica responded to the COVID-19 pandemic, for example, can be a most useful case study. While addressing these issues has served to deepen my working knowledge of all areas of the law- especially Constitutional and Administrative Law, they have also highlighted things taken for granted by state agents in the performance of duties and the general exercise of leadership at various levels. These things not only expose the state to liability, but they also undermine confidence in the machinery of government and decrease government's effectiveness.
11. On the matter of constitutional law, I must mention in passing how I welcome the clarity provided by the Judicial Committee of the Privy Council on the vexed question of mandatory minimum sentences and on the separation of powers doctrine, in its judgment given on 16 May 2022 in the case of **Jay Chandler (Appellant) v The State (No 2) (Trinidad and Tobago)**. The principal constitutional question raised in that appeal was whether the mandatory death penalty for murder was contrary to the Constitution which Trinidad and Tobago adopted in 1976, when the state became a republic.
12. In reiterating the law applicable to Constitutions on the Westminster model, at paragraph 79 of the judgment the following appears:

“Turning to the role of the legislature Lord Diplock stated [in Hinds v The Queen [1977] AC 195, (p 226)]:

“in the exercise of its legislative power, Parliament may, if it thinks fit, prescribe a fixed punishment to be inflicted on all offenders found guilty of a defined offence, as for example, capital punishment for the crime of murder. Or it may prescribe a range of punishments up to a maximum in severity, either with or...without a minimum, leaving it to the court by which the individual is tried to determine what punishment falling within the range prescribed by Parliament is appropriate in the particular circumstances of his case.”
13. Of much significance to us here in Jamaica, our final court, in the Chandler case cited at paragraph 11 supra, reminded that *‘the separation of powers also works to prevent judges from arrogating to themselves powers vested in another branch of government’*.
14. **Madam Speaker-** my almost six-year tenure as Attorney General atop my role of Member of Parliament gave me new insights into how the law impacts the everyday life of the people. Early in the day I began to closely examine the relationship between

the rule of law and sustainable development, from the perspectives of the rule of law as a development end, as well as a means to sustainable development. Over the years I have also been analysing this relationship through the lens of the three rule of law component- legal frameworks, institutional capacity and legal empowerment. In developing legal frameworks, great care is required at each stage of the process. The spirit of the law and the letter of the law must be clear, to avoid unintended consequences in use and interpretation of the law.

15. **Madam Speaker**, permit me to now direct attention to the portfolio work of the Ministry. I gather there is much anticipation across government, in the wider society, as well as in the Diaspora, about what I may be announcing on the constitutional reform front. If I had the vocal skills like some others who already presented, I would ‘cut a tune’ in quick response; but I know my limitations in this regard, so I will simply pray in aid words from our legendary Bob Marley: *“Zion train is coming our way...oh people get on board...you betta get on board...the Zion train is coming our way...oh where there’s a will there’s always a way...Zion train is coming our way...”*
16. Before dealing with the matter of constitutional reform, I will first report on the work done in the other portfolio areas of the Ministry for the reporting period. In doing so, I should like to firstly acknowledge my Permanent Secretary (acting), Mr. Wayne O. Robertson, who has been working assiduously to set up the Ministry. A big thank-you to the Office of the Prime Minister where we are currently housed and the Ministry of Justice with whom we share corporate services. I second what the Prime Minister said when he acknowledged Permanent Secretary Mrs. Audrey V. Sewell, CD, JP, of the Office of the Prime Minister and the Ministry of Economic Growth and Job Creation, as one of the most effective, knowledgeable and hardworking Permanent Secretaries. Mrs. Sewell has been very helpful to us and I know Mr. Robertson has learned much from her. My every interaction with her has been pleasant, professional and productive.
17. In my maiden Ministerial Statement to this Honourable House on January 18, 2022, a week after this Ministry was created, I advised that the portfolio, has been assigned four subjects and three departments, for a start. The subjects are (i) legal reform; (ii) constitutional reform; (iii) legal education (including the Council of Legal Education’s Norman Manley Law School, now under the principalship of Ms. O. Carol Aina, CD); and (iv) protection of human rights (involving interfacing with the Office of the Public Defender). The departments are (i) the Office of the Parliamentary Counsel (OPC)- headed by the Chief Parliamentary Counsel (CPC) Miss Judith Grant, the Legal Reform Department (LRD)- headed by Miss Nadine Wilkins and the Law Revision Secretariat (headed by Mrs. Julia Gowie-Williams).
18. I use this occasion to thank the outgoing Public Defender, Mrs. Arlene Harrison Henry, for her service as head of this important Commission of Parliament and to also commend the staff of the Office for their work on behalf of the people of Jamaica. I will address the outstanding matter of the proposed National Human Rights Institute at a later date.

THE NORMAN MANLEY LAW SCHOOL

19. From the time of my appointment as the Attorney General in 2016 until I demitted that office in January of this year (2022), I served as a member of the Council of Legal Education (CLE), pursuant to the provisions of the *Council of Legal Education Act, 1974*, which provides for the Agreement establishing the Council of Legal Education to have the force of law in Jamaica, and which mandates, inter alia, the Attorney General's membership thereon. I got a first-hand understanding of the operations of the Council and learnt that I was an exception to my predecessors in office, based on my regular attendance at Council meetings and participation in its various other activities.
20. Now, as *'the Minister for the time being charged with responsibility for legal education'*, I am pleased to continue my relationship with the CLE, albeit in a different capacity; and to provide a brief report on the Norman Manley Law School, (NMLS) located on the Mona Campus of the University of the West Indies (UWI), Jamaica.
21. The latest Registrar's Report (Academic Year 2021/2022) on the school's education results, reveal in broad terms that eighty-five per cent (85%) of students routinely graduate within the two years of the Legal Education Certificate (LEC) programme. Ninety-five per cent (95%) of students routinely graduate within 3 years, which means that ten per cent (10%) of students repeat one year of the programme.
22. It gives me great pleasure to also extend (even though somewhat belatedly) heartiest congratulations to the NMLS team who now proudly holds the winning trophy for the Caribbean Court of Justice (CCJ) Mooting Competition in its 12th year, after defeating the Hugh Wooding Law School, at the first ever virtual meet. The NMLS had previously won the competition in its inaugural year (2009) and in 2016 and 2018. As noted in the Principal's Report, mooting competitions are recognized as impressive vehicles for international and regional benchmarking of legal skills. As one Judge of the Court noted, in announcing the winner, there was a marked difference between students in the undergraduate programme and those in the vocational programme, thus underscoring the value-added by the LEC programme. It is noteworthy that all together the three CLE schools have won the CCJ competition in 11 of the 12 years. The NMLS also progressed to the Advanced Rounds of the Philip C. Jessup Competition last month. The Philip C. Jessup Moot Court is the most prestigious International Law Moot Court in the world.
23. On another occasion I will address other issues that fall for consideration under this subject, including the challenges faced by graduates of the University of Technology (UTECH) and other non-UWI Bachelor of Laws (LLB) Degree holders and the options to be considered to address these issues.

OFFICE OF THE PARLIAMENTARY COUNSEL (OPC)

- 24.** I am pleased to inform this Honourable House that over the reporting period the OPC dispatched one hundred and seventy-nine (179) complete drafts, with another four (4) in progress, on seventy-three (73) different bills. Sixteen (16) of these bills were passed into law. They are as follows:
- Casino Gaming (Amendment) Act, 2021
 - Companies (Amendment) Act, 2021
 - Corrections (Amendment) Act, 2021
 - Council of Community Colleges (Amendment, Validation and Indemnity) Act, 2021
 - Criminal Justice (Suppression of Criminal Organisations) (Amendment) Act, 2021
 - Emergency Powers (Amendment) Act, 2021
 - Extradition (Amendment) Act, 2021
 - International Corporate and Trust Services Providers (Change of Name and Amendment) Act, 2021
 - Judicature (Appellate Jurisdiction (Amendment) Act, 2021
 - Judicature (Parish Courts) (Amendment) Act, 2021
 - Justices of the Peace (Amendment) Act, 2021
 - Legal Aid (Fees) (Validation and Indemnification) Act, 2021
 - Limited Liability Companies Act, 2021
 - National Identification and Registration Act, 2021
 - National Insurance (Validation, Indemnification and Amendment) Act, 2021
 - Road Traffic (Amendment) Act, 2021
 - Trafficking in Persons (Prevention, Suppression and Punishment) (Amendment) Act, 2021
- 25.** Details of the 73 bills, by name and number of drafts per bill, dispatched to the relevant portfolio Ministries are set out in Table 1 below.

Bills Dispatched by OPC – FY 2021/2022

	Name of Bill	Status/# of drafts dispatched	Ministry
1	Agricultural Produce (Amendment) Bill	0 (Drafting in progress)	Agriculture & Fisheries
2	Aliens (Amendment) Bill	6	National Security
3	Appropriation Bill	1	Finance & Public Service
4	Appropriation Bill – Supplementary Estimates	1	Finance & Public Service
5	Bank of Jamaica (Amendment) Bill – Digital Currency	4 (Revised draft in progress)	Finance & Public Service
6	Bank of Jamaica (Amendment) Bill – Financial Services and Consumer Protection	1	Finance & Public Service
7	Bank of Jamaica (Amendment) Bill (companion to Banking Services Amendment)	1	Finance & Public Service
8	Banking Services (Amendment) Bill	1	Finance & Public Service
9	Casino Gaming (Amendment) Bill	1 (Passed – Act 17/21)	Finance & Public Service
10	Civil Aviation (Amendment) Bill	2	Transport & Mining
11	Companies (Amendment) Bill	3 (Passed – Act 19/21)	Industry Investment & Commerce

	Name of Bill	Status/# of drafts dispatched	Ministry
12	Companies (Amendment) Bill	1 (Revised draft in progress)	Industry Investment & Commerce
13	Constitution (Amendment) (Tenure of Judges of Parish Courts <i>et al</i>) Bill	2	Justice
14	Copyright (Amendment) Bill	3	Industry Investment & Commerce
15	Corrections (Amendment) Bill	6 (Passed- Act 27/21)	National Security
16	Council of Community Colleges (Amendment, Validation and Indemnity) Bill	1 (Passed – Act 15/21)	Education & Youth
17	Credit Unions (Special Provisions) Bill	2	Finance & Public Service
18	Criminal Justice (Suppression of Criminal Organisations) (Amendment) Bill	12 (Passed – Act 16/21)	National Security
19	Domestic Violence (Amendment) Bill	3	Culture Gender Entertainment & Sports
20	Electricity (Amendment) Bill	5	Science Energy & Technology
21	Emergency Powers (Amendment) Bill	2 (Passed – Act 23/21)	Justice
22	Extradition (Amendment) Bill	12 (Passed – Act 14/21)	Justice
23	Financial Institutions (Special Resolution Framework) Bill	Work in progress	Finance & Public Service
24	Financial Services Commission (Amendment) Bill	5	Finance & Public Service
25	Firearms (Prohibition, Restriction and Regulation) Bill	5 (Tabled)	National Security
26	Forest (Amendment) Bill	2	Housing Urban Renewal

	Name of Bill	Status/# of drafts dispatched	Ministry
			Environment & Climate Change
27	Gaming Bill	1	Finance & Public Service
28	General Consumption Tax (Validation, Indemnification and Amendment) Bill	1	Finance & Public Service
29	Income Tax (Superannuation Funds and Retirement Schemes) (Amendment) Bill	2	Finance & Public Service
30	Income Tax Relief (Large-Scale Projects and Pioneer Industries) (Amendment) Bill	1	Finance & Public Service
31	Immigration Restriction (Commonwealth Citizens) (Amendment) Bill	6	National Security
32	INDECOM (Validation, Indemnification and Amendment) Bill	1	Justice
33	Insolvency (Amendment) Bill	6 (Revised draft in progress)	Industry Investment & Commerce
34	Insurance (Amendment) Bill	0 (Drafting in progress)	Finance & Public Service
35	International Corporate and Trust Services Providers (Change of Name and Amendment) Bill	3 (Passed – Act 26/21)	Finance & Public Service
36	Irrigation Authority (National Irrigation Commission) (Validation and Indemnity) Bill	1 (Revised draft in progress)	Agriculture & Fisheries
37	Jamaica Development Bank (Repeal) Bill	2 (Tabled)	Economic Growth & Job Creation
38	Jamaica Promotions Corporation (Validation, Indemnification and Amendment) Bill	2	Industry Investment & Commerce
39	Jamaica Teaching Council Bill	4 (Tabled)	Education & Youth

	Name of Bill	Status/# of drafts dispatched	Ministry
40	Judicature (Appellate Jurisdiction (Amendment) Bill	5 (Passed – Act 20/21)	Justice
41	Judicature (Parish Courts) (Amendment) Bill	6 (Passed – Act 21/21)	Justice
42	Justices of the Peace (Amendment) Bill	1 (Passed) – Act 9/21)	Justice
43	Law Reform (Amendment of Penalties) Bill	1	Science Energy & Technology
44	Legal Aid (Amendment) Bill	2	Justice
45	Legal Aid (Fees) (Validation and Indemnification) Bill	3 (Passed – Act 13/21)	Justice
46	Limited Liability Companies Bill	3 (Tabled)	Economic Growth & Job Creation
47	National Archives and Records Management Bill	0 (Drafting in progress)	Office of Prime Minister
48	National Compliance and Regulatory Authority Bill	4 (Revised draft in progress)	Investment Industry & Commerce
49	National Council on Drug Abuse (Repeal) Bill	1	Health & Wellness
50	National Family Planning (Repeal) Bill	2	Health & Wellness
51	National Housing Trust (Amendment, Validation and Indemnity) Bill	0 (Drafting in progress)	Office of Prime Minister
52	National Identification and Registration Bill	5 (Passed – Act 25/21)	Office of Prime Minister
53	National Insurance (Validation, Indemnification and Amendment) Bill	1 (Passed – Act 10/21)	Labour & Social Security
54	National Solid Waste Management (Amendment) Bill	1	Local Government & Rural Development

	Name of Bill	Status/# of drafts dispatched	Ministry
55	New Plant Varieties (Rights of Breeders) Bill	2	Industry Investment & Commerce
56	Notaries Public (Repeal and Replacement) (Validation and Indemnity) Bill	2	Justice
57	Occupational Health and Safety Bill	1	Labour & Social Security
58	Pensions (Jamaica Constabulary Force) (Validation and Indemnity) Bill	2	Finance & Public Service
59	Pensions (Superannuation Funds and Retirement Schemes) (Amendment) Bill	2	Finance & Public Service
60	Petroleum Bill	5	Science Energy & Technology
61	Petroleum (Downstream Activities) Bill	1	Science Energy & Technology
62	Plant Quarantine and Produce Inspection Bill	0 (Drafting in progress)	Agriculture & Fisheries
63	Real Estate (Dealers and Developers) (Amendment and Change of Name) Bill	1	Economic Growth & Job Creation
64	Rent Restriction (Change of Name and Amendment) Bill	1	Economic Growth & Job Creation
65	Revenue Administration (Amendment) Bill	1	Finance & Public Service
66	Road Traffic (Amendment) Bill	1 (Passed – Act 22/21)	Transport & Mining
67	Road Traffic (Amendment) Bill	0 (Drafting in progress)	Transport & Mining
68	Segregated Accounts Companies Bill	1	Economic Growth & Job Creation
69	Shipping (Pollution Prevention Response, Liability and Compensation) Bill	2	Transport & Mining

	Name of Bill	Status/# of drafts dispatched	Ministry
70	Shipping (Prevention of Pollution of the Sea) Bill	1	Transport & Mining
71	Special Economic Zones (Amendment) Bill	1	Finance & Public Service
72	Trafficking in Persons (Prevention, Suppression and Punishment) (Amendment) Bill	4 (Passed – Act 24/21)	National Security
73	Transport Authority Bill	5	Industry Investment & Commerce

Table 1. Source: Office of the Parliamentary Counsel (OPC) Government of Jamaica

26. Contrary to the impression formed by some that the OPC is primarily responsible for delays in the legislative process and claims that bills are usually stuck there, the CPC and her team do deliver in a timely manner when drafting instructions are clear and complete and policy issues are settled. At the same time, it is very true that the office is under-resourced, for the size of our government and the robust legislative response that is required in so many areas to address so many issues in the society.

THE LAW REVISION SECRETARIAT (LRS)

27. The core object of the LRS is to increase access to the laws through the annual publication of the Revised Pages of the Laws of Jamaica volumes, and the facilitation of the publication of the Laws online. The ongoing task of consolidating the Laws of Jamaica is usually done on a year-by-year basis (i.e. revision year) and involves the reviewing of all new legislation that are ‘in force’ up to the ‘cut-off date’ (December 31st each year), to include all Acts passed (and ‘operationalised’) and all subsidiary legislation promulgated (both duly gazetted), to determine what change to the “Revised Laws of Jamaica” have been activated by the new legislation.
28. The *Law Revision Act* provided for the functions of law revision to be carried out by Law Commissioners. An assessment of how the Law Revision Secretariat has been functioning reveals that the current system may have to be re-conceptualised, as the Statute Law Commissioners are not now involved in the day-to-day tasks of law revision. Furthermore, the staff complement is not adequate to keep pace with the volume and scope of work. The reclassification of posts to reflect the knowledge, competence level and required skillset to properly revise the laws is still pending even though a comprehensive strategic review was done. The entire system must be redesigned and appropriately resourced to make it fit for purpose.

29. To provide up-to-date and accurate legislative information online and elsewhere, we must also reduce the lag time between enactment and inclusion in the Revised Laws of Jamaica. Right now, Ministries do not have a compilation of Ministerial Orders and many Legal Officers do not know where to find the Gazettes with them. The goal is to have a dedicated website, where all Acts passed by Parliament and subsidiary legislation can be published and circulated in a searchable database, which also includes sunset legislation and repealed Acts of Jamaica, as well as Gazettes containing legal notices and other relevant matters.
30. I recall during my days as a Judge of the Parish Court how I lamented that our statute law was made available in such a user-unfriendly manner. I thought then how convenient it would be to see not only the primary legislation, but also the relevant Regulations, in one place, so that judges, lawyers and others could easily access them. Later, as Attorney General I decried the exclusion of the Memorandum of Objects and Reasons from prints after enactment and agonised when I had to look in so many different places to get a complete picture on the law, where Regulations, including Ministerial Orders were made under an Act.
31. I am pleased to report progress on the work of law revision, commenced under the Ministry of Justice and assure everyone that the deficiencies identified will be addressed in due course.

LEGAL INFORMATION PORTAL FOR THE LAWS OF JAMAICA

32. **Madam Speaker**, it gives me great pleasure to report that the Ministry of Legal and Constitutional Affairs has entered into a Memorandum of Understanding with the Jamaica Promotions Corporation (JAMPRO) to introduce a Comprehensive Legal Information Portal. This project will be funded by the World Bank Group under Component 1 of the Foundations for Competitiveness and Growth Project (FCGP). No longer will extensive time and effort be expended to identify gazette notices and laws.
33. The Ministry intends to use the web portal to engage on law reform issues. This engagement will serve to inform both the public and the Ministry about issues of concern that are to be considered in the development of law reform proposals. This portal will provide public access to, *inter alia*:
 - The Revised Laws of Jamaica (all editions from 19th century to present)
 - The annual Acts of Jamaica (17th century to the present)
 - The Jamaica Gazette Publications
 - Proclamation Rules & Regulations; Bills & Acts and the Gazette Extraordinary.
34. Funding for acquisition of the software and equipment, as well as technical expertise, have been secured from JAMPRO and the project is expected to begin in April 2023. At this time, material is being scanned and prepared for upload to the website when it is developed. The portal will include common law-making judgements of the courts.

35. The creation of a Jamaica Legal Information Portal (JLIP) is also complimentary to the broader effort to modernize Jamaica's Justice Sector institutions and processes. The broad programme of justice reform and the renewed focus on updating the Laws of Jamaica, in particular, align with and is grounded in the high priority accorded by the Andrew Holness Administration to the resolution of issues affecting access to justice and the rule of law. The programme also supports the economic imperatives of the Government in terms of improving Jamaica's business environment and competitiveness. Improvements in the availability of legal information should therefore be assessed as complimentary to, and part and parcel of, the broader framework of Jamaica's Economic Growth Agenda.

LEGISLATIVE PRODUCTION MANAGEMENT SYSTEM

36. **Madam Speaker**, the Ministry of Justice had commenced the process of operationalizing a new Legislative Production Management System (LPMS) a few years ago. The LPMS is a comprehensive, modern, computerized tool, capable of managing the life-cycle of legislative documents - from drafting to publishing. Once introduced, it will connect all Government entities involved in the drafting and publishing of legislation. This will redound to a more efficient legislative review process and reduction in the amount of paper used.
37. Implementation of the system has been affected by delays. After conducting a gap assessment, my Ministry has determined that an Information Technology (IT) Consultant with experience in SharePoint implementation is needed to assist us in implementing the system. The Consultant is projected to commence work by September 2022 and complete the assignment over a nine-month period. This would see a rollout of the system by June 2023, all things being equal.
38. The preparation of materials for upload to the 'Jamaica Laws Online' Website is in progress. The LRS has completed and delivered revised laws for three legislative years (2016, 2017 & 2018) during the reporting period of fiscal year 2021/2022 and has also completed and finalized update for the 2019 statutes. The next steps are the completion of typesetting and proofreading for 2019 Subsidiary Legislation and for legislative years 2020 & 2021. Actual update of the webpage is underway, with upload of 2016 Revised Laws (Statutes and Subsidiary Legislation) now fifty per cent (50%) complete, as seventy (70) pieces of new and amended legislation (Revised Statutes and Subsidiary Legislation) have been uploaded. The Acts of Parliament 2001, 2005-2020 have been uploaded and eighty per cent (80%) upload of the Jamaica Gazettes (2001-2021) has been achieved.
39. A Digitization Project to convert and index copies of the Jamaica Gazette (Proclamation Rules and Regulations and Extraordinary) from hard-copy and soft-copy, for the purposes of preservation, maximization of storage space, as well as to create digital content that can eventually be organized and made available online to the public is ongoing.

40. The targets and achievements of the Secretariat over the reporting period are set out below in Table 2.

Targets and Achievements of the Law Revision Secretariat – FY 2021/2022

Budget No/Budget & Expenditure Y-T-D (\$/%)	Activities	Key Outputs	Performance Measure/ End-of-Year Targets	Achievements (April 2021 - March 2022)	End-of-Year Result(s) of Programmes/ Sub-programmes
Law Revision Secretariat	Revision (consolidation, and proofreading and preparation) for delivery of new and amended Subsidiary Legislation for 2016, 2017, 2018.	Statutes for 2016	39 pieces of 2016 Statutes submitted for publication.	Targeted and achieved in Q1	Increased currency and availability of the Revised Pages of the Laws of Jamaica (Statutes and Subsidiary Legislation), accessible in loose-leaf form.
		Subsidiary Legislation for 2016	31 pieces of Subsidiary Legislation for 2016 submitted for publication	Targeted and achieved in Q1	
		Statutes for 2017	48 pieces of 2017 Statutes submitted for publication.	Targeted for achievement in Q1 but achieved in Q2	
		Subsidiary Legislation for 2017	29 pieces of Subsidiary Legislation for 2017 submitted for publication.	Targeted and achieved in Q2	
		Statutes for 2018	46 pieces of 2018 Statutes submitted for publication.	Targeted and achieved in Q3	
		Subsidiary Legislation for 2018	37 pieces of Subsidiary Legislation for 2018 submitted for publication.	Targeted and achieved in Q4	

Budget No/Budget & Expenditure Y-T-D (\$/%)	Activities	Key Outputs	Performance Measure/ End-of-Year Targets	Achievements (April 2021 - March 2022)	End-of-Year Result(s) of Programmes/ Sub-programmes
		Statutes for 2019	65 pieces of Statutes typeset and proofread	Targeted for FY 2022/2023 but was completed and ready for delivery in fiscal year 2021/2022	
		Subsidiary Legislation for 2019	35 pieces to be typeset and proofread	Targeted for FY 2022/2023	
		Statutes for 2020	20 pieces to be typeset and proofread (final number to be determined)	Targeted for FY 2022/2023	
		Subsidiary Legislation for 2020	25 pieces to be typeset and proofread (final number to be determined)	Targeted for FY 2022/2023	
		Statutes for 2021	30 pieces to be typeset and proofread (final number to be determined)	Targeted for FY 2022/2023	
		Subsidiary Legislation for 2021	17 pieces to be typeset and proofread (final number to be determined)	Targeted for FY 2022/2023	

Budget No/Budget & Expenditure Y-T-D (\$/%)	Activities	Key Outputs	Performance Measure/ End-of-Year Targets	Achievements (April 2021 - March 2022)	End-of-Year Result(s) of Programmes/ Sub-programmes
	Publish Updated Revised Pages of the Laws of Jamaica (Acts and Subsidiary Legislation) Online	Statutes and Legislations, revised and digitized for upload	# of Revised Pages of (a) Statutes (Acts) updated to 2018, and (b) Subsidiary Legislation updated to 2017, digitized (scanned and organized) and ready for uploading online	Partially achieved- Delivery of 2016, 2017 and 2018 Revised Pages done but official prints not received to be uploaded online.	Increased currency and availability of the Revised Pages of the Laws of Jamaica (Statutes and Subsidiary Legislation), accessible via Laws Online website
	Digitizing of Legislative Instruments (Acts & Gazettes)	Old and recent legislative instruments digitized	# of old & new legislative instruments/documents (Acts & Gazettes) converted from hardcopy to softcopy format	1200 of 2000 (Partially achieved due to lack of resources)	

Table 2. Source: Law Revision Secretariat, Government of Jamaica

LEGAL REFORM DEPARTMENT (LRD)

41. The primary function of the Law Reform Department is to constantly review the Laws and then propose to the policymakers Laws that are to be passed, reviewed, updated or even repealed. The continued relevance of older Laws is to be assessed and checks made whether they have been superseded by other laws. I am advised by the Director of Legal Reform that all 19th Century Laws on our Books are now being reviewed and in this regard (unlike in other matters where the role is a reactionary one) it is the Director who determines the priority. Since priority is not determined in a vacuum, the criteria which guide the order of review must be carefully considered, and even re-considered, if need be, having regard to wider governance issues.
42. Although there is currently no requirement for policy documents for laws to be submitted to the LRD, but properly ought, the LRD does review Cabinet Submissions and draft bills. This allows for a determination of whether a proposal for new law is already covered by existing law or if the existing law goes far enough and the role of other laws in achieving desired goals. While it is the Attorney General who has ultimate responsibility for advising on the constitutionality of any proposal, the LRD also opines on the matter and attends the Legislation Committee of the Cabinet (where necessary) and provides technical support to Joint Select Committees of the Parliament.
43. And although the LRD is challenged by paucity of resources, which impacts its response time, I am confident that we will overcome when the wider public sector reforms underway are implemented, especially the revised remuneration level, to enable experienced staff to be recruited and/or retained. Notwithstanding, the LRD is poised to play a more pivotal role in the conceptualization of legislative policy and development of preliminary documents, including assisting with the drafting of Cabinet Submissions.
44. I believe that a certain type of synergy is required among the different players who have a critical role in the law-making process, if we are to achieve the reform goals timeously. Consequently, I have shared some perspectives with the Prime Minister, as he gives further consideration to the arrangement of government for greater efficiency in the working relationships among Ministries, Departments and Agencies and in particular among this Ministry, the Ministry of Justice, the Office of Attorney General and the Parliament.
45. In the meantime, I placed before the Cabinet, for its approval, a proposal that will formalise arrangements across all of government on how to improve the flow on the legislative work.

INTER-MINISTRY LEGISLATIVE COLLABORATION

46. **Madam Speaker**, one of the strategic priorities of the Ministry is to address the slow pace of legislative reform in the public sector by strengthening inter-Ministry collaboration. The aim is to improve operational efficiency, speed, and the quality of legislation promulgated, because the legislative review process has been affected by delays, culminating in critical pieces of legislation neither being amended, repealed and replaced, nor developed and subsequently passed in a timely manner. The situation has been exacerbated by the lack of adequate human resources in some Ministries, coupled with the crafting of ambitious legislative targets prior to the start of each financial year. Some targets, which are encompassed in Strategic and Operational Plans, the annual Legislation Programme, and Throne Speeches, are not accorded priority and the concomitant dedication and focus by some entities.
47. **Madam Speaker**- this Ministry cross-cuts all of government, and dips into all other ministries, with a supervisory role on legislative matters. To facilitate the work to be done, Cabinet has granted approval for:
- (a) The establishment of Legislative Team(s) in each Ministry, to include the relevant Policy Officer(s), the relevant Legal Officer(s), and the relevant Senior Officers (at the level of Chief Technical Director, Principal Director or Senior Director) responsible for working closely with the relevant policy and legal officer(s) to provide oversight of each Ministry's Legislation Programme, as part of [my Ministry's] work to strengthen inter-ministry collaboration to advance the Government's Legislative Agenda;
 - (b) Collaboration between the Ministry of Legal and Constitutional Affairs and the Office of the Cabinet in supporting and monitoring the legislative work programme, and implementing strategies to close gaps identified, using established and proven project management principles;
 - (c) Implementation of a Public Education Programme on the Laws of Jamaica to augment awareness of, inter alia, (i) the legislative process; (ii) the role of all stakeholders in the process; (iii) the need for full compliance with the law; and in particular, with the Charter of Fundamental Rights and Freedoms; and (iv) the Administrative/Public Law requirements for the exercise of statutory functions; and
 - (d) A projectized approach to law revision and law reform (in principle) with the aim of establishing a law Reform Commission.
48. Going forward, all Ministries will be required to work within settled timeframes.

49. **Madam Speaker**, we are cognizant that there are capacity gaps within the Ministries, and if these gaps are not closed, the desired objective will not be achieved. In this regard, my Ministry will partner with the Management Institute of National Development (MIND) to provide training in Policy Development and the Preparation of Cabinet Submissions.
50. The Ministry will also collaborate with the Office of the Cabinet to conduct sensitization sessions to, inter alia, improve the quality of Cabinet Submissions prepared by the Ministries in respect of law reform proposals.

PUBLIC EDUCATION PROGRAMME ON THE CONSTITUTION & LAWS OF JAMAICA

51. The Ministry's portfolio responsibility for the subject of legal education will transcend the provision of monthly subventions to the Norman Manley Law School, to further include implementation of a robust programme to augment technocrats' knowledge and awareness of the laws which govern the operations of their entities, the legislative review process, and their role in the process. The Ministry recognizes the need to improve knowledge and understanding of legislation under each Ministry's portfolio. Enhanced knowledge and understanding will reduce, if not prevent, the Government's exposure to Court action and ultimately, liability; but will also help improve confidence and integrity in government. I look forward, with much eagerness, to implementing the Public Education Programme on the Laws of Jamaica.
52. The purpose of the Public Education Programme is to help educate technocrats and all Jamaicans on the following:
 - (a) The legislative process and the role of all stakeholders in the process;
 - (b) The laws which govern the operations of Ministries, Departments and Agencies, and the need to comply with them;
 - (c) Administrative/Public Law requirements for the exercise of statutory functions;
 - (d) The Charter of Fundamental Rights and Freedoms and the responsibility of State and citizens in protecting rights;
 - (e) The Government's Legal and Constitutional Reform Agendas.
53. **Madam Speaker**, my Ministry has hit the ground running. We are motivated and poised to achieve results, once we get the required co-operation of the rest of government and the resources from the Ministry of Finance and the Public Service.
54. Before I turn to the final area of my presentation, I should like to advise the Honourable House that a new Bail Act is coming. I wanted to table it today but we are revising the wording of some clauses. I will say no more at this stage, except that ***"if yuh on murder charge you cannot be at large and if yuh on gun charge yuh cannot be at large"***.

CONSTITUTIONAL REFORM

55. **Madam Speaker**, the continued symbolic presence of the British Crown in the constitutional makeup of our state and other Commonwealth Caribbean states has been repeatedly placed on reform agendas here and across the region. With “Little England” officially severing ties from Queen Elizabeth II of the United Kingdom and establishing the Republic of Barbados in 2021; and Prime Minister Holness’ announcement of his government’s intention to move on from a Constitutional Monarchy, eyes are now focussed on the remaining *Commonwealth Caribbean realms*, to see who will take the next steps, and when.
56. The mandate of this new Ministry of Legal and Constitutional Affairs includes spearheading the most meaningful and comprehensive post-Independence constitutional reform work to be undertaken in our nation. The goal is to ultimately produce a new Constitution of Jamaica, enacted by the Parliament of Jamaica, to, inter alia, establish the Republic of Jamaica as a parliamentary republic, replacing the Constitutional Monarchy, and ‘*affirming our self-determination and cultural heritage*’. I am pleased to advise this Honourable House that the work to achieve this goal, while being done in stages, has formally commenced.
57. Before I get to timelines, I believe I should assist in providing clarity on aspects of our constitutional history. I note misunderstanding in some quarters about how we got our constitution and what may be involved in changing it. Some statements made in the media and on political platforms in the conversations around constitutional reform have not been quite accurate.
58. For all practical purposes, experts tell us that the history of the Constitutional Laws of Jamaica begins with the 1655 acquisition of the Island by the English fleet in the Cromwelian expedition. The constitutional status of a British colony depended on whether it was classified as settled or conquered but the peculiar circumstances surrounding the acquisition, militated against the application of this dichotomy in Jamaica, for more reasons than one. The island was formally ceded by Spain to England in the 1670 Treaty of Madrid between England and Spain, which officially ended the war begun in 1654 in the Caribbean in which England had conquered Jamaica. The title of the Spanish Crown had itself been the subject of legal dispute and it was doubtful whether on restoration the King could adopt and ratify an act of “illegal warfare”. Furthermore, the Spanish Administrators had negotiated an agreement with the English invaders by which the Spanish were permitted to withdraw freely from the Island leaving no settlement or administrative structure. From the beginning, therefore, Jamaica came to be treated as a settled colony, but the peculiar surrounding circumstances sowed seeds of a legal problem of far-reaching constitutional importance.
59. Early on, Jamaica suffered a military government administered by the commanders of the invading British forces. Edward D’Oyley was an officer of the original 1655 expedition who survived his superiors. He continued to administer the affairs of the

Island under a military jurisdiction assisted by a sort of Executive Council of Officers, because of the political uncertainties in England, until he was formally confirmed in the position of Governor in 1661. As the first Governor, he did very little to develop civil institutions.

60. When Lord Windsor replaced D'Oyley and became the second Governor in 1662, the Royal Commission and Instructions to him empowered him to govern in accordance with *'all such reasonable laws, customs and institutions as are exercised and settled in the other colonies and plantations, or such others as shall upon mature advice and consideration be held necessary and proper for the good government and security of our said Island of Jamaica the said Island adjacent, provided that they were not repugnant to our laws of England, but agreeing thereto as near as the conditions of affairs will permit'*.
61. Governor Windsor was also empowered to call assemblies together and to make eminently necessary laws for two years unless confirmed by the Crown, to levy monies, provided they were not repugnant to the laws of England. The Assembly which met in 1664 immediately gave notice of the constitutional doctrines to which it would subscribe. One of its first enactments was a Law declaring that the laws of England were in force in Jamaica. Money bills were passed to provide for the new administration.
62. An early report of a reply by Sir Thomas Modyford (Governor of Jamaica from 1664 to 1671) to the King's Commission said: *"... Right reason, which in the common law of England, is esteemed and of force amongst us, together with Magna Carta and the ancient statutes of England, so far as they are practicable."*
63. That is a very short story and an abridged version of how the laws of England became the laws of Jamaica. The early constitutional history of Jamaica is to a large extent, concerned with the struggle of the inhabitants under an early form of representative government to assert claims to the privileges and rights of the English settlers.
64. Let me now turn specifically to the making of the Constitution.
65. Critics say though independence was supposed to mark a definite break from the colonial past, paradoxically it seemed obvious to the constitution makers that the Constitution ought to be, as far as possible continuous with the past. They also say that the People's National Party's nationalism more or less surrendered to the Anglophilism of the class from which it came and more generally the society it hoped to reform, because at no time did they seek to assess critically the applicability of British institutions to the Jamaican context. On the contrary, the colonial connection should go in order that the party might lead the way to bringing British political culture to Jamaica. In the defining years, it is said that the Party allowed more importance to the fact that *"all our ideas about politics come from Britain-all the institutions to which we are accustomed are British"* (PNP Pamphlet Join the Party circa 1939 pp. 6, 7). To that extent, the PNP advocated the type of self-government which was "democratic and fundamentally British".

66. Norman Manley- the “father of Jamaican nationalism” said he made no apology for the fact that they did not attempt to embark upon any original or any novel exercise for constitution-building but deliberately opted for what they were familiar with- the system of parliamentary government which, over the centuries, had been evolved by the British people who displayed the most unique genius of any people in history for devising a form of government acceptable to people. It was a system they understood, said he, and which we had been operating for many years with sense. He felt it was a system which was consistent with the sort of ideals we had in this country and so it was not difficult to decide to follow that familiar system with those modifications they thought the circumstances of Independence deserved. (see Jamaica Hansard 1961-62 House, p. 719)
67. The Report of the Joint Committee records at page 18 that a considerable body of opinion which appeared before the Committee favoured a non-monarchical head of state. Most of the submissions in this regard were based on the assumption that independence had to involve some identifiable break with the past for it to become an extraordinary national experience. The proposal for a Constitution whereby Jamaica would become a Republic within the Commonwealth with a ceremonial President as Head of State with the importance of the symbolic difference that the Head of State should derive the powers under the constitution and not be regarded as the representative of the Queen was rejected without the Joint Committee ever giving a full explanation of its position.
68. The Report of the Joint Committee which was unanimously adopted by the Legislature, merely stated that the Constitution provided for Jamaica’s becoming a constitutional monarchy, while acknowledging there were many proposals that Jamaica should become a Republic with some favouring a Republic within the Commonwealth of Nations and a small number favouring a Republic outside the Commonwealth. The Committee took the view that in substance there did not appear to be any fundamental difference between its preferred form—constitutional monarchy, and the proposal of a ceremonial presidency.
69. At the Court at Buckingham Palace, the 23rd day of July, 1962 ‘THE QUEEN’S MOST EXCELLENT MAJESTY IN COUNCIL Her Majesty, by virtue and in exercise of the powers in that behalf by **subsection (1) of section 5 of the West Indies Act, 1962** or otherwise in Her vested, was pleased, by and with the advice of Her Majesty Council, to order, and thereby promulgated an Order to be cited as the **Jamaica (Constitution) Order in Council 1962**. It was reportedly signed by one W.G. Agnew.
70. *The Jamaica (Constitution) Order on Council*, 1962 provided that the Orders in Council specified in the First Schedule (i.e. The Jamaica (Constitution) Order in Council, 1959; The Jamaica (Constitution) (Amendment) Order in Council, 1959; The (Constitution) (Amendment) Order in Council, 1961) referred to as “the existing Orders”) were revoked. Notwithstanding the revocation, (a) *the Public Service Regulations, 1961*, (b) *the Judicial Service Regulations, 1961*, (c) *the Police Service Regulations, 1961* and (d) *the Jamaica (Constitution) (Retirement of Entitled Officers) Regulations, 1961*,

which were made under them and all amendments thereto were to continue in force, subject to such adaptations or modifications made. All laws which were in force in Jamaica immediately before the appointed day (subject to amendment or repeal) were to also continue in force.

71. The Constitution of Jamaica was set out in the Second Schedule of this Jamaica (Constitution) Order in Council 1962, with “the appointed date” set at the sixth day of August, 1962.
72. **Madam Speaker-** we may continue to engage in spirited debate on why we got what we got but hear me well: “It’s been a long a long time coming but I know a change gonna come.”
73. Before turning to ‘why’, ‘what’ and ‘when’ of the reform work, permit me to provide some further information on how we got to the Independence Constitution.
74. On the 19th July, 1962, “An Act to make provision for, and in connection with, the attainment by Jamaica of fully responsible status within the Commonwealth was passed by the English Parliament. Simultaneously on that said 19th July 1962 the Legislature of Jamaica passed the Jamaica Independence Act, as “An Act to make provision for, and in connection with, the attainment of fully responsible status within the Commonwealth”. These are **10 & 11 ELIZ. 2 Jamaica Independence Act, 1962. CH 40 An Act to make provision for, and in connection with, the attainment by Jamaica of fully responsible status within the Commonwealth [19th July, 1962].**
75. This ACT provided that as from the sixth day of August, nineteen hundred and sixty-two (referred to as “the appointed day”), Her Majesty’s Government in the United Kingdom shall have no responsibility for the government of Jamaica. And no Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to Jamaica as part of the law thereof; and from that day the provisions of the First Schedule to this Act shall have effect with respect to the legislative powers of Jamaica.
76. *Inter alia*, the First Schedule provided that ‘*The Colonial Laws Validity Act 1865*, shall not apply to any law made on or after the appointed day by the legislature of Jamaica. No law and no provision of any law made on or after the appointed day by that legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, including [the Jamaica Independence Act, 1962], or to any order, rule or regulation made under any such Act, and subject to paragraph 6 of this Schedule, the powers of that legislature shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Jamaica.
77. ‘**...The legislature of Jamaica shall have full power to make laws having extra-territorial operation....** Nothing in this Act shall confer on the legislature of Jamaica any power to repeal, amend or modify the constitutional provisions otherwise than in

such manner as may be provided for in those provisions....In this paragraph “constitutional provisions” means the following, that is to say- (a) This Act, (b) Any Order in Council made before the appointed day (whether before or after the passing of this Act) which made or makes provision in respect of Jamaica in pursuance of section 5 of the West Indies Act, 1962; (c) Any law, or instrument made under a law, of the legislature of Jamaica made on or after the appointed day which amends, modifies, or re-enact, with or without amendment or modification, or makes different provision in lieu of, any provisions of this Act, of any such Order in Council, or of any such law or instrument previously made.

78. We could have done better with these powers many may argue. In fact, few know that it is constitutionally permissible for the Parliament of Jamaica to pass laws having extra-territorial operation. Be that as it may, we are where we are and there are many lessons to learn. This leads me to the promulgation the of the Constitution itself.
79. At the Court at Buckingham Palace, the 23rd day of July, 1962 ‘THE QUEEN’S MOST EXCELLENT MAJESTY IN COUNCIL Her Majesty, by virtue and in exercise of the powers in that behalf by **subsection (1) of section 5 of the West Indies Act, 1962** or otherwise in Her vested, was pleased, by and with the advice of Her Majesty Council, to order, and thereby promulgated an Order to be cited as the **Jamaica (Constitution) Order in Council 1962**. It was reportedly signed by one W.G. Agnew.
80. *The Jamaica (Constitution) Order on Council, 1962* provided that the Orders in Council specified in the First Schedule (i.e. The Jamaica (Constitution) Order in Council, 1959; The Jamaica (Constitution) (Amendment) Order in Council, 1959); The (Constitution) (Amendment Order in Council, 1961) referred to as “the existing Orders”) were revoked. Notwithstanding the revocation, (a) *the Public Service Regulations, 1961*, (b) *the Judicial Service Regulations, 1961*, (c) *the Police Service Regulations, 1961* and (d) *the Jamaica (Constitution) (Retirement of Entitled Officers) Regulations, 1961*, which were made under them and all amendments thereto were to continue in force, subject to such adaptations or modifications made. All laws which were in force in Jamaica immediately before the appointed day (subject to amendment or repeal) were to also continue in force.
81. The Constitution of Jamaica was/is set out in the Second Schedule of this Jamaica (Constitution) Order in Council 1962, with “the appointed date” set at the sixth day of August, 1962. It contains three types of provisions. Each has a specified process for amendment set out in the Constitution itself.
82. To amend the ordinary provisions, the vote involves the majority of all members of both Houses, not just the majority of all members present and voting, as is the case with ordinary legislation. Amendment of the ordinarily entrenched provisions requires the vote of two-thirds in each House and the Bill cannot be submitted for assent unless a period of three months has elapsed between the introduction of the Bill into the House of Representatives and the commencement of the first debate on the whole

text of that Bill and a further period of three months has elapsed between the conclusion of that debate and the passing on that bill by that House. In addition to the two-thirds vote and delay process for ordinarily entrenched provisions, a Bill to amend a deeply entrenched provision must be submitted to the electors qualified to vote for the election of members of the House of Representatives. If the two-third vote were secured in the Parliament a vote of two thirds of the electors will suffice to approve the Bill and it may be presented for assent by the Governor-General. If the two-thirds vote is not secured in the Senate a vote of three-fifths of the electors may approve the Bill.

83. Put more forensically and relevantly: A Bill for an Act of Parliament to remove Her Majesty, by altering *section 34 of the Constitution of Jamaica*, which establishes the Parliament of Jamaica consisting of Her Majesty, a Senate and a House of Representatives, shall not be deemed to be passed unless at the final vote thereon it is supported by the votes of not less than two-thirds of all members in either House. This Jamaica Labour Party Government can secure the required two-thirds majority vote of forty-one of the sixty-three (41/63) votes in the House of Representative during the currency of this Parliament by virtue of its seat count of forty-five (45). However, the Bill also has to be passed in the Senate.
84. The composition of the Senate is provided for at *section 35 of the Constitution*. It consists of twenty-one (21) persons), thirteen (13) of whom are appointed on the government side and the remaining eight (8) on the Opposition side. To get a two-thirds vote in the Senate at least one member of the Opposition must vote with the full complement of Senators on the government side, as fourteen of the twenty-one (14/21) votes are required.
85. It is said, anecdotally, that the distrust between the founding father on both sides of the aisle was so deep that they, by design, have ensured that the long road must be taken to change the form of government we have. Some say they intended it to remain. The work to be done to achieve the goal of producing a Constitution passed by the Parliament of Jamaica will, therefore, require cooperation between the government and the parliamentary opposition, as well as the seal of approval of the people. The process must be inclusiveness and reflective of representativeness and broad-based participation.
86. There are important substantive and procedural issues to be resolved to ensure a smooth transition to a republic. Each recommendation that I have looked at will require both careful thought as well as substantial resources to implement successfully. To further the process of moving from recommendations to action I propose to appoint a Constitutional Reform Committee (CRC) to include representatives from the Government, Parliamentary Opposition, relevant experts and the wider society.

87. I have written to the Leader of the Opposition with a request for him to name two members of the Parliamentary Opposition to this Committee, which is now being constituted. I have set out the work to be done by the Committee in very broad terms, specifying, *inter alia*, that it will involve at this stage the conduct of a thorough and comprehensive review of the 1962 Constitution, including the 2011 Charter of Fundamental Rights and Freedoms, as well as recommendations for reform made through the various constitutional reform commissions and committees in the past, to ultimately implement an ambitious reform agenda, settled by consensus. He has responded with expressions of concerns, obviously thinking that this approach is meant to further delay the matter.
88. The Leader of the Opposition is of the view that the relevant parameters for Jamaica to become a republic have already been agreed by the two major political parties, arising from the extensive constitutional reform consultative processes over the past 25 years and the required legislative research has already been done. It is true that much work has been done but it is also true that important substantive issues are yet to be settled and these are the more difficult issues since not only government and parliamentary opposition must be on same page but also the people. Collectively as a nation we need consensus on the direction we want to go in. For example, the requirement for referendum and our own experience and outlook on referendum makes the society gun-shy. Going forward is this a process we need? To amend the procedure for the ordinary and deeply entrenched provisions also require a referendum.
89. The reform work will involve a thorough and comprehensive review of the 1962 Constitution of Jamaica, as we have to determine the extent to which the existing structure of government ought to be modified or preserved. In the same way that for very practical purposes all that existed prior to Independence could not be got rid of, we cannot now get rid of all that we have. The same dilemma that was faced then between the desire of change and the necessity for continuity is being faced now. Jamaica boasts a high degree of stability in its democracy which should never be taken for granted.
90. At the same time, while it is not necessary to reconstruct our whole system of government, one problem with the Westminster system is that many of the rules and practices under which it operates do not have the force of law. Without knowledge of these rules and practices, knowledge of the legal rules alone is incomplete and sometimes misleading. These rules, principles and practices are essential to an understanding of the relationship between what may be called the 'political constitution' and the 'legal constitution' and give a constitutional meaning to apparently disparate events.
91. The pragmatic approach that predominated at Independence avoided the difficult task of stating the shared political beliefs and assumptions on which the system of government depended. Many informal practices and understandings are observed between the main parties in the House and between the front benches and the

backbenchers. Such practices are not contained in the House's Standing Orders, but they directly affect parliamentary business. While it may be unnecessary to reduce them all into writing, the fact is that we do have a written constitution unlike Whitehall and some things are not adequately provided for.

92. The simple truth is that we must radically alter the way Parliament works and must therefore determine what new pace will be set by the Constitution itself. Laws are to be passed for peace, order and good government. We in Jamaica have been generally reactionary in our approach as most of our laws are passed in response to some bi or multi-lateral conditionality as a condition precedent to getting funding or to avoid sanctions. Where laws require state agencies to report or be accountable to the Parliament their reports must be read and interrogated by the Parliament. Now, it is primarily when the news report on something that there is a scramble to respond. In the past, agencies go for many years without submitting any annual report and there is no evaluation of the effectiveness of those agencies.
93. I am not saying that a constitutional solution is required to address these problems; but one may be required, for example, in how we provide for accountability in the political directorate as well as in the civil and public services. Since we subscribe to the principle of constitutional supremacy instead of parliamentary supremacy, we must reassess the constitutional parameters.
94. In signalling an answer to why we must look back at the Charter, I pray in aid the very wise words of the Rt Hon. Norman Manley when he called for careful re-examination of the rights-clauses of the initial Bill of Rights at Chapter III. This is what he said: *"If you are not careful, you may write yourself out of the right to do many things which are useful and good for the community."* (See Proceedings of the House of Representatives Tuesday January 23, 1962, p 722).
95. **Madam Speaker-** I maintain that it is responsibility that guarantees rights. To deal with the criminal terrorists who are sucking the life out of our society, and who know their rights better than their wrongs, Lord knows that we need to be wiser than Solomon, stronger than Sampson and more patient than Job, to deal with them.
96. Until we achieve this important constitutional reform goal, the executive authority of Jamaica remains constitutionally vested in Her Majesty, and exercised on her behalf by the Governor-General (*section 68 of the Constitution of Jamaica*). As such, I should also like to use this opportunity to add our congratulations to Her Majesty Queen Elizabeth II, our Sovereign for the time being, on the occasion of her Platinum Jubilee marking her 70 years of reign.
97. Having said this, I boldly say to the Parliamentary Opposition and everyone else in doubt about what is coming, when: perish that thought!

98. Although we can agree that Queen Elizabeth II has always comported herself with the dignity befitting her office and status, thereby endearing herself to many the world over, we can also agree that the legacy of colonialism and slavery bequeath to us by the institution of the British Monarchy still impacts us. The persistence of both overt and subtle discrimination against people on the basis of class and colour, continues to influence our society and the world over in the form of disparities in education, health, wealth, income, social mobility and almost any other metric we might use to measure equality.
99. In these six decades of Independence, Jamaica has made much progress, but we have much work still to do. Our recent progress must not obscure the reality of our past- or the continuing effects of the past on the present. Therefore, in this year of Jamaica's Diamond Jubilee, and that of Our Sovereign Lady the Queen's Platinum Jubilee, we say, with due respect but without apology, borrowing the words of our renowned constitutional law expert, Dr the Hon. Lloyd Barnett, OJ:

*"The historical essence of a Monarchy as a form of government is rule by one person. An important characteristic of monarchism is the obeisance, adulation and submission that it demands of its subjects. This relationship is enhanced by the dynastic nature of the Monarchy by which there is succession of rulers of the same line or family. The Sovereign, being selected on a hereditary basis and not by virtue of his or her qualities, had to claim some dynamical powers, exclusively and divinely bestowed. In return for the allegiance of their subjects, the Monarch had the responsibility of defending the people against external enemies and criminal violence. The Monarch thus came to be the embodiment of the national spirit and the symbol of patriotic pride. **The majority of colonial peoples and of the inhabitants of Jamaica** were not subjects of this imperialism but through the slave trade and slavery **were its oppressed objects**. Whereas, therefore, **the Monarchy** can be truly representative of the Englishman's pride in history of his country and may symbolise British national aspirations, unity and continuity, it **cannot have the same significance for the majority of Jamaicans**. In the event of the death or abdication of the present Queen, Charles or anyone who according to the hereditary principles of English law succeeds her, immediately becomes our King or Queen and Head of State without Jamaicans having any say in the matter. This is highly undesirable and inappropriate."*

100. There are many steps to take between now and the tabling of a new constitution. I will advise when the Committee is fully constituted and keep everyone up to date on all progress made. It is my intention, in leading the process, to work assiduously to place something before the Parliament, unless more pressing matters overtake, for the start of the next session. "Session" is defined to mean, in relation to a House, the sitting of that House when it first meets after the prorogation of Parliament."
101. I thank God for His grace and mercies that are new each day. I am confident that He who began this work in me is faithful to bring it to completion. May our Eternal Father continue to bless our Land and guard us with His mighty Hand.

