



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

TERMS OF REFERENCE FOR THE CONSTITUTIONAL REFORM COMMITTEE

July 29, 2022/ Revised January 2023/ Further Revised February 2023/ Finalised March 22, 2023

*(With further addition * on April 6, 2023)*

Minister: Hon. Marlene Malahoo Forte, KC, JP, MP | Permanent Secretary: Mr Wayne O. Robertson, JP

1.0 BACKGROUND

- 1.1 The continued symbolic presence of the British Crown in the constitutional makeup of the Jamaican state (and other Commonwealth Caribbean realm countries) has been repeatedly placed on reform agendas. In the six decades since the enactment of the Independence Constitution of Jamaica in 1962, there have been two noteworthy reform periods - the 1970s, and the 1990s up to 2015.
- 1.2 A lengthy process of constitutional reform began with the establishment of the Constitutional Reform Division in the Ministry of Justice in 1977. The research and technical support of the Division proved invaluable to a Joint Select Committee on Constitutional and Electoral Reform (JSCCER) that was appointed in 1991. The mandate of the JSCCER was to review the Independence Constitution of Jamaica and make recommendations for its reform. Following on the recommendation of the JSCCER that a new Constitution should be framed, the Parliament established a Constitutional Commission (“the Commission”) charged with the responsibility of soliciting the views of all Jamaicans and providing a report on the outcome of its consultations.
- 1.3 The first and final Reports of the Commission were submitted in 1993 and 1994, respectively, and included an examination of Chapter III (Charter of Fundamental Rights and Freedoms). The Report of the JSCCER was tabled in the Parliament in 1995.
- 1.4 A Green Paper, tabled in the Parliament in May 2007, proposed that following the next General Elections, a Bill providing for a new Constitution should be brought to Parliament. It is important to point out that the Green Paper did not depart from the recommendations made by the JSCCER. In fact, it urged Parliamentarians to acquaint themselves with the Report with a view to advancing the implementation process. The following section of the Green Paper is instructive:

“...the Report presented in 1995 and subsequent deliberations have indicated a wide area of agreement that the assumptions that underlie the present Constitution no longer reflect the prevailing sentiments either in the political parties or the nation.”¹
- 1.5 Despite the flurry of rhetoric and reform efforts, the fundamental institutional structures have largely remained unchanged. As a signal of his Administration’s seriousness about constitutional reform, The Most Honourable Andrew Holness, ON, PC, MP, Prime Minister, established the Ministry of Legal and Constitutional Affairs on January 10, 2022 to take charge of and give focused attention to the Government of Jamaica’s (GOJ) legislative agenda and its legal and constitutional reform aspirations, and specifically, to spearhead the most meaningful and comprehensive post-Independence constitutional reform work to be undertaken in Jamaica. Building on the work of the JSCCER and the Commission, the goal, in this regard, is to ultimately produce a new Constitution of Jamaica, enacted by the Parliament of Jamaica, establish the Republic of Jamaica as a parliamentary

¹ Extract from Green Paper on Constitutional Reform Issues, 29 May 2007.

republic to replace the Constitutional Monarchy and affirm Jamaica's self-determination and cultural heritage.

- 1.6 Although much work has been done by the JSCCER and the Commission, some important substantive and procedural issues remain unresolved. For example, moving forward, should we continue with the process of a referendum? Embarking on yet another constitutional reform exercise at this time is therefore to be seen as taking the step required for implementation of the agreed recommendations, while working to build consensus in related areas. However, a review of the recommendations is necessary, having regard to the passage of time between 1995 when they were made and now. Furthermore, some amendments have been made to the Constitution over the years, with the most significant being the replacement of Chapter III with the provisions of the Charter of Fundamental Rights and Freedoms in 2011.
- 1.7 Against this backdrop, a high-level Constitutional Reform Committee (CRC) has been established to, *inter alia*, perform an advisory and oversight role, with respect to the reform work, including the transition from a Constitutional Monarchy to a Republic.

2.0 PURPOSE

- 2.1 The purpose of the CRC is to assist in providing expert guidance and oversight to the Government and People of Jamaica during the constitutional reform process, to *inter alia*, implement the recommendations of the JSCCER on which consensus remains, while helping to build consensus where it has eroded or is non-existent on other related matters.
- 2.2 In particular, the CRC is required to:
 - **Assess** how the passage of time has impacted the recommendations of the JSCCER contained in its Final Report (1995) which were submitted to and approved by the Parliament; and
 - **advise** what fresh perspectives ought to be considered in light of any new national, regional or international development between then and now, as well as,
 - **recommend** any necessary modification to update the recommendations for implementation.
 - **Evaluate** the said recommendations of the JSCCER on the establishment of the office of President; and
 - **advise** on the nature of such presidency, the qualifications and tenure of the president, and the legislative, executive, or ceremonial powers to be exercised by the President.
 - **Assist in co-ordinating** the required parliamentary cross-aisle and nationwide consultation and collaboration during the various phases of the reform work; and in particular,

- **help to educate** the electorate on their role in the referendum process, in order to successfully transition from a Constitutional Monarchy to a Republic and to provide for related matters.
- **Generally agree on and guide** the sequence of steps to be taken to implement the said recommendations of the JSCCER and other recommendations for implementation to achieve the overall reform goal.

3.0 SCOPE OF WORK

3.1 The CRC is required to help guide the constitutional reform process throughout all phases of the work (including during the referendum process), culminating in the crafting of a modern and new Constitution which reflects an appreciation and understanding of our cultural heritage, governance challenges and development aspirations, and which embodies the will of the People of Jamaica.

3.2 The work will be executed in three (3) phases:

Phase 1: (Re)patriation of the Constitution of Jamaica, abolition of the Constitutional Monarchy, establishment of the Republic of Jamaica, and all matters within the deeply entrenched provisions of the Constitution for which a referendum is required to amend.

Phase 2: Review other ordinarily entrenched provisions of the Constitution for which amendments are desired and required, including the wordings and provisions on the Charter of Fundamental Rights and Freedoms set out at Chapter III.

Phase 3: Full assessment of the nation state's legal and constitutional infrastructure to facilitate putting together a new Constitution of Jamaica.

3.3 The CRC is expected to regulate its own proceedings to ensure that all aspects of the work are completed on time and within agreed budget.

3.4 In conducting its review and making its recommendations, the CRC is expected to, *inter alia*:

- Examine the provisions of the Order in Council, the Constitution of Jamaica and the Jamaica Independence Act and identify the provisions that may require amendment or revocation to give effect to the reform recommendations.
- Advise and make recommendations on the shift from a Constitutional Monarchy to a Republic, including the manner of selection of the Head of State, the powers to be exercised by the Head of State, and the power dynamics within Jamaica's governance structure.
- Comparatively examine the processes adopted by other Constitutional Monarchies that have transitioned to a Republic (such as Trinidad and Tobago, Kenya,

Mauritius, and Barbados), with consideration being given to any difference in the Constitution of Jamaica.

- As for Phase 2 - Conduct an in-depth review of the provisions of Chapter III of the Constitution (Charter of Fundamental Rights and Freedoms) to clarify the legislative intention and make recommendations for reform of any of its provisions, where necessary or advisable.
- Consult with constitutional law practitioners and as wide a cross-section of the public from whom the Committee deems it useful to obtain views on the proposals for reform and the proposed process for transition from a Constitutional Monarchy to a Republic.

4.0 COMMENCEMENT & DURATION

4.1 The CRC will be required to serve **between March 1, 2023 and no later than the end of the constitutional life of the Parliament.**

4.2 The duration of Phase 1 is approximately **two (2) months**, focusing specifically on the transition from a Constitutional Monarchy to a Republic and related matters for the Bill, for which a referendum is required.

4.3 The other phases will proceed in sequence, after the tabling of the Bill and will run in parallel to the work to be done to prepare the electorate for the referendum.

5.0 OUTPUTS/DELIVERABLES DURING PHASE 1- Indicative timetimes

5.1 The CRC will be required to deliver the following:

- Work Plan (encompassing work to be executed, including timelines) to be finalised by **March 29, 2023.**
- Draft Report on the matters deliberated upon to be prepared by **April 12, 2023.**
- Final Report with recommendations for Cabinet approval by **April 14, 2023.**
- Preparation of the draft Bill by **May 10, 2023.**
- **TABLING OF THE BILL BY MAY 30, 2023.**
- General guidance and specific support during the referendum process (i.e. contribute to the design of the referendum ballot, etc.).

5.2 All deliverables must be submitted to the Permanent Secretary, Ministry of Legal and Constitutional Affairs.

6.0 MEMBERS OF THE COMMITTEE

6.1 The CRC is a high-level committee with representation from a diverse cross-section of the society, comprising the following:

- **Honourable Marlene Malahoo Forte, KC, JP, MP** (Chairman)
- **Ambassador Rocky Meade, CD, JP, PhD** (Co-Chair - Office of the Prime Minister)
- **Dr Derrick McKoy, CD, KC** (Attorney General of Jamaica)
- **Senator the Hon Tom Tavares-Finson, OJ, CD, KC** (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- **Senator Ransford Braham, CD, KC** (Government Senator)
- **Senator Donna Scott-Mottley** (Parliamentary Opposition - Senate)
- **Mr Anthony Hylton, CD, MP** (Parliamentary Opposition - House of Representatives)
- **Dr the Hon Lloyd Barnett, OJ** (National Constitutional Law Expert)
- **Mr Hugh Small, KC** (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- **Dr David Henry** (Wider Society - Faith-based)
- **Dr Elaine McCarthy** (Chairman of the Jamaica Umbrella Group of Churches (JUGC))* [Added on the Committee on April 6, 2023 and attended first meeting of April 12, 2023]
- **Dr Nadeen Spence** (Civil Society - Social & Political Commentator)
- **Mrs Laleta Davis Mattis CD, JP** (National Council on Reparation)
- **Mr Sujae Boswell** (Youth Advisor)
- **Professor Richard Albert** (International Constitutional Law Expert - University of Texas)

Committee Liaison Officer:

Mr Christopher Harper (Senior Constitutional Reform Officer - MLCA)

7.0 ROLE OF THE CHAIRMAN & CO-CHAIRMAN

7.1 The chairman and co-chairman are expected to, *inter alia*:

- Chair meetings
- Finalise a Work Plan to meet the objectives and scope of the project and manage the approved Work Plan
- Coordinate the activities of the CRC
- Ensure timely submission of all deliverables
- Assign tasks and provide guidance (where necessary) to the CRC members
- Establish sub-committees (where necessary) to advance the work of the CRC
- Provide updates, as and when required
- Manage issues and risks
- Liaise with key stakeholders

- Ensure that the project is completed on-time and within budget
- Provide general oversight of the work of the CRC
- Be ultimately accountable for the outcome of the project

8.0 ROLE OF THE CRC MEMBERS

8.1 The members of the CRC are required to:

- Contribute to the completion of the various deliverables and the overall project
- Perform assigned tasks and make submissions in a timely manner
- Ensure that all documentation is properly maintained for ease of reference
- Attend meetings
- Chair/participate in sub-committee meetings (if and when required)
- Liaise with the Secretariat (when necessary)
- Work harmoniously with the chairman and co-chairman, other CRC members, and key stakeholders

9.0 SECRETARIAT/TECHNICAL SUPPORT

9.1 Secretariat support to the CRC will be provided by the Ministry of Legal and Constitutional Affairs, constituted in accordance with the prior approval of the Cabinet. The Secretariat will act as a resource for the CRC, offering technical and administrative support.

10.0 MEETINGS - FREQUENCY & MODALITY

10.1 The frequency of meetings will be informed by the work to be done within the proposed timelines and as agreed to by the CRC.

10.2 The CRC will meet face-to-face, virtually or in a hybrid format, as the circumstances require.

11.0 QUORUM

11.1 A minimum of fifty percent (50%) plus one CRC member are required for the meeting to be recognised as authorised, and for recommendations and decisions to be accepted for implementation.

12.0 DECISIONS OF THE COMMITTEE

12.1 Decisions within the scope of the CRC's authority shall be made by consensus.

13.0 CO-OPTING MEMBERS

13.1 The Chairman/Minister may co-opt people with the requisite expertise (if necessary) to serve on sub-committees or otherwise assist the CRC in carrying out its work.

14.0 REPORTING RELATIONSHIP

14.1 The CRC reports to the Cabinet through the Minister of Legal and Constitutional Affairs, who is Chairman of the Committee; and is also required to maintain functional working relationship with the Permanent Secretary, Ministry of Legal and Constitutional Affairs, as head of the Secretariat.

15.0 COMPLIANCE WITH LAWS, POLICIES AND PROCEDURES

15.1 The CRC is required to comply with all relevant Government of Jamaica laws; and in liaising with the Secretariat, also comply with the government policies and procedures.