



## **MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS**

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JAMAICA*

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ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE PERMANENT SECRETARY

### **MINUTES**

#### **48<sup>th</sup> Meeting of the Constitutional Reform Committee (CRC)**

**Venue: Ministry of Legal and Constitutional Affairs**

**Date: September 18, 2024**

**Time: 10:00am**

### **AGENDA**

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Confirmation of the Minutes of the 45<sup>th</sup> and 46<sup>th</sup> Meetings of the CRC
7. Matters Arising
  - a. Review of Revised Recommendations on the Appointment Process for the President of the Republic of Jamaica in response to Feedback received from the Public
8. Stakeholder Presentations
  - a. Jamaicans for Justice
  - b. Jamaica Coalition for a Healthy Society
9. Any Other Business
10. Date and Time of Next Meeting
11. Adjournment

## **ATTENDEES:**

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Permanent Secretary, Office of the Prime Minister) via video link
- Dr Derrick McKoy, CD, KC (Attorney General of Jamaica)
- 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 Elaine McCarthy (Former Chairman – Jamaica Umbrella Groups of Churches)
- Dr David Henry (Wider Society – Faith-Based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin)

## **Secretariat**

### **Ministry of Legal and Constitutional Affairs**

- Mr Wayne O Robertson, JP, Permanent Secretary
- Ms Nadine Wilkins, Director of Legal Reform
- Ms Nastacia McFarlane, Director, Corporate Communication and Public Relations
- Ms Cheryl Bonnick Forrest, Senior Director, Strategic Planning
- Mrs Janelle Miller Williams, Senior Director, Legal Education
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Mr Makene Brown, Legal Officer
- Ms Shereika Mills, Human Rights Officer
- Mrs Shawna-Kaye Taylor Reid, Administrative Assistant
- Mr Shazzam Austin, Technical Support

## **1. CALL TO ORDER**

- 1.1.** The meeting was called to order at 10:20am by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved.

## **2. PRAYER**

- 2.1.** Prayer was led by Dr Elaine McCarthy.

## **3. NATIONAL PLEDGE**

- 3.1.** The National Pledge was recited.

## **4. APOLOGIES FOR ABSENCE/LATENESS**

- 4.1.** An apology for absence was received from Senator Donna Scott-Mottley.

## **5. CONFIRMATION OF AGENDA**

- 5.1.** No changes were proposed to the Agenda.

## **6. CONFIRMATION OF THE MINUTES OF THE 45<sup>th</sup> AND 46<sup>th</sup> MEETINGS OF THE CRC**

- 6.1.** The Minutes of the 45<sup>th</sup> Meeting of the Constitutional Reform Committee held on July 24, 2024 were corrected and confirmed on a motion by Dr Derrick McKoy and seconded by Dr David Henry.
- 6.2.** The Chairman requested that the confirmation of the Minutes of the 46<sup>th</sup> Meeting be deferred to facilitate the presentation by Jamaicans for Justice (JFJ) and the Jamaica Coalition for a Healthy Society (JCHS).

## **7. STAKEHOLDER PRESENTATIONS**

### **7.1. JAMAICANS FOR JUSTICE**

- 7.1.1.** The Chairman extended a warm welcome to the team from JFJ comprising its Executive Director, Ms Mickel Jackson and its Policy and Advocacy Specialist, Jade Williams.
- 7.1.2.** Ms Jackson, in her opening remarks, informed Members that a revised version of their submission was sent to the Secretariat for dissemination to the wider Committee. She noted that the submission was lengthy because the team embarked upon a comprehensive review of the Constitution based on their understanding of the phased approach of the reform process. Furthermore, she stated that they sought to

condense their presentation to those matters that were being considered at phase I. She then commended the Committee for its effort in putting together its Report of recommendations.

- 7.1.3. The Chairman applauded the work of the organisation noting that its voice was well heard.
- 7.1.4. Ms Jackson then presented JFJ's submission, a copy of which is appended hereto and labelled **Annex I**.
- 7.1.5. Ms Jackson advised that JFJ supported the recommendation of the Committee for a Non-Executive President noting a variety of challenges with the Executive Presidential System as demonstrated throughout a number of Latin American countries, and in the United States of America (USA). She noted that Executive Presidents tended to be autocratic.
- 7.1.6. She then proposed that Non-Executive Presidents with term limits should be elected by a special Electoral College suggesting an approach akin to that which obtained in India. She noted that India, in a recent Report, sought to broaden the scope of the to include local government representatives. She also opined that there were a number of handicaps with a directly elected president. Therefore, the proposal to include the 228 members of the local government would seek to strike a balance, particularly having regard to the view that the ruling party would always find a favourable outcome in who was confirmed President.
- 7.1.7. On the matter of the nomination process for the President, Ms Jackson stated that JFJ disagreed with a consensus nominee who was to be confirmed by the Parliament as such a process undermined the legitimacy of the office. Accordingly, she invited Members to consider the recommendation in the recent Report of Trinidad and Tobago's National Advisory Committee on Constitutional Reform for a Presidential Electoral Commission to be established to certify that the candidate for the office of President satisfied the eligibility requirements outlined in the Constitution.
- 7.1.8. The Chairman enquired whether JFJ gave any consideration to the fact that the Prime Minister came to his role not in a personal capacity but rather in a representative one as a result of a democratic process.

- 7.1.9. On the matter of the reference to the Electoral College in India, Dr McKoy advised that it would be vastly different from how Jamaica was structured. He further enquired into whether JFJ had any disquiet around handing over the choice of President to an anointed body.
- 7.1.10. The Chairman then asked Ms Jackson to highlight the grounds for their concept of legitimacy in a democracy.
- 7.1.11. Ms Jackson, in response, stated that the public's perception of a republic was to give more power and voice to the people and to facilitate their increased participation. She opined that legitimacy could be grounded in that perspective. In response to Dr McKoy, Ms Jackson stated that while the organisation did not have any set position on the nomination process, having read the recommendation by Trinidad's National Advisory Committee, she thought the approach could be similarly considered.
- 7.1.12. Dr McKoy sought clarity on how those involved in the special commission would approve the quality of the candidate and whether they would be better placed than the politicians themselves to make the nomination.
- 7.1.13. Ms Jackson stated that this special commission would exercise a function similar to the Electoral Commission of Jamaica which was empowered to examine the suitability of candidates for elections based on the qualifications outlined in the Representation of People Act. She further proposed that this independent body, once satisfied that the relevant nominees met the qualification requirements, would offer a slate of candidates to the special Electoral College comprising both Houses of Parliament and the Local Government.
- 7.1.14. Dr Barnett stated that he understood the initial motivation in proposing a Presidential Elections Commission for the making of the nominations. However, the persons who were being proposed to be appointed to serve in such a capacity would not be representatives of the public.
- 7.1.15. Dr Henry enquired whether JFJ was proposing a process through which the public could nominate prospective candidates. Ms Jackson, in response, stated that they had not considered the specificity of how the nomination process would be conducted.
- 7.1.16. The Chairman advised that all processes must be administered. She further noted that Jamaica was a representative democracy rather than a direct democracy.

- 7.1.17. Ms Jackson, in response, stated that while the organisation was yet to iron out the details, there needed to be some middle ground in ensuring that the public had an opportunity to put forward a slate of candidates.
- 7.1.18. Ms Jackson further opined that the existence of a direct democracy or an indirect one did not negate the need for greater participation.
- 7.1.19. Dr McKoy enquired whether a special elections commission would be better qualified to filter nominees than the elected representatives of the people.
- 7.1.20. Ms Jackson, in response, stated that the Constitution would set out guidelines as to who could be nominated, noting that the Commission would filter those nominations. She then proposed that a special Electoral College would confirm the nominee for President. She reaffirmed the submission that a set of independent people would be better than two people i.e. the Prime Minister and the Leader of the Opposition. She noted that the Prime Minister was not nominated by the people. Rather, the Prime Minister was a Member of Parliament chosen by the people who garnered the majority support of a political party. She opined that in the absence of consensus, and based on the structure of the Parliament, the Prime Minister would always get his choice.
- 7.1.21. Dr McKoy characterised the proposal for a special elections commission as a filter and enquired into whether this commission, as proposed, would make a better filter than the entire Electoral College itself.
- 7.1.22. Ms Jackson clarified that there was no filter being proposed in the Parliament.
- 7.1.23. Ms Jackson then sought clarity on the recommendation in respect of the reserved powers to be exercised by the President. She further enquired whether there would be any implications should the President withhold assent to the Bill.
- 7.1.24. The Chairman clarified that the legislative power of the State would be vested in the legislature. The President for Republic of Jamaica would not exercise any power to assent. Dr McKoy, in providing further clarity, advised that the dominant view was that the Head of State would not have a role in the legislative process.

## **7.2. JAMAICA COALITION FOR A HEALTHY SOCIETY**

- 7.2.1. The Chairman invited the representatives from the JCHS to make their submission.

- 7.2.2. Ms Philippa Davis, Advocacy Officer of the JCHS, expressed her gratitude to the Members of the Committee for the opportunity to present their initial comments on the Report of the Committee. She then read verbatim, the JCHS's presentation which is appended hereto as **Annex II**.
- 7.2.3. Following the presentation, Dr Henry, in referencing the enquiry set out at paragraph 9.1.2 of their submission advised that Commonwealth citizens, at present, were accorded special privileges under the Constitution and the substantive question was whether special privileges should be made for CARICOM citizens having regard to the recommendation of the Committee to remove references to the Commonwealth from the Constitution.
- 7.2.4. The Chairman advised that any special privilege accorded to CARICOM citizens would be done by ordinary legislation and Parliament would be empowered to so do.
- 7.2.5. Dr McKoy stated that the emerging treaty obligations would allow CARICOM citizens to be afforded the same treatment as nationals.
- 7.2.6. Ms Davis then invited Ms Shirley Richards and Dr Wayne West to join her on the platform in order to participate in the question-and-answer segment.
- 7.2.7. Having regard to the judeo-Christian principles posited by the JCHS, the Chairman enquired into any proposal of the organisation on the matter of homosexuality noting that society often legislated on behalf of people who did not share their private sense of morality.
- 7.2.8. Dr West, in response, stated that a society should not be built on the feelings of people. He opined that men and women were the foundation of society and noted that there were some who wished to build society on something else. While acknowledging the existence of challenges among some members of the LGBT community, he opined that there was no need to recognise them in the laws of Jamaica. He then stated that the LGBT community was built on human desire and therefore made no sense, at its core.
- 7.2.9. In response to the presentation on the choice of the Final Court, the Chairman indicated that there was no consensus to move forward with a change but the absence of consensus posed a risk to achieving the other reform goals. She said she was particularly struck by the comment in the presentation which admonished the

Committee to focus its public education and engagement efforts to enable informed choices to be made instead of persuading the public. She noted that those who were advocating for accension to the Appellate Jurisdiction of the Caribbean Court of Justice (CCJ) appeared unwilling to subject the choice to wider discussion. She said that she found the JCHS's articulation of their concern about the CCJ to be particularly curious and that the concerns seemed to be twofold. The first stemmed from interpretations of judgments of the courts and/or presentations made by particular judges. The Chairman clarified that a judgment of the court was not just attached to a judge who handed down the decision. The second concern related to the ideology of the CCJ which according to the presentation stemmed from what appeared to be a contamination of the judicial role in that the court was arrogating onto itself executive powers comingling its judicial powers and moving into the policy realm. She said that in our system matters of policy fell within the domain of the Executive and not the Judiciary. Furthermore, the Chairman sought clarity on whether the JCHS's issue with the CCJ was solely underpinned by their concerns about the LGBT matters.

- 7.2.10. Ms Richards, in response, stated that there were other grounds. She opined that judges did not see themselves as bound by constitutional text based on the utterances of judges of the Court.
- 7.2.11. Dr Barnett noted that in their submission, references were made to utterances by judges of the CCJ but not to those made by judges of the Judicial Committee of the Privy Council (JCPC). Ms Richards, in response, opined that the JCPC exercised greater judicial restraint.
- 7.2.12. Mr Small enquired whether the members of the JCHS would be willing to help draft the Preamble to the Constitution. The Chairman advised that the matter of determining a suitable Preamble was already assigned to a committee chaired by Dr Spence. Dr Spence, in referencing the Terms of Reference of the Preamble Committee, advised that there was a caveat which enabled Members to extend invitation to persons who met the criteria of the recommendation made by the Committee if there was need for any particular talent or skill.



- 7.2.13. Ms Davis stated that judeo-Christian values ought be reflected in the Constitution. Dr Barnett, in response, stated that as a Christian and student of constitutional law, he was concerned about the proposal of incorporating a Preamble in the Constitution which was limited to Christians when there were a number of other religions practised in Jamaica. Ms Davis opined that being a Christian and constitutional lawyer ought not conflict. The Chairman, in response, stated that the right to freedom from discrimination on the ground of religion required a particular sensitivity. Dr Barnett stated that a constitution must express ideals of unity and cautioned the inclusion of any expression that may exclude segments of the population.
- 7.2.14. On the recommendation regarding International Treaties, the Chairman stated that what was presented was not prevented from working in the existing system noting that those matters where decisions were to be properly taken ought be placed before the Parliament. The Chairman stated that the timeline proposed raised curiosity because it assumed that nothing else was on the parliamentary agenda. Nevertheless, she indicated that it remained a work in progress.
- 7.2.15. Dr Spence recalled a discussion whereby she was advised that Jamaica was unable to sign any treaty if it was in contravention of the provisions contained therein. The Chairman, in providing clarity, informed Members that a State may be asked to bring laws into compliance with the treaty but ordinarily, before any international treaty was signed, an assessment was to be done to see whether Jamaica would be compliant with it.
- 7.2.16. Dr Spence stated, generally, that she was a Jamaican who disagreed with most of the proposals presented by the JCHS. She then enquired whether her perspectives should not be given any weight because of her disagreement and whether she was expected to conform to the values and perspectives of the organisation. Ms Davis, in response, stated that such was not the case as Jamaicans were a plurality of views.
- 7.2.17. On the matter of the international treaties, Dr Barnett opined that anything which sought to bind Jamaica should be subject to some public discussion and parliamentary view unless, because of some urgency or special reason, the time did not allow for it.

- 7.2.18. On the proposal related to the Charter of Rights suggesting the incorporation of a clause which dealt with the matter of sex and gender, Dr Barnett enquired what was meant by “ordinarily apparent”. Ms Shirley, in response, stated that such language was used because of the existence of persons born with abnormalities. She noted that while the persons born with abnormalities in genitalia were miniscule in number, laws should not be made on a minority perspective.
- 7.2.19. Dr McKoy, in revisiting the matter of international treaties, stated that while the Constitution could regulate how the international law should be exercised, he was uncertain whether that needed to be done at this moment. The Chairman, in response, stated that the issues raised and the vibrant discussions that took place demonstrated the importance of the phased approach to the work of reforming the Constitution.
- 7.2.20. On the matter of the extension of the life of the Parliament, the Chairman advised that the Constitution currently made provision for an extension of up to two years if Jamaica was at war. Dr Barnett noted that the matter was discussed by the Committee at length and Members proposed a stricter limitation on the period of extension.
- 7.2.21. In respect of the proposal related to the holding of by-elections, the Chairman felt it to be a reasonable one.
- 7.2.22. Having regard to the conclusion of the presentation, the Chairman expressed her gratitude to the representatives of the JCHS and stated that another invitation would be extended, at the relevant juncture, to engage in further dialogue.

## **8. CONFIRMATION OF THE MINUTES OF THE 46<sup>th</sup> MEETING OF THE CRC (EARLIER DEFERRED)**

- 8.1.** The Minutes of the 46<sup>th</sup> Meeting of the Constitutional Reform Committee held on Wednesday, July 31, 2024 were corrected and confirmed on a motion by Dr Derrick McKoy and seconded by Dr Nadeen Spence.

## **9. MATTERS ARISING**

- 9.1.** The Chairman invited Members to revisit paragraph 7.1.32 of the Minutes of the 45<sup>th</sup> Meeting of the Committee. She stated that she understood the complaint from Dr Barnett that the Terms of References were irrational and conflicting to be one which arose from his

explanation of what the goal of Jamaicanising the Constitution would achieve as opposed to what was set out as the goal of phase III. She noted that if Members were to adopt his guidance in respect of achieving the goal of Jamaicanising the Constitution, there would be a new Constitution. Therefore, to say that a new Constitution would come at phase III was what he described to be irrational.

- 9.2. The Chairman then stated that there were different perspectives on the matter. Nevertheless, she accepted the view that the process of decloaking the Constitution from its imperial form would, *in effect*, yield something new. She also stated that having proceeded on the basis that not every provision contained in the Constitution would be examined in this initial phase, a reformed constitution, rather than a new constitution, would be produced. She then regarded this as a technically relevant matter.
- 9.3. The Chairman further stated that the ambiguity surrounding what constituted the imperial instrument provided some doubt as to what could be achieved in pursuing the goal of Jamaicanising the Constitution. She said that while it was not her intention to reopen the conversation, there was a need to provide clarity having regard to the fact that people read the Minutes of the meetings.
- 9.4. In respect of the Minutes of the 46<sup>th</sup> Meeting, the Chairman advised Members that she would be updating the Parliament on September 24, 2024 by way of a Ministerial Statement on the progress of the work to date. She stated that she would adopt some of the language from the Minutes which clarified a number of issues, particular those in respect of the type of President proposed. She also stated that the presentations made to the Committee helped to frame, with clarity, some of the other concerns raised by a number of stakeholders about the phasing of the work and the risk brought about by the lack of consensus on the matter of the final Court. She explained that notwithstanding the current status of the life of the Parliament, she was instructed to proceed with putting a Bill in the Parliament to achieve the two goals of Jamaicanising the Constitution and abolishing the Monarchy respectively, alongside any other matter on which there was consensus.
- 9.5. The Chairman then informed Members that her administration remained committed to reforming the Constitution and educating the public. She noted that there was a lot to be learnt from the journey travelled thus far. She expressed regret that the Members of the Committee representing the Parliamentary Opposition were not present at meetings in a

manner similar to when the Committee commenced and pursued its work. She also noted that the Leader of the Opposition, during the annual Conference of the People's National Party held on September 15, 2024, stated that the Members of the Parliamentary Opposition did not sign the Report because they did not agree with it. She said that she found such a statement unfortunate as even at the eleventh hour, amendments were being made to the Report to accommodate the issues raised by the members of the Opposition. She acknowledged that there would be different views on the matter having regard to the different approaches that would be taken by each side of the Parliamentary aisle. Nevertheless, she opined that the suggestion that recommendations contained in the Report were not arrived at after a process of deliberation and agreement was an injustice.

- 9.6.** The Chairman then advised Members that the Ministry was in receipt of a draft Bill which was being reviewed by the Drafting Strategy Sub-Committee. She stated that some additional comments on the draft Bill were sent to the Chief Parliamentary Counsel and the review would continue before reporting back to the wider Committee. She expressed her gratitude to Dr Barnett for his commitment to the process.

**9.7. REVIEW OF REVISED RECOMMENDATIONS ON THE APPOINTMENT PROCESS FOR THE PRESIDENT OF THE REPUBLIC OF JAMAICA IN RESPONSE TO FEEDBACK RECEIVED FROM THE PUBLIC**

- 9.7.1. Dr Barnett noted that there were three matters in need of clarification:

1. The principle of how the new Jamaican constitution would be presented;
2. The method of appointment of the President; and
3. Whether impeachment provisions for Members of Parliament and other holders of high public office should be included in the Constitution

- 9.7.2. He recalled that during the last meeting, on the question of the goal of Jamaicanising the Constitution and having regard to the interventions of Dr McKoy and Senator Braham, the Committee concluded that the technique of having an amendment Bill rather than a replacement Bill would be extremely cumbersome.

- 9.7.3. Dr McKoy, in response, recalled his deference to the draftsman on the question of how to achieve the goal of Jamaicanising the Constitution.

- 9.7.4. Dr Barnett then stated that on the question of the method of appointment, there were a number of criticisms and comments on the recommendation made by the Committee. He noted that none of these critics had suggested a clear solution to the problem of how to resolve differences in opinion on the matter of selecting the President. He stated that the method proposed sought consensus in the first instance and a resolution by a Parliamentary vote if consensus was unobtainable. He said that he was unable to see a better resolution of the issue than that proposed by the Committee.
- 9.7.5. Mr Small opined that one aspect of the submission made by JFJ that was worthy of the Committee's consideration was their recommendation that the process of confirming the Presidential nominee should include Members of the House of Representatives as well as Local Government Councillors. He further opined that setting aside their submission around the nomination process, the Committee should take note of their submission on how the vote should be taken. He stated that it touched on matters previously discussed whereby the matter played lip service to the role of local government in the Constitution. He further stated that this recommendation would be an important acknowledgement that outside of the House of Representatives, there were persons elected by the people of Jamaica who engaged different kinds of communities. He said that the local government represented a voice, perspective and daily interaction with people on the ground that was not necessarily reflected in the views of Members of Parliament. He then stated that the democratic emphasis should be placed on the confirmation process and suggested that Members seize the method proposed.
- 9.7.6. Dr Barnett noted that while the recommendation was new, the Committee previously discussed the matter of popular confirmation. He opined that a combination of Parliamentarians and Local Government Representatives would widen the pool of persons eligible to confirm the President.
- 9.7.7. Dr Henry stated that from the outset, he expressed a desire for the people to have some significant say in selecting the President. He stated that he accepted that engaging the general public was impractical. Nevertheless, he said that he was

attracted to the idea to include the Local Government Councillors as part of the confirmation process which suggested a greater democratisation of the process.

9.7.8. The Chairman stated that she found the proposal from JFJ attractive as it was a part of the bigger strategy of including the people in the process. The broadening of the pool which confirmed the President would be of high symbolic nature.

9.7.9. Dr Barnett opined that it went beyond mere symbolism as it guaranteed wider representation.

9.7.10. The Chairman noted that there appeared to be consensus that the process of selecting the President be revised to ensure wider representation, not only as a means of achieving greater symbolism but to ensure wider participation. She then asked Dr Barnett to formulate the new proposal for consideration at the next meeting of the Drafting Strategy Sub-Committee.

## **10. ANY OTHER BUSINESS**

10.1. Dr McKoy informed the Committee that the University of the West Indies would be conferring a Doctor of Letters (DLitt) to the Most Honourable Elton Deighton 'Elombe' Mottley, husband of Senator Donna Scott-Mottley, for his contribution to the development of Culture and Arts in Barbados.

## **11. DATE AND TIME OF NEXT MEETING**

11.1. The Chairman advised that a meeting of the Drafting Strategy Sub-Committee would be held on September 25, 2024. In light of this, the next meeting of the Constitutional Reform Committee would be held on October 2, 2025 at 10:00am.

## **12. ADJOURNMENT**

12.1. There being no other business, the meeting was terminated at 3:20pm on a motion by Dr David Henry and seconded by Mr Hugh Small.

ANNEX I – PRESENTATION: JAMAICANS FOR JUSTICE



CONSTITUTIONAL  
REFORM &  
HUMAN RIGHTS

*Presentation to the  
Constitutional Reform Committee*



**JAMAICANS  
FOR JUSTICE**

# Head of state?

Type of president

How we elect that president?

Powers of the president

Balancing accountability with  
parliamentary sovereignty



# A Non-executive President With Term Limits Elected Via A Special Electoral College

- JFJ proposes a seven-year term with a two-term limit.
- Individual to be elected by a special electoral college. The special electoral college consists of members of both Houses of Parliament and local government representatives. This broadens the scope of who will elect the non-executive president.
- A secret ballot could be used to avoid politicizing the process. Some may contend that for transparency, such voting should be open and made public.

# Nomination of a Non-Executive President

- JFJ initial recommendation of at least two candidates nominated by a specific number of the House is amended. **We believe Trinidad's proposed model may be instructive.**

- 
- A Presidential Elections Commission should review and approve presidential candidates nominated by the public.
  - This Commission could include the Chief Justice, the heads of the Electoral Commission of Jamaica, Public Service Commission, and Integrity Commission, along with a reputable individual within civil society (religious, business or other sectors) at the Chief Justice's request.

***Candidates must be nominated by a set number of proposers, and political parties are not allowed to nominate anyone. A Presidential Elections Commission will ensure candidates meet the constitutional requirements.***

# Proposed Reserved Powers of a Non-Executive President

- Careful review of existing powers of the governor-general rather than the seeming automatic transition.
- Appoints independent positions in consultation with prime minister and leader of opposition but not necessarily upon the advice of.
- Role in safeguarding the constitution and avoiding constitutional crisis.
  - ✓ Therefore, if he or she deems a proposed law to possibly violate the constitution, s/he may ask Parliament for reconsideration.
  - ✓ If Parliament refuses, the President can ask the Supreme Court to make a declaration.
- Accountability of the Parliament regarding status of domestic laws based on any international treaties and conventions signed.

# Clarity on the effect of the two-third majority voting requirement

*Unlike the 1990s recommendation that upheld the two-third principle in senate, the current proposal allows for same to be achieved with the president's choice of 3 senators.*

*While the CRC does state that amendments to entrenched provisions will still require at least one opposition member, this is not sufficient to address the broader concerns regarding the curtailment of government power, especially when it comes to the suspension of rights.*

*For instance, would it be permissible for the extension of SoEs to occur without any opposition input, solely at the discretion of the Prime Minister, his political party and his President?*

Accountability to  
the people?  
Across branches?

Impeachment

Right to recall

Who elects whom?

# Right to Recall

- Right to recall for members of parliament.
- JFJ proposes giving the public the Right to Recall of the Prime Minister if our proposal for direct election is granted.
- Belize (Trinidad's proposal) can be used as reference
  - ✓ What percentage of voters must participate?
  - ✓ For MPs, is it only constituents or national who vote?

How can the local government act provisions be replicated?

# Impeachment

- JFJ supports calls for constitutional provisions for the impeachment of public officials, including judges, civil servants, the director of public prosecutions, and auditor general, while expanding it to include members of parliament, senators, and heads of statutory bodies. *(Noting some elements already exist with the principle of judicial review).*
- We suggest the committee reconsiders its recommendation. Accountability must be had for those with the highest levels of powers and authority, including elected officials. How to mitigate the concerns:
  - ✓ The Constitution should clearly define impeachable offences, identify those subject to impeachment, outline the process, and designate the body responsible for hearing complaints.
  - ✓ Judicial involvement to mitigate political exploitation from possibly happening
  - ✓ Examine strengths and weaknesses in the US and Brazil models as they offer key comparative analyses

# Entrenchment for horizontal accountability

Public Defender (National Human  
Rights Institution)

Political Ombudsman

Electoral Commission of Jamaica

Integrity Commission of Jamaica



### **South African Human Rights Commission**

#### **Functions of South African Human Rights Commission**

184. (1) The South African Human Rights Commission must—
- (a) promote respect for human rights and a culture of human rights;
  - (b) promote the protection, development and attainment of human rights; and
  - (c) monitor and assess the observance of human rights in the Republic.
- (2) The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power—
- (a) to investigate and to report on the observance of human rights;
  - (b) to take steps to secure appropriate redress where human rights have been violated;
  - (c) to carry out research; and
  - (d) to educate.
- (3) Each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
- (4) The South African Human Rights Commission has the additional powers and functions prescribed by national legislation.

## **National Human Rights Institution (Office of the Public Defender)**

- Support the CRC's and the 1990s recommendation of the Public Defender to be entrenched.
- However, we strongly recommend that the language of its inclusion acknowledges that the body will be broadened in scope to become that of a National Human Rights Institution. Ordinary legislation would then outline the structure and specific authority of the NHRI.

# *What could the language of the OPD look like in the constitution?*

## **Functions of the Public Defender**

- (1) The public defender must –
  - (a) Promote respect for human rights and culture of human rights;
  - (b) Promote the protection, development and attainment of human rights;
  - (c) Monitor and assess the observance of human rights in the Republic.
  
- (2) The Public Defender has the powers, as regulated by national legislation, necessary to perform its functions, including the power –
  - (a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;
  - (b) To take steps to secure appropriate redress where human rights have been violated;
  - (c) To participate in legal proceedings
  - (d) To carry out research; and
  - (e) To educate
  
- (3) Each year, the Public Defender must -
  - (a) submit an annual report to the Parliament outlining the number and types of human rights violations observed and complaints received
  - (b) require relevant organisations of the state to provide the Office with information on the measures that they have taken towards the addressing any rights that were found to have been breached. The summary of this should be included in the annual report.

## Office of the Political Ombudsman

- JFJ believes the Political Ombudsman's office must continue with enhanced powers, as it plays a key role in investigating political misconduct and ensuring adherence to the political code of conduct.
- We are concerned about the recent law merging the Ombudsman's office with the Electoral Commission of Jamaica (ECJ), which could lead to conflicts between their roles. JFJ calls for the repeal of this law and supports strengthening the Ombudsman's powers.
- Additionally, JFJ advocates for giving the office constitutional status, as recommended in 1995 and the 2011 draft bill, to ensure greater accountability and protect it from political interference.

# Electoral Commission of Jamaica

- We support the recommendation of ECJ
  - ✓ We welcome entrenchment without the Political Ombudsman's office.
  - ✓ Support the level of entrenchment
  - ✓ However, regarding calling of election dates, we note limited time period of the three months so if no absolute fixed election date, the calling of same should be within the jurisdiction of the ECJ, not the prime minister.

## Integrity Commission

- In the 1990s, a report suggested putting the Office of Contractor General in the Constitution. Over time, the Jamaican Government combined three entities, one of which was the Contractor General, into what is now known as the Integrity Commission.
- The Integrity Commission was created in 2017 as a commission of parliament to investigate and prosecute acts of corruption. However, because it has no constitutional protection, a simple majority vote in parliament can get rid of the body or weaken the legislation that governs it.

Other matters to  
ensure successful  
referendum

Caribbean Court of  
Justice

One Year Sustained  
Public Education

# Caribbean Court of Justice (CCJ)

- The CCJ provides notable benefits, such as granting appeals in forma pauperis (waiving filing fees for those with financial burdens), being more affordable due to easier travel within CARICOM, and using electronic hearings, reducing the need for travel.
- Though some question the CCJ's effectiveness, evidence from countries like Barbados shows its ability to handle cases well, with more people accessing their final appeal. By contrast, high costs prevent many Jamaicans from reaching the Privy Council, denying them justice.
- Adopting the CCJ represents true decolonization, breaking ties with the Privy Council and our colonial past.

# Rethinking Phased Approach and public education

- JFJ believes the phased approach to reform should be reconsidered. Constitutional issues are deeply interconnected and cannot be addressed in isolation.
- JFJ stresses that meaningful constitutional reform requires broad public education and inclusion. Without an informed citizenry, the process risks indifference or resistance. Education efforts must go beyond basic outreach, using diverse materials like videos and infographics to address key concerns, such as the role and selection of a president.



## ANNEX II – PRESENTATION: JAMAICA COALITION FOR A HEALTHY SOCIETY

**The Jamaica Coalition  
for a Healthy Society**  
*Ministry • Advocacy • Education*



9 Cecelia Ave  
Kingston 10

September 18, 2024.

**A. Review of May 2024 Report of the Constitutional Reform Committee**

The references herein are references to the Full Report of the CRC.

**3.2.5 – Insertion of a Preamble –**

The Preamble is an important aspect of the entire document and whilst it is not the Law itself it must set the philosophy behind the document. Where is the reflection of the Christian ethos and worldview that we currently enjoy? We are concerned that the move away from the British monarchy is being taken by some as being one and the same thing as moving away from the adherence to Judeo-Christian principles. We certainly hope that is not the intention! The wording of the Preamble will help us in this regard. But then when we examined the process by which the Preamble will be finalized we noted that no room has been made for the voice of the Christian constituency. In order to rectify what we consider to be a major oversight we are therefore asking that the Jamaica Umbrella Group of Churches be asked to nominate an individual to sit on the Committee. The recommended text must thereafter be returned to the CRC (and legal scholars specifically) for robust review of the implications of any changes for the text and possible interpretations of the Constitution.

**4.4.1 - Qualification for President**

We ask that it be clearly stated that the President must not be a citizen of any other country. His or her duty of allegiance should be solely to the Jamaican state. We are therefore asking for sub-paragraph (iii) to be deleted.

**6.4.4 – Fixed Election Date – must be clearly stated in the new Constitution.**

The formula which has been given actually adds complexity to what can be a simple matter. We are of the view that the country will benefit from having a clearly stated fixed election date for example it can be clearly

Directors: Dr. Kay Bailey Mrs. Shirley Richards Dr. Wayne West (Chairman)

stated that elections are to be held 1<sup>st</sup> Monday in the month of May every 5 years. There is no need to surprise the nation with an election date. The country should be permitted to calmly go about its business knowing that a certain date is in sight. A fixed date allows for:

- a. certainty in planning both to the electoral authorities, the government itself and the society generally.
- b. It reduces the opportunity for opportunistic manoeuvres by incumbents

this should be an entrenched provision

#### **6.5.2- Extension of life of Parliament.**

New conditionalities for extensions of the life of Parliament have been recommended. We find this recommendation to be very troubling. Not every disaster caused by hurricane or even earthquake will impact the country to such a degree to justify foregoing the holding of elections. Therefore there has to be qualification to the disaster it must be on such a scale that the entire country is affected. There must be limiting language. The impact on the country must be such that it justifies foregoing of elections. Furthermore we are of the view that the maximum extension in these additional circumstances should be 1 year.

#### **7.1.3- Increase in the size of the Senate**

If the size of Senate is increased then a way must be found to maintain the existing balance of power between the Government and the Opposition especially in regard to entrenched provisions of the Constitution. Currently the support of at least 1 Opposition Senator is needed in order for entrenched provisions of the Constitution to be amended. This formula needs to be maintained. This is a part of our Constitution which has worked why are we changing it? The proposed changes will do mischief to the balance of power. The value of those members is outweighed by the risk to the balance of power. In the alternative in order to preserve the delicate balance of power the members appointed by the President should be non-voting members.

#### **9.1.2 – Privileges for CARICOM members**

We ask for clarification – what type of privileges are being recommended?

#### **12. The issue of the Final Appellate Court – No consensus was reached on the issue.**

Our position is that the Privy Council should be retained as our final appellate Court at least for the time being. Our reasons are as follows:

- (a) **The CCJ markets itself as an Apex Court which does not only focus on judicial precedents but it also gets involved in policy issues.** On this issue, the President of the CCJ, the Honourable Mr Adrian Saunders, on August 3, 2022 while addressing a local audience of Judges and other dignitaries stated that:  
“In a healthy democracy, a decent percentage of the judgements of the Court of Appeal (10-15%) should be appealed to the Apex Court so that the Court can interstitially and in partnership with Legislature close the gap between law and society.”  
Note that the President defines the role of Judges as being in the same category as that of legislators! Who gave our Judges that role viz to make decisions on policy and to partner with our legislators?

- (b) This view by the President is consistent with the viewpoint expressed by Mr Justice Peter Jamadar in an address to the Belize Annual Law Conference in 2022. He stated as follows:

“In effect, the decision in *Nervais and Severin* is monumental in Caribbean jurisprudence, because it establishes that even the literal text of a constitution is not inviolable and is at once subject to certain ‘basic underlying principles’. What becomes normative and authoritative, is ultimately not the letter of the text, but the basic ‘deep’ structure (certain non-derogable features, principles and values) that underpins, informs and constitutes the text as a constitution.”

**It would appear therefore that the CCJ does not consider itself to be bound by the text of a Constitution and particularly in regard to what it considers to be the “human rights values”.** It seems clear that the CCJ is prepared to go beyond the text of a constitution in order to enforce what it considers to be human rights values! So, we say Jamaica beware! Senior Counsel V. K. Rajah, then Attorney-General of Singapore said in 2016:

“The interpretation of the Constitution must be faithful to the constitutional text. In a way, this is a truism: How can one claim to interpret a text without being faithful to it? But there are also higher principles involved. Underlying the notion of written law is a belief in the power of the written word: That words have meaning, that words are important, and that words can bind. This is all the more so for a written Constitution that is the supreme law of the land - its words are meant to bind the State and secure the rights of the people. Fidelity to the idea of a written Constitution must mean fidelity to its text.”<sup>1</sup>

<sup>1</sup> <https://www.straitstimes.com/opinion/interpreting-the-constitution>.



- (c) The fact that the Court is an executing agency for donor funds, including funds from UN Women. (This was stated by the President in his aforementioned address of August 3, 2022). This was the opening paragraph of a statement by UN Women Executive Director Sima Bahous on May 17, 2023:

“We recognize today as the International Day against Homophobia, Biphobia, Intersexphobia and Transphobia, and mark the theme for this year: “Together always: United in diversity”. This is a day to celebrate the diversity of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) across humanity.”

So then, the CCJ is unashamedly an executing agency for funds from an international LGBT advocate. Is this what we desire of our final Court?

- (d) ***The Draft Gender Equality “Protocol” for Judges and Gender Sensitive Training for Judges***

There is a draft Gender Equality Protocol which was/is being circulated among some members of the Caribbean judiciary. Page 19 of the “Protocol” deals with the issue of “Non-Discrimination” *effectively* telling the Judges that it is reasonable to conclude that “sexual orientation” is a ground of non-discrimination covered by the Charter of Rights! We would challenge this viewpoint as being erroneous. Additionally, the definitions given of various terms in the “Keys to Unlock the Gender Box” are given in such a manner as to make it appear that certain behaviours are normal and innate. These are the very behaviours which are at the heart of the legal challenge to the buggery law! Examples of this are the definitions given to “sexual orientation” and to “gender identity”. Another example is found on page 17 of the “Protocol” in the box entitled “Judge’s Role in Correcting Imbalances Between Parties”. In one of the examples given of “situations where power imbalances exist” the following is stated: “Where the number of people on each side is imbalanced. Example: a LGBT rights case involving a gay applicant on one side and several other anti-LGBT groups on the other.” The clear implication here is that the Judges’ role in the context of gender issues is to correct what is seen as an imbalance because of numbers as distinct from what is normally considered to be the role of a Judge which is simply to make a ruling based on the law.

It seems that this was the work of Jurist Project, an organization for which the CCJ is an executing agency for funds. Note the web page <https://jurist.ccj.org/media-releases/formal-handing-over-ceremony-of-the-draft-gender-equality-protocol-for-magistrates->

and-judges-to-the-barbadian-judiciary/ This web page with CCJ's logo depicts the handing over of this Manual to the Barbadian Judiciary. So again we have the CCJ endorsing LGBT advocacy. We note too on the CCJ's website regarding the Honourable President Justice Saunders, that he "serves as Chairman of the Caribbean Association of Judicial Officers which, in collaboration with UN Women, played a leading role in developing and promoting the adoption of Gender Sensitive Protocols for Judicial Officers for various Caribbean judiciaries."<sup>2</sup>

These are **some** of the reasons why we at this time advocate for the retention of the Privy Council, as the CCJ with its current ideologies presents a clear and present danger to our laws and values.

#### **11.6 Entrenchment of the Office of the Public Defender.**

From what we have seen in other countries human rights bodies have created issues for the people. In our construction of human rights, we must be careful not to lead our people into confusion. Since this is an office which deals with human rights we must therefore be careful about the language used in entrenching this office. The only way to mitigate that is to be careful about the language used in entrenching this office. The wording of the terms of reference in the Constitution should therefore reflect the current statute such wording should be unaltered from what currently exists.

**13.5 – Public Education and Engagement** People to be "sensitized and persuaded to adopt a positive attitude..." Goal should not be persuasion it should be education. There should be public education without a bias, consultations for the people to make up their own minds and not a media blitz to make them make uninformed decisions that have already been determined by the CRC.

#### **B. Additional comments/ recommendations.**

##### **1. Term Limits**

Elected officials should be limited to 3 consecutive terms in office

##### **2. Entrench the Integrity Commission**

This Commission serves an important role in our country. It maybe that some members of government will find it to be a nuisance and thus could be tempted to one day abolish same by an Act of Parliament. In order to discourage this we strongly recommend that this Commission be entrenched in the Constitution.

<sup>2</sup> <https://ccj.org/about-the-ccj/judges/saunders/>

### **3. Right to Recall Elected Officials**

We have noted that the CRC is not in favour of impeachment proceedings. However, there is a desire among Jamaicans that for our members of Parliament to be more accountable to us instead of having to wait for the next General Elections. Accordingly, we are recommending that there be inserted in the Constitution a mechanism which would give the electorate a right to recall their political representatives. The following is skeletal outline of the proposal:

- a. This is a right to recall Members of Parliament who fail to meet certain minimum standards if verified petitions with X number of signatures are presented to the ECJ outlining grievances consistent with and meeting constitutional provisions. For example, 1 ground of grievance could be gross neglect of the constituency. In such a case a minimum percentage of the electorate within a specified constituency would put together a Petition in the required format and present same to the ECJ.
- b. ECJ will then determine if recall conditions met and also verify the signatures
- c. Successful recall results in MP's seat becoming vacant and a by-election being held unless general election to be held within next 4 months of seat having been declared vacated
- d. Unseated MP ineligible from contesting by-election but allowed to stand in next general election

### **4. Court Administration Division**

The administrative arm of the judicial system being presently represented by the Court Administration Division should receive the same level of constitutional protection as is accorded to the Judiciary. The budget of the CAD would be a charge on the Consolidated Fund. In this way one ensures independence from the Executive branch.

### **5. International Treaties**

We are recommending the insertion of a clause which prohibits the Government from becoming party to treaties which are in contravention to Jamaica's laws and values or which will result in the undermining of Jamaica's laws and values. Additionally we recommend that:

- a) The Government must inform Parliament of its intention to sign and/or ratify international treaties or enter into international/external obligations at least 90 days before doing so and seek its approval before taking any further steps



- b) The text of the treaty or external obligation must be provided to Parliament (and disclosed to the public) at least 90 days before its consideration by Parliament
- c) Parliament should disclose to the public the date for the debate and allow public responses
- d) After a 60 day period for review by the Parliamentarians of the proposed text, and a 30 day period after the debate and with consideration given to any public responses, Parliament may approve by resolution such signature/ratification or reject same, with reasons.

#### **6. Holding of by-elections**

Section 45 (2) of the current Constitution provides to the effect that vacancies in the House of Representatives shall be filled "by election in the manner provided ...". Since the people of this country have a right to representation we are asking that a time period be stated within this subsection resulting in it being mandatory to have such an election within 4 months of a vacancy.

#### **7. Office of the Director of Public Prosecutions**

- a. The DPP should be required to provide written reasons when he/she exercises authority (whether to prosecute or not to prosecute) which reasons – with exceptions- should be made available to the public via ATI as requested.
- b. Set term limits 2 terms of 7 years each. The Committee may want to consider whether this should be applicable to holders of other public offices.

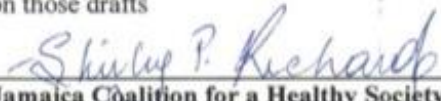
#### **8 . Charter of Rights**

- a. Right to Life begins at conception.
- b. A clause stating that the institution of marriage is entitled to protection by society and the State.
- c. Parents to have the right to have their children brought up and taught in accordance with the dictates of their consciences.
- d. A clause which deals with the matter of sex and gender to state to the effect that:  
"The sex and gender of an individual being one and the same is that which is determined at conception and ordinarily apparent before and after birth." This should be stated in the Constitution to help our people to avoid confusion.
- e. Essential to keep the savings law clauses as well as other clauses in the Charter of Rights including the clause defining marriage and

other unions as being between one man and one woman. A carefully worded savings law clause will be needed to ensure that those laws which are saved in 2011 Charter are properly brought forward in the new Constitution.

**We will at the appropriate time submit a more detailed document to justify our recommendations regarding the Charter of Rights.**

Generally, we would also want to urge the CRC to retain the checks and balances in the Constitution. Going forward, much depends upon the specific words drafted and so we hope to be a part of future deliberations on those drafts

  
**Jamaica Coalition for a Healthy Society**