

LEGAL & ECONOMIC PERSPECTIVES FOR CONSTITUTIONAL CHANGE

A. BACKGROUND/INTRODUCTION

On January 10, 2022, the Ministry of Legal and Constitutional Affairs (MLCA) was established to spearhead constitutional reform work in Jamaica and, in April 2023, Constitutional Reform Committee (CRC) was created to guide the process. This paper contributes to the constitutional reform public education process by highlighting the importance of constitutional change to enhancing economic development.

The analysis is rooted in a socio-economic and political interpretation of resistance to the tyranny of oppression and exploitation by a few since the arrival of Columbus in 1494. This resistance is grounded in the search for opportunities to improve their social and economic conditions of life in pursuit of freedom, self-determination and a true recognition of their humanity. The search continues today. It is essentially the search for adequate legal foundations to establish a structure of government to enable Jamaicans to improve their standard of living.

This paper suggests that comprehensive constitutional reform to achieve this requires changes in the following areas:

1. the size and structure of parliament;
2. the independence of the judiciary;
3. the insulation of the public service from unwarranted political influence;
4. local government with adequate policy making power to reflect the facts of each local circumstance; and
5. adequate opportunities to practice direct democracy through participatory budgeting in the communities.

B. ECONOMIC RATIONALE FOR CONSTITUTIONAL CHANGE

Jamaica's economy has been underperforming for more than 40 years. Real GDP per capita has grown at less than 1% per year since 1962. This is mainly due to the shortage of capital, illustrated by the fact that the sectors with the capacity to produce capital contributed 49% of GDP in 2019, well below the benchmark of 65% that is characteristic of the developed economies. Some significant consequences of this poor economic performance have been protracted underemployment, rising crime, and emigration to the developed economies in search of better living standards.

These problems can only be adequately addressed through deliberate, strategic economic development policies and related growth that can create an increasing flow of good jobs in the country while catching up with living standards in the developed economies. However, Jamaica's experience over the past 61 years suggests that such development and growth cannot be taken for granted. What is needed is a carefully calibrated policy of economic restructuring focused on increasing the production, accumulation, and export of capital and, in turn, growing the share of capital-producing industries in GDP.

But such a policy cannot be developed in Jamaica's current governance arrangements. It requires changes to the constitutional arrangements to ensure full and widespread operation of the rule of law at all relevant levels where policy is made, including local government. This means ensuring adequate mechanisms for effective oversight of executive action by the people's representative as well as for strengthening the voice of the people, especially in shaping policy and law to enhance economic development.

To achieve this, changes to the structure of government are essential. Here, it should be noted that for such changes to have the desired effect of enhancing the rule of law, related changes are needed in the governance model of the country's political parties. It is also noted that effective operation of the rule of law requires a high level of informed and routine public participation in the law-making process. Such participation must normally be supported by an extensive public education, information-sharing and communication programme, reinforced by a competent and free press.

C. KEY ELEMENTS OF A NEW STRUCTURE OF GOVERNMENT

What is needed is a design of an accountable governance framework that provides **effective oversight of executive decisions** and enables **participatory governance**. Such a design should detail the roles, responsibilities, and relationships among different stakeholders in Jamaica's governance framework required to build an equitable and just Republic of Jamaica. The key elements of the design include:

- 1) A **Restructured Parliament** comprising:
 - a. A **Restructured House of Representative** to enable oversight and accountability of the executive to the legislature, non-executive control of the lawmaking process, and improved participatory governance. Changes should be guided by the following principles:
 - i. *Ensure the size of the Executive is smaller than non-Executive members of the Legislature*
 - ii. *Establish Appropriate Oversight Committees*
 - iii. *Empower Citizens Through Petitioning*
 - b. A **Restructured Elected Senate** to strengthen the voice of the people in Parliament, especially to ensure equitable access to development opportunities across parishes.
 - c. A **Local Appointed Head of State** with specific responsibilities to deepen citizen participation in governance.
- 2) **An Improved the Judiciary, especially through accession to the full jurisdiction of the CCJ** to enable judicial decisions that can transform our society in partnership with the executive and legislative branches of government.
- 3) **A Strengthened Public Service** to provide a set of independently formulated scientific, technical, and professional services in support of the executive function of government, especially through constitutional protection for:
 - a. *Office of the Public Defender*

- b. *Electoral Commission of Jamaica*
 - c. *Office of the Political Ombudsman*
 - d. *Integrity Commission*
- 4) **A Strengthened Local Government** system of self-interested local government representatives to ensure that communities have access to social and economic policies they can influence.
- 5) **Increased Citizen Participation through Participatory Budgeting** intended to provide communities with the opportunity to practice direct democracy while pursuing their own community development interests and needs.

D. CONCLUSION

Jamaica requires constitutional changes that will enhance equitable and sustainable economic development. In the move to become a Republic, comprehensive changes to the structure of government are essential, not merely changes related to the Head of State. These changes relate to improving the size and structure of parliament, the judiciary, public service, local government and the practice of direct democracy as discussed above. They provide a framework for effective oversight of executive action that will cut the cost of corruption, as well as a framework for inclusive decision-making that will enhance economic development and improve living standards.

Achieving the democratic and economic outcomes envisioned will take time, perhaps decades. A high level of active and informed citizen engagement supported by a continuous, extensive public education, information-sharing and communication programme are required to achieve expected outcomes. It is essential that appropriate investment in a well-designed public education programme to upgrade and enhance citizen engagement be undertaken as soon as possible. This would be the most important human capital investment undertaken to transform governance as well as the economy in Jamaica since 1962.

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