



LEGAL & ECONOMIC PERSPECTIVES FOR CONSTITUTIONAL CHANGE

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TABLE OF CONTENTS

A. BACKGROUND/INTRODUCTION	2
B. ECONOMIC RATIONALE FOR CONSTITUTION CHANGE	3
C. PARLIAMENT	4
C1. House of Representatives.....	4
C1.1 Current Constitutional Arrangements.....	4
C1.2 RECOMMENDATIONS for Redesigning the House of Representatives	5
C2. The Senate	8
C2.1. Current Constitutional Arrangements.....	8
C2.2 RECOMMENDATIONS for Redesigning the Senate.....	8
C3. The Head of State of Jamaica	11
C3.1 Current Constitutional Arrangements.....	11
C3.2 RECOMMENDATIONS for Redesigning the Office of the Head of State.....	12
D. THE JUDICIARY	13
D1 Current Constitutional Arrangements	13
D1.1 Terms of Engagement for Supreme Court & Court of Appeal Judges	13
D1.2 Appeals to the Judicial Committee of the Privy Council	13
D1.3 Judicial Service Commission.....	13
D2 RECOMMENDATIONS for the Judiciary	13
E. PUBLIC SERVICE.....	14
E1 Current Constitutional Arrangements	14
E1.1 Constitutional Provisions	14
E1.2 Institutional Arrangements to Support Citizens	14
E2 RECOMMENDATIONS for the Public Service	15
F. LOCAL GOVERNMENT	16
F1 Current Constitutional Arrangements	16
F1.1 Legal Framework.....	16
F1.2 Powers of Local Authorities	17
F2 RECOMMENDATIONS for Local Government	18
G. DIRECT DEMOCRACY THROUGH PARTICIPATORY BUDGETING	19
G1 Current Constitutional Arrangements	19
G2 RECOMMENDATIONS for Direct Democracy	19
H. CONCLUSION	20

A. BACKGROUND/INTRODUCTION

On January 10, 2022, the Ministry of Legal and Constitutional Affairs (MLCA) was established specifically to “spearhead the most meaningful and comprehensive post-Independence constitutional reform work to be undertaken in Jamaica.”¹ In April 2023, the MLCA established a Constitutional Reform Committee (CRC) to “provide expert guidance and oversight to the Government and people of Jamaica.” After much public discussion about the absence of public education about the constitution and mechanisms for the Jamaican people to become involved in the constitutional reform process, the CRC has encouraged Jamaicans to engage the process and make submissions to the CRC.

This paper is a contribution to this constitutional reform process. It is intended to highlight the importance of constitutional change to enhance economic development. This has been a major gap in public discussions. It is also a response to many Jamaicans who do not see how constitutional change, and the move to become a Republic, will address the daily “bread and butter” issues they face.

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 as Jamaica engages a process of constitutional reform to become a Republic. 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 is the real meaning of completing the decolonization process beyond the symbolism of removing the foreign, hereditary monarch as Head of State.

Here, it is suggested that comprehensive constitutional reform to complete the decolonization process and give real meaning to people sovereignty 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.**

Under each heading, an explanation is provided of why the relevant function is needed to ensure the rule of law, the current provisions in the constitution and the law, and the changes that are needed. The changes specified take into account that adequate opportunity to undertake the standard tasks of representation through consultation with electors is an essential aspect of the rule of law.

¹ See Terms of Reference for the Constitutional Reform Committee, Ministry of Legal & Constitutional Affairs, finalised March 22, 2023 (with further addition on April 6, 2023), Section 1.5, p.2.

B. ECONOMIC RATIONALE FOR CONSTITUTION CHANGE

Jamaica's economy has been underperforming for more than 40 years, resulting in annual GDP per capita of about US\$5,187 (as of 2022)² which is lower than it was in 1972. Real GDP per capita has grown at less than 1% per year since 1980. 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.³ 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. It would take Jamaica an annual rate of growth of more than 6% for 40 years to achieve living standards (GDP per capita) of approximately US\$50,000 per annum, which is the average living standard in developed countries.⁴

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However, Jamaica's experience over the past 61 years suggests that such development and growth cannot be taken for granted. Empirical evidence from 128 countries suggests that raising Jamaica's standard of living will require simultaneously devoting resources to: (a) growing capacity to innovate; (b) growing capacity to produce (and export) capital goods and services; and upgrading key institutions, including institutions of governance. Therefore, 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 size and structure of parliament 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. Such changes must be designed to enable simultaneous change in a party's leadership when the parliamentary party deems it necessary to implement provisions in the constitution that allow the removal of the Prime Minister with a vote of no-confidence.⁵ 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.

² See World Bank data <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=JM>

³ See James, Vanus & Hamilton, Rosalea (2022). *Strategic Factors In Economic Development Revisited*, Tapia House Movement, July 2022.

⁴ Estimate from 2019 data used in James & Hamilton (2022).

⁵ See **section 71(2)** of the Jamaica Constitution.

C. PARLIAMENT

This section addresses the elements of the Parliament of Jamaica. Currently, the Parliament of Jamaica consists of His Majesty King Charles III, an appointed Senate and an elected House of Representatives (the House) (**s.34**). **Chapter IV** (ss. 27 – 33) describes the office and functions of the Governor General (GG); **Chapter V** (ss. 34 – 67) describes the composition, powers, procedures, summoning, prorogation and dissolution of Parliament as well as delimitation of constituencies; and **Chapter VI** (ss.68 – 96) details Executive Powers.

C1. House of Representatives

A **House of Representatives** is needed to undertake four (4) key functions: (1) *the legislative function of the government*; (2) *the executive function of the government*; (3) *oversight of the Executive function*; and, importantly (4) *organize and facilitate Public Petitioning of the Legislators*.

C1.1 Current Constitutional Arrangements

C1.1.1 Composition of the House of Representatives

Currently, the fourteen (14) parishes in Jamaica are subdivided into sixty-three (63) constituencies, as prescribed by the *Constituencies (Boundaries) Order, 1959*, and shall return one member to the House (**s.66**).⁶ Therefore, the winning majority in the House must comprise at least 32 MPs. However, by **s.70(1)**, the PM may appoint an unrestricted number of MPs to Cabinet, with no less than 2 and no more than 4 from the Senate. This means that the Executive can outnumber the non-executive MPs. The consequence of this design is that the non-executive MPs cannot provide effective oversight and scrutiny of executive action, and cannot control the law-making process.

C1.1.2 House Sessional Select Committees

Currently, **s.68 (1)** of the **House Standing Orders** provides for the following Sessional Select Committees:

1. The Public Accounts Committee
2. The Standing Order Committee
3. The House Committee
4. The Committee of Privileges
5. The Regulation Committee
6. The Public Administration and Appropriation Committee
7. The Internal and External Affairs Committee
8. The Economy and Production Committee
9. The Human Resource and Social Development Committee
10. The Infrastructure and Physical Development Committee
11. The Integrity Commission Oversight Committee
12. The Ethics Committee

⁶ A Standing Committee of the House continuously reviews the number and the boundaries of constituencies and reports to the House within 4 to 6 years from the date of submission of its last report (**s.67**).

According to **s.68(3)** of the **House Standing Order**, a sessional select committee shall consist of not less than six (6) members including the chairman, none of whom shall be a Minister or Parliamentary Secretary. However, there are no rules in the Standing Order or in the Constitution that require these Parliamentary Committees to function as oversight committees.

C1.1.3 Public Petitioning of the Legislators

The “right to petition” is recognized and encouraged by the GOJ in the **Petition Policy** which states: “*As a citizen, you have the right to petition your government. The power lies within you to be an advocate for good governance and an agent of change.*”⁷ However, this “right” is **not** embodied in the Constitution nor in ordinary legislation.

Further, within the current structure the “right to petition government” effectively means petitioning the executive. However, in ensuring the rule of law, the fundamental intent is a right to petition the legislature within a structure that enables effective legislative oversight and control of executive action and non-executive control of the lawmaking process.

C1.2 RECOMMENDATIONS for Redesigning the House of Representatives

C1.2.1 Key Principles

To effectively carry out the functions specified under **C1** above, an effective redesign of the House is required to enable legislative oversight and accountability of the executive to the legislature, non-executive control of the lawmaking process, and improved participatory governance. This will require specific provisions for effective oversight in the Standing Orders and in the Constitution. Changes related to the House should be guided by the following principles:

1. Ensure that the size of the Executive is smaller than the non-Executive members of the Legislature

The number of non-executive members should be much larger than the number of the Executive members and, in general, the number should be set so that the non-Executive legislators of the winning party will always significantly outnumber and out-vote the Executive. This will contribute to effective oversight of executive actions and accountability.

2. Establish Appropriate Oversight Committees

To enable effective oversight of the Executive function of the government and to ensure participatory governance, Committees should be redesigned to ensure that all Ministries, Departments and Agencies (MDAs) of government, including private companies that obtain most of their funding from government are subject to legislative oversight.

3. Establish the Right of Citizens to Petition

Committees should schedule and hold regular and timely hearings as necessary to enable and facilitate the public to share and communicate its information with the legislature in appropriate forms. Information sharing and communication relate to data, concerns, grievances, whistleblowing, or requests that would improve the capacity of the legislature to undertake its oversight and law-making functions.

⁷ See link: <https://opm.gov.jm/participate/jamaica-House-petition/petition-policy/#:~:text=As%20a%20citizen%2C%20you%20have,and%20an%20agent%20of%20change>

C1.2.2 Proposed Constitutional Changes

I. Provisions to Change the Composition of the House

- a. **Section 69(1)** should include not only a minimum threshold of Ministers in the Cabinet, “**not being less than eleven**,” but also an **upper threshold**: “**not being less than eleven and no more than 16 members**.”⁸ The larger the upper threshold, the larger must be the House.
- b. **Modify section s.66 to increase the number of constituencies to 95** and, in turn, the number of members of the House to at least 95. This will mean: (i) a minimum overall governing majority of 48; and (ii) a non-executive winning majority of 32.⁹ This gives just enough non-executive members to effectively operate the oversight committees of the House.

II. Provisions to Establish Effective Oversight Committees of Parliament

- a. Make explicit the role and objective of the relevant Committees assigned to function as **Oversight Committees** by adding a provision to the *Powers and Procedure of Parliament* in **Part 2, Chapter V** of the Constitution.
- b. The existing Sessional Select Committees should be updated and assigned **oversight responsibilities** as follows:
 - i. **The Public Accounts, Administration and Appropriations Committee**
 - a. *Ministry of Finance and the Public Service*
 - ii. **The Internal and External Affairs Committee**
 - a. *Ministry of National Security*
 - b. *Ministry of Foreign Affairs and Foreign Trade*
 - c. *Ministry of Justice*
 - d. *Ministry of Legal and Constitutional Affairs*
 - iii. **The Economy and Production Committee**
 - a. *Ministry of Economic Growth and Job Creation*
 - b. *Ministry of Industry, Investment and Commerce*
 - iv. **The Human Resource and Social Development Committee**
 - a. *Ministry of Education and Youth*
 - b. *Ministry of Health and Wellness*
 - c. *Ministry of Labour and Social Security*
 - v. **The Infrastructure and Physical Development Committee**
 - a. *Ministry of Agriculture, Fisheries, and Mining*
 - b. *Ministry of Transport and Mining*
 - c. *Ministry of Science, Energy, Telecommunications and Transport*
 - vi. **The Tourism and Community Development Committee (to be added)**
 - a. *Ministry of Tourism*
 - b. *Ministry of Culture, Gender, Entertainment and Sport*
 - c. *Ministry of Local Government and Community Development*¹⁰

⁸ The smallest number of Cabinet Ministers in the past ten (10) years was 16.

⁹ The non-executive winning majority = 48 min governing majority – 16 Cabinet Ministers = **32**

¹⁰ With adequate redesign of Local Government for participatory governance by communities, a Ministry of Local Government may be unnecessary.

- c. Detail the rules related to the role and function of the Oversight Committees (listed above) in the *House Standing Orders*, including requirement to undertake the responsibilities listed below:
 - i. *Identify issues and problems suitable for parliamentary committee review, and gather information, consider, compare, and evaluate alternatives.*
 - ii. *Monitor and evaluate relevant executive divisions, agencies, and programmes with respect to policy, spending, and implementation to determine their effectiveness and efficiency.*
 - iii. *Investigate matters arising, including through subpoenas, with respect to allegations of wrongdoing by the Executive.*
 - iv. *Hold hearings and compel executive testimony to facilitate public petitioning on all matters arising under (a) to (c), including the national budget.*
 - v. *Prepare and submit proposals to the House for related legislation to reflect the findings from the oversight process.*
- d. In cases, such as the budget law, where specific schedules of hearings are required to ensure adequate public participation in the oversight process, the schedule of hearings should be specifically mandated.
- e. The Chairperson and majority members of each Oversight Committee must be nominated by the majority party and elected by the House.
- f. The minority members of each committee must be nominated by the minority party and elected by the House.
- g. Remuneration for the Chairperson of each oversight committee should reflect significant responsibilities assigned, with emoluments equivalent to those of a Cabinet minister.

III. Provisions for Public Petitioning of the Legislators

- a. Modify **Chapter III – Fundamental Rights & Freedoms** the Constitution and/or add extend the Powers and Procedure of Parliament in Part 2, Chapter V of the Constitution to include the right to petition.
- b. Modify the **House Standing Order** to provide rules for public petitioning, including:
 - i. The schedule of all hearings as part of the work of each Committee during a session of the House.
 - ii. The rules governing public participation in the process, including the time and form in which submissions should be made.
 - iii. Arrangements to facilitate public participation, including any arrangements for technical support to individuals seeking to make submissions to a Committee.
 - iv. Rules to protect citizens from retaliation or persecution by the Executive for submitting petitions or expressing their views to legislators.

C2. The Senate

An elected **Senate** is needed to ensure that changes in the House do not create a deficit in representation and to function as a senior representative body that undertakes five (5) functions: (1) *the legislative function of the parliament*; (2) *oversight of the Executive function*; (3) *protection of minority rights and the equality of status of the parishes of the country*; (4) *organization and facilitation of public petitioning of the Senators*; and (5) *advice and consent on the appointment, discipline and removal of senior government officials and members of the judiciary*. The Senate should be designed to provide both continuity and leadership, especially in periods of uncertainty after the House elections.

C2.1. Current Constitutional Arrangements

C2.1.1 Composition of the Senate

Currently, the Senate comprises 21 appointed individuals: 13 senators appointed by the GG acting on the advice of the PM; and 8 senators appointed by GG acting on the advice of the Leader of the Opposition (**s.35**). The qualification for membership of the Senate includes “a *commonwealth citizen of the age of twenty-one years or upwards*” (**s.39(a)**). The tenure of Senators is the same as the tenure for MPs. At least 2, and no more than 4, Senators must be in the Cabinet (**s.69(3)**).

C2.1.2 Senate Sessional Select Committee

Currently, **s.66(1)** of the **Senate Standing Orders** provide for the following Sessional Select Committees:

- (a) the Standing Orders Committee
- (b) the Committee of Privileges
- (c) the Regulations Committee
- (d) the Senate Committee

According to **Senate Standing Orders s.66(3)**, a sessional select committee shall consist of not less than six (6) members including the chairman, none of whom shall be a Minister. However, there are no rules in the Standing Orders or in the constitution that require functioning oversight committees or facilitation of public petitioning.

This design provides a body that does not represent the electors of the country and cannot undertake the functions listed in **s.2.1** above. It also cannot fill the vacuum of effective representation created by establishment of a House with oversight capacity and responsibilities.

C2.2 RECOMMENDATIONS for Redesigning the Senate

C2.2.1 Proposed Structure of the Senate – Key Features

To meet the design requirements of a Senate in **C2** above, the following changes are recommended to **Part 1, Chapter V**:

1. **Election of all Senators** – Election of all Senators enables them to function with the responsibility to consult with their constituents before making law as well as to function with the authenticity and credibility of representatives of the electors. **Section 35** should be modified to provide for election of senators.
2. **The Constituencies of Senators** should be the Parishes of Jamaica.

3. **Three (3) Senators should be elected per parish – yielding a total of 42 Senators.**
This is the provision for disproportional representation that guarantees equality of status of each geographical area of the country.
4. **Special functions** should be assigned to the Senate to provide the basis of protection of minority rights. Accordingly, among the functions assigned must be:
 - I. Responsibility to monitor and legislate steps intended to guarantee the right of each parish to equitable access to development opportunity.
 - II. Responsibility to monitor and evaluate the economic and social development of each parish.
 - III. Responsibility to monitor and finalize parish-based allocations of the annual capital budget within broad parameters that guide such allocations, and right to advice and consent on the capital budget with a vote of at least 2/3 of Senators.
 - IV. Responsibility to hold adequate and timely hearings to afford citizens in each parish the opportunity to consider the fairness and adequacy of the allocations of the capital budget among the parishes.

✓ **NOTE:** *This will require specific deadlines for the Ministry of Finance to submit its capital budget proposals to the Senate to facilitate conduct of such hearings.*
5. **Tenure & Eligibility of Senators** – Senators should have a tenure of 6 years, with a fixed election date. Senators should be required to meet the additional standard of eligibility of 30 years or older, and satisfy all the conditions of eligibility to be elected to the House. Here, **s.39** of the constitution should be modified with related provisions inserted to adjust **the age requirement and tenure of senators.**
6. **No Senator should be in the Cabinet.**
7. **Swearing in Requirement** - On swearing in, the following should be required:
 - I. Senators shall elect a President of the Senate - not an elected senator. President to administer the oath of office.
 - II. Each party shall elect its party leader in the Senate.
 - III. Senate shall elect the Committee Chairpersons, except that the Chairperson of the Rules and Privileges Committee shall be a member of the Minority, if willing to serve.
8. **Majority Leader** - The Majority leader is the person elected by the majority party and shall be responsible for controlling the agenda of the Senate by scheduling debates and votes. In consultation with President of the Senate, the Majority Leader shall appoint the majority members to each Senate Oversight Committees, with representation reflecting the overall composition of the Senate.
9. **Minority Leader** - The Minority Leader is the person elected by the minority party. In consultation with the President of the Senate, the Minority Leader shall appoint the minority members to each Senate Oversight Committee, with representation reflecting the overall composition of the Senate.
10. **Seniority of Members** - Seniority of members of the majority shall be determined by the Majority Leader, who shall consider in his ranking factors of merit such as length and quality of public service and service to civil society, as well as academic qualifications, credentials, and performance. Seniority of members of the minority shall be determined by the Minority leader, who shall consider in his ranking factors of merit such as length and quality of public service and service to civil society, as well as academic qualifications, credentials, and performance.
11. **Remuneration** - Remuneration for the Majority Leader shall be not less than 98% of that of the PM with emoluments equivalent to those of a Cabinet minister. Remuneration of members of Oversight Committee should be determined by an independent Salaries Review Commission.

C2.2.2 Proposed Structure of the Senate – Oversight Committees

To strengthen effective oversight of the Executive function and participatory governance, Senate Oversight Committees should be established (similar to the House) with the following responsibilities:

- 1. The Public Administration and Appropriation Committee**
 - a. Ministry of Finance and the Public Service
- 2. The Internal and External Affairs Committee**
 - a. Ministry of National Security
 - b. Ministry of Foreign Affairs and Foreign Trade
 - c. Ministry of Justice
 - d. Ministry of Legal and Constitutional Affairs
- 3. The Economy and Production Committee**
 - a. Ministry of Economic Growth and Job Creation
 - b. Ministry of Industry, Investment and Commerce
- 4. The Human Resource and Social Development Committee**
 - a. Ministry of Education and Youth
 - b. Ministry of Health and Wellness
 - c. Ministry of Labour and Social Security
- 5. The Infrastructure and Physical Development Committee**
 - a. Ministry of Agriculture, Fisheries, and Mining
 - b. Ministry of Transport and Mining
 - c. Ministry of Science, Energy, Telecommunications and Transport
- 6. The Tourism and Community Development Committee**
 - a. Ministry of Tourism
 - b. Ministry of Culture, Gender, Entertainment and Sport
 - c. Ministry of Local Government and Community Development

C2.2.3 Proposed Structure of the Senate – Committees Rules

- i. Detail the rules related to the roles and functions of the Senate Oversight Committees by adding suitable provisions to the ***Powers and Procedure of Parliament*** in **Part 2, Chapter V** of the Constitution.
- ii. Detail the rules related to the role and function of the Oversight Committees in the ***Senate Standing Orders***. Include rules to undertake the following responsibilities:
 - (a) *Identify issues and problems suitable for parliamentary committee review, and gather information, consider, compare, and evaluate alternatives.*
 - (b) *Monitor and evaluate relevant executive divisions, agencies, and programmes with respect to policy, spending, and implementation to determine their effectiveness and efficiency.*
 - (c) *Investigate matters arising, including through subpoenas, with respect to allegations of wrongdoing by the Executive.*
 - (d) *Hold hearings and compel executive testimony to facilitate public petitioning on all matters arising under (a) to (c), including the national budget.*
 - (e) *Prepare and submit proposals to the House for related legislation to reflect the findings from the oversight process.*

- iii. Within the purview of the **Public Administration and Appropriations Committee of the Senate**, the following should also be assigned:
 1. Responsibility to monitor and legislate steps intended to guarantee the right of each parish to equitable access to development opportunities.
 2. Responsibility to monitor and evaluate the economic and social development of each parish.
 3. Responsibility to monitor and make final recommendations to the Senate on the parish-based allocations of the annual capital budget within broad parameters that guide such allocations; and, exercise of the right to advice and consent on the capital budget with a vote of at least 2/3 of Senators.
 4. Responsibility to hold adequate and timely hearings to afford citizens in each parish the opportunity to consider the fairness and adequacy of the allocations of the capital budget among the parishes.

✓ *NOTE: This will require specific deadlines for the Ministry of Finance to submit its capital budget proposals to the Senate to facilitate the conduct of such hearings.*
- iv. Oversight committees or appropriately constituted subcommittees should also carry out the **Senate's special function of advice and consent related to appointing, disciplining, and removing senior government officials and members of the judiciary.**
- v. With respect to the lawmaking function of the Senate, provide for reconciliation of differences between proposed legislation of the Senate and the House by establishing **Parliamentary Reconciliation Committees**, with appropriate rules to ensure effective and timely passage of Bills if agreed.
- vi. Include similar provisions for **public petitioning of the Senators** as outlined in **sec. C1.2.2 III** above.

C3. The Head of State of Jamaica

A **Head of State** is needed to carry out three main functions: (1) *vest the executive power of the State*; (2) *assent to legislation*; and (3) *carry out special functions* as prescribed.

C3.1 Current Constitutional Arrangements

Currently, the British Monarch serves as Head of State with a local representative appointed to serve as Governor General (GG) (**s.27**). The Monarch has vested all executive authority to the GG who carries out specific roles and functions according to rules outlined in **s.32**. These roles/functions include:

a. Swearings-in and/or Appointments of:

- i. the Prime Minister, the Leader of Opposition, Cabinet Ministers, the Attorney-General, the Chief Justice, the President of the Court of Appeal and other members of the Judiciary;
- ii. Members of the Services Commissions; and
- iii. Privy Councillors, the Custos Rotulorum of each Parish, the Chief of Defence Staff, the Public Defender, the Political Ombudsman, the Commissioner of INDECOM, and the Contractor-General.

- b. **Chairing meetings of the Privy Council (s.88)** which advises the GG on the exercise of the Prerogative of Mercy (**s.90**) and appeals from public officers.
- c. **Formal assent to:**
 - i. Bills adopted by the Parliament;
 - ii. Recommendations from the Prime Minister for proroguing or dissolving Parliament; and
 - iii. Conferral of Jamaican Honours and Awards.
- d. **Ceremonial and Social duties**, including, *inter alia*:
 - i. Delivery of the “Throne Speech” in a joint sitting of both Houses
 - ii. Receipt of the credentials of newly designated Ambassadors to Jamaica
 - iii. Hosting State banquets at King’s House for Members of the Royal Family or a foreign HOS, and annually, in honour of the Members of the Diplomatic Corps accredited to Jamaica
 - iv. Serving as Patron of several organizations such as St. John Ambulance, Jamaica Agricultural Society, the Jamaica Cancer Society and the National Road Safety Council
 - v. Serving as the “Visitor” for the University of Technology, Jamaica

C3.2 RECOMMENDATIONS for Redesigning the Office of the Head of State

1. **S.27** of the Constitution should be modified to remove the British Monarch and institute a President of Jamaica with specific functions clearly stated.¹¹
2. **S.31** should be modified to include staffing required to support the specific functions of the President.
3. **S.60(3)** should be modified to provide that, on receipt of bills passed by the House and Senate, the President should signal the intention to assent or exercise a veto by refusing to assent within a specified period. Provision should also be made that if the President declines to assent, the President’s veto may be overridden by a 2/3 majority of each of the House and Senate, and that the bill becomes law on the basis of that override.
4. **Chapter IV** should be extended to include:
 - a. Eligibility requirements for the President
 - b. Nominations for the position of President to be made by the House
 - c. Appointment of President by 2/3 majority vote of the House and Senate, sitting jointly.

¹¹ S.32 details how to exercise the functions of the GG and does not clarify the specific functions of the GG.

D. THE JUDICIARY

In a society governed by the rule of law, an independent judiciary is needed to interpret, defend, and apply the law, and adjudicate legal disputes, in a fair and consistent manner. Through the power of judicial review, the judiciary upholds the Constitution and reviews the constitutionality of laws, executive actions, and government policies.

D1 Current Constitutional Arrangements

Chapter VII of the constitution details provisions for the Judicature, specifically the Supreme Court, the Court of Appeal, Appeals to the Judicial Committee of the Privy Council and the Judicial Service Commission.

D1.1 Terms of Engagement for Supreme Court & Court of Appeal Judges

Provisions for the appointment, continuation in office, disciplining, removal, tenure and remuneration of judges are detailed as follows:

- a. the **appointment** of the Chief Justice (**s. 98(1)**), Acting Chief Justice (**s.99(1)**), the President of the Court of Appeal (**s.104(1)**) and Acting President (**s.105(1)**);
- b. the **continuation in office** of Supreme Court and the Court of Appeal judges after age 70 (**s.100 (2)** and (**s.106 (2)**), respectively);
- c. the **disciplining or removal** of Supreme Court and the Court of Appeal judges (**s.100 (6,8&9)** and (**s.106 (6,8&9)**), respectively); and
- d. the **tenure** of Supreme Court and the Court of Appeal judges (**s.100 (1)** and (**s.106 (1)**), respectively).

D1.2 Appeals to the Judicial Committee of the Privy Council

Appeals lie from the decisions Court of Appeal to “Her Majesty in Council” (i.e., the Judicial Committee of the Privy Council) **as of right** and with **the leave of the Court of Appeal** in specific cases detailed in **s.110(1) and (2)** respectively.

D1.3 Judicial Service Commission

Chapter VII, Part 4 provides for a **Judicial Service Commission (JSC)** which appoints, removes and exercise disciplinary control over judges (**s.111 – 113**). The members of the JSC are the Chief Justice, who acts as Chairman, the President of the Court of Appeal, the Chairman of the Public Service Commission (PSC) and three (3) other members appointed in a similar manner as members of the PSC (**s.111(2)**). The JSC advises the Governor General on matters concerning appointments, promotions, acting appointments, transfers, study leave and separation of the Judiciary.

D2 RECOMMENDATIONS for the Judiciary

1. **D.2.1 Judicial independence should be strengthened** to safeguard the judiciary's role and to enable impartial decisions without external influence or interference. The constitutional provisions outlined in s.2.1.1 (a) – (h) above should be amended by replacing the role of the Prime Minister with that of an elected Senate.
2. **D.2.2 Repeal s.110 and pursue accession to the full jurisdiction of the Caribbean Court of Justice (CCJ).** This will enable final judicial decisions that reflect an evolving regional jurisprudence that shapes our economy and society.
3. **D.2.3 Exclude the Chairman of the Public Service Commission from the Judicial Service Commission.** The judiciary is not part of the public service under the control of the executive.

E. PUBLIC SERVICE

A civil service or public service is needed to provide a set of independently formulated scientific, technical, and professional services in support of the executive function of government. Employees in the civil service are typically hired, hold an institutional tenure that survives transitions of political leadership, and operate under arrangements that guarantee their independence from political interference by the executive. Special public services are also needed to protect the fundamental rights of citizens and to support citizens in the exercise of their fundamental civic responsibilities, including the responsibility to elect representatives to make law.

E1 Current Constitutional Arrangements

E1.1 Constitutional Provisions

Chapter IX of the constitution details provisions for the Public Service. **Section 124** provides for the **Public Service Commission**, charged with the responsibility of dealing with matters relating to the appointment, removal and exercise of disciplinary control in respect of public officers. The power to appoint, to remove and to exercise disciplinary control over public officers is vested in the Governor-General acting on the advice of the *Public Service Commission* (**s.124**). The *Public Service Regulations, 1961* details how the Commission carries out appointment, separation, discipline and the selection of public officers for national scholarships and study leave.

Chapter IX, Part 2, s.129, provides for the *Police Services Commission*, and **Part 3, ss.132 - 34**, provides for pensions for public officers.

Chapter X provides for, *inter alia*, the powers and procedures of all Commissions established by the Constitution. Any Commission may regulate its own procedure, but this is subject to “*the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister*” (**s.135(1)**).

E1.2 Institutional Arrangements to Support Citizens

Special agencies have been established to support citizens in exercising their democratic responsibilities and to protect their rights. Several have been established as interim legislation which continue in force until a relevant provision is made in the Constitution of Jamaica. These Acts include:

E1.2.1 Office of the Public Defender

The Office of the Public Defender was established by the *Public Defender's (Interim) Act 2000* and is responsible for safeguarding the rights of citizens against potential abuses by government authorities and other entities. It plays a crucial role in ensuring that individuals have access to legal representation and protection when their rights are violated. However, there is no constitutional protection for this Office.

E1.2.2 Electoral Commission of Jamaica (ECJ)

The Electoral Commission of Jamaica was established by the *Electoral Commission (Interim) Act (2006)* “to safeguard the democratic foundations of Jamaica by enabling eligible electors to elect, through free and fair elections, their representatives to govern Jamaica” (**s.5**). The functions of the ECJ includes, *inter alia*, operationalizing provisions in **s.36** and **s.67** of the constitution pursuant to **s.6(1)(a)** and **s.6(1)(j)** of the *Electoral Commission (Interim) Act*, respectively. However, there is no constitutional protection for the ECJ.

E1.2.3 Office of the Political Ombudsman

The Office of the Political Ombudsman was established by the *Political Ombudsman (Interim) Act, 2002* to prevent political violence, intimidation, and unethical behavior during elections and other political processes. The Office plays a critical role in promoting peaceful and fair political activities. However, there is no constitutional protection for this Office.

E1.2.4 Integrity Commission

The Integrity Commission was established by the *Integrity Commission Act, 2017*. The main objective of the Commission is to promote and enhance the integrity of public officials and public institutions in Jamaica. It is responsible for investigating and preventing corruption, as well as ensuring that individuals in public office adhere to ethical standards and financial disclosure requirements.

E2 RECOMMENDATIONS for the Public Service

1. Modify the constitution to include constitutional protection for:

- a. **Office of the Public Defender** to safeguard its ability to operate independently and enable effective challenge to government actions without fear of retribution;
- b. **Electoral Commission of Jamaica** to ensure its independence from partisan influences, promote public trust in the electoral system and prevent the manipulation of election processes by those in power, thereby maintaining the democratic principle of free and fair elections; and
- c. **Office of the Political Ombudsman** to ensure that investigations and actions without can be taken without political interference, thereby preserving the integrity of the democratic process and promoting political civility.
- d. **Integrity Commission** to ensure that the public can be informed about the integrity of public officials and public institutions. This not only builds public trust, but also provides greater independence for the Commission and more protection from political interference and external pressures.

2. Modify Chapter V & Chapter X, s.135(1) of the constitution to include oversight of Commissions/Agencies of Government by the Senate and replace consent of the Prime Minister with consent of the Senate.

3. Modify the constitution to ensure that appointments and discipline of senior public officers are done with the advice and consent of the Senate and not the Prime Minister.

F. LOCAL GOVERNMENT

A system of self-interested local government bodies is needed to ensure that communities have access to social and economic policies based on:

- a. intimate knowledge of local circumstances and interests;
- b. intense community interest, loyalty and cooperation;
- c. impactful services produced for citizen-consumers by government officials;
- d. highly accessible information about civic responsibility and governance;
- e. adequate protection from potential abuses of central power; and
- f. the opportunity to practice democracy in a way that reflects the political experiences, culture and confidence of the locality.

Such a local government system brings government closer to the people and ensures effective policy-making that addresses the needs of local communities.

F1 Current Constitutional Arrangements

F1.1 Legal Framework

There was no reference to Local Government in the constitution until *The Constitution (Amendment) (Local Government) Act, 2015*. This was followed by three (3) pieces of ordinary legislation, which emerged after more than a decade of local government reform discussions,¹² and provide the central legislative framework for local government:

1. **Local Governance Act, 2016:** This Act aims to devolve decision-making powers to local communities, empowering them to have a greater say in matters that directly affect them. It promotes citizen participation, transparency, and accountability in local government processes.
2. **Local Government (Unified Service and Employment) Act, 2016:** This act addresses employment in local government and aims to create a unified system for human resource management across all local authorities. It seeks to improve efficiency, fairness, and transparency in employment-related processes.
3. **Local Government (Financing and Financial Management) Act, 2016:** This Act is designed to enhance the financial management and sustainability of local government entities by ensuring that local authorities have the necessary financial resources to carry out their responsibilities effectively, and contribute to local development.

¹² In 2003, a Joint Select Committee of Parliament on Local Government Reform was established to advise Parliament on issues related to Local Government Reform. A key recommendation was the need for a comprehensive revision of about eighty (80) laws relating to local government. The *Local Governance Act, 2016*, the *Local Government (Unified Service and Employment) Act, 2016*, and the *Local Government (Financing and Financial Management) Act, 2016* have consolidated several of these local government laws.

F1.2 Powers of Local Authorities

The *Local Governance Act, 2016* categorizes Local Authorities, as Municipal Corporations and City Municipalities (or Town Municipalities) (**s.6**). The Municipal Corporation is a body corporate empowered to make by-laws, regulations and rules for the good governance of the parishes through a Municipal Council. There are two arms of the Local Authorities:

1. The **political arm** comprising Councillors, headed by a Mayor who chairs the Municipal Council and is responsible for determining policies. By **s.18** a Mayor can be impeached by a signed petition of 25 percent of registered voters or a two-thirds motion of Council members.
2. The **administrative arm** headed by a Chief Executive Officer¹³ who is responsible for the planning, execution, conduct and administration of the affairs of the Municipal Council (**s.24(2)**).

Municipal Councils have the power to raise revenue¹⁴ and, from time to time, they receive transfers from central government for specific purposes. They are responsible for local infrastructure and poverty alleviation, and share responsibility with central government for other services such as environmental health; supply of water; and management of development projects. By **s.22(1)** of the *Local Governance Act, 2016*, Municipal Corporations are also required to facilitate participation of all relevant stakeholders in their jurisdiction, including MPs, businesses, and associations of residents.

Municipal Councils also have the power to appoint a committee for any general or special purpose and for any function, except the power to fix rates or borrow money (**s.37(1)**). Specific provisions are made for: (i) **Finance Committees** to oversee budgets, plans and the financial management of Local Authorities (**s.38(4)**); and (ii) **Local Public Accounts Committees** to ensure that the performance of Local Authorities meet accountability, transparency, and ethical standards, as well as service delivery standards, and that financing and procurement practices conform with legal requirements, standards and guidelines (**s.38(7)**).

Although the Municipal Council has the power to make by-laws, rules and regulations (**s.51(1)**), this power is subject to Ministerial notification and approval (**s.51(1)**). The Minister responsible for Local Government has discretionary power to make, amend or revoke any by-laws, rules or regulations made by the Municipal Council (**s.51(7)**). Further, under **s.42(1)**, the Minister has the power to dissolve a Municipal Council if, the Minister is satisfied that the Council is not competent to perform or persistently fails to perform its functions.¹⁵ This power has the effect of negating (or seems to be at odds with) the intention of the *Local Governance Act, 2016* to (i) facilitate the participation and empowerment of civil society and communities in local government processes (**s.3(f)**); and (ii) broaden the democratic process to ensure full participation in the local governance system and promote greater inclusiveness and equity for all sectors of the society (**s.3(g)**).

¹³ Note that the head of the administrative arm of Council is also secretary to the Council and is therefore called the **Secretary/Manager**. In the case of the Kingston & St Andrew Corporation this person is called the **Town Clerk**. In the Portmore Municipal Council this person is called the **Chief Administrative Officer**. See <https://www.localgovjamaica.gov.jm/roles-and-functions/>

¹⁴ Revenues are typically raised from property taxes, licenses, fees and fines.

¹⁵ By **s.43(1)**, such dissolution requires a signed petition by 15 percent of registered voters or a report of misconduct or persistent failure to discharge legal responsibilities.

In general, the Local Authorities have limited responsibility for the development of the local economy complementary to the responsibilities of the GOJ.

F2 RECOMMENDATIONS for Local Government

Modify the constitution to **provide constitutional protection for the system of local government**. Provisions should include the following:

1. Definition of Local Government and its powers
2. Power to make and implement policy in relation to its function and to raise revenue.
3. Power to make local law in relation to its policymaking and implementation function.
4. Enhancement of the scope of responsibilities to cover **economic development of the locality** complementary to those of the GOJ.
5. Updated budgetary provisions in relation to the scope of responsibilities and the power to make policy.
6. Strengthen the active participation of citizens in decision-making, through mechanisms such as the right to petition local government.
7. Removal of discretionary Ministerial power to make local policy and dissolve a Local Government;
8. Removal of Prime Ministerial power to call Local government elections; and
9. A requirement of the Municipal Councils to establish oversight committees.

G. DIRECT DEMOCRACY THROUGH PARTICIPATORY BUDGETING

Participatory budgeting (PB) is needed to provide communities with the opportunity to practice direct democracy while pursuing their own community development interests and needs.

G1 Current Constitutional Arrangements

There is no provision for participatory budgeting in the current Constitution. The closest arrangement is in the procedures for operation of the **Constituency Development Fund (CDF)** which requires constituency/community consultation “*at least once every two years to ensure that constituents have forum to articulate development needs and to participate in the identification and prioritization of plans and projects.*”¹⁶ However, the CDF was established to “*provide members of Parliament with financial resources to execute approved social and economic programs within their constituency.*”¹⁷ It was not intended to strengthen the process of citizen participation and foster participatory democracy and enable citizens to directly influence social and economic outcomes in their community.

G2 RECOMMENDATIONS for Direct Democracy

1. **Assign a share of the national budget** to participatory budgeting, allocated among the distinct communities served by a Community Development Committee (CDC) according to population and geographical area. This should replace and update the allocations under the Constituency Development Fund (CDF), up to 10% of the national budget.
2. **The Constituency Development Committees (CDCs) should manage the PB decision-making process**, relying on project design capacity building and technical assistance provided by the Local Governments.
3. **The CDCs should implement the community decisions** taken under the PB process.
4. **Using reports filed by the CDCs, the Jamaican Senate should be assigned responsibility for monitoring and evaluation** of the success of the PB process and its outcomes.

¹⁶ See *Revised Constituency Development Fund (CDF) Operational Procedures*, Financial Systems Unit, Ministry of Finance and the Public Service, March 27, 2019, p.4.

¹⁷ *Ibid*, p.3.

H. 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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