

DRAFT (22/5/95)

FINAL REPORT OF THE JOINT SELECT COMMITTEE OF THE HOUSES OF
PARLIAMENT ON CONSTITUTIONAL AND ELECTORAL REFORM

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I.

INTRODUCTION

The current process of Constitutional Reform had its start in 1991 with the formation of a Joint Select Committee on Constitutional and Electoral Reform to recommend the precise form and content of Constitutional Amendments both with respect to an Electoral Commission and other aspects of Constitutional Reform .

The Joint Select Committee, after a series of meetings and after considering the proposal from Rt. Hon. Edward Seaga, P.C. for the establishment of a Constituent Assembly for the purpose of framing a new Constitution, made the recommendation that Parliament establish a Constitutional Commission to examine proposals from the public as well as to initiate discussions on points raised by its own membership.

This recommendation came about because of the perceived need for greater public input and involvement in the entire Constitutional Reform process than was being achieved through the Joint Select Committee, which reflected the views of only the two political parties.

To this end, membership of the Commission was to be drawn from diverse sectors of the society including Educational Institutions, Trade Unions, the Legal Fraternity, the Church, the Press and groupings representing Women, Farmers, Youth and Private Sector Organizations.

Accordingly in February, 1992, the Attorney General and Minister of Justice, Hon. Carl Rattray, Q.C. announced that on the recommendation of the Joint Select Committee, Parliament had decided to suspend the work of the Joint Select Committee and to establish the Constitutional Commission. This Commission was given the wide mandate to receive and examine proposals from the general public, initiate public discussions in a meaningful way at various venues throughout the country, to prepare and disseminate such materials as are relevant to widening public knowledge and appreciation of the Constitution and to analyse and discuss such points as may be raised by its own members. The Commission was to formulate its recommendations on Constitutional and Electoral reform and to submit such recommendations to the Joint Select Committee by December, 1992.

The Commission held thirty-six (36) meetings, hosted thirteen (13) public fora in each of the parishes and received written submissions from one hundred and twenty-nine (129) individuals/organizations.

Parliament received the Report of the Constitutional Commission dated August, 1993, without that Commission having fully considered Chapter III on Fundamental Rights and Freedoms. The life of the Commission was subsequently extended by Parliament to enable it to give full consideration to Chapter III.

On 24th September, 1993, the Senate under Standing Order No. 72 re-appointed its Select Committee to recommend to the Legislature the precise form and contents of the Constitutional

Amendments both with respect to an Electoral Commission and other aspects of Constitutional Reform. This Joint Select Committee was then comprised of the following Senators:

Senator Hon. David Coore, Q.C.
Senator Hon. Dr. Peter Phillips
Senator Syringa Marshall-Burnett, C.D.
Senator Noel Monteith
Senator Oswald G. Harding, Q.C.
Senator Ryan G. Peralto
Senator Dorothy Lightbourne

who sat jointly with the Committee appointed by the House of Representatives.

On 5th October, 1993, the House of Representatives under Standing Order No. 76 passed a similar Resolution appointing the following Members of Parliament to the Joint Select Committee -

Hon. K. D. Knight,
Hon. Easton Douglas,
Mr. A.J. Nicholson,
Mrs. K. Kirlew-Robertson,
Dr. Fenton Ferguson,
Mr. Michael Peart,
Mr. Peter Bunting,
Mr. Arthur Nelson,
Rt. Hon. Edward Seaga, P.C.
Mr. Bruce Golding,
Dr. Neville Gallimore, C.D.

The re-appointed Joint Select Committee, at its first meeting held on 27th October, 1993, agreed to the appointment of Senator the Hon. David Coore, Q.C. as Chairman, and commenced its work by conducting a review of the Report of the Constitutional Commission. Subsequently, in February, 1994, the Committee received the Final Report of the Commission recommending reform to the Fundamental Rights and Freedoms Chapter and attaching as an appendix the text proposed by the Commission to replace the present Chapter III of the Constitution.

Following the prorogation of Parliament in April, 1994, the House Committee was re-appointed on 19th May, 1994, with the same membership with the addition of the Hon. Dr. Peter Phillips who had been recently elected to the House of Representatives. The Senate Committee was re-appointed on 20th May, 1994, without Dr. Phillips.

The Joint Select Committee at its initial sittings examined in detail the recommendations of the Constitutional Commission, section by section, and in September of 1994 published a Progress Report outlining its decisions on the various recommendations of the Commission. The

Progress Report also indicated the areas of disagreement within the Committee that would require further discussion prior to the Committee reporting to Parliament.

In an effort to have an even greater public input the Joint Select Committee invited the Public to submit memoranda making proposals for Constitutional Reform. After receipt of these memoranda the Committee extended invitations, to all those persons who had submitted memoranda prior to the deadline set by the Commission, to appear in person before the Committee to amplify their submissions. The Committee received thirty (30) written submissions from individuals and organizations and held seven (7) meetings for the purpose of hearing 19 oral presentations.

The Committee in all held thirty one (31) meetings, including a two day closed session on the 4th and 5th day of February, 1995, at Medallion Hall Hotel. At that closed weekend session the Committee examined the submissions of the public and sought to identify the fundamental outstanding issues remaining to be resolved before the Committee reported to Parliament.

The Committee was unable to conclude its work in the 1994/1995 Parliamentary year. The Senate under Standing Order No. 72 reappointed its members of the Select Committee on the 7th day of April 1995, while the House of Representatives under Standing Order No. 76 reappointed its members to the Select Committee on the 6th day of April 1995.

The Committee's final recommendations and the contents of the report were agreed at its meetings on the 10th and 24th May 1995.

II. OVERVIEW OF COMMITTEE'S MAIN RECOMMENDATIONS

The Committee's main recommendations are summarised below to provide an overview of the Joint Select Committee's approach to the task of Constitutional Reform. It should be noted that this Report is recommending amendments to the existing Constitution, unlike the 1962 Report which was proposing a new Constitution for independent Jamaica. Accordingly where this Report fails to mention a particular subject or issue, it should not be taken to mean that the subject was not considered but merely that this Committee proposes no change to the relevant provisions of the existing Constitution.

A. THE BASIC STRUCTURE OF THE CONSTITUTION

The Jamaican Independence Constitution of 1962 was the product of the deliberations of the 1961 Committees of the Legislature which in their Report under the heading, "BASIC FORM OF CONSTITUTION" stated their position as follows:

The Committees at their first meeting agreed that Jamaica should seek Independence with Dominion Status within the British Commonwealth of Nations.

"It was also agreed that the Constitution should follow the pattern of the older Dominions and as well of some of the most recent by providing for a Governor-General representing Her Majesty the Queen as the formal depository of the executive authority with a Parliament in whom is to be vested legal supremacy within the framework of the Constitution itself and a Cabinet of Ministers controlling the executive of Government and responsible to the Parliament of the Nation.

Proposals came from many sources for Jamaica to become a Republic after the manner of India, Ghana and some other recent members of the Commonwealth. This was not accepted.

It is the view of the Committees that Nationhood as a reality is not affected in any way by the choice between these two forms of Constitution and the reasons which have led some recently created Dominions to prefer a Republican Constitution (with a President having purely formal authority and with a Cabinet in which real authority is vested) are not thought to apply to Jamaica."

This quotation from the report of the Committees of the Legislature shows that in 1961 the body set up by Parliament to propose and draft the Independence Constitution had no difficulty in readily agreeing on the basic structure of the proposed Constitution. They were

content to adopt the model in place in the older Commonwealth Countries such as Canada, Australia and New Zealand with Her Majesty the Queen as the formal Head of State, a local representative, the Governor-General, acting in her name and the Westminster Model of Parliamentary Supremacy.

We have come to a different conclusion, as to what we should recommend in respect of some of the elements of this model. The Constitutional Commission, the overwhelming majority of those members of the public who have made representations to that Commission and to our Committee, as well as all the members of our Committee, are united in the view that it is no longer appropriate for our Head of State to be the representative of the hereditary monarch of another country. We are satisfied that the time has come for Jamaica to have a Head of State who is selected by a national process and symbolizes the unity and identity of the Jamaica nation.

The Committees that sat in 1961 did not think it desirable for Jamaica to adopt a Constitution where the Head of State should be empowered to act in his or her own discretion so as to create a governmental model of the type that exists in the United States of America and the countries of Central and South America.

We have had to give careful attention to this question because of the very strong and well prepared presentations made to us advocating this type of Constitution. The advocates of this view have tended to define the difference between the Presidential system and the Westminster Model, which our Constitution exhibits, as the fact that in the Presidential Model there is a separation of powers and that in the Westminster Parliamentary system that separation does not exist.

We do not agree that this is a correct statement of the difference between the two systems. In both systems a separation of power is envisaged between the Judiciary, Executive and Legislature, but each system seeks to achieve this separation by a somewhat different route. The essential difference between the two systems is that in the Presidential system the responsibility for formulating Government policy, both in its general direction and its particular application is shared between the Legislature and the President.

Those who contend for the introduction of the Executive Presidential system say that this sharing of responsibility is necessary in order:

(a) to make the Parliament more effective in representing the interests of the people and not a mere rubber stamp of the decisions of the Executive.

(b) to relieve Parliamentarians of executive responsibility so as to enable them to concentrate on dealing with the concerns of their constituents and advocating remedies therefor.

(c) to enable the President to select a Cabinet from a wider cross-section of the

population rather than being confined to Parliamentarians.

(d) to make the Parliament more effective in exercising its oversight functions in relations to the Executive.

Those who contend for the retention of the present system say that:

- (a) the responsibility for formulating Government policy for submission to the Legislature is vested in the Cabinet which is itself a committee of the Legislature. This can be regarded as a distinct advantage enjoyed by the Westminster Model which by avoiding competition between the Legislature and the Executive, promotes certainty and clarity in the policies of Government and ensures the passage of the necessary legislation to implement these policies.
- (b) There is always the danger in the Presidential system of the two policy making entities, the President and the Legislature, acting in conflict with each other and creating either confusion or paralysis of decision making or both.
- (c) Whenever the Presidential system operates in a context in which there is particularly strong party loyalty and discipline and the President's party controls the Legislature, uniformity of policy between the President and the Legislature is achieved but there is the danger that the President by virtue of his operational control of the Executive and of the Legislature can exercise virtually unbridled power. This possibility is much less likely to occur in the Parliamentary system. The reason for this lies in the fact that the Parliamentary system includes within it an administrative arm, the Civil Service, which usually is, a career service, obliged to carry out Government policies but not subject to political control in its day to day implementation of those policies.

The fact is that both contemporary and historical experience shows that either system can work efficiently depending upon the particular political culture in which the system is being operated. What is critical for any country seeking to make a choice between these two models is to determine which is best suited to its own historical experience and political realities.

The Committee recognises that the Westminster model is the one to which our people are accustomed, in which our existing institutions have been fashioned and is the one in which such defects in its operation as may arise from time to time can be cured by specific measures targeted at those particular defects. For example, the complaint that the Legislature does not sufficiently or adequately exercise its power to review and reshape proposals that the Cabinet puts before it, can be met by reforming the way in which Parliament does its work; by limiting the proportion of members of the Legislature who can occupy Executive positions, by insisting on the prompt answering of Parliamentary questions, by allocating specific times for debating private members motions and by expanding the work of Parliamentary Committees to include critical oversight functions.

These examples do not exhaust the reforms that may be needed to make the Legislature more vibrant and effective but they indicate that this end result can be achieved within the parameters of a Westminster Model Constitution.

The Committee also took note of the practical consideration that the institution of an Executive Presidential System would require the support of both political parties in Parliament before it could reach the stage of being submitted to the electorate under section 49 of the Constitution. It was made clear both before the Commission and before this Committee, up to the time when we submitted our interim report in September of last year, that there was no likelihood of such a bi-partisan support. The PNP nominees to the Commission had indicated, at an early stage, that the party supported an Executive style Presidential system. The JLP nominees on the other hand, opted for the retention of the present Parliamentary system but with certain alterations and reforms made thereto.

The Committee also recognises that the Executive Presidential System would require substantial change in existing Governmental structures, particularly in relation to the Civil Service and to the ways in which fiscal and monetary policy would be devised and administered. These changes would also require bi-partisan support and wide public acceptance if they are to be effectively implemented.

Both the Commission and this Committee have therefore focussed attention on identifying areas of agreement on such reforms of the existing Parliamentary System of Government as our experience since Independence has shown to be desirable.

Accordingly, the Committee in its interim report noted that we had reached agreement on the kind of reforms to be made in the retention of the Parliamentary System with a Non-Executive President, who would, however, have certain powers and functions additional to those now vested in the Governor General. This is reflected in this Report.

At a later stage in our proceedings, however, it became apparent that both parties were prepared to commit themselves in advance to abiding by the result of some process of popular consultation that would determine in a definite way which of the two systems - the Parliamentary or the Executive Presidential- best reflects the wishes of the Jamaican people.

At the end of the report we have made a recommendation in this regard.

B. FUNDAMENTAL RIGHTS AND FREEDOMS (HUMAN RIGHTS)

At the time of the drafting of Jamaica's Independence Constitution in 1961 constitutional provisions relating to human rights were a relatively new practice. The 1961 Committees faced a difficult choice in deciding how to protect individual rights and paragraphs 18 and 19 of that Committees' Report state their views on that choice:

"This is not an easy thing to do because if the rights are stated too broadly they will prove inconsistent with the many exceptional cases where the rights themselves in the interests of some larger interest may be abridged or curtailed temporarily or otherwise. On the other hand, an attempt to spell out in detail all the exceptions is extremely difficult and may lead to omissions or may go so far as to unduly limit the content of the rights.

"Nevertheless it was decided that it would be better for Jamaica to insert in the Constitution for Independence a series of provisions dealing with these fundamental human rights and the provisions that have been inserted in the Constitution are very largely based on models provided in recent Constitutions which have come into force among the new Nations in Africa, these provisions being themselves adapted from the European Convention on Human Rights which was prepared by the foremost experts in the world in this field."

The 1961 Committees chose to include in the Independence Constitution provisions relating to fundamental human rights in a form by which there was an attempt to spell out in detail all the exceptions to the protected rights.

Both the Constitutional Commission and the Joint Select Committee re-examined the question of the nature and form of the Constitution's protection of fundamental rights and freedoms in the light of thirty two (32) years of experience on both the local and international level and came to a different conclusion. The Committee recommends a new, improved and more effective Chapter III based on the Draft prepared by the Constitutional Commission. The new Chapter III will go a far way to answering the persistent complaints from persons and organizations that the existing Chapter III is inadequate and excepts the protected rights and freedoms out of sight in an over zealous attempt to protect the interest of the State.

The existing Constitution endeavours to give this qualified protection to the following rights and freedoms:

- the right to life.
- freedom from arbitrary arrest or detention.
- freedom of movement.
- freedom from inhuman treatment.
- freedom from compulsory acquisition of property.
- right to privacy of home and other property.
- right to due process of law.

- freedom of conscience.
- freedom of expression.
- freedom of assembly and association.
- freedom from discrimination on the ground of race, religion, political affiliation or place of origin.

The proposed new Charter includes the following additional rights, namely:

1. the right to vote and participate in free and fair elections.
2. the right to a healthy and productive environment.
3. the right of every child to the protection required by the status of a minor.
4. the right of every child to free education at least throughout the primary level.
5. the right to fair, humane and equal treatment from public authorities.
6. the right of every citizen to be granted a passport and not to be denied or deprived thereof, except by due process of law.

The new Chapter III better reflects modern thinking by adopting the modern Bill of Rights form in which the rights are positively and simply stated without specific exception. It also ensures much greater protection to the individual against abuse by the State or other persons or organizations and provides easier access to more persons and organizations to the Court to facilitate the protection and preservation of the protected rights and freedoms. It should also be noted that in the new Chapter III individual rights are protected not only from the State but from "any other person or body".

To give meaningful effect to the new Charter's expansion of the number and scope of the protected rights, the Joint Select Committee recommends that Parliament establish within the new Chapter on Fundamental Rights and Freedoms a Parliamentary Commission to be known as the Citizen's Protection Bureau to be headed by the Public Defender. This Bureau will have two areas of responsibility:

1. the new function of ensuring that a Citizen who complains of a breach of Constitutional Rights has the ability to access professional assistance and advice to ensure effective redress;
2. the functions now performed by the Ombudsman under the Ombudsman Act

but with enhanced powers to enforce compliance.

The format and contents of the new Chapter III are more fully set out at pages 18 to 21 of this report and a proposed draft of the Chapter is contained in the Commission's Final Report submitted to Parliament on 28th February 1994 to which draft is to be added the further recommendations contained in this Report.

C. COMPOSITION OF PARLIAMENT

The Joint Select Committee agreed to recommend the retention of the existing two chambers of Parliament, the elected House of Representatives and the nominated Senate. It was also decided to retain the "first past the post" system of elections as the basis of the membership of the lower House as it was desirable to retain an entirely elected lower House with the Members of Parliament representing their individual constituencies.

The Committee recommends that the size of the Senate be increased to thirty-six (36) to facilitate the representation of wider interests both from within the two traditional political groupings and from outside those groupings.

It should be noted however that the proposed composition of the Senate, preserves and strengthens the existing feature of the Constitution by which the Government is specifically denied a two-thirds (2/3) majority in the Senate, thereby intentionally making Constitutional amendment more difficult to achieve. In the proposed thirty-six (36) member Senate the appointees of the Prime Minister will always be less than two-thirds (2/3) of the total membership.

D. ROLE OF THE HEAD OF STATE

The 1961 Committees of the Legislature at paragraphs 29, 30 and 31 of their report set out a limited role for the largely ceremonial Governor-General:

"Generally, the functions of the Governor-General are to be exercised in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

There are, however, a few instances where the Constitution permits him to act in his own discretion or requires him to act on the recommendation or after consultation with some person or authority.

In the appointment of the Prime Minister and Leader of the Opposition, he is directed to exercise his own discretion, but the exercise of this discretion will in

practice be governed and limited by the political realities of each case. This is a well understood and accepted convention."

Jamaica's experience in the operation of the Independence Constitution has clearly shown that it is desirable to have an impartial Head of State to play a decisive role in the selection of personnel for several sensitive offices that would otherwise be appointed by the Prime Minister. This relatively new role for the Head of State is not the creation of the Constitutional Commission or the Joint Select Committee. It was first started by Parliament, through ordinary legislation, establishing new bodies to perform important national tasks. It was quickly appreciated that the appointments to these positions would be critical to the success of these bodies and that the process for appointment needed to be taken out of the ultimate control of the political directorate.

The Joint Select Committee is of the view that certain institutions including the Electoral Commission, the Contractor General and the proposed Citizen's Protection Bureau should be enshrined in the Constitution and the Head of State given the Constitutional power to appoint persons to these Constitutional offices. It was also agreed that the appointment of certain Constitutional positions, such as the Chief Justice, President of the Court of Appeal and some members of the Judicial Service Commission and Police Service Commission, now appointed by the Head of State on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, should in the new Constitution be appointed by the President after consultation with both the Prime Minister and the Leader of the Opposition.

We have therefore made recommendations to vest in the Head of State the ultimate discretion to appoint persons to certain sensitive national positions. The Joint Select Committee also recommends to Parliament that these appointments be subject to Parliamentary confirmation by a mechanism which is to be agreed.

Entrusting these sensitive functions to the President makes it imperative that the process of selecting the President be such as to create and maintain the widest respect and confidence in the holder of the office. Accordingly, the Committee recommends that the President not be elected but be appointed by the Prime Minister after consultation with the Leader of the Opposition, subject to Parliamentary confirmation by a two-thirds majority on a secret ballot. There is disagreement in the Committee as to whether the two-thirds majority should be obtained by a two-thirds majority of both Houses voting together or by a two-thirds majority of each House voting separately.

E. IMPEACHMENT

The Independence Constitution provides for constitutional procedures for the removal of Constitutional officers such as Judges, Civil Servants, the Director of Public Prosecutions and the Auditor General but makes no similar provision for Members of Parliament, Senators, Clerks to the Legislature, Heads of Statutory Bodies and others. The Joint Select Committee in

this context recommends to Parliament that:

1. a separate Chapter on Impeachment be included in the Constitution which provides an impeachment procedure as set out later in this Report and which addresses:
 - a. the definition of an impeachable offence,
 - b. the identification of those persons amenable to the process,
 - c. the procedure for the initiation and conduct of impeachment proceedings,
 - d. which body shall hear the complaint and how that procedure should be commenced,
2. the impeachment procedure should be subject to Judicial Review.

The Committee recommends an impeachment process which would provide an effective check on the power of persons who might otherwise be perceived to be beyond challenge. This process is based on the following principles:

1. it should be aimed at blatant non-performance, corruption and the abuse of power and authority,
2. it must not be a duplication of the criminal process and impeachable offences should not be defined in criminal law terms, the sanction for impeachment should not be in the nature of criminal punishment but should be confined to censure, removal from office, and disqualification from holding all or any public office for a specified period or indefinitely,
3. it must not be allowed to become bogged down with trifling matters and minor offences or with non-officials;
4. it must be confined to matters which threaten the integrity of public institutions or bring the public office into disrepute,
5. it must be so structured as to gain public confidence in its effectiveness and fairness.

It is the Committee's intention that this system of impeachment will operate effectively to ensure that all high level public officials are subject to appropriate disciplinary procedures in the Constitution.

F. "JAMAICANIZING" THE NEW CONSTITUTION

The Constitutional Commission reported a strong feeling that the Jamaican Constitution should be "Jamaicanized." In this regard, the Commission felt that it was inappropriate that a new Jamaican Constitution should remain a schedule to a United Kingdom Order in Council under a United Kingdom Act of Parliament.

The Joint Select Committee agreed with the Commission that the Jamaica (Constitution) Order in Council, 1962, should be revoked to:

- a. show that our new Constitution is the product of the Jamaican People, and
- b. rid our basic law of its present colonial form.

The Joint Select Committee therefore recommends that the new Jamaican Constitution should be brought into force by the procedure set out in Part IV below.

The Joint Select Committee also regards the simplification of the language of the Constitution particularly in the areas of Citizenship and Fundamental Rights and Freedoms as important steps in Jamaicanizing the Constitution. The Committee however agreed with the Constitutional Commission that it would not be possible to wholly replace the traditional legal terminology in the Constitution as this was required for legal certainty and precision.

In addition, the Committee supports the Constitutional Commission's call for a suitable Preamble at the start of the Constitution. Attached to this report as Appendix 3 are drafts prepared by :

- Professor Edward Baugh
- Hon. David Coore, Q.C.
- Jeffrey Mordecai
- Sen. Ryan G. Peralto
- Hon. Sir Phillip Sherlock

The Committee recommends to Parliament that an appropriate method be devised for ensuring that a suitable and fitting Preamble is chosen.

THE MAJOR UNRESOLVED ISSUES

In the main, the Committee's deliberations succeeded in producing a consensus and this is evidenced by the large number of unanimous recommendations set out in the body of this report.

However, there are four (4) major issues which despite extensive discussions, continue to elude efforts to arrive at a consensus. The Committee hopes that Parliament's consideration of this report will provide an opportunity for a consensus position to be agreed on each of these issues to ensure that this process of Constitutional Reform ends with widespread acceptance of a new Constitution.

The four (4) issues are set out below and reference is made to the section and page of this report where these issues are dealt with and the majority and minority positions set out:

1. the selection of the President (see "The President" - pages 21-22, see also "Role of the Head of State" - pages 12-13).
2. the process by which Presidential appointments to Constitutional offices are confirmed by Parliament (see "The President" - page 22).
3. the method of appointing the two Senate seats not appointed by the Prime Minister or the Leader of the Opposition (see "The Senate" - pages 24-25).
4. the method of appointing six (6) of the nine (9) members of the Public Service Commission (see "Public Service Commission" - page 29).

III. RECOMMENDATIONS TO AMEND THE INDEPENDENCE CONSTITUTION

The Joint Select Committee recommends that the new Constitution be divided into the following chapters -

Chapter I	-	Preliminary
Chapter II	-	Citizenship
Chapter III	-	Fundamental Rights and Freedoms
Chapter IV	-	The President
Chapter V	-	Parliament
Chapter VI	-	Executive Powers
Chapter VII	-	The Judicature
Chapter VIII	-	Finance
Chapter IX	-	The Public Service
Chapter X	-	Impeachment
Chapter XI	-	Constitutional Offices
Chapter XII	-	Local Government
Chapter XIII	-	Miscellaneous

The Joint Select Committee's recommendations to Parliament are briefly set out below.

CITIZENSHIP

The Committee recommended that the Chapter on Citizenship needed to be expressed in more readily understandable form and that the language and structure should be simplified. To this end, the Chairman Senator Hon. David Coore, Q.C., prepared a draft text setting out in simple form the basis on which citizenship can be acquired. This Draft was accepted by the Joint Select Committee and is attached to this report as Appendix 1.

The draft incorporates the amendments to Chapter II of the Constitution that were made since the initial appointment of the Joint Select Committee, by Act 6 of 1993. It also incorporates the following recommendations of the Constitutional Commission that:

- i section 8(2) of the present Constitution empowering the deprivation of citizenship be rescinded ;
- ii section 11(b) of the present Constitution be amended to enable the enactment of ordinary legislation defining under what circumstances and by whose authority a Jamaican can lose citizenship;
- iii the deprivation of citizenship on any ground be subject to Judicial Review.

The Chairman's draft further incorporates a proposal from the Ministry of Foreign Affairs that children born to Diplomatic Officers serving abroad, should be treated as having been born in Jamaica, and that such births should be registered in Kingston, Jamaica.

FUNDAMENTAL RIGHTS AND FREEDOMS

The Joint Select Committee used, the Chapter on Fundamental Rights and Freedoms, prepared by the Constitutional Commission as the basis of its discussions and almost wholly adopted the Commission's recommendations. The only recommendation of the Commission in this area on which the Committee could not reach agreement was the minority recommendation that the phrase "Freedom of the Press" be included in the Charter of Rights. It was agreed that this issue would be left to be finally determined by Parliament.

The new Chapter significantly improves the existing Chapter III by:

1. stating the Rights positively in simple language in the form of a Charter which will constitute a guarantee by the State to preserve and protect the rights stated therein,
2. increasing the number of protected rights to include:
 - the right to vote and participate in free and fair elections,
 - the right to a healthy and productive environment,
 - the right of every child to the protection required by the status of a minor,
 - the right of every child to free education, at least throughout the primary level,
 - the right to fair, humane and equal treatment from any public authority in exercise of any function,
 - the right of every citizen to be granted a passport and not to be denied or deprived thereof, except by due process of law,
3. containing detailed provisions designed to give improved protection to the freedom of the person, the right to due process of law and to property rights.
4. making an affirmative commitment to the preservation of the stated Rights in the Chapter by providing that any abridgement or infringement of those Rights which is not demonstrably justified in a free and democratic society will be struck down by the Courts and give the appropriate complainant a right of redress.

5. requiring that it is the person or entity seeking to uphold the act complained of (not the complainant) that must demonstrate its justification,
6. making an explicit prohibition of Parliament or any State organ taking any action which abrogates, abridges or infringes the protected Rights,
7. strengthening the Court's power of Judicial Review and its role as the guardian of the Constitution,
8. extending the right to apply to the Court for redress in Constitutional matters to include any member of the public likely to be affected or a public or civic organisation or any person authorised by law. The Court is also given the discretion to entertain an application notwithstanding that there are other adequate means of redress,
9. not including a provision such as section 50 of the existing Constitution by which Parliament by a Special Act of Parliament can suspend or abrogate the Fundamental Rights and Freedoms,
10. containing detailed and balanced provisions on "Public Emergency" and "Public Disaster"- Public Emergency being where the security of the State is threatened by subversive or violent action and Public Disaster being where there is a natural disaster; these provisions make it clear that the Government by Executive Act can only declare a Public Emergency or Public Disaster for fourteen (14) days unless the period is extended by a two-thirds majority of all the members of each House of Parliament and also make it clear that Judicial Review applies to the declaration of a State of Public Emergency or of Public Disaster and to actions taken to restrict citizens rights during such periods,
11. not including the Constitutional preservation of inconsistent pre-independence laws (see existing sections 17(2), 26(8) and 26(9)).

The Committee also accepted two proposals from a member of the public that improved the new draft of the chapter of the Constitution dealing with Fundamental Rights and Freedoms and accordingly recommends to Parliament the following additional provisions for the protection of Freedom of the Person.

- a. the right of a person who is charged or detained, without delay, to communicate with and, if desired, retain and instruct a legal adviser,
- b. the right of a person charged or detained to communicate with and to be visited by spouse, partner or family member, religious counsellor and a medical practitioner of choice.

THE CITIZEN'S PROTECTION BUREAU - Public Defender

In addition to the recommended improvements set out above, the Committee addressed the question of how to ensure that citizens, whose rights are breached are able in practice to obtain adequate redress.

The Committee recognizes that many persons who may have legitimate complaints of breaches of their constitutional rights lack the means to pay for the advice and representation required. Such provisions for legal aid, as may exist now or in the foreseeable future, are unlikely to be adequate to meet the requirements of this very specialized area of law.

In this context, the Committee also considered the operation of the existing Ombudsman system, which is designed to deal with complaints arising out of administrative action or inaction. The usefulness of this system is, however, limited by the lack of any power in the Ombudsman's Office to enforce the recommendations that are made.

To meet these two concerns, the Committee recommends to Parliament the establishment of a Parliamentary Commission to be known as the Citizens Protection Bureau, the head of which will be known as "The Public Defender." The establishment of this Bureau, its powers, functions and privileges, will be included in this chapter of the Constitution, and the Public Defender will be accorded the same autonomy and protection as is accorded to the Director of Public Prosecutions.

The responsibilities of this Bureau will be two fold:

- 1) it will replace the existing Ombudsman system, but in addition to the powers now exercised by the Ombudsman it will be empowered to compel compliance with its decisions and, in appropriate cases, to make recommendations for disciplinary actions to the appropriate constitutional or statutory body.
- 2) it will ensure that complainants who allege that their constitutional rights have been infringed are provided with ready access to professional advice and if necessary, legal representation.

In considering how best the Bureau could discharge this latter responsibility, the Committee has taken the view that private legal practitioners or private law firms offer the person complaining about breaches of his or her constitutional rights the best opportunity for obtaining effective legal representation. The complainant is likely to feel that the cause is best pursued by his or her own lawyer rather than by an employee or functionary of the State.

The Committee therefore recommends that the Public Defender and the staff of the Bureau should not engage in direct legal representation in the courts, but would perform the following functions:

- a) to receive complaints of constitutional breaches in order to certify that there is a prima facie case worthy to be pursued,
- b) on being satisfied that a worthy case exists, to give a legal aid certificate and invite the person complaining to select an attorney or a firm of attorneys with experience in constitutional matters and listed on a special constitutional legal aid panel.
- c) to negotiate an appropriate fee with the said attorney or firm.
- d) to pay the legal fees of the said attorneys, arising out of the issuing of the legal aid certificate, from the pool of funds provided to the Bureau,
- e) to report to Parliament on a regular basis as to the operation and effectiveness of the system and to make recommendations from time to time for its improvement.

The Committee believes that the establishment of the Bureau will go a long way towards providing to all our citizens, regardless of their financial status, protection against abuses of State power and damage caused by unjustifiable administrative action or inaction.

However, the extent to which this is achieved will depend in large measure on the Bureau being provided with adequate resources to carry out its responsibilities.

The Committee therefore recommends, in the strongest possible terms, that a mechanism be put in place to ensure that the Bureau is given an adequate annual budget which should be treated as an inescapable charge on the national Budget.

THE PRESIDENT

This Committee recommends that the new Jamaican Constitution should create a Jamaican Republic with the Head of State being the President who would be above purely partisan politics and be given additional powers of appointment.

The Committee also recommended that the President be appointed on the nomination of the Prime Minister in consultation with the Leader of the Opposition, subject to Parliamentary confirmation on a secret ballot by a two-thirds majority. The Committee could not agree as to how that two-thirds majority would be obtained.

The Majority recommendation is that confirmation be by a two-thirds majority of both Houses of Parliament voting in Joint Session.

The Minority recommendation is that confirmation be by a two-thirds majority of each House voting separately.

We have already mentioned our decision not to recommend that Jamaica have an elected Executive President. However we have taken note of the growing number of cases in which ordinary legislation has entrusted the Head of State with sensitive powers of appointment and we recommend that this process should be expanded so as to have the Constitution give the discretionary power to make certain sensitive appointments to the Head of State. In the main, the existing Constitution provides that the appointments be made by the Head of State on the recommendation of the Prime Minister.

We therefore recommend that appointment to the offices set out below be made by the President after consultation with the Prime Minister and the Leader of the Opposition. These offices are:

- The Chief Justice
- President of the Court of Appeal
- Appointed members of the Judicial Service Commission
- Chairman and members of the Police Service commission
- Public Defender
- Contractor General
- The Electoral Commission (the Independent members)

It is further recommended that these Presidential appointments should be subject to Parliamentary confirmation. However the Committee is not unanimous as to the form of the process of Parliamentary confirmation.

The Majority recommendation is that appointments by the President should be deemed to be confirmed unless rejected by a two-thirds majority of either House.

The Minority recommendation is that confirmation should require a two-third majority in favour in each House.

The Committee recommends that the existing Chapter IV of the Constitution would largely be retained with the following changes:

1. wherever " Governor-General" appears it should be replaced by "President",
2. section 29 should be amended to provide for the appointment of an acting President:

- a. by the President from among the Custodes or the President's Council where the President was proceeding on a temporary absence for a limited period,
- b. in the person of the Chief Justice, where either the President was involuntarily unable to perform presidential duties and was therefore not in a position to so appoint or for some other reason the President had failed to make an appointment.

PARLIAMENT

The Committee agreed to recommend the retention of the existing bi-cameral structure of Parliament, and that the life of the Senate should continue to coincide with that of the House of Representatives.

The Committee was informed in no uncertain manner that it was the feeling of the public that Parliament was perceived as:

- a. an ineffective forum being merely a "rubber stamp" for Cabinet's proposals,
- b. providing inadequate representation of the people,
- c. containing the members of the Executive and many others more concerned about becoming members of the Executive than about fulfilling their primary responsibility as representatives of the people,
- d. failing to provide an opportunity for representation of any other groupings other than the two major political parties,

The Committee notes with approval the on-going process by which Parliament is seeking to review and reform its way of doing business and also notes the various proposals that have been put forward for discussion as to how this can be best achieved. There is no necessity for this to await the lengthy process of constitutional reform and the Committee therefore recommends that Parliament agree and adopt any necessary changes at the earliest opportunity.

The Committee gave considerable attention to examining the public's views but felt that the necessary changes could be accomplished by the recommendations outlined below and any changes Parliament may adopt with respect to its own procedures.

SENATE

The Committee recommends that the size of the Senate be increased from its present membership to thirty six (36) to facilitate the representation of wider interests, both within the traditional two political groupings and from outside of those groupings.

It was agreed that the majority grouping in the House of Representatives should have a working majority in the Senate but that the minority grouping in the House of Representatives should have sufficient seats in the Senate to effectively deny the governing party (by at least two votes) a two-thirds majority with which to pass those Constitutional amendments that require such a majority.

The Committee agreed that the thirty six (36) seats in the enlarged Senate should be divided as follows:

- 20 members appointed by the Prime Minister to represent the Government,
- 14 members appointed by the Leader of the Opposition to represent the Opposition,
- 2 members to represent other interests.

The Committee explored two main ways of ensuring the representation in the Senate of interests other than those of the governing party and the main opposition party, namely;

- a. by providing for the appointment of a Senator by the leader of any other grouping which having contested a General Election in at least one-half of the constituencies, obtains a certain proportion of the national vote,
- b. by the President appointing Independent Senators as was recommended by the Constitutional Commission.

The Committee could not agree on the approach to be taken in respect of these two (2) seats and the majority of the Committee recommends to Parliament that the Leader of any other grouping which contested at least 50% of the constituencies in a General Election be given the power to appoint a Senator for every 7.5% of the National vote secured by that grouping

If neither of the two (2) available Senate seats are so appointed or only one Senate seat is so appointed, the seats would be apportioned between the Government and the Opposition in the following manner:

- if both seats are unappointed they would be equally shared by the Government and the Opposition and the Senate would be

comprised 21-15,

--- if one seat is unappointed it goes to the Opposition and the Senate would be comprised 20-15-1,

The Minority in the Committee was of the view that the two (2) seats in the Senate should be appointed by the President in his own discretion.

HOUSE OF REPRESENTATIVES

The Committee agreed that the process of electing members of the House of Representatives by means of elections held in constituencies and decided on a "first past the post" system should continue.

The Committee rejected the idea of introducing a hybrid system of having some members elected on a constituency basis and others elected on a Proportional Representation basis. It was felt that such a structure was inconsistent and incompatible with the direct representation that citizens expect.

The Committee also considered adopting a mechanism for recall of members of Parliament but many members opposed the idea and those members sympathetic to the idea could not devise a mechanism that would secure the benefits to be obtained without opening up the system of recall to abuse. No system of recall of Members of Parliament is recommended to Parliament.

The Committee recommends to Parliament that sections 69 and 70 of the Constitution be amended to limit the number of members of the Government who could hold Executive office to be;

1. no more than 40% of the total number of Parliamentarians, and
2. less than 50% of the members of each House.

This proposal is designed to restrict the ability of the Parliamentarians holding Executive positions to dominate and control their parliamentary colleagues. The Committee recommends that there be no other limit to the number of members of the Cabinet who could be appointed from the Senate.

The Committee accepted the recommendation of the Constitutional Commission that the Prime Minister should have no power to call a General Election, unless there is in existence a

list of registered voters which has been completed for not more than six (6) months prior to the holding of the General Elections. The Committee also recommends that the list must be current, not less than five (5) days before nomination day. These recommendations would require amending section 7 of the Constitution.

OTHER MATTERS

The Committee carefully considered section 39 of the Constitution which:

- a. entitles a Commonwealth Citizen to be a Member of Parliament or Senator if he or she has been "ordinarily resident" in Jamaica for the twelve (12) months immediately preceding election or nomination,
- b. requires a Jamaican citizen to be similarly so resident,

and the Committee decided to recommend to Parliament that Commonwealth Citizens, who are not Jamaican Citizens, should no longer be entitled to be Parliamentarians and that the residential requirement should no longer apply to Jamaican Citizens to enable them to be Parliamentarians. These proposals would require amendment to section 39 of the Constitution.

With respect to Parliamentary Privilege, the Committee accepted the proposals of the Constitutional Commission and recommends that where "malice" is established relating to a false statement made by a Parliamentarian against another person, that would constitute an abuse of the privilege of the House and the offending member should be subject to impeachment. The Committee recommended that the existing immunity against legal proceedings in section 48 of the Constitution should be retained.

THE EXECUTIVE

CHALLENGE TO EXECUTIVE ACTION

The Joint Select Committee accepted the proposals of the Constitutional Commission designed to empower individuals and organizations to challenge Executive actions and recommends to Parliament:

1. the removal of those powers of the Attorney General which relates to the giving of consent to actions being brought in the public interest for the protection and enforcement of public rights,
2. that legislation should be enacted to widen locus standi in relation to Representative actions similar to the amendments made to the English Rules of Court.

ABOLITION OF PARLIAMENTARY SECRETARY AND MINISTER OF STATE

The Committee also agreed to recommend to Parliament the abolition of the positions of Parliamentary Secretary and Minister of State and to substitute for these positions one position to be known as Deputy Minister. This would require amendment to section 78 of the Constitution. It is proposed that the Executive would comprise Ministers, being members of the Cabinet and Deputy Ministers, not being members of the Cabinet. The limitations, (see above), on the size of the Executive would apply to the number of Ministers and Deputy Ministers.

THE DIRECTOR OF PUBLIC PROSECUTIONS

The Committee accepted the Commission's recommendation that an express provision should be included in the Constitution providing for Judicial Review of the decisions of the Director of Public Prosecutions.

THE LEADER OF THE OPPOSITION

The Committee accepted the Commission's recommendations that:

1. there should be provisions requiring the appointment or reappointment of the Leader of the Opposition immediately following a general election similar to those provisions in regard to the Prime Minister,
2. there should be appropriate prescribed oaths in respect of the office of the Leader of the Opposition.

THE PRESIDENT'S COUNCIL

The Committee accepted the Commission's recommendations that:

1. the name of the existing Privy Council be changed to the President's Council,
2. the number of persons sitting on that body be increased from 6 to 8,
3. the present system of appointment be retained.

PREROGATIVE OF MERCY

The Committee agreed with the Commission and recommends to Parliament that subject to the name change "the President's Council" the existing constitutional provisions should remain.

THE JUDICIARY

With respect to the appointment of the Chief Justice and the President of the Court of Appeal, the Committee disagreed with the recommendation of the Constitutional Commission and recommends that the appointment of the Chief Justice and the President of the Court of Appeal should be made by the Head of State who would be obliged to consult with the Prime Minister and Leader of the Opposition before making the appointments and that the persons so nominated would be subject to Parliamentary confirmation in a manner to be agreed.

The Committee adopted the recommendation of the Constitutional Commission that the Chief Justice should have jurisdiction to sit in the Court of Appeal as of right and when sitting should preside, but that right should only be exercised in cases of exceptional public importance and when there is a Full Court of not less than five (5) Judges.

APPEALS TO HER MAJESTY IN COUNCIL

The Committee also adopted the Commission's recommendation that the present system of appeal to the Privy Council should continue but stated that this arrangement is subject to the introduction of a Caribbean Court of Appeal, if and when such a decision is taken.

THE JUDICIAL SERVICE COMMISSION

The Committee recommends to Parliament that the membership of the Commission be increased from six (6) to nine (9).

The recommendation provides for three (3) ex-officio members, the Chief Justice who would be Chairman, the President of the Court of Appeal and the Chairman of the Public Service Commission. The other six (6) members would be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition to include the following persons:

- (a) three (3) members from the Judiciary and the Bar chosen as follows:
 - (i) one being a person who has held office as a Judge of the High Court,
 - (ii) one from a list of three (3) submitted by the Bar Council,
 - (iii) one from a list of three (3) submitted by the General Legal Council,
- (b) three (3) persons who are not from the Judicial or Legal ranks.

FINANCE AND MATTERS INCIDENTAL

The Committee received proposals from the Rt. Hon. Edward Seaga, P.C. proposing amendments to Chapter VIII of the Constitution to provide for a low Inflation Monetary Policy. The Bill is currently before Parliament for debate and as such consideration on this issue, in terms of constitutional amendment, must await the conclusion of that debate and a decision by Parliament as to whether any changes are to be made to the Constitution.

THE PUBLIC SERVICE COMMISSION.

The Committee recommends that the membership of the Public Service Commission should be increased to nine (9) and should include:

- (a) two members selected by the Head of State from a panel of five (5) submitted by the Jamaica Civil Service Association;
- (b) one member from a list of three (3) submitted by the Permanent Secretaries Board.
- (c) the remaining six (6) appointed by the President, either;
 - (i) acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition; OR
 - (ii) after consultation with the Prime Minister and the Leader of the Opposition;
- (d) the Chairman of the Commission to be selected by the Commission when constituted.

The Committee could not reach agreement on the method of appointment of the six (6) members at (c) above and the Majority position and the Minority position are set out as the alternatives at (c)(i) and (c)(ii), respectively.

THE POLICE SERVICE COMMISSION

The Committee adopted the Commission's recommendation that the Police Service Commission should be appointed by the Head of State after consultation with the Prime Minister and the Leader of the Opposition. The Committee recommended further that these appointments

would be subject to Parliamentary confirmation. The Committee also adopted the Commission's recommendation that the membership of the Police Service Commission be increased from five (5) to seven (7); but the Committee disagreed with the Commission's proposal for the additional members to be chosen from professional, philanthropic, religious and other organizations, as the Committee felt this should be left to the discretion of the President.

IMPEACHMENT

The Committee recommends to Parliament an Impeachment Procedure which deal with the four major areas of the impeachment process, namely -

- (i) the definition of impeachable offences,
- (ii) the identification of persons amenable to the process,
- (iii) the organisation of the decision-making mechanism, and
- (iv) the procedure for the initiation and conduct of the proceedings.

Definition of Impeachable Offence

The distinction between the criminal and the impeachment process should be strictly maintained and therefore the impeachable offences should not be defined in criminal law terms. Hence the fact that an impeachable offence may in a particular case also be a criminal offence or that there is pending criminal prosecution will not preclude the impeachment process and the principle of double jeopardy should not be applicable.

The precise definition is as follows:

Misconduct so serious in nature as to:-

- (a) render the holder of a public office unfit to continue to hold that or any other public office, or
- (b) bring the public office held by the offender into disrepute,

Such misconduct shall include but is not limited to:

- (i) corruption or misappropriation of public funds or property,
- (ii) refusal or persistent neglect in the exercise of the duties or responsibilities of a public office,

- (iii) abuse of statutory power or official authority,
- (iv) deliberately misleading Parliament or intentionally abusing the privileges of Parliament.

Persons to be Subject to Impeachment

There is a need to ensure that all senior level public officials are made more accountable.

The persons amenable to impeachment should include the following:

- (1) The Head of State, Parliamentarians, Ministers of Government, Officers of Parliament, Contractor-General, Chief Electoral Officer and Clerks to the Legislature,
- (2) Chairmen, Chief Executive Officers and Heads of Department carrying out public functions as officers or employees of bodies established by or pursuant to Acts of Parliament or which are supported wholly or partially out of public funds and who do not fall within the jurisdiction of any of the Services Commission or disciplinary bodies established by the Constitution,
- (3) Chairmen of Regulatory and Disciplinary bodies established by the Constitution or any Act of Parliament,
- (4) Ambassadors, High Commissioners and Principal Diplomatic Representatives of Jamaica who do not fall within the jurisdiction of any of the Services Commissions or a disciplinary body established by the Constitution.

The intention is to include within this impeachment procedure senior public officials, such as the Governor of the Bank of Jamaica and the Heads of Statutory Bodies, not now subject to existing Constitutional disciplinary procedures.

The resignation or dismissal of the officer should not automatically terminate the impeachment process.

The Decision-Making Mechanism

The rule for the initiating of the decision-making process should not be too stringent but that there should be effective machinery for ensuring the sifting of the complaints.

A complaint that a person amenable to impeachment has committed an impeachable

offence may be laid before the Joint Select Committee on Impeachment by the President of the Senate or the Speaker of the House on the request of:

- (1) any three Parliamentarians, of their own motion,
- (2) any three Parliamentarians pursuant to a petition lodged in Parliament and supported by the authenticated signatures of 1000 electors,
- (3) the Auditor-General, Contractor-General, Director of Public Prosecutions, the The Director of Elections, The Integrity Commission The Public Defender and any Commission of Enquiry,

and the persons making the request shall also present the complaint at any meeting of the Joint Select Committee.

The Joint Select Committee on Impeachment shall be appointed within thirty (30) days of the first meeting of Parliament following a General Election and its members shall continue in office for the life of that Parliament but in the case of a dissolution of Parliament the outgoing members of the Committee may complete the hearing of any complaint which they previously commenced.

This Joint Select Committee shall comprise seven (7) persons being:

- (1) two (2) members of the House of Representatives appointed by the Prime Minister,
- (2) two (2) members of the House of Representatives appointed by the Leader of the Opposition,
- (3) one (1) member of the Senate appointed by the Prime Minister,
- (4) one (1) member of the Senate appointed by the Leader of the Opposition,
- (5) The President of the Senate who shall be the Chairman of the Joint Select Committee.

The Procedure for the Initiation and Conduct of the Proceedings

The Joint Select Committee on Impeachment has the duty to investigate the complaint and shall only determine that a prima facie case of the commission of an impeachable offence exists by the affirmative vote of at least five (5) of its members. If the decision is in the negative the

Joint Select Committee must so report to Parliament and the impeachment proceedings shall be considered closed. If the decision is in the affirmative, the Committee must draw up the Articles of Impeachment containing a Statement and Particulars of the alleged impeachable offence, and place it before Parliament for transmission to the **Impeachment Tribunal**.

The Impeachment Tribunal shall be established by the Constitution. It shall comprise five (5) non-Parliamentarians appointed as follows:

- (1) one (1) person appointed by the Prime Minister within twenty (20) days after the first meeting of Parliament following a General Election;
- (2) one (1) person similarly appointed by the Leader of the Opposition;
- (3) three (3) persons appointed by the Head of State after consultation with the persons appointed pursuant to (1) and (2) above, those appointments to be made within fifteen (15) days of appointment of the persons at (1) and (2). If there is a failure to make the appointment of the persons at (1) and (2), the Head of State shall proceed to fill any such vacancy.

The Head of State must appoint at least two (2) persons with the qualifications for appointment to judicial office and the Chairman shall be chosen by the five members from the three persons at (3). As in the case of the Joint Select Committee, the terms of office of the members of Tribunal shall be the duration of the Parliament subject to the right to complete a hearing commenced prior to the dissolution. No member of the Jamaican Judiciary shall be appointed a member of the Tribunal.

The decision to impeach must be supported by at least three (3) of the members of the Tribunal. The sanctions which may be imposed are censure, removal from office, and disqualification from holding all or any public office for a specified period or indefinitely.

The impeachment proceedings must give to the person against whom the allegation is made, a fair opportunity to defend himself and he must be given the right to be represented by a legal representative of his choice. The Tribunal shall establish its own procedure but must apply the rules of evidence applicable in a criminal court and the accused person and witnesses must also be accorded the same privileges as in a Court of Law.

The hearings of both the Joint Select Committee on Impeachment and the Impeachment Tribunal shall be open to the Public.

The Impeachment process shall be subject to Judicial Review.

INSTITUTIONS TO BE ENSHRINED IN THE CONSTITUTION

A. THE CONTRACTOR GENERAL

The Committee agreed with the Commission's recommendation that the post of Contractor General be enshrined in the Constitution in keeping with the status, function and purpose for which the office was created.

B. THE OMBUDSMAN (NOW TO BE INCORPORATED IN THE CITIZEN'S PROTECTION BUREAU)

The Committee agreed with the Commission that the Office of the Ombudsman should be entrenched in the Constitution along with the appropriate provisions, to ensure the independence and impartiality of that office. It was also agreed that appointments to this position should be made by the President after consultation with the Prime Minister and the Leader of the Opposition, subject to the confirmation of Parliament.

This decision must now be read in the light of the Committee's later decision to establish a Citizen's Protection Bureau which would perform, as part of its functions, all of the functions now performed by the Ombudsman, together with its other constitutional functions set out elsewhere in this report. Since this Bureau will be entrenched in the Constitution the objective of the Commission's recommendation to enshrine the Ombudsman's Office will be effectively achieved.

C. THE ELECTORAL COMMISSION

The Committee did not consider the question of Electoral Reform other than adopting the recommendations of the Constitutional Commission. The Committee recognizes the Electoral Commission's central importance to the effective functioning of our democracy and accordingly adopts the recommendations of the Constitutional Commission that in keeping with the directives of the Representation of the People (Interim Electoral Reform) Act, the Electoral Commission be enshrined in the Constitution based on the present structure and composition of the Electoral Advisory Committee, subject to a minor change in that it would now be an Electoral Commission with the Director being the Chief Executive Officer.

The details of how the system is formed and will operate are questions now being dealt with by the Electoral Advisory Committee. In due course, that Advisory Committee will be presenting specific proposals to Parliament, which if adopted by Parliament, may result in appropriate provisions being placed in the Constitution.

The Constitutional provisions should be such that appointment of the Commission members, its tenure of office and its powers and responsibilities are consistent with its role as an independent and impartial body.

LOCAL GOVERNMENT

The Committee considered various submissions from the public and adopted the Commission's two proposals, that the Local Government system should be enshrined in the Constitution, but that the powers and duties should be defined by ordinary legislation rather than being stated in the Constitution. The Committee accordingly recommends that:

- (a) the system of Local Government be enshrined in the Constitution,
- (b) the term of elections with respect to Local Government would be specified in the Constitution,
- (c) the power to hold and raise revenue, as specified by ordinary law, would be included in the Constitution.

AMENDMENT PROCEDURE (SECTION 49 OF THE CONSTITUTION)

The Committee discussed the amendment procedure and the recommendation of the Constitutional Commission for a revision of the procedure, but after lengthy discussions and various views being proffered, it was agreed that the existing system of amendment to the Constitution in Section 49 should remain.

The only other question of substance is whether or not the matters should remain entrenched at the same levels as in the existing Constitution. The Committee is of the view that the existing levels of entrenchment ensure that only those matters that are fundamental to the structure of the Constitution are deeply entrenched. The Committee sees no need to alter this.

The Committee is further of the view that in addition to the matters now listed as ordinarily entrenched in the Constitution there should be added :

- a) The Citizens Protection Bureau
- b) The Contractor General
- c) Local Government
- d) The Impeachment procedure
- e) The Electoral Commission.

The Committee recommends however that section 49 be redrafted to make it more readily understandable.

MISCELLANEOUS

A. TREATIES

The Committee adopted the Commission's recommendation that Ratification by Parliament of Treaties negotiated by the Executive should be obligatory. However the Committee felt that the matter should be left to Parliament to devise how it should be implemented.

B. CONFLICT OF INTEREST OF SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES

The Rt. Hon. Edward Seaga, P.C. submitted to the Committee that he wished the Committee to consider amending Section 41 of the Constitution and in this regard tabled for the information of the Committee, Ministry Paper No. 32 of 1988.

This matter is currently being studied by another Joint Select Committee of Parliament and accordingly Parliament will have to consider at a later date that Committee's recommendations in the context of constitutional amendment.

IV. PROCEDURE FOR PROMULGATING THE NEW CONSTITUTION.

The Joint Select Committee recommends to Parliament that, after it has debated this report and arrived at the agreed changes to the Independence Constitution, it should appoint a small drafting group consisting of say, two members of the Government, two members of the Opposition, a Drafting Consultant and representatives of the Chief Parliamentary Counsel, the Attorney General and the Constitutional Reform Secretariat. The Committee envisages that this group would produce a Draft Constitution which would be a Schedule to the proposed Jamaica Republic Act. That legislation in Bill form, with the required words of enactment for constitutional amendment would be introduced into the House of Representatives and debated in both Houses in accordance with section 49 of the Constitution and thereafter submitted to the required referendum.

This Act entitled "The Jamaica Republic Act" would:

- i. provide the appropriate transitional provisions;
- ii. revoke the Jamaica Independence Act and with it the Jamaica (Constitution) Order in Council and the Jamaica Independence Constitution;
- iii. attach the new Jamaican Republican Constitution as a schedule;
- iv. place in a schedule the National Anthem, Song for Schools, Motto, Pledge, Flag (and where it should be displayed eg. to the Speaker's/President's right in Parliament) and all the National symbols.

The Jamaica Republic Act would come into force when passed by Parliament, approved by the electors in a referendum and signed by the Governor-General and the new Constitution would come into force on a date to be identified in that Act; as **REPUBLIC DAY!**

As an additional measure it would be appropriate for Jamaica to make a formal diplomatic request to the British Government for the United Kingdom Parliament to revoke the Jamaica Independence Act simultaneously with the coming into force of the new Jamaican Constitution.

This procedure will secure the passage of the new Republican Constitution without having to hold multiple referenda.

It is noted however that this procedure would have to be modified if one or more of the proposed amendments to the entrenched or deeply entrenched clauses do not command sufficient support in Parliament to ensure passage in both Houses. In that event it would be necessary to have at least two bills, one containing the matters on which there was the required agreement.

the other or others containing the provisions on which there was no such agreement. This latter Bill containing amendments to any of the deeply entrenched provisions would have to be dealt with by a separate referendum.

PUBLIC EDUCATION AND PUBLIC CONSULTATION

If the process of constitutional reform in which we are engaged is to make a significant contribution towards our development as a nation, then two things, at least, are essential.

First, it is essential to promote national awareness and understanding of the broad purposes and important provisions of our Constitution its role as the supreme law of the land, To this end, the Committee recommends to Parliament that a full and effective public education programme and all proposals for its reforms, be undertaken in this regard as a matter of urgency.

Secondly, the Constitution that emerges from this process of constitutional reform should be such as to command the widest possible level of acceptance and respect. For this reason, both the Constitutional Commission and this Committee have been at pains to invite suggestions and proposals from the general public and to give the most careful consideration to the many written and oral presentations that have been forthcoming. Nevertheless, the view has been strongly urged, both within and outside of this Committee, that further consultations should be undertaken in respect of the fundamental issue of the basic structure of Government.

This Committee, after careful consideration of the respective merits and disadvantages of the Executive Presidential System of Government and the Parliamentary or "Westminster model" system, has decided to recommend the latter, for the reasons stated in our report.

We recognize, however, that this issue is so fundamental and the differing viewpoints so strongly held that the question is not likely to be set at rest without some clear cut expression by the Jamaican people as to which of the two systems commands the greatest popular support.

We therefore recommend to Parliament that before setting in motion the formal legislative processes necessary to amend the Constitution, that it should put in place an appropriate mechanism for determining the will of the Jamaican people in this regard.

V. REPRESENTATIONS MADE BY PERSONS AND ORGANIZATIONS

The Committee in fulfilling its mandate examined the several proposals received from the public for amendments to the Constitution and gave careful consideration to including them in the Constitution.

A total of thirty (30) memoranda were received and a complete list of the persons and bodies submitting memoranda is attached hereto as Appendix 3.

The Joint Select Committee set a deadline of 30th September, 1994, for receiving submissions from the public and the Committee invited the persons or bodies who submitted memoranda prior to the deadline set, to attend on it. Of those nineteen (19) attended and made oral presentations to the Committee in support of their submissions. A list of all persons who attended on the Joint Select Committee is attached hereto as Appendix 4.

In addition, the members of the Joint Select Committee were provided with summaries of those submissions to make the Committee's task easier.

Those submissions received after the deadline were circulated to the members of the Joint Select Committee for their consideration.

The Committee gained from the considerable thought and research that had gone into the submissions and presentations. All the proposals were fully considered and though it is not practical to go into all the details covered by the memoranda, it is useful to point out that some proposals were adopted by the Committee and a number of others were similar to decisions already taken by the Committee.

VI. ACKNOWLEDGEMENTS AND THANKS

The Joint Select Committee wishes to place on record its recognition of the incisive and patriotic approach taken by all its members in dealing with this most important subject.

The quality of the debate and the objectivity which permeated the discussions enabled the Committee to critically examine proposals and arrive at its recommendations.

In particular the Committee wishes to record its grateful and sincere thanks to the many persons and organizations who submitted their memoranda and to the Secretary to the Joint Select Committee, Mr Neville Gibbs and the staff of the Secretariat for the long hours of hard work and tremendous effort they put into organizing and supporting the Committee's work.

The Committee also thanks the entire Parliamentary Staff and the verbatim writers for their input.

Our special thanks must go to the Chairmen and members of the Constitutional Commission for the care, energy and time devoted to the compilation of their reports which proved invaluable in assisting the Joint Select Committee to complete its work.

Special mention must be made of the outstanding contribution made by Dr. Lloyd Barnett by way of technical advice and expertise in preparing the draft of the new chapter on Fundamental Rights and Freedoms. He also chaired a working group which included Mr. Delroy Chuck and Mr Jeffrey Mordecai, whose reports considerably assisted the Committee in formulating the proposals herein relating to Impeachment and the establishment of the Citizens Protection Bureau.

The Committee wishes to record its thanks and appreciation to the Media for the coverage of the Committee's work and their role in taking the subject of constitutional reform to the people.

Finally the Committee wishes to thank the public for its active participation in the process of Constitutional Reform both before the Constitutional Commission and before the Committee itself. The Committee acknowledges the fact that the issue of Constitutional Reform is now firmly placed on the national agenda. Though there are differing views there is also a far greater knowledge of the Constitution and its role in our development as a nation.

DRAFT 20/5/95

APPENDIX 1

CITIZENSHIP

1. A person may become a Citizen of Jamaica:

- (a) By birth
- (b) By descent
- (c) By marriage to a Jamaican Citizen
- (d) By naturalization - in the manner set forth in the succeeding articles of this Chapter.

2. Citizenship by Birth

- (a) Every person born in Jamaica whether before or after the appointed day shall become a Citizen of Jamaica at the date of his birth.
- (b) For the purposes of this Chapter a person shall be deemed to be born in Jamaica, if:
 - i) he was born on a ship or aircraft registered in Jamaica or belonging to the Government of Jamaica;
 - ii) at the time of his birth his mother was a Jamaican Citizen residing abroad by reason of being in the diplomatic service of the Government of Jamaica or was married to a Jamaican Citizen residing abroad by reason of being in the diplomatic service of the Government of Jamaica.

3. Citizenship by Descent

A person born abroad shall at birth become a Jamaican Citizen if at the time of his birth, his mother or his father was a Jamaican Citizen by birth, naturalisation or marriage.

4. Citizenship by Marriage

Any person who marries a Jamaican Citizen shall be entitled to be registered as a Jamaican Citizen on application in the manner prescribed by Law.

5. Citizenship by Naturalisation

Parliament may provide by Law for the acquisition of Jamaican Citizenship by any person not covered by the foregoing provisions.

6. These provisions as to Citizenship shall be deemed to have come into effect on the 6th day of August, 1962 and any person who on that date was, or was entitled to become, a Citizen of Jamaica shall continue to enjoy the same status.

7. Deprivation of Citizenship

No person who is or becomes a Citizen of Jamaica shall be deprived of such citizenship except under and by virtue of a law setting out the grounds on which such deprivation may take place and providing the opportunity for the citizen to show cause why he should not be deprived of his citizenship.

PREAMBLE
SUBMITTED BY
HONOURABLE SIR PHILIP SHERLOCK, O.J.

WHEREAS the passage of time and the cumulative experience in the management of the nation's affairs have made it necessary to amend, change and add to the Constitution of Jamaica, and

WHEREAS Jamaica is the second black country in the Western Hemisphere to achieve independence, and by reason of its history is closely and indissolubly linked with the West African people, and with the Afro-American people whose origins lie in the African diaspora, and

WHEREAS Jamaica's Freedom and independence were achieved in the course of three centuries of liberation struggles, civil rights uprisings, and the rejection of a racial ideology,

AND WHEREAS European domination was rooted in the doctrine of African inferiority, the denigration of Africa and the inculcation of self-contempt in people of African origin,

IT THEREFORE becomes necessary to set forth in this preamble to the reformed Constitution certain of the guiding principles enshrined therein, these being:

- (a) the affirmation that Jamaica is predominantly a black nation, that the great majority of its people are of African origin, and that their history dictates that national consciousness also means racial consciousness.
- (b) the claiming likewise of a European heritage;
- (c) the cultivation of respect for, and appreciation of, the cultures of the Jews, Arabs, Indians and Chinese who have enriched and added quality to the Jamaican way of life

- (d) the recognition that for three centuries it was their black ancestors and not the European rulers, who preserved the passion for freedom and for justice, and that in consequence the Jamaican people are committed to the principle of preliminary democracy, accepted the importance and value of the individual human being, regardless of race, colour, creed and gender, and express this commitment through a system of universal adult suffrage in which every Jamaican citizen over the age of eighteen has the right to vote by secret ballot;
- (e) the recognition that by reason of their record of achievement and of triumph over the denial of the rights of personality, the Jamaican people set great value on protecting and preserving, by all means in their power, the principles of freedom, equal justice for all, equality of opportunity, freedom of conscience and association, freedom of speech, the right of access for all to educational and training opportunities, protection for children, the underprivileged and the handicapped.

Underlying these aims is the belief, validated by their history in the capacity of the Jamaican people to govern themselves as an independent nation. The Constitution memorializes these achievements and is the people's pledge to their ancestors. From tribulation the people harvested triumph.

PREAMBLE
SUBMITTED BY
JEFFREY MORDECAI ATTORNEY-AT-LAW

Conscious that final power and responsibility resides in the People, we agree this Constitution and create the Republic of Jamaica to build a better Jamaica for all.

Out of Many, One People, we take pride in our Constitution and the Representative Democracy it creates as evidence of how our People by their unity of purpose can transform centuries of sacrifice, endurance and struggle, into progress.

By this Constitution we affirm our commitment to those tried and proven principles of Democracy which guarantee the inherent equality, dignity and freedom of the individual with equal respect for others and for the general good.

We recognize the contributions of our ancestors, National Heroes, leaders, artists and authors, sportsmen and women and other stalwarts and hope their example will inspire a common commitment to and participation in Jamaica's development. We also recognize that Jamaica's development must be based on the promotion, protection and preservation of the environment.

We emphasize the role to be played by our organizations and institutions, supported by a Free Press and Media, and express our determination to develop a society based on the Rule of Law which guarantees the moral, material and spiritual well being of all in Jamaica and all of Jamaica by fulfilling the call for One Love, One Unity under God.

PREAMBLE
SUBMITTED BY
SENATOR. RYAN G. PERALTO

"Out of many one people" describes most aptly the mixture of ethnic strains which have mingled and blended to create this island nation.

Cognizant of this rich heritage, which has sired and nurtured the Jamaican people, bonding us in our struggles to establish a just, free, fair and noble society;

Recognizing the variety of cultural, social and economic origins from which our fore-bears migrated or were brought in bondage to this land;

Being ever mindful that these peoples become as one, united in the struggle to survive, which gave birth to this nation;

Reaffirming our pride in our history, of courage, vision, and commitment, displayed by our leaders and our people, with honor and dignity through centuries of hardship;

We, by this Constitution, do hereby declare certain fundamental principles and procedures, in order to preserve for this and future generations inalienable Rights and Freedoms which the dignity of man deserves as intended by the Creator, and for which generations of our people, agitated, fought and died to create a homeland.

To this purpose, we the people do hereby declare this Constitution as our Sovereign Will, as we establish the Republic of Jamaica.

APPENDIX 2

PREAMBLE
SUBMITTED BY
PROFESSOR EDWARD BAUGH

We, the people of Jamaica, do hereby inscribe and enshrine in this Constitution those principles by which we assume our place in the world community of free and self-respecting peoples.

The conviction and pride with which we espouse these principles derive from the knowledge that they have evolved out of a history of endurance, struggle and sacrifice, which began in bondage and exploitation for the majority of our ancestors, but which saw, in despite of these hardships, the gradual emergence of an independent, democratic nation.

By this Constitution, and believing in the inherent dignity of all persons, we affirm our commitment to those tried and proven principles of Democracy by which the freedom of the individual is guaranteed within the context of the general good; by which all men are considered equal before the law; by which equal opportunity and social justice exist for all; and by which, having regard to our national motto "Out of Many One People", no one shall be denied these freedoms and rights on the grounds of colour, class or religious belief.

By these principles we seek to promote the well-being, material, moral and spiritual, of all citizens, and to preserve a nation secure in its commitment to those ideals which reflect our best common hopes and aspirations, believing in the idea of the brotherhood of all men, and humbly acknowledging the supremacy and beneficence of God.

PREAMBLE
SUBMITTED BY
THE HON. DAVID COORE O.C.

We the people of Jamaica affirm our commitment to the preservation and steadfast observance of those principles of individual freedom and democratic Government that are our inalienable heritage.

We enjoy this heritage and hold it in trust to pass on to future generations by virtue of the struggles and sacrifices of our forefathers. They came to this land at different times, in different circumstances and from different regions of the earth, but in the majority they came in bondage from the mother continent of Africa. From these harsh beginnings has been fashioned an independent democratic nation with an honourable place in the world community of free and self-respecting peoples.

In this long journey we have been blessed with leaders of courage and vision, with artists, writers, musicians and athletes who have carried the name of our country with honour and glory throughout the world but above all with an indomitable determination through centuries of hardship and struggle to create a nation of freedom and justice.

In this Constitution we give form and substance to those tried and proven principles of democracy whereby the fruits of that struggle can be guaranteed for ourselves and future generations. While preserving the essential features of those institutions that have served us well in the past, we are conscious of our obligation to make those changes that experience has shown will better promote the material, moral and spiritual well-being of all Jamaicans and the enjoyment of the beauty and fertility with which our land and surrounding seas have been so abundantly blessed by Almighty God.

Consistent with these purposes and convinced that the time is right for the full expression of our national identity we now by this Constitution and in the exercise of our sovereign will, establish the Republic of Jamaica.

APPENDIX 3

List of Persons Who Submitted Memoranda to the Joint Select Committee

- | | | | |
|-----|--------------------------------|-----|-----------------------------------------------|
| 1. | W. R. Roddy Ashby | 17. | Henry C. Morant |
| 2. | Lloyd Ashly | 18. | Dr. Trevor Munroe |
| 3. | Beth Aub | 19. | National Environmental Societies Trust (NEST) |
| 4. | Dr. Lloyd G. Barnett | 20. | Poor Relief Class of 1994 - (U.W.I.) |
| 5. | G. A. Bovell | 21. | The Republican Party |
| 6. | Rothwell A. Ferraro | 22. | Al Richards & Associates |
| 7. | Laurel B. Francis | 23. | David Al Sharpe |
| 8. | Beverley Hamilton | 24. | Maurice Saunders |
| 9. | The Imperial Ethiopian | 25. | O. Hilaire Sobers |
| 10. | The Jamaica Progressive League | 26. | St. Davids Farmers Assoc. Ltd. |
| 11. | Dr. Roye E. Johnstone | 27. | Joseph Thomas |
| 12. | John Kelly | 28. | Dr. Robert A. Thomas |
| 13. | A. Patrick Lawe | 29. | West Indies Union of Seventh Day Adventist |
| 14. | Edith J. Marshalleck | 30. | Linnette Vassell |
| 15. | Clifton McBean | | |

LIST OF PERSONS WHO ATTENDED
ON
THE JOINT SELECT COMMITTEE TO MAKE ORAL PRESENTATIONS

1. Beth Aub
2. Lloyd G. Barnett
3. G. A. Bovell
4. Laurel B. Francis
5. Beverley Hamilton
6. The Imperial Ethiopian World Federation Inc.
Delegation consisting of -

Mr. George Hart	1st Vice President
Mr. Junior Anderson	2nd Vice President
Mr. Trevor Sharpas	Treasurer
Mr. Leroy Lindsay	Secretary
Mr. Hugh Goulbourne	Information Officer
7. The Jamaica Progressive League
Delegation consisting of -

Dr. Roy E. Johnstone	Chairman
Mr. Jimmy Tucker	Secretary
Mr. Frank Gordon, O.D.	Executive Member
8. Mr. John Kelly
9. A. Patrick Lawe
10. Edith Jean Marshalleck
11. Clifton McBean
12. Dr. Trevor Munroe - Reader Head Department of
Government - U.W.I. - accompanied by the
New Beginning Movement
Members -
Dr. D. K. Duncan

Mr. Dickie Crawford
Mr. Anthony Abrahams

13. National Environmental Societies Trust (NEST)
represented by Mrs. Christine Scott-Dunkley,
Programme Director

14. The Republican Party of Jamaica
Delegation consisting of -
 - Mr. Denzil Taylor - Chairman
 - Mr. V. G. Smith - President
 - Mr. James Francis - Member
 - Mr. Charlie Babalool - "
 - Mr. C. M. Smith - "
 - Mrs. Dawn Smith - "
 - Mr. Allan Martin - "

15. David Sharpe

16. Mr. Maurice Saunders

17. O. Hilaire Sobers

18. The West Indies Union of Seventh Day
Delegation consisting of -
 - Mr. M. E. Weir - Secretary
 - Pastor Errol Thomas - Communication and News Director
 - Mr. Audley Foster - Legal Officer

19. Ms. Linnette Vassell of the Social Action Centre (UWI)
Mrs. Carol Narcisse - Co-ordinator of the Association
of Women's Organization in Jamaica (A.W.O.J.A.)
Mr. Horace Levy of the Association of Development
Agencies (A.D.A.)