

### Comments on the draft CRC Report

Clause in draft CRC Report	Comments
<b>4.1.4 iii</b>	We suggest that the content of footnote 9 is significant and should be stated here, to make it clear that the official name of Jamaica as a State is not to be changed to “the Republic of Jamaica” but is to remain as “Jamaica”?
<b>4.3.3 and 4.3.4</b>	<p>We do not agree with the proposed solution to a situation where the Prime Minister and the Leader of the Opposition have not agreed on the proposed President.</p> <p>Any solution which enables the President to be approved via a simple majority vote of both Houses of Parliament effectively incentivizes the PM to choose someone who he/she perceives as favouring his/her Party, as the inevitable (and, perhaps, desired) failure to achieve consensus will lead to a President acceptable to the Government for political reasons and who is not even perceived to be politically neutral.</p> <p>We do not consider this to be in the Nation’s best interests. We suggest that, until consensus is achieved, the incumbent President (or GG, if this divergence occurs at the outset of the new Republic) should remain in office; or, if the incumbent is not willing and able to remain in office until consensus is achieved, the Chief Justice should act as President until consensus is achieved.</p>
<b>4.4.1</b>	<p>ii - What does “permanently in Jamaica” mean? Being ordinarily resident here should suffice, even if brief trips have been made overseas on business or for pleasure.</p> <p>iv – Rather than using the criteria for disqualification for election to Parliament (i.e. a political process) in this context, it is better to set out afresh the applicable disqualifying criteria that will apply to the President.</p>
<b>4.7.3</b>	Is this suggesting that the President should be immune to proceedings in cases of treason, fraud and/or violence, even though civil and criminal immunity are denied in such circumstances as per 4.7.2? This appears to be incoherent.
<b>4.9.1</b>	<p>We do not agree with the proposal for appointing an interim President to act in a temporary vacancy.</p> <p>In Jamaica, Custodes are political appointments made by the Governor-General on the advice of the Prime Minister. They are not a suitable pool from which to appoint someone who is politically independent to act as interim President, when the Prime Minister and the Leader of the Opposition have not been able to agree on the person after consultation. Mere consultation does not require consensus.</p>

	In the absence of consensus among the Prime Minister and the Leader of the Opposition, we suggest that the Chief Justice should act as interim President until consensus is achieved.
<b>4.10.3</b>	<p>While we accept the need for a removal process, we have concerns about the proposed approach in which the quasi-judicial process of removing a President, who is not a political representative or political appointee, will be via a procedure within the Parliament.</p> <p>One can envisage a situation where a firm-minded President stands up for principle against a given Government on some matter of national importance, such as the declaration of a state of public emergency in dubious circumstances, and the peeved Government then invokes this parliamentary procedure to embark upon a political witch-hunt to sully the reputation and undermine the stature of the President in the debate on the motion (even though the removal process cannot proceed without the Opposition).</p> <p>For a matter like this, we favour the process to determine whether a ground for removal has been established being managed by the judiciary, as exists for other important non-political constitutional offices (e.g. a tribunal comprised of a chairman and not less than two other members from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in a member state of Caricom or a court having Jurisdiction in appeals from any such court).</p>
<b>4.10.3.5</b>	Our concerns in relation to 4.9.1 (see above) apply equally here.
<b>6.1.9</b>	<p>Apart from Jamaican citizenship, will there be a residency requirement for “membership in the Parliament”, and is this intended also to apply to the Senate?</p> <p>If so, what is the residency requirement? At least one year’s ordinary residence is the current requirement.</p> <p>Furthermore, the issue of dual citizenship has not been fully addressed in the Report. We are a nation with a large Diaspora, on whose remittances our country relies for balance of payments support, and who provide a vital social safety net for family and friends across Jamaica in the absence of adequate support from the State. We also encourage our Jamaicans abroad to actively participate in the societies where they live, to build Brand Jamaica and increase their influence on affairs there.</p> <p>Therefore, in our view as long as a Jamaican citizen meets the residency requirement and swears an oath of allegiance to Jamaica and to uphold and defend the Constitution of Jamaica, his/her dual citizenship should not preclude him/her from eligibility to sit in our Parliament, whatever wording may be on the application form for his/her other citizenship and whatever wording comprises the oath that he/she was required to swear to become a citizen of the other state.</p>
<b>6.2.2</b>	Given that 6.2.1 adopts the principle of the commission of a “serious criminal offence” as the yardstick of disqualification, we suggest that rather than using the length of the sentence that was imposed in the particular case (which may depend on a host of factors) as the specific criterion for disqualification, consider using the yardstick of the

	<p>offence carrying a potential term of imprisonment of at least eighteen months as the threshold for what constitutes a “serious criminal offence” for this purpose.</p>
<b>6.3</b>	<p>We note the Report’s position on impeachment. We disagree with this position, and believe that the Constitution ought to include this procedure for holding parliamentarians to account for egregious misconduct, a matter for which we believe there is also significant public support.</p> <p>Indeed, we have tabled a Private Member’s Bill in 2022 to amend the Constitution for this purpose (as had former PM Bruce Golding in 2010), and the introduction of an impeachment procedure in the Constitution has also been a manifesto commitment of the JLP.</p> <p>Suffice it to say that we are not convinced by the points raised in 6.3.2, as impeachment has been a successful accountability mechanism in other jurisdictions where these concerns would equally apply.</p>
<b>6.4.4</b>	<p>This provision is unclear.</p> <p>It seems to propose a fixed 5-year term for each Parliament, with the Prime Minister being required to call the election for a date of his/her choosing within a 3-month window commencing on the day that the 5-year term expires, “<i>in the event there is consensus between the two (2) political parties represented in Parliament</i>”.</p> <p>What exactly is the CRC recommending? This needs to be clarified.</p>
<b>6.5.3</b>	<p>We are of the view that any extension of the life of a Parliament beyond 5 years should only be possible if the extension is approved in the same manner as the approval of the extension of a State of Public Emergency – i.e. by a vote supported by at least 2/3 of each House of Parliament.</p> <p>We do not agree that the first extension of up to six months can be approved by a simple majority vote in the House of Representatives. This would empower the Government of the day to extend its own life beyond five years.</p>
<b>7.1.3</b>	<p>We do not agree with the proposal as to the composition of the Senate. It is an important safeguard to retain the Opposition having 1/3 plus 1 of the senators, which is the only buffer against the Executive completely dominating the Legislature and only applies to entrenched matters.</p> <p>We would propose a Senate of 42, of which the Prime Minister appoints 24, the Leader of the Opposition appoints 15, and the President appoints 3. The President’s 3 appointees should be persons recognized for their independence, good reputation and eminence, and the President should consult with the Prime Minister and the Leader of the Opposition before making the appointments.</p>
<b>7.3.1</b>	<p>What is meant by “constitutional measures”?</p> <p>Does it mean legislation to amend the Constitution?</p>

	<p>Or does it also include any matter (whether a bill, motion, resolution or otherwise) that requires at least 2/3 majority support to pass?</p> <p>Our proposal as to the composition of the Senate (see the comments on 7.1.3 above) would provide the required safeguard structurally, as is presently the case, rather than weakening the Opposition's position in the Senate and seeking to mitigate that by a special provision.</p>
<b>9.1.3</b>	<p>Why is this necessary to state this? Parliament already has this power.</p> <p>Any special power to be given to Parliament by the Constitution to confer privileges and make special provisions for Caricom citizens by ordinary legislation should expressly be subject to such ordinary legislation being consistent/compliant with the remainder of the Constitution.</p>
<b>12.5</b>	<p>This is a fundamental issue for us.</p> <p>The Leader of the Opposition has written to the Prime Minister on this issue, and once again set out the Opposition's position. We await the Prime Minister's response.</p> <p>Suffice it to say that what is proposed in 12.5 is not acceptable to the Opposition.</p>

Mark J. Golding  
 Leader of the Opposition  
 May 9, 2024