

The following is an edited version of a statement by the Attorney-General and Minister of Justice to the Senate last Friday on the reform of the Constitution and the system of the administration of justice

Modernising Ja's Constitution

AS HONOURABLE Senators are aware, this year 2007 marks the bi-centenary of the abolition of the trans-Atlantic slave trade which brought captured Africans in bondage to the Western Hemisphere and, particularly, to the Caribbean.

The Government is satisfied that there can be no better way to mark the significance of this historic moment in 2007 than to begin immediately the process of removing from our Constitution the last remaining vestiges of colonial status.

REMOVING COLONIAL VESTIGES

■ First, our Constitution is not legally rooted in any act on the part of the Jamaican people but in a statute of the United Kingdom Parliament – The Jamaica Independence Act.

■ Second, our Head of State is the hereditary monarch of the erstwhile colonial ruler. While it is true that the duties of that office are performed by a resident Governor-General, you should be made aware, as Senators, that if His Excellency wishes to visit and to have audience with Her Majesty, whose representative he is, he now needs to obtain a visa from the resident High Commissioner of the United Kingdom.

■ Third, our judicial system is still headed by the same institution that governed it while we were a colony, namely, the Judicial Committee of the Privy Council.

These constitutional positions have practical consequences of the most fundamental and far-reaching nature. The executive arm of our Government which, itself, is not subject to control by any other executive power or entity, entered into a treaty with other sovereign nations to establish a Caribbean Court of Justice as our final court of appeal. Our legislature ratified that treaty and then, by the majority stated in the Constitution as sufficient for amending an unentrenched section of the Constitution, amended such a section in order to implement the treaty obligations of the Government and people of Jamaica. As Senators are aware, the Judicial Committee of the Privy Council made a decision which the Constitution obliges us to accept and which has so far prevented this treaty from being implemented.

I now wish to announce that the Cabinet has approved a programme of action to bring our Constitution fully into the 21st century. I will

outline this programme in the chronological order of action that the items themselves dictate.

CONSTITUTIONAL REFORM

The first is the reform of our Constitution itself. As members of the Senate are aware, a commission was established in the year 1992, under the chairmanship of the late Mr. Justice Kerr and subsequently Dr. Lloyd Barnett, to consider proposals for constitutional reform and to make recommendations for Parliament's consideration.

The commission submitted its final report in February of 1994. It included a wide range of suggested changes that would, in effect, create a new Constitution. The commission's report was the subject of prolonged and careful consideration by a joint select committee of both Houses of Parliament which presented its report in 1995.

Since that time, the issues dealt with in that report, and in particular a proposed new Charter of Rights, have been the subject of intensive deliberations. Some agreed amendments to the original proposal have been made by another joint select committee whose mandate had been renewed from time to time. Eventually, in July of last year, a full report of all these recommendations was presented to Parliament.

As a result of this prolonged process of discussion and consultation, there has emerged a substantial body of proposals for far-reaching constitutional proposals which has received the agreement of both sides of the House of Representatives and of the Senate and the apparent acceptance, by both parties, of modifications and compromises to their original positions.

IT HAS BEEN AGREED THAT:

"We should no longer have as our Head of State the hereditary monarch of the United Kingdom, but that we should become a republic, with our own indigenous president as Head of State;

"The Head of State would not be elected directly by the people but should be chosen by a process that will enable the person selected

to be a symbol of national unity and who would not exercise executive or legislative powers but would be vested with the responsibility to make certain sensitive appointments that are required to be made without partisan bias or influence;

"We would maintain the basic structure of parliamentary government, with the Prime Minister appointed on the basis of commanding the support of the majority of the Members of the House of Representatives and that ministers, appointed by the Prime Minister, must be chosen from one or other of the Houses of Parliament;

"The new Charter of Rights will, in form and content, reflect the development in international thinking and practice that has taken place since our present Bill of Rights was fashioned in 1962;

"The new Constitution should come into being by an act of the Jamaican legislature enacted by the process appropriate to amending the deeply entrenched clauses of our present Constitution;

"The new constitutional provisions will therefore receive the express stamp of approval not only from all the parliamentary representatives of the people, but of the electorate itself in a referendum.

Notwithstanding the agreement on these fundamental issues and a number of other important details, there still remain some outstanding matters that need to be settled before the final constitution document can be prepared.

For example, the precise method of selecting the President is still to be finally agreed. In any event, even if the outstanding issues could be speedily resolved, it is obviously impractical to attempt to introduce such a far-reaching and fundamental alteration in our governmental system within the limited time available before the next general election.

The Cabinet has therefore directed that there should be the production of a green paper outlining the elements of the new

Constitution that have already been agreed and containing a suggested strategy for resolving those few important matters that, as I have indicated, are still not fully settled.

The outline of this green paper would not, of course, be cast in the language of an act of Parliament but would contain, in a form that is readily understood, the essential features clearly and accurately stated. It will be used as the basis for a campaign to familiarise the public with the proposals and provide an opportunity for further comments and suggestions, while keeping the issues alive in the public domain.

It is intended that, at some appropriate time during this year, a resolution will be brought to Parliament recommending that, immediately following the next general election, legislation should be prepared effecting these changes in our constitutional system.

It should be our pledge and commitment, as parliamentarians, as we mark the bi-centenary of the abolition of the trans-Atlantic slave trade, that these initiatives should, in time, come to be established and recognised as part of the signature of the year 2007.

We should also be prepared to examine any new suggestions as to how we might strengthen our constitutional arrangements directed at improving the governance of our country. The nation cannot, however, be held hostage to the consideration of new suggestions which have not been subjected to the searching rigour to which the positions that are already agreed have been.

DE-LINKING FROM THE PRIVY COUNCIL, SUBSCRIBING TO THE CCJ

As Senators are aware, Parliament has passed the legislation that is required to enable Jamaica to subscribe to the original jurisdiction of the Caribbean Court of Justice. However, the attempt to substitute the appellate jurisdiction of the court for that of the Privy Council has, as I have said above, been nullified on the ground that the appropriate parliamentary procedure was not followed. The procedure, which the Privy Council said should have been followed, would require the voting support in Parliament

of at least some of the Opposition members as well as the other requirements in the Constitution relating to the amendment of an entrenched provision.

Pursuant to that decision, I initiated a series of meetings between a team from the ministry and representatives of the parliamentary Opposition. Those discussions reached what appeared to be an agreed legislative programme. The leader of the Opposition representatives, however, noted that he would have to consult with his party and his parliamentary colleagues to confirm a formal agreement on which the Government could rely. My ministry has, for its part, obtained from parliamentary counsel a draft of the proposed legislation and we have made it available to the Opposition. We have not yet received their formal indication of support.

The legislative scheme embodied in this draft, which is acceptable to the Government, follows the procedure laid down by the Privy Council and it also satisfies the two main issues that the Opposition has always emphasised as its fundamental points of concern. These are, first, that the court should, from the beginning, be entrenched in the Constitution and, second, that the court should not begin to operate unless and until its underpinning provisions were submitted to the general electorate for its approval by some process limited to that specific issue as distinct from being one of many issues canvassed in a general election.

To achieve these objectives, a proposal emerging from the discussions with the Opposition representatives involved the passage of two separate legislative measures. One would amend Section 110 of the Constitution so as to establish the appellate jurisdiction of the Caribbean Court of Justice as part of the Jamaican Constitution. The other would amend Section 49 of the Constitution so as to include the new Section 110 in the list of ordinarily entrenched sections. These two bills would come into effect simultaneously because each would contain a clause making the activation of each dependent on the enactment of the other.

Since Section 49 is a deeply entrenched section, there is the requirement that, after passage in Parliament, the inclusion of new provisions therein would have to be submitted to the electorate for approval. This will ensure that the electorate has the opportunity, from the very beginning, to give its stamp of approval to the institution of the Caribbean Court of Justice in place of the Privy Council.

It is therefore intended that during this year, this legislation will be laid on the table of the House of Representatives and thereafter dealt with in accordance with the relevant constitutional requirements.



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NOTICE

Members of the public are hereby advised that Mr. Leonard Horace (Bunny) McLean, attorney-at-law of 3 Long Lane, Kingston 8 has been suspended from practice for a period of two (2) years commencing from the 1st January, 2007

The Disciplinary Committee of the General Legal Council having heard the evidence in the complaint brought against Mr. Leonard Horace (Bunny) McLean, found the attorney guilty of professional misconduct.

Mr. Leonard Horace (Bunny) McLean, is therefore not entitled to practise until the suspension period has expired. Members of the public are advised accordingly.

Dated 15th January 2007

Secretary,
Disciplinary Committee of the
General Legal Council



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MINISTRY OF JUSTICE

Invitation to Tender

The Ministry of Justice invites suitably qualified contractors to submit tenders for general refurbishing works at the May Pen Court House, Clarendon.

Description of Works

Proposals are being sought from interested contractors to do roof repairs, painting and dry wall partitioning at the May Pen Courthouse, Clarendon.

Eligibility

Tenderers are required to submit (a) proof of tax compliance, (b) proof of being registered with the National Contracts Commission, at the Ministry of Justice.

Location of Tender Documents

The tender documents will be available as of January 8, 2007 at the Ministry of Justice, 11th Floor, NCB Tower (South), 2 Oxford Road, Kingston 5

Submission of Tender Documents

Sealed tender documents must be placed in the designated tender box at the Ministry of Justice, on the 2nd Floor, NCB Tower (South), no later than January 22, 2007 at 2:00 p.m. Tenders will be opened at 2:15 p.m. the same day.

For further information kindly contact:

Ministry of Justice
Project Department
2nd Floor, NCB Tower (South)
2 Oxford Road, Kingston 5
Tel: 960-6835



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