

FINAL REPORT
OF
THE CONSTITUTIONAL COMMISSION
JAMAICA

FEBRUARY, 1994

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The CONSTITUTION COMMISSION

Marcus Garvey Building
85 Knutsford Blvd.
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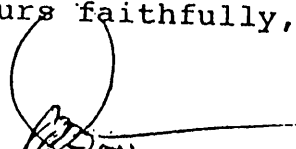
28th February, 1994

The Honourable Chairman
and Members of the Joint Select Committee
of the Senate and the House of Representatives
on Constitutional and Electoral Reform

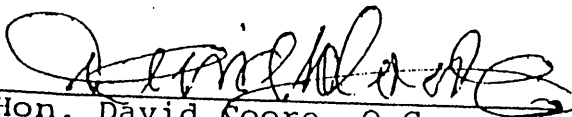
Dear Sir,

In accordance with our terms of reference we hereby submit for your consideration our final recommendations for reform of the Fundamental Rights and Freedoms Chapter of the Constitution, together with our draft of a new Chapter to replace the present one.


Yours faithfully,




Lloyd G. Barnett,
Chairman
Constitutional Commission



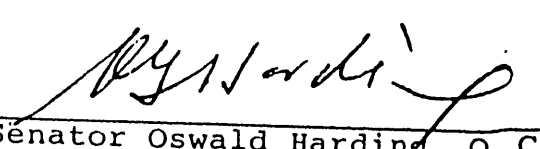
Hon. David Coore, Q.C.



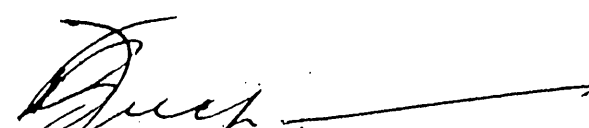
Rt. Hon. Edward Seaga, P.C.




Sen. Dr. Hon. Peter Phillips



Senator Oswald Harding, Q.C.



Hon. Donald Buchanan, M.P.



Hon. Hector Wynter, O.J.

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Shirley Ann Eaton
Ms. Shirley-Ann Eaton

Harold Brady
Mr. Harold Brady

Frederick Hamaty
Mr. Frederick Hamaty, Q.C.

Ruby Walcott
Mrs. Ruby Walcott

Edwin Jones
Professor Edwin Jones

Dorothy Lightbourne
Senator Dorothy Lightbourne

Wenty Bowen
Mr. Wenty Bowen

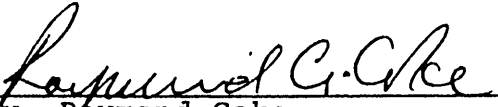
Jeremy Palmer
Mr. Jeremy Palmer

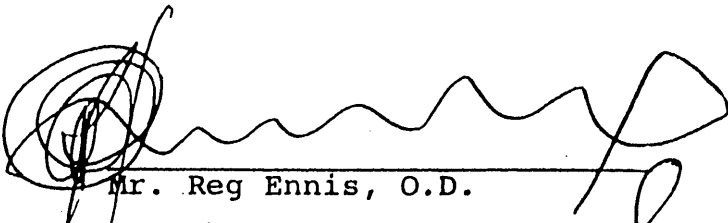
Lady Gifford (with Record)
Lady Gifford

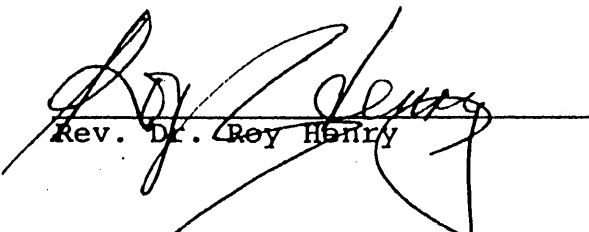
Dr. Horace Chang

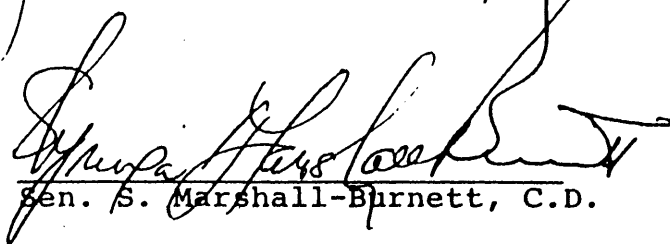
Norma Linton
Ms. Norma Linton

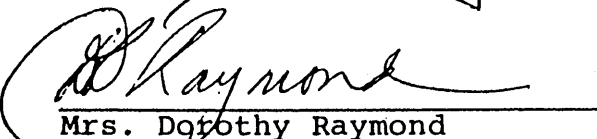
Delroy Chuck
Mr. Delroy Chuck


Rev. Raymond Coke

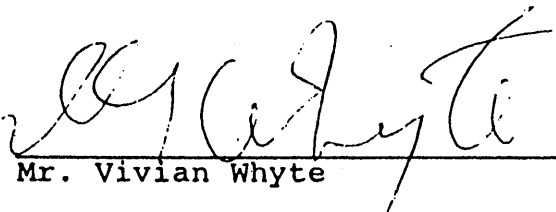

Mr. Reg Ennis, O.D.

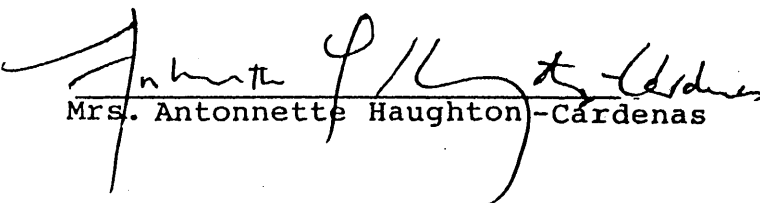

Rev. Dr. Roy Henry

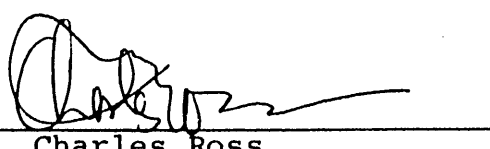

Sen. S. Marshall-Burnett, C.D.


Mrs. Dorothy Raymond

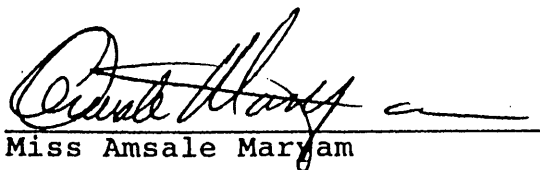

Mr. David Gordon-Rowe


Mr. Vivian Whyte

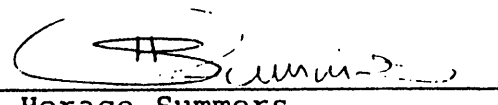

Mrs. Antonette Haughton-Cardenas

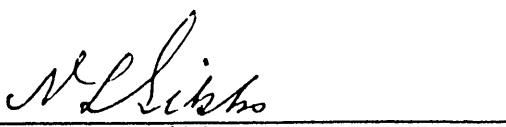

Mr. Charles Ross


Mr. Alfred King


Miss Amsale Maryam


Mr. Lucius Patterson


Mr. Horace Summers


Mr. N. L. Gibbs, O.D.
Secretary



1.

REPORT
OF
THE RECONSTITUTED CONSTITUTIONAL COMMISSION

PART I

THE RECONSTITUTION OF THE COMMISSION
REAPPOINTMENT AND TERMS OF REFERENCE

1. Pursuant to the Resolutions of the Senate and the House of Representatives passed on 5th and 9th November, 1993 respectively, Parliament authorized the re-establishment of the Constitutional Commission, consisting of the same membership as the previous Commission, with the Chairman to be elected from among its members and with the following terms of reference:

"To consider further and finalise an appropriate draft on the Fundamental Rights and Freedoms Chapter of the Constitution

and

To submit such recommendations to the Joint Select Committee for consideration by end of January, 1994.

MEMBERSHIP

2. The following were the members of the former Commission who accepted reappointment:

<u>People's National Party</u>	(6)	Sen. Hon. David Coore, Q.C. Sen. Dr. The Hon. Peter Phillips Hon. Donald Buchanan, M.P. Ms. Shirley-Ann Eaton Mr. Frederick Hamaty, Q.C. Professor Edwin Jones
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<u>Jamaica Labour Party</u>	(8)	Rt. Hon. Edward Seaga, P.C., M.P. Senator Oswald Harding, Q.C.
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Hon. Hector Wynter, O.J.
 Mr. Harold Brady
 Mrs. Ruby Walcott
 Sen. Dorothy Lightbourne
 Mr. Jeremy Palmer
 Dr. Horace Chang

<u>Jamaican Bar Association</u>	(2)	Dr. Lloyd Barnett Ms. Norma Linton
<u>Press Association of Jamaica</u>	(2)	Mr. Wenty Bowen Lady Gifford
<u>University of the West Indies</u>	(1)	Mr. Delroy Chuck
<u>Trade Unions</u>	(3)	Mr. Reg Ennis, Union of Technical Advisory Supervisory Personnel
		Sen. Syringa Marshall-Burnett, C.D. Nurses Association of Jamaica
		Mr. David Gordon-Rowe, Research Officer, Trade Union Development Research Council
<u>Church Organizations (Ja. Council of Churches)</u>	(2)	Rev. Raymond Coke Rev. Dr. Roy Henry
<u>Teachers' Organizations</u>	(2)	Mrs. Dorothy Raymond Mr. Vivian Whyte
<u>Women's Organizations</u>	(1)	Mrs. Antonnette Haughton-Cardenas
<u>Private Sector Interests</u>	(1)	Mr. Charles Ross
<u>Farmers' Organization (Jamaica Agricultural Society)</u>	(2)	Mr. Alfred King Mr. Lucius Patterson
<u>Youth Organizations (Jamaica Youth Council)</u>	(2)	Miss Amsale Maryam Mr. Horace Summers

Mr. N.L. Gibbs, O.D. was reappointed Secretary of the Commission.

Appointment of a Chairman

3. At the inaugural meeting of the Commission on 24th November, 1993, members unanimously proposed Dr. Lloyd Barnett to be Chairman of the Commission. Dr. Barnett however declined the nomination and it was only at the following meeting on 9th December, 1993, that he agreed to accept the appointment on the understanding that he would be free to express his views and opinions within the meetings and elsewhere. This was unanimously accepted.

4. The Commission at its first meeting took the opportunity to place on record its thanks and appreciation to the immediate past Chairman, the Hon. Mr. Justice James Kerr, Q.C., O.J., for the able and dedicated manner in which he had carried out his duties and for the outstanding contribution he had made to the work of the previous Commission.

5. The Commission regrets that it was not possible to complete its work and to submit its recommendations to the Joint Select Committee on Constitutional and Electoral Reform by the end of January, 1994. Accordingly, approval was sought for an extension of the deadline date to 28th February, 1994, and this request was promptly granted.

Meetings

6. The Commission held a total of nine meetings, the majority of which were open to the Press. (20 members on an average attended the meetings).

PART IISOURCES AND MATERIALS EXAMINED

7. In pursuing its terms of reference, the Commission took careful note of the various public concerns expressed about the inadequacy of the provisions in the present Chapter of the Constitution on the Fundamental Rights and Freedoms. In reconsidering the subject, the Commission took into account the recommendations which had already been made in the first report of the Commission.

8. These may be summarised as follows:

- 1) The declaratory provisions of the Fundamental Rights and Freedoms should be expressed in positive terms and in the modern Bill of Rights form obtaining in the Constitutions of certain other Commonwealth Countries, such as Canada and Trinidad and Tobago.
- 2) There should be reference in the Constitution to certain social and economic aspirations but these should not be included as part of the enforceable fundamental rights provisions.
- 3) Provisions relating to the protection of the environment should be included in some appropriate place in the Constitution.
- 4) The right to freedom of movement should be extended to include freedom to leave Jamaica.

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Consistent with the fundamental nature of the declared rights and freedoms, those rights should be entrenched and should not be subject to suspension or abrogation by Special Acts of Parliament, and accordingly the present section 50 should be repealed.

- 6) The present provisions of the freedom of the person clause with respect to bail should be retained but consideration should be given to enacting legislation to give effect to the intention of the constitutional protection against unjustified denial of bail.
- 7) The existing provisions which permitted the Executive to disregard the recommendations of the Review Tribunal with regard to persons detained during periods of public emergency should be amended to compel conformity with such recommendations.
- 8) A provision should be inserted to the effect that on the declaration of a public emergency a Review Tribunal must be immediately established and upon request by any person detained his case must be reviewed by such a Tribunal with due despatch.
- 9) The duration of a state of emergency should in the first instance be limited to three months instead of the present twelve months and it should be subject to parliamentary extensions not exceeding three (3) months.

- 10) The grounds of the establishment of a state of emergency should be definite and confined to those circumstances specifically listed and accordingly the phrase "or other calamity whether similar to the foregoing or not" in the present section 26(5)(a) should be deleted.
- 11) The question of whether the establishment of a state of emergency was justified on any of the grounds set out in the Constitution should be subject to judicial review.
- 12) It should be clearly stated that a state of emergency may be declared in respect of any part or parts of Jamaica.
- 13) In the formulation of the Bill of Rights special groups or institutions, such as the Press, the Maroons, the Rastafarians, political parties and trade unions should not be singled out for express mention or treatment.
- 14) Discrimination on the grounds of sex should be included in the constitutional prohibition.
- 15) The right to apply to the Court for redress should be extended to include any member of the public likely to be affected.
- 16) In the proviso to subsection 2 of the present section 25 "shall" should be deleted and "may" substituted, giving the Court the discretion to entertain an application notwithstanding

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that there are other adequate means of redress.

17) Consideration should be given to enacting legislation as contemplated by subsection 4 of the existing section 25 by expressly empowering the Court to award damages in appropriate cases.

18) The present provision of section 26(8) by which pre-independence laws are preserved despite their inconsistency with the fundamental rights and freedoms should be repealed.

9. In the draft prepared by us we have in part reaffirmed and incorporated the earlier recommendations numbered 1, 2 and 9 in paragraph 6 above.

We have adopted and fully incorporated the recommendations numbered 3, 4, 7, 8, 10, 11, 12, 13, 14, 15, 16 and 18. We support and urge the implementation of the recommendation numbered 5.

We have not accepted or provided for the recommendations numbered 6 and 17.

10. The Commission re-examined the provisions of the present Constitution with respect to the fundamental rights and freedoms as well as various national and conventional formulations on the subject.

PART III

THE IDEALS AND OBJECTIVES OF THE DRAFT

11. As indicated, we reaffirm the recommendation of the former Commission that the declaratory sections of the Bill of Rights should be expressed in simple language. We are of the view that the clarity of the provisions does not depend on whether they are expressed in positive or negative terms but on the general manner of their formulation. On the other hand, the explicit prohibition of any derogation or abridgement of the rights and freedoms is an effective way to emphasize the fundamental and sacrosanct nature of the rights and freedoms. Accordingly, we have combined both an affirmative commitment to the preservation of the rights and freedoms with a clear prohibition against legislative or executive infringements.

12. The draft which has been eventually settled and is attached to this Report as Appendix A is the result of a combination of a Preamble proposed by the Chairman, Dr. Lloyd Barnett, an introductory clause proposed by the Hon. David Coore Q.C. and a Declaratory Section drafted by the Right Honourable Edward Seaga as well as more detailed provisions for the protection of certain rights and the enforcement of the guarantees drafted by the Chairman.

13. In examining, re-drafting and refining these formulations we sought:

9.

- (1) to make it clear that the genesis of the fundamental rights and freedoms is not confined to English common law but also encompasses universally accepted human rights norms;
- (2) to preserve and strengthen in all aspects the power and jurisdiction of the Courts to determine the constitutionality of any measure or action which has an impact on the rights and freedoms;
- (3) to ensure that any abridgement or infringement of the rights and freedoms will be struck down unless it satisfies a stringent test of demonstrable justifiability; and
- (4) to facilitate the individual's access to the Courts for constitutional redress as well as to ensure that the Court's power to grant adequate remedies will not be hindered or curtailed by technicality.

14. Accordingly, we have made provision in the draft to the effect that:

- (1) the rights and freedoms are the entitlement of the people by virtue of their inherent dignity as individuals;
- (2) any derogation from the rights will offend the protective provisions unless reasonably required during a state of

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public emergency or of public disaster or is demonstrably justified in a free and democratic society;

- (3) the person who seeks to justify the derogation has the burden of proving that it is justified,
- (4) a public or civic organisation or any person authorised by law may initiate proceedings to challenge an infringement or threatened infringement of the right; and
- (5) judicial review applies to the declaration of states of emergency and of public disaster and to action taken in restriction of the citizens' rights during such periods.

PART IV

ANALYSIS OF PARTICULAR ISSUES

15. With respect to the Commission's previous recommendation that the present provision regarding freedom of the person should remain unchanged, we took the view that since there was continuing derogation of this right the constitutional provision should be reworded so as to make it clear that persons in custody should not be unduly denied bail and should be treated humanely during such periods. [See Article 3(3)] (Compare Recommendation No. 5).

16. It is our view that it is unnecessary to provide specifically for the award of damages as a remedy for infringement of the

constitutional guarantees as the present formulation which gives the Court power to grant "redress" is sufficiently comprehensive as laid down by the Judicial Committee of the Privy Council in Maharaj vs Attorney-General of Trinidad and Tobago (No. 2) [1979] A.C. 385. (See Recommendation No. 16). Moreover, the specific mention of one type of remedy may lead to a restrictive interpretation of the existing provision.

17. It is our view that the right to free primary education and the right to protection against environmental abuse are two socio-economic rights which at the minimum should be accepted as state obligations. Accordingly, these have been incorporated in the proposed Charter of Rights. [See Article 1(14)(15)] (Compare Recommendation No. 2).

18. We also concluded that it is desirable to provide children with constitutional guarantees against abuse and exploitation. Accordingly, we have inserted in the draft Charter protection for:

"the right of every child to such measures of protection as are required by the status of a minor or as part of the family, society and the state;" (See Article 1(13)).

In addition, we strongly recommend the establishment by legislation of a public office or the employment of a public officer charged with the responsibility of representing children whose rights are infringed.

19. With respect to periods of public emergency, we have agreed that the period of twelve(12) months now permitted in the first

instance is unduly long and have taken the view that it should not last for longer than fourteen(14) days without specific Parliamentary approval. [See Article 8(3)] (Compare Recommendation No. 8).

20. In our view, the announcement of a state of emergency generally carries a connotation of instability and it was therefore desirable to confine that term to situations in which the security of the State was threatened by subversive or violent action. For the periods occasioned by natural disaster we have adopted the term 'period of public disaster.' In addition to restricting to fourteen days the duration of these exceptional situations where they have been brought into force by executive declaration, we have provided that extensions of the period require the approval of a two-thirds majority of all the members of each House of Parliament. In addition, the declaration and resolutions as well as action taken as a consequence of them are to be made subject to judicial review. Although we have not thought it desirable to limit the fundamental rights and freedoms which may be affected by a state of public emergency or of public disaster, we are of the opinion that these checks and balances provide adequate safeguards against abuse of the special situations.

21. We are of the opinion that certain protective provisions should be separately spelled out because of the particular nature of those rights. Accordingly, there are specific articles dealing with (a) protection from inhuman treatment; (b) protection of

freedom of the person; (c) the right to due process of law and (d) the protection of property rights. (See Articles 2, 3, 4, 5) As far as is practicable, however, we have sought to simplify the language of these provisions.

22. It was strongly urged on us by the Media Association of Jamaica Ltd. that the Charter of Rights should specifically incorporate 'freedom of the press' in those terms. As indicated above, the Commission had previously decided against this proposal. As it had first decided in favour of its express mention and reversed its decision in circumstances in which it might have mistakenly believed that the term was not specifically used in the Constitution of the United States of America, we decided to re-examine the matter thoroughly. In this regard, we received a delegation of six members from the Media Association and they made submissions to us.

23. While recognizing the critical role played by the Press in the preservation of democracy, by a majority decision we did not accept that the only or even the most effective way of providing the appropriate constitutional guarantee is by the use of the term "freedom of the press." In the first place, press literally means a printing house or newspaper establishment. Modern technology has demonstrated that there is unlimited scope for the development of new methods of expression and communication. It therefore requires a particularly liberal extension of the word "press" to cover all these new developments. Accordingly, we have preferred the use of

the word "media."

24. In many cases, Judges have treated freedom of expression as including freedom of the press and the right of the press to disseminate information. See Express Newspapers (Private) Ltd. v Union of India [1961] 1 L.L.J. 339; Olivier and Another v Buttigieg [1966] 2 All E.R. 459; Attorney-General v Antigua Times Ltd. (1975) 3 W.I.R.232; [1975] 3 All E.R. 232. The true issue is whether the constitutional guarantees protect investigative journalism and prevent restrictive government regulation of the media. It is no more than a reasonable conjecture that the use of the term 'freedom of the press' will provide the desired protection. Accordingly, we have recommended the explicit incorporation of the functional aspects of the media in the following terms:

"the right to seek, distribute or disseminate to other persons and members of the public, information, opinions and ideas through any media;"

25. It was represented to us that the constitutional protection would be inadequate if the term "freedom of the press" is not explicitly included and there is no provision which corresponds to paragraphs 2 and 3 of Article 13 of the American Convention on Human Rights. Those two paragraphs are in the following terms:

"The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputation of others; or

- b. the protection of national security, public order, or public health or morals."

"The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

As indicated, we do not accept the premise that the term 'freedom of the press' by itself has a connotation that will produce the protection given by those paragraphs. On the other hand, the provisions which we have made to ensure a purposeful and liberal interpretation of the guarantees against the background of international human rights norms and a stringent test for any infringement direct or indirect afford a more reliable protection against infringement of the freedom.

26. We have sought, by the general provisions mentioned in Part III of this Report, to ensure that the constitutional guarantees are construed in such a manner as to provide for the full and effective realisation of the rights. Additionally, we have incorporated a provision that, in the interpretation of the judicial rights and freedoms, the Courts must have regard to international human rights jurisprudence. In the view of the majority, these provisions will give a far more definite, predictable and comprehensive protection for the freedom of the media than would the mere use of the term "freedom of the press."

27. Moreover, the majority does not think it is wise to use the

FUNDAMENTAL RIGHTS AND FREEDOMS

THE CHARTER

WE RESOLVE as a people to preserve for ourselves and future generations the fundamental rights and freedoms to which we are entitled by virtue of our inherent dignity as individuals and as citizens of a free and democratic society:

WE AFFIRM that, save only for laws that are required for the governance of the State in periods of peril and emergency or as may be demonstrably justified in a free and democratic society, Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes:

- 1) the right to life, liberty and the security of the person;
- 2) the right to freedom of conscience, belief and observance of religious and political doctrines;
- 3) the right to freedom of expression;
- 4) the right to seek, distribute or disseminate to other persons and members of the public, information, opinions and ideas through any media;
- 5) the right to freedom of association and assembly;
- 6) the right to freedom of movement;
- 7) the right to due process of law;

ii.

- 8) the right to equality before the Law;
- 9) the right to fair, humane and equal treatment from any public authority in the exercise of any function;
- 10) the right to freedom from discrimination by reason of race, social class, colour, religion, gender or political preference;
- 11) the right to enjoyment and beneficial ownership of property;
- 12) the right to respect for private and family life, privacy of the home and of communication;
- 13) the right of every child to such measures of protection as are required by the status of a minor or as part of the family, society and the State;
- 14) the right of every child who is a citizen to free education, at least throughout the primary level;
- 15) the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage;
- 16) the right of every citizen to participate and vote in free and fair elections;

iii.

- 17) the right of every citizen to be granted a passport and not to be denied or deprived thereof, except by due process of law:

AND WE FURTHER DECLARE that any person whose right, freedom or entitlement here stated has been abrogated, abridged, infringed or denied whether by action of the State or by the act of any other person or body may seek redress before a court of law.

Protection From Inhuman Treatment

2. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

Protection Of Freedom Of The Person

3. (1) With respect to the right to liberty and security of the person no one shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law, in the following cases:
- a) the lawful detention of a person after conviction by a competent court;
 - b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;

- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d) the lawful detention of persons for the prevention of the spreading of infectious diseases constituting a serious threat to public health, or of persons suffering from mental disorder where necessary for the prevention of harm to themselves or others;
 - e) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into Jamaica or of a person against whom action is being taken with a view to deportation or extradition.
- 2) Anyone who is arrested shall, at the time of arrest, be informed in a language which he understands of the reasons for his arrest and shall be promptly informed of any charges against him.
- 3) Any person awaiting trial and detained in custody shall be entitled to bail on reasonable conditions unless sufficient cause is shown for keeping him in custody. Anyone arrested or detained on a criminal charge shall be brought promptly before a

v.

judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be subject to reasonable guarantees to appear for trial or at any other stage of the judicial proceedings.

- 4) Anyone who is deprived of liberty by arrest or detention shall be brought promptly before a Court and shall also be entitled to take proceedings before a Court in order that the Court may decide without delay on the lawfulness of the arrest or detention and may order his release if the arrest or detention is not lawful.
- 5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
- 6) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this article to the extent that the law in question authorizes the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.
- 8) If any person who is lawfully detained by virtue only of such a law as is referred to in paragraph

(7) of this article so requests at any time during the period of that detention not earlier than six weeks after he last made such a request during that period, his case shall be reviewed with due despatch by an independent and impartial tribunal which must be promptly established by law and presided over by a person appointed by the Chief Justice of Jamaica from among the persons entitled to practise or to be admitted to practise in Jamaica as attorneys-at-law.

- 9) On any review by a tribunal in pursuance of paragraph (8) of this article of the case of any detained person, the tribunal may make recommendations concerning the conditions of his detention or necessity or expediency of continuing his detention to the authority by whom it was ordered and that authority shall be obliged to act in accordance with any such recommendations.

The Right To Due Process

4. 1) In the determination of his civil rights and obligations (or of any charges against him) or of any legal proceedings which may result in an important decision adverse to his interests, each person is entitled to a fair and public hearing within a reasonable time by an independent and impartial court or tribunal established by law.
- 2) In all cases judgment shall be pronounced publicly but the press and public may be excluded from all or any part of the trial to the extent strictly necessary in the opinion of the Court,

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- a) in the interest of public order or national security in a democratic society;
 - b) where the interests of juveniles or the protection of the private life of a party so require; or
 - c) where publicity would prejudice the interests of justice.
- 3) Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 4) Every person charged with a criminal offence has the following minimum rights:
- a) to be informed promptly in a language which he understands and in detail of the nature and cause of the accusation against him;
 - b) to have adequate time and facilities for the preparation of his defence;
 - c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

viii.

- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in Court;
 - f) not to be compelled to testify against himself or to confess guilt; and
 - g) shall, when charged on information or indictment in a Superior Court have the right to trial by jury; and except with his own consent the trial shall not take place in his absence unless he so conducts himself in the Court as to render the continuance of the proceedings in his presence impracticable and the Court has ordered him to be removed and the trial to proceed in his absence.
- 5) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use by the accused person of any record of the proceedings made by or on behalf of the Court.
- 6) When a person has, by a final decision, been convicted of a criminal offence and has suffered punishment as a result of such conviction, and it is subsequently shown that there has been a miscarriage of justice, that person shall be compensated according to law.

ix.

- 7) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
- 8) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure.
- 9) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier or more severe penalty be imposed than the one that was applicable at the time the criminal offence was committed.

Protection Of Property Rights

5. 1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired, transferred, diminished or extinguished except by or under the provisions of a law that -
 - a) prescribes the principles on which and the manner in which compensation therefor is to be determined and given; and
 - b) secures to any person claiming an interest in or right over such property a right of access to a Court for the purpose of -

x.

- i) establishing such interest or right (if any);
 - ii) determining the amount of such compensation (if any) to which he is entitled; and
 - iii) enforcing his right to any such compensation.
- 2) Nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property -
- a) in satisfaction of any tax, rate or due;
 - b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;
 - c) upon the attempted removal of the property in question out of or into Jamaica in contravention of any law;
 - d) by way of the taking of a sample for the purposes of any law;
 - e) where the property consists of an animal upon its being found trespassing or straying;
 - f) as an incident of a lease, tenancy, licence, mortgage, charge, bill of sale, pledge or contract;

- g) by way of the vesting or administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporate in the course of being wound up;
- h) in the execution of judgments or orders of courts;
- i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;
- j) in consequence of any law with respect to the limitation of actions;
- k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon -
 - i) of work of soil conservation or the conservation of other natural resources;
or
 - ii) of agricultural development or improvement which the owner or occupier of the land has been required and has, without reasonable and lawful excuse, refused or failed to carry out.

Provided that:

- a) the seizure or forfeiture of property as a penalty for a criminal offence shall be limited to property used in the furtherance of the criminal enterprise, or obtained from the proceeds or profits of the criminal enterprise, and;
 - b) where a court exercises a power granted it to order the seizure or forfeiture of the property of a convicted person, the home in which the infant children of that convicted person habitually resides shall not be subject to such an order unless the court is able from other assets of the convicted person to make adequate provisions for the accommodation of such infant children.
- 3) Nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property in the interests of safeguarding the interests of others or the protection of tenants, licencees or others having rights in or over such property.

- 4) Nothing in this article shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purpose by any law and in which no monies have been invested other than monies provided by Parliament or by the Legislature of the former Colony of Jamaica.
- 5) In this article "compensation" means the consideration to be given to a person for any interest or right which he may have in or over property which has been compulsorily subject to any action referred to in paragraph (1) of this article and as is prescribed and determined in accordance with the provisions of the law by or under which the property has been compulsorily so affected.

Voiding Of Incompatible Laws

6. 1) Subject to the provisions of paragraph (3) of this article and of article [49], a law or rule of law shall be void if and to the extent that -
 - a) it requires or authorizes anything to be done or omitted in contravention of any provision of this chapter; or
 - b) it prohibits the exercise of any right or freedom protected by this chapter; or

- c) it restricts the exercise of any such right or freedom in a manner not authorized by this chapter.
- 2) If the validity of any provision of an Act of Parliament or subordinate legislation is challenged in the course of proceedings in an inferior court or tribunal, the court or tribunal shall (unless it is satisfied that there is no substance in the challenge) refer the question to the Supreme Court.
- 3) Where the protection of any right or freedom by this chapter is subject to any restriction or qualification, that restriction or qualification shall have no wider effect than is strictly necessary in the circumstances, and shall not be applied for any purpose other than that for which it has been prescribed.

Applications For Redress

- 7. 1) If any person alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.
- 2) A public or civic organization may with leave of the Court, or any person authorized by law, initiate an application to the Supreme Court on

behalf of persons who are entitled to apply under paragraph (1) of this article for a declaration that any legislative or executive act contravenes the provisions of this chapter.

- 3) Any person aggrieved by any determination of the Supreme Court under this article may appeal therefrom to the Court of Appeal.
- ✓ 4) In determining the meaning and effect of the provisions of this chapter judicial notice should be taken of the international human rights instruments to which Jamaica is a party and where a legislative or executive act has a direct impact on the fundamental rights and freedoms protected by this chapter the onus shall rest on the State or other responsible party to justify the derogation.
- 5) Where any application is made for redress under this article the Supreme Court may decline to exercise its powers and may remit the matter to the appropriate court, tribunal or authority if it is satisfied that adequate means of redress for the contravention alleged are available to the person concerned under any other law.
- 6) Parliament may make provision, or may authorize the making of provision, with respect to the practice and procedure of any court for the purposes of this article and may confer upon that court such powers, or may authorize the conferment

thereon of such powers, in addition to those conferred by this article, as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this article.

Public Emergency and Public Disaster

8. In this chapter -
- 1) "Period of public emergency" means any period during which -
 - a) Jamaica is engaged in any war; or
 - b) there is in force a Proclamation by the [Governor-General] declaring that a state of public emergency exists; or
 - c) there is in force a resolution of each House of Parliament supported by the votes of a two-thirds majority of all the members of each House declaring that democratic institutions in Jamaica are threatened by subversion.

"Period of public disaster" means any period during which there is in force a Proclamation by the [Governor-General] or a resolution of each House supported by the votes of a two-thirds majority of all the members of each House declaring that as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of any pestilence or outbreak of infectious disease, lives, health, communications or property are endangered.

- 2) A Proclamation made by the [Governor-General] shall not be effective for the purposes of paragraph (1b) of this article unless it is declared that the [Governor-General] is satisfied -
 - a) that a public emergency has arisen as a result of the imminence of a state of war between Jamaica and a foreign State;
 - b) that action has been taken or is immediately threatened by any person or body or persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

- 3) A Proclamation made by the [Governor-General] for the purposes of and in accordance with this article -
 - a) shall, unless previously revoked, remain in force for fourteen days or for such longer period, not exceeding three months, as both Houses of Parliament may determine by a resolution supported by a two-thirds majority of all the members of each House;
 - b) may be extended from time to time by a resolution passed in like manner as is prescribed in sub-paragraph (a) of this sub-paragraph for further periods, not exceeding in respect of each such extension a period of three months;

- c) may be revoked at any time by a resolution supported by the votes of a two-thirds majority of all the members of each House; and
 - d) may be limited to a part or parts of Jamaica.
- 4) A resolution passed by a House for the purposes of this article may be revoked at any time by a resolution of that House supported by the votes of a majority of all the members thereof.
 - 5) A resolution passed for the purposes of this article may be limited in application to a part or parts of Jamaica.
 - 6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of this chapter to the extent that the law in question authorizes the taking, during a period of public emergency or a period of public disaster, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency or public disaster.
 - 7) The court shall be competent to enquire into and determine whether a proclamation or resolution purporting to have been made or passed under this article, was made or passed for any purpose specified in this article or whether any measures taken pursuant thereto are reasonably justified for that purpose.