

REFERENCE

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CONSTITUTIONAL LAW AND LEGAL SYSTEMS

COUNCIL OF LEGAL EDUCATION
NORMAN MANLY
U.W.I.

ABILL

ENTITLED

AN ACT to Amend the Constitution of Jamaica to provide for a Charter of Fundamental Rights and Freedoms and for connected matters.

WHEREAS a Constitutional Commission established by Parliament recommended, after wide public consultation and due deliberation, that Chapter III of the Constitution of Jamaica should be replaced by a new Chapter which provides more comprehensive and effective protection for the fundamental rights and freedoms of all persons in Jamaica:

AND WHEREAS the recommendations of the Constitutional Commission were endorsed by a Joint Select Committee of Parliament and by resolutions of the House of Representatives and of the Senate:

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KINGSTON, JAMAICA

AND WHEREAS successive Joint Select Committees of both Houses of Parliament gave further consideration to the recommendations and received and considered representations made by members of the public in relation thereto and made recommendations thereon:

[]

NOW, THEREFORE, BE IT ENACTED by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica in accordance with the provisions of section 49 of the Constitution of Jamaica, and by the authority of the same, as follows—

Short title and construction.

1. This Act may be cited as the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2008, and shall be read and construed as one with the Constitution of Jamaica (hereinafter referred to as the “Constitution”) and all amendments thereto.

Repeal and replacement of Chapter III of Constitution.

2. Chapter III of the Constitution is repealed and the following substituted therefor—

“

CHAPTER III

CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

Fundamental rights and freedoms.

13.—(1) Whereas—

- (a) the state has an obligation to promote universal respect for, and observance of, human rights and freedoms;
- (b) all persons in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and as citizens of a free and democratic society; and
- (c) all persons are under a responsibility to respect and uphold the rights of others recognized in this Chapter,

the following provisions of this Chapter shall have effect for the purpose of affording protection to the rights and freedoms of persons as set out in those provisions, to the extent that those rights and freedoms do not prejudice the rights and freedoms of others.

(2) Subject to section 49 and to subsections (8) and (11) of this section and save only as may be demonstrably justified in a free and democratic society—

- (a) this Chapter guarantees the rights and freedoms set out in subsections (3) and (6) of this section and in sections 14, 15, 16 and 17; and
- (b) Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes those rights.

(3) The rights and freedoms referred to in subsection (2) are as follows—

- (a) the right to life, liberty and security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence of which the person has been convicted;
- (b) the right to freedom of thought, conscience, belief and observance of political doctrines;
- (c) the right to freedom of expression;
- (d) the right to seek, receive, distribute or disseminate information, opinions and ideas through any media;

- (e) the right to freedom of peaceful assembly and association;
- (f) the right to freedom of movement, that is to say, the right—
 - (i) of every citizen to enter Jamaica; and
 - (ii) of every person lawfully in Jamaica, to move around freely throughout Jamaica, to reside in any part of Jamaica and to leave Jamaica;
- (g) the right to equality before the law;
- (h) the right to equitable and humane treatment by any public authority in the exercise of any function;
- (i) the right to freedom from discrimination on the ground of—
 - (i) being male or female;
 - (ii) race, place of origin, social class, colour, religion or political opinions;
- (j) the right of everyone to—
 - (i) protection from search of the person and property;
 - (ii) respect for and protection of private and family life, and privacy of the home; and
 - (iii) protection of privacy of other property and of communication;

- (k) the right of every child—
 - (i) to such measures of protection as are required by virtue of the status of being a minor or as part of the family, society and the State;
 - (ii) who is a citizen, to publicly funded tuition in a public educational institution at the pre-primary and primary levels;
- (l) 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;
- (m) the right of every citizen—
 - (i) who is qualified to be registered as an elector for elections to the House of Representatives, to be so registered; and
 - (ii) who is so registered, to vote in free and fair elections;
- (n) the right of every citizen to be granted a passport and not to be denied or deprived thereof except by due process of law;
- (o) the right to protection from torture, inhuman or degrading punishment or other treatment as provided in subsections (6) and (7);
- (p) the right to freedom of the person as provided in section 14;

- (q) the protection of property rights as provided in section 15;
- (r) the right to due process as provided in section 16; and
- (s) the right to freedom of religion, as provided in section 17.

(4) This Chapter applies to all law and binds the legislature, the executive and all public authorities.

(5) A provision of this Chapter binds natural or juristic persons if, and to the extent that, it is applicable, taking account of the nature of the right and the nature of any duty imposed by the right.

(6) No person shall be subjected to torture or inhuman or degrading punishment or other treatment.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (6) to the extent that the law in question authorizes the infliction of any description of punishment which was lawful in Jamaica immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2008.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (3) (f) of this section and sections 14 and 16 (3), to the extent that the law authorizes the taking, in relation to persons detained or whose freedom of movement has been restricted by virtue of that law, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during a period of public emergency or public disaster.

(9) A person, who is detained or whose freedom of movement has been restricted by virtue only of a law

referred to in subsection (8), may request a review of his case at any time during the period of detention or restriction, but any request subsequent to the initial request shall not be made earlier than six weeks after he last made such a request, and if he makes such a request, his case shall be reviewed promptly by an independent and impartial tribunal which shall be immediately established pursuant to law and presided over by a person appointed by the Chief Justice of Jamaica from among persons qualified to be appointed as a Judge of the Supreme Court.

(10) On any review by a tribunal in pursuance of subsection (9), of the case of any person who is detained or whose freedom of movement has been restricted, the tribunal may give directions to the authority by whom such detention or restriction was ordered concerning the continued detention or restriction of movement of that person and the authority shall act in accordance with such directions.

(11) Nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2008, relating to—

- (a) sexual offences;
- (b) obscene publications; or
- (c) offences regarding the life of the unborn,

shall be held to be inconsistent with or in contravention of the provisions of this Chapter.

(12) In this section “public educational institution” means an all-age school, a pre-primary school or a primary school that is maintained or assisted by the Government.

Protection of
freedom of
the person.

14.—(1) No person shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law in the following circumstances—

- (a) in consequence of his unfitness to plead to a criminal charge;
- (b) in execution of the sentence or order of a court whether in Jamaica or elsewhere, in respect of a criminal offence of which he has been convicted;
- (c) in execution of an order of the Supreme Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal;
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law;
- (e) for the purpose of bringing him before a court in execution of the order of a court;
- (f) the arrest or detention of a person—
 - (i) for the purpose of bringing him before the competent legal authority on reasonable suspicion of his having committed an offence; or
 - (ii) where it is reasonably necessary to prevent his committing an offence;
- (g) in the case of a person who has not attained the age of eighteen years, for the purpose of his care and protection;
- (h) the detention of a person—
 - (i) for the prevention of the spreading of an infectious or contagious

disease constituting a serious threat to public health; or

- (ii) suffering from mental disorder or addicted to drugs or alcohol where necessary for his care or treatment or for the prevention of harm to himself or others; or

- (i) the arrest or detention of a person—

- (i) who is not a citizen of Jamaica, to prevent his unauthorized entry into Jamaica; or
- (ii) against whom action is being taken with a view to deportation or extradition or other lawful removal or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall have the right—

- (a) to communicate with and be visited by his spouse, partner or family member, religious counsellor and a medical practitioner of his choice;
- (b) at the time of his arrest or detention or as soon as is reasonably practicable, to be informed, in a language which he understands, of the reasons for his arrest or detention;
- (c) where he is charged with an offence, to be informed forthwith, in a language which he understands, of the nature of the charge; and
- (d) to communicate with and retain an attorney-at-law.

(3) Any person who is arrested or detained shall be entitled to be tried within a reasonable time and—

(a) shall be—

(i) brought forthwith or as soon as is reasonably practicable before an officer authorized by law, or a court; and

(ii) released either unconditionally or upon reasonable conditions to secure his attendance at the trial or at any other stage of the proceedings; or

(b) if he is not released as mentioned in paragraph (a)(ii), shall be promptly brought before a court which may thereupon release him as provided in that paragraph.

(4) 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.

(5) Any person deprived of his liberty shall be treated humanely and with respect for the inherent dignity of the person.

Protection of
property
rights.

15.—(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 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—
 - (i) establishing such interest or right (if any);
 - (ii) determining the compensation (if any) to which he is entitled; and
 - (iii) enforcing his right to any such compensation.

(2) Nothing in this section 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 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.

(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it—

- (a) makes such provisions as are reasonably required for the protection of the environment; or
- (b) provides for the orderly marketing or production or growth or extraction of any agricultural product or mineral or any article or thing prepared for the market or manufactured therefor or for the reasonable restriction of the use of any property in the

interests of safeguarding the interest of others or the protection of tenants, licensees or others having rights in or over such property.

(4) Nothing in this section 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 purposes by any law and in which no monies have been invested other than monies provided by Parliament.

(5) Where an order is made under any law which provides for the compulsory acquisition of property, the court may have regard to—

- (a) any hardship that may reasonably be expected to be caused to any person by the operation of the order; or
- (b) the use that is ordinarily made of the property, or the intended use of the property.

(6) In this section “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 taken possession of or compulsorily acquired as prescribed and determined in accordance with the provisions of the law by or under which the property has been so compulsorily taken possession of or acquired.

Protection of
right to due
process.

16.—(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) In the determination of a person’s civil rights and obligations or of any legal proceedings which may

result in a decision adverse to his interests, he shall be entitled to a fair and public hearing within a reasonable time by an independent and impartial court or authority established by law.

(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or authority, shall be held in public.

(4) Nothing in subsection (3) shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings, persons other than the parties thereto and their legal representatives—

- (a) in interlocutory proceedings;
- (b) in appeal proceedings under any law relating to income tax; or
- (c) to such extent as—
 - (i) the court or other authority may consider necessary or expedient, in circumstances where publicity would prejudice the interests of justice; or
 - (ii) the court may decide to do so or, as the case may be, the authority may be empowered or required by law to do so, in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years, or the protection of the private lives of persons concerned in the proceedings.

(5) Every person charged with a criminal offence shall be presumed innocent until he is proved guilty or has pleaded guilty.

(6) Every person charged with a criminal offence shall—

- (a) be informed as soon as is reasonably practicable, in a language which he understands, of the nature of the offence charged;
- (b) have adequate time and facilities for the preparation of his defence;
- (c) be entitled to defend himself in person or through legal representation of his own choosing or, if he has not sufficient means to pay for legal representation, to be given such assistance as is required in the interests of justice;
- (d) be entitled to examine or have examined, at his trial, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) have the assistance of an interpreter free of cost if he cannot understand or speak the language used in court;
- (f) not be compelled to testify against himself or to make any statement amounting to a confession or admission of guilt; and
- (g) except with his own consent, not be tried in his absence unless—
 - (i) 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; or

(ii) he absconds during the trial.

(7) An accused person who is tried for a criminal offence or any person authorized by him in that behalf shall be entitled, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, to be given for his own use, within a reasonable time after judgment, a copy of any record of the proceedings made by or on behalf of the court.

(8) Any person convicted of a criminal offence shall have the right to have his conviction and sentence reviewed by a court the jurisdiction of which is superior to the court in which he was convicted and sentenced.

(9) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence:

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorizes any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(10) No person shall be held guilty of any criminal offence on account of any act or omission which did not, at the time it took place, constitute a criminal offence.

(11) No penalty shall be imposed in relation to any criminal offence or in relation to an infringement of a civil nature which is more severe than the maximum penalty which might have been imposed for the offence or in respect of that infringement, at the time when the offence was committed or the infringement occurred.

(12) If, at the time of sentencing of a person who is convicted of a criminal offence, the penalty prescribed by law for that offence is less severe than the penalty that might have been imposed at the time when the offence was committed, the less severe penalty shall be imposed at the time of sentencing.

Protection of
freedom of
religion.

17.—(1) Every person shall have the right to freedom of religion including the freedom to change his religion and the right, either alone or in community with others and both in public and in private, to manifest and propagate his religion in worship, teaching, practice and observance.

(2) The constitution of a religious body or denomination shall not be altered except with the consent of the governing authority of that body or denomination.

(3) Every religious body or denomination shall have the right to provide religious instruction for persons of that body or denomination in the course of any education provided by that body or denomination whether or not that body or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) No person attending any place of education, except with his own consent (or, if he is a minor, the

consent of his parent or guardian) shall be required to receive religious instruction, or to take part in or attend any religious ceremony or observance, which relates to a religion or religious body or denomination other than his own.

Status of
marriage.

18.—(1) Nothing contained in or done under any law in so far as it restricts—

- (a) marriage; or
- (b) any other relationship in respect of which any rights and obligations similar to those pertaining to marriage are conferred upon persons as if they were husband and wife,

to one man and one woman shall be regarded as being inconsistent with or in contravention of the provisions of this Chapter.

(2) No form of marriage or other relationship referred to in subsection (1), other than the voluntary union of one man and one woman may be contracted or legally recognized in Jamaica.

Application
for redress.

19.—(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) Any person authorized by law, or, with the leave of the Court, a public or civic organization, may initiate an application to the Supreme Court on behalf of persons who are entitled to apply under subsection (1) for a declaration that any legislative or executive act contravenes the provisions of this Chapter.

(3) The Supreme Court shall have original jurisdiction to hear and determine any application made

by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

(4) Where any application is made for redress under this Chapter, 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.

(5) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.

(6) Parliament may make provision or authorize the making of provision with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorize the conferment thereon of such powers, in addition to those conferred by this section, 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 section.

retation. 20.—(1) In this Chapter—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law in Jamaica other than a court constituted by or under service law and—

- (a) in sections 13 (3)(a), 14 and 16 (1), (2), (3), (5), (6), (7) and (8) (excluding the proviso thereto) of this Constitution includes, in relation to an offence against service law, a court so constituted; and
- (b) in section 14 of this Constitution includes, in relation to an offence against service law, an officer of a defence force, or the Police Service Commission or any person or authority to whom the disciplinary powers of that Commission have been lawfully delegated;

“period of public disaster” means any period during which there is in force a Proclamation by the Governor-General declaring that a period of public disaster exists;

“period of public emergency” means any period during which—

- (a) Jamaica is engaged in any war;
- (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;

“service law” means the law regulating the discipline of a defence force or police officers.

(2) A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (1) 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 of 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;
- (c) that a period of public disaster has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity, whether similar to the foregoing or not.

(3) A Proclamation made by the Governor-General for the purposes of and in accordance with this section—

- (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 paragraph (a) 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.

(4) A resolution passed by a House for the purpose of paragraph (c) of the definition of "period of public emergency" in subsection (1) 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) The court shall be competent to enquire into and determine whether a proclamation or resolution purporting to have been made or passed under this section was made or passed for any purpose specified in this section or whether any measures taken pursuant thereto are reasonably justified for that purpose."

Repeal of
section 50 of
Constitution.

3. Section 50 of the Constitution is repealed.

MEMORANDUM OF OBJECTS AND REASONS

The Government has recognized a need for reform of many aspects of the Constitution in order to meet the needs of post independence Jamaica. To this end, a Constitutional Commission was formed to examine various issues. A Joint Select Committee of the Houses of Parliament was appointed with a mandate to undertake such reform. The Constitutional Commission made recommendations to the Joint Select Committee which in turn presented its final report to Parliament for approval.

The then Government decided that pending more comprehensive amendments to the Constitution, it was desirous to give effect to the proposals emanating from the Final Report relating to the Fundamental Rights and Freedoms which would constitute a guarantee by the State to preserve and protect those rights and freedoms.

A Bill to that effect was considered by successive Joint Select Committees of Parliament which recommended various amendments. The report of the latest Committee was tabled but the dissolution of Parliament prevented any further action in relation thereto. The Government has decided to table a new Bill which incorporates the recommendations made by that Joint Select Committee.

The provisions relating to protection from torture or inhuman or degrading punishment restate the existing provisions in the Constitution. It is intended that final determination in that regard will be left as a matter to be determined by the outcome of a free conscience vote of Members of the Houses of Parliament on the question of the retention or abolition of the death penalty.

Consequently, this Bill seeks to amend the Constitution in order to give effect to that decision.

The Bill provides for protection of the rights and freedoms of individuals subject to such measures as are required for state governance in periods of public disaster or emergency or as are regarded as demonstrably justified in a free and democratic society.

The protected rights and freedoms include the following—

- (a) life, liberty and the security of the person;
- (b) freedom of thought, conscience, belief and observance of religious and political doctrines;
- (c) freedom of expression;
- (d) the right to seek, distribute or disseminate to any other person, information, opinions and ideas through any media;
- (e) freedom of peaceful assembly and association;

- (f) freedom of movement;
- (g) due process of law;
- (h) equality before the law;
- (i) equitable and humane treatment by any public authority in the exercise of any function;
- (j) freedom from discrimination, on the ground of race, social class, colour, religion, gender, place of origin or political preference;
- (k) protection of property rights;
- (l) protection from search of the person, respect for private and family life, privacy of home and of communication;
- (m) entitlement of every child—
 - (i) to such measures of protection as are required by the status of a minor or as part of the family, society and the State; and
 - (ii) who is a citizen to publicly funded education in a public educational institution at the pre-primary and primary levels;
- (n) entitlement of a person charged with a criminal offence or detained in pursuance of a provision of any enactment to communicate with and be visited by his spouse, partner or family member, religious; counsellor and a medical practitioner of his choice;
- (o) enjoyment of a healthy and productive environment free from threat or injury or damage from environmental abuse and degradation of the ecological heritage;
- (p) entitlement of every citizen who is registered to vote, to participate and vote in free and fair elections;
- (q) entitlement of every citizen to be granted a passport and not be denied or deprived thereof except by due process of law; and
- (r) entitlement of a person who is charged with or detained, in connection with a criminal offence to communicate with and retain an attorney-at-law.

BRUCE GOLDING
Prime Minister

A BILL

ENTITLED

AN ACT to Amend the Constitution of Jamaica
to provide for a Charter of Fundamental Rights
and Freedoms and for connected matters.

As introduced by the Honourable Prime Minister.

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REPEAL AND REPLACEMENT OF CHAPTER 3
OF THE CONSTITUTION

CHAPTER III

FUNDAMENTAL RIGHTS AND FREEDOMS

13. Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression and of peaceful assembly and association; and
- (c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

14.—(1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order lawfully to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

16.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and immunity from expulsion from Jamaica.

(2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) which is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the imposition of restrictions on the movement or residence within Jamaica of any person who is not a citizen thereof or the exclusion or expulsion from Jamaica of any such person; or
- (c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Jamaica; or
- (d) for the imposition of restrictions upon the movement or residence within Jamaica of public officers, police officers or members of a defence force; or
- (e) for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence or to undergo imprisonment outside Jamaica in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by virtue only of such a provision as is referred to in paragraph (a) of subsection (3) of this section so requests at any time during the period of that restriction not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal 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 barristers or solicitors.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

17.—(1) No person shall be subjected to torture or to inhuman or degrading punishment, or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorise the infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day.

18.— (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 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—
 - (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 section 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.

(3) Nothing in this section 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, licensees or other having rights in or over such property.

(4) Nothing in this section 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 purposes 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 section “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 taken possession of or compulsorily acquired as prescribed and determined in accordance with the provisions of the law by or under which the property has been compulsorily taken possession of or compulsorily acquired.

19.—(1) Except with his own consent, no person shall be protection subject to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning or the development and utilisation of any property in such a manner as to promote the public benefit; or
- (b) to enable any body corporate established by any law for public purposes or any department of the Government of Jamaica or any local government authority to enter on the premises of any person in order to carry out work connected with any property or installation which is lawfully on such premises and which belongs to that body corporate or that Government or that authority, as the case may be; or
- (c) for the purpose of preventing or detecting crime; or
- (d) for the purpose of protecting the rights or freedoms of other persons.

20.—(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Any court or other authority prescribed by law for the determination of the existence or the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(4) Nothing in subsection (3) of this section shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings persons other than the parties thereto and their legal representatives—

- (a) in interlocutory civil proceedings; or
- (b) in appeal proceedings under any law relating to income tax; or
- (c) to such extent as the court or other authority—
 - (i) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice; or
 - (ii) may be empowered or required by law to do so in the interests of defence, public safety, public order, public

morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty:

Provided that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this subsection to the extent that the law in question imposes upon any person charged as aforesaid the burden of proving particular facts.

(6) Every person who is charged with a criminal offence—

- (a) shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;
- (b) shall be given adequate time and facilities for the preparation of his defence;
- (c) shall be permitted to defend himself in person or by a legal representative of his own choice;
- (d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
- (e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language.

(7) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

Provided that nothing in any law shall be held to be inconsistent with or in contravention of this subsection by reason only that it authorises any court to try a member of a defence force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under service law; but any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under service law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any provision of this section other than subsection (7) thereof to the extent that the law in question authorises 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.

(10) In paragraphs (c) and (d) of subsection (6) of this section "legal representative" means a barrister entitled to practise as such in Jamaica or, except in relation to proceedings before a court in which a solicitor has no right of audience, a solicitor who is so entitled.

21.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or a religious body or denomination other than his own.

(3) The constitution of a religious body or denomination shall not be altered except with the consent of the governing authority of that body or denomination.

(4) No religious body or denomination shall be prevented from providing religious instruction for persons of that body or denomination in the course of any education provided by that body or denomination whether or not that body or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion.

22.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) which is reasonably required—
 - (i) in the interests of defence, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or
- (b) which imposes restrictions upon public officers, police officers or upon members of a defence force.

23.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) which is reasonably required—

- (i) in the interests of defence, public safety, public order, public morality or public health; or
 - (ii) for the purpose of protecting the rights or freedoms of other persons; or
- (b) which imposes restrictions upon public officers, police officers or upon members of a defence force.

24.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsection (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

- (a) with respect to persons who are not citizens of Jamaica; or
- (b) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or
- (c) for authorising 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; or
- (d) for the imposition of taxation or appropriation of revenue by the Government of Jamaica or any local authority or body for local purposes.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer, police officer or as a member of a defence force or for the service of a local government authority or a body corporate established by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 16, 19, 21, 22 and 23 of this Constitution, being such a restriction as is authorised by paragraph (a) of subsection (3) of section 16, subsection (2) of section 19, subsection (6) of section 21, subsection (2) of section 22 or subsection (2) of section 23, as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

25.—(1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution 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) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.

(4) Parliament may make provision, or may authorise the making of provision, with respect to the practice and procedure of any court for the purposes of this section and may confer upon that court such powers, or may authorise the conferment thereon of such powers, in addition to those conferred by this section 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 section.

26.—(1) In this Chapter, save where the context otherwise requires, the following expressions have the following meanings respectively, that is to say—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law in Jamaica other than a court constituted by or under service law and—

- (i) in section 14, section 15, section 16, subsections (3), (4), (6), (8) (but not the proviso thereto) and (10) of section 20, and subsection (8) of section 24 of this Constitution includes, in relation to an offence against service law, a court so constituted; and
- (ii) in section 15 and subsection (8) of section 24 of this Constitution includes, in relation to an offence against service law, an officer of a defence force, or the Police Service Commission or any person or authority to whom the disciplinary powers of that Commission have been lawfully delegated;

“member”, in relation to a defence force or other armed force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

“service law” means the law regulating the discipline of a defence force or of police officers.

(2) References in sections 14, 15, 16 and 18 of this Constitution to a “criminal offence” shall be construed as including references to an offence against service law and such references in subsections (5) to (9) (inclusive) of section 20 of this Constitution shall, in relation to proceedings before a court constituted by or under service law, be similarly construed.

(3) Nothing done by or under the authority of the law of any country other than Jamaica to a member of an armed force raised under that law and lawfully present in Jamaica shall be held to be in contravention of this Chapter.

(4) In this Chapter “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 supported by the votes of a majority of all the members of that House declaring that democratic institutions in Jamaica are threatened by subversion.

(5) A Proclamation made by the Governor-General shall not be effective for the purposes of subsection (4) of this section unless it is declared therein 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 or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or
- (b) that action has been taken or is immediately threatened by any person or body of 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.

(6) A Proclamation made by the Governor-General for the purposes of and in accordance with this section—

- (a) shall, unless previously revoked, remain in force for one month or for such longer period, not exceeding twelve months, as the House of Representatives may determine by a resolution supported by the votes of a majority of all the members of the House;
- (b) may be extended from time to time by a resolution passed in like manner as is prescribed in paragraph (a) of this subsection for further periods, not exceeding in respect of each such extension a period of twelve months; and
- (c) may be revoked at any time by a resolution supported by the votes of a majority of all the members of the House of Representatives.

(7) A resolution passed by a House for the purposes of subsection (4) of this section may be revoked at any time by a resolution of that House supported by the votes of a majority of all the members thereof.

(8) Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this Chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions.

