



Presentation by

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Jamaica Employers' Federation CEOs Breakfast

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Salutations

Ladies and gentlemen, I appear before you this morning at a juncture in Jamaica's history where I believe that there is a clear basis for hope and confidence that we can build a brighter future for our people.

The economy is also showing numerous positive signs:

- a steadily reducing debt-to-GDP ratio from 146% in 2011 to 125% now, which has been further helped by the buy-back of our PetroCaribe debt at a price of 46 cents on the dollar,
- a massively reduced current account deficit, from well over 10% of GDP in 2011 to less than 3% of GDP this year, and elevated levels of Net International Reserves of over US\$2.6 Billion, resulting in the stabilisation of our exchange rate after a period of necessary adjustment,
- a competitively priced currency that has enabled the high rates of growth that we are now enjoying in the areas where Jamaica can be internationally competitive, such as tourism and business process outsourcing,
- falling unemployment and increased job creation,
- falling interest rates,
- low rates of inflation (indeed, the lowest for over 40 years),
- the beginning of the roll-out of the investment to transform our energy sources away from excessive dependence on imported oil – work has

begun on the conversion of the Bogue generating plant from Automotive Diesel Oil to Liquid Natural Gas (LNG), and the construction of the required infrastructure to allow LNG to be imported and piped to the Bogue plant; the construction of a new 190MW LNG-fired plant at Old Harbour for JPS has gone to tender, as has the investment in a LNG terminal on the coast to supply that plant and act as a regional LNG hub; plans are advanced for the construction of a 50MW coal-fired plant at Jamalco that will supply the grid as well as providing Jamalco with the steam it needs at prices that will ensure its global competitiveness; and major investments in renewables are now underway, using both solar and wind, including the development of the largest solar power facility in the English-speaking Caribbean.

Ladies and gentlemen, these achievements are the outcome of prudent and courageous economic management that has led to Jamaica passing nine successive IMF tests. These achievements have required significant sacrifice, discipline and hard work.

I am happy to be able to say that the Ministry of Justice has played a key role in these achievements, by ensuring that the many pieces of legislation that were structural benchmarks under the IMF Programme were developed and passed into law within the strict deadlines that Jamaica had committed itself to.

Many of these legislative reforms have been key platforms for moving our economy forward.

You need to look no further than principal initiatives that have resulted in Jamaica's recent dramatic jump by 36 places in the international Ease of Doing Business rankings. These include the introduction of a "Super Form" to enable persons forming companies or registering businesses to get all their required statutory numbers (NIS, NHT, GCT, and a start-up TCC) at the same time, by a single filing at the Companies Office; the creation of a completely new and coherent system of secured finance (the Security Interests in Personal Property Act 2013), a major modern overhaul of the laws that deal with financially-distressed businesses, which now focuses on rehabilitation (the Insolvency Act 2014), and the legislation to introduce an internationally-recognised electronic filing and tracking system for Jamaica Customs, known as Asycuda.

We have substantially overhauled our systems of tax incentives, tax collection and tax administration. The results are bearing fruit, as tax revenues, which in the past have tended to lag budgeted projections, are ahead of budget for the current fiscal year.

We have modernised our regulatory framework for the financial sector, by passing a comprehensive new Banking Services Act, and we have strengthened the framework under which the securities industry is required to operate by amending the Securities Act and enacting new regulations to introduce a central trustee to hold retail repo assets.

And in the broad social arena, we have passed the long-awaited Flexi-Work legislation to remove the legal impediments to persons adopting flexible working hours, and we have passed the landmark Disabilities Act to protect the rights of our disabled community.

So, ladies and gentlemen, much has been achieved, and there is indeed hope for Jamaica. We must continue the work that has been commenced, and stick to our goals. The reforms that have been implemented are enabling us to shift the focus from economic stabilization to growth, employment, wealth creation and development.

Even as we have ensured that Jamaica has met all these structural benchmarks (and I have only highlighted some of them), we have also have been working hard to transform the Justice Sector, long starved of investment and mired in out-of-date procedures and inadequate use of technology. The Justice System is central to the attainment of our national goals, as a cohesive society and lowered levels of violent crime cannot be achieved by effective policing alone. The criminal justice system is a continuum, and the disposal of prosecutions on a timely basis is vital in the fight against crime. I will mention a few of our achievements in this area.

We have made several strategic amendments to the Evidence Act, to reduce unnecessary delays in our trial procedures, and to allow for the greater use of audio-visual technology to allow for evidence to be given from remote locations by vulnerable witnesses, or by video recordings in the case of abused children.

We have increased the monetary jurisdiction in the Resident Magistrates courts from \$250,000 to \$1,000,000, allowing many relatively small claims that previously had to be brought in the Supreme Court in Kingston, with its complex procedures, delays and costs, to be brought in the local parish court. As a corollary of this, we are amending the Court Rules to provide for mediation of civil claims of over \$500,000 in the RM Courts.

The Administrator General (Amendment) Act 2015 will empower the Administrator General to administer intestate estates without any longer having to obtain a Grant of Letters of Administration from the court, thereby speeding up the estate administration process and relieving the probate division of the courts of thousands of cases that previously had to be brought there. This pioneering legislation will also allow the Administrator General to settle the multi-generational estates that have been tied up in legal limbo for decades, enabling several thousand estates that have been in abeyance for decades finally to be resolved, so that the assets can be distributed to tens of thousands of beneficiaries and used, at last, for the economic advancement of thousands of Jamaican families, having previously been sterilised for decades.

The reform to the Dangerous Drugs Act has decriminalised personal use of ganja, making it a ticketable infraction rather than an arrestable offence, thereby relieving the courts of approximately 15,000 cases a year, and removing a source of police-citizen confrontation that had in the past been the basis of well over one-third of annual arrests made by the Police. We have facilitated persons with past convictions for possession of small quantities of ganja to have their records expunged, thereby freeing thousands of Jamaicans from the yoke of a criminal record that inhibited their employment prospects and travel opportunities.

We have completed and commissioned a new state-of-the-art judicial complex, known as Public Building North, to facilitate the much-needed expansion of the Supreme Court in downtown Kingston. It will house additional court rooms, judges' chambers, and, perhaps most importantly, a new fit-for-purpose court registry. We are introducing technology for the

electronic recording of evidence, to reduce the time taken in trials as judges record the evidence by writing it down manually. We have established a Western Registry of the Supreme Court in Montego Bay to allow cases to be filed there. Our goal, if we can identify and acquire a suitable plot of land, is to build a modern regional court complex in Montego Bay to serve Western Jamaica.

But, ladies and gentlemen, there is important unfinished business in establishing Jamaica's credentials as an independent nation, and ensuring access to justice for our people. We continue to have the Judicial Committee of Her Majesty's Privy Council as the highest rung of our court system. After 53 years, it is time to find the self-confidence to become truly independent of our former colonial master. Canada, Australia, New Zealand, all the African countries that were formerly British colonies, the four countries of the Indian sub-continent, and three of our Caribbean neighbours (including conservative Barbados) have all affirmed their self-belief and repatriated their judicial sovereignty. Two other Caribbean states, have recently decided to do so. What about Jamaica?

The three Bills to establish the Caribbean Court of Justice were tabled in the House in July 2012, prior to our 50th anniversary celebrations. As directed by the Privy Council itself, the Bills will entrench the Caribbean Court of Justice in our Constitution in the same manner as the Supreme Court and the Court of Appeal, requiring not less than two-thirds majority support in both Houses of Parliament.

The Bills were debated and passed in the House of Representatives, where the Government has the two thirds majority needed to pass the bills.

Unfortunately, the Opposition did not support the Bills in the Lower House, but the Upper House will debate the three bills in mid October, and we remain hopeful that the Opposition will keep its position under review and not prevent Jamaica from achieving this significant step forward when it comes to the vote in the Senate.

There are compelling reasons for Jamaica to go the route of the vast majority of former British colonies, by adopting our very fine regional court, the Caribbean Court of Justice, as our final court of appeal.

The Opposition has said many different things about this most important matter over the years, and their latest position is that Jamaica should set up a final court of its own. But our court system is already substantially under-funded, and the fiscal challenges that underlie this reality are not going away for many years to come. It would be misguided and, frankly, shambolic to try to set up a new home-grown organ as our highest court, with no substantial incremental budgetary support available to do so.

In contrast, the CCJ is already fully funded. Loans were borrowed at the outset and paid into a professionally-managed trust fund, which supports the CCJ's operating costs and capital expenditures. Jamaica has already repaid its share of those loans, so the CCJ has already been fully paid for. Since the costs of the CCJ are covered by the income and gains generated by the fully-endowed trust fund, the CCJ is not a charge on the national budgets of the countries which use the court. This effectively insulates the CCJ from being deprived of resources in favour of other more politically compelling matters in a manner that our local court do not enjoy.

The CCJ has been established with great care to ensure the highest level of judicial independence and integrity. The Regional Judicial Services Commission is fully shielded from political interference, and has appointed eminent jurists of the highest standard, both from within the Region and outside, to the bench of the court.

The most crucial benefit of the CCJ is its accessibility. The Privy Council is fundamentally inaccessible to the vast majority of our people. Litigants and their Jamaican counsel need visas to travel there, which are not available as of right. The costs of retaining UK lawyers to fight these appeals are prohibitive to most Jamaicans, as are the costs of London hotels, meals and transportation. The filing fees, merely to initiate an appeal before the Privy Council, were recently substantially increased, and are many multiples of the cost of filing an appeal in the CCJ.

On the other hand, the CCJ has invested in modern audiovisual technology, and its procedures encourage the use of ICT, so that matters before the court can often be dealt with without requiring litigants or their lawyers to travel. The CCJ is also designed as an itinerant court – it can travel to its member countries to dispose of cases on home soil. That is how Shanique Myrie was able to access justice after her Treaty rights were violated by agents of the State on attempting to enter Barbados. And the Treaty of Chaguaramas, as interpreted by the CCJ in the Shanique Myrie case, guarantees the right of any citizen of a Caricom state to travel to the seat of the court if they wish to do so.

CCJ has an excellent jurisprudential record so far. As Dr. Lloyd Barnett, Jamaica's most eminent constitutional scholar recently stated in a paper delivered at a conference this year:

“I have been obliged to make a careful study of the CCJ judgments, particularly in the appellate jurisdiction. In my view they are thorough and analytically sound, socially relevant without being insular, learned without being pedantic, progressive while being appreciative of precedent, culturally sensitive while appreciative of Commonwealth and international learning.”

Barbados, Guyana and Belize, and indeed Caricom as a whole on treaty matters, are all benefitting from the quality of its jurisprudence, and the ready access which it affords Caribbean citizens. For example, Guyana's land law, which is unusual and complex because of its mixed Roman Dutch and English law origins, has been clarified and put onto a coherent footing in a series of appeals to the CCJ.

The retention of the Privy Council as our final court has a substantially negative impact on the Ministry of Justice's resources, as we have to bear the very high cost of the prosecution's representation at criminal appeals in London, and this depletes the already inadequate budgetary funds available to improve Jamaica's justice system. This amounts to tens of millions of dollars every year.

The Privy Council is a colonial institution. Its existence depends on the whims of the UK Government. There have been calls from the some of the UK judges who sit on the Privy Council, whose main responsibility is their local supreme court, for Caribbean countries to use the CCJ and free up

their judicial time to deal with cases from their home jurisdiction. It is embarrassing for us to be forcing ourselves on them. It is time to take the hint.

One issue in the public domain is whether there should be a referendum on this issue. We believe a referendum would be a huge mistake.

The Bills will entrench the court in the constitution in a manner that is consistent with the principles enunciated by Lord Bingham giving the opinion of the Privy Council in the *Syngma Marshall Burnett* case, and the CCJ will have the same protection in our constitution as the Supreme Court and the Court of Appeal. The Privy Council has no such protection, as it was always understood that independent Jamaica would not stay with that colonial vestige forever. However, the Constitution does not require or contemplate that these changes be put to a referendum. It would therefore be inconsistent with the scheme of the Constitution to subject the Bills to a referendum.

There is very good reason for this. A referendum is fundamentally a political process. Political parties inevitably seek to use them for political advantage. It is highly undesirable to subject a decision concerning the highest level of our judiciary, a most critical and sensitive institution that is always to be shielded from the vagaries of politics, to the excesses of political rhetoric on campaign platforms. Over 30 countries formerly in the British Empire have moved away from the Privy Council, including Canada, Australia, New Zealand, India, South Africa, Barbados, Guyana and Belize. None of them has put the issue to a referendum. Only one country has done so (St. Vincent), and this was because its Constitution expressly

required it, and the experience of that referendum supports our worst fears. It became highly politicised polluted by all sorts of extraneous issues, and as an indication of the will of the people on the issue at hand it therefore served no useful purpose.

A referendum is a very expensive process, costing the country hundreds of millions of dollars (one ECJ member has estimated it at \$470 million). To spend this money on a process not required by our Constitution and which the experience of other countries shows to be unnecessary and potentially damaging, really makes little sense.

Another issue recently raised in the media is the complaint about Shanique Myrie's lawyers not being paid by the Government of Barbados almost two years after the judgement. The attempt is being made to link that to the effectiveness of the court.

Quite frankly I am disappointed by these utterances, especially from those who should know that the enforcement of a judgement or order for costs against a sovereign government is not a matter for court processes. This is as true in relation to the UK Privy Council as it is for the CCJ. In Jamaica, this is enshrined in the Crown Proceedings Act, which has its origin in a UK statute of the same name, and exists in various forms across Commonwealth jurisdictions.

It is founded on the fundamental constitutional principle that, in raising revenue from the public and expending those resources, Governments must operate within budgets that have been approved by Parliament, and the payment of amounts awarded by the courts against the Government must await being funded out of sums that have been appropriated by

Parliament for that purpose. An orderly system of conducting public finances is necessary for protecting the rule of law.

This has nothing to do with the quality of the court or the effectiveness of its processes, and everything to do with the separation of powers and the appropriate boundaries of the respective provinces of each branch of the State in the Westminster system of Government.

Accordingly, in our own domestic situation there are instances of judgments and costs awarded against the Government of Jamaica by the courts, including the UK Privy Council, being outstanding for periods greater than that for which Ms. Myrie's attorneys have been waiting on the Government of Barbados for payment of their fees. The speed of payment is, of necessity, affected by available fiscal resources and the competing priorities of the national budget. The Attorney General of Barbados has recently confirmed that Barbados will settle the liability for costs.

For these compelling reasons, more than 50 years after our independence, I am making the call once again for political consensus between the Government and Opposition to fulfil this important aspect of achieving independence. I say to the eight Opposition Senators that they should not etch their names forever on the wrong side of history. The Court of Appeal has, in the case arising out of the Opposition Leader's unconstitutional use of pre-signed resignation letters, reiterated that constitutional requirement for Senators to exercise independent judgement on matters that come before them. This is particularly true in a matter as far-reaching as independent Jamaica's final court. The "super eight" Opposition Senators

must dig deep and do the right thing, thereby assuring that, on this fundamental matter, the three Bills pass with bipartisan support.

Thank you.