



## MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE PERMANENT SECRETARY

### MINUTES

#### 3<sup>rd</sup> Meeting of the Constitutional Reform Committee (CRC)

**Venue: Jamaica House Banquet Hall**

**Date: Wednesday, April 5, 2023**

**Time: 9:00 am**

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### AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Welcome and Apologies
5. Chairman's Remarks
6. Matters for Deliberations and Decision
  - a. Review of Summary of Recommendations of Joint Select Committee on Constitutional and Electoral Reform
    - i. Chapter II – Citizenship
    - ii. Chapter IV – The President
    - iii. Chapter V –
      - A. Qualifications to sit in Parliament
      - B. Extension of life of Parliament
      - C. Constitutional Amendment Procedure – Section 49
  - b. Work Plan

7. Additional Matters
  - a. Report from Public Engagement & Communications Sub-Committee
  - b. Formation of Other Sub-Committees
8. Any Other Business
9. Closing Comments
10. Date and Time of Next Meeting

### **CONVERSATIONS OVER LUNCH**

11. Adjournment

## **1. CALL TO ORDER**

**1.1.** The meeting was called to order at 9:30 am.

### **ATTENDEES**

#### **Constitutional Reform Committee:**

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chair – Office of the Prime Minister)
- Dr Derrick McKoy, CD, KC (Attorney General of Jamaica)
- Senator the Hon Tom Tavares-Finson, OJ, CD, KC (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- Senator Ransford Braham, CD, KC (Government Senator)
- Senator Donna Scott-Mottley (Parliamentary Opposition – Senate)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- Dr David Henry (Wider Society – Faith-Based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mrs Laleta Davis Mattis CD, JP (National Council on Reparation)
- Mr Sujae Boswell (Youth Advisor) *via video link*
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) *via video link*

#### **Secretariat:**

##### ***Ministry of Legal and Constitutional Affairs***

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Ms Judith Grant, Chief Parliamentary Counsel
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Mrs Chrystine Bernard-Wedderburn - Legislative Editor

- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel
- Mr Makene Brown, Legal Officer
- Ms Nastacia McFarlane, Director, Corporate Communication & Public Relations (Actg.)
- Ms Roxene Nickle, Advisor/Consultant

*Ministry of Foreign Affairs and Foreign Trade*

- Ambassador Sheila Sealy Monteith, CD, JP, Permanent Secretary, Ministry of Foreign Affairs & Foreign Trade

*Ministry of Justice*

- Ms Samantha Blair, Deputy Director, Legal Services (Actg.)

**2. PRAYER**

- 2.1. Prayer was said by Dr David Henry.

**3. NATIONAL PLEDGE**

- 3.1. The National Pledge was recited.

**4. WELCOME AND APOLOGIES FOR ABSENCE**

- 4.1. A special welcome was also extended to Ambassador Sealy Monteith later in the meeting. Apologies were tendered on behalf of Senator Ransford Braham for absence and for Ambassador Meade and Senator Tavares-Finson for lateness.
- 4.2. Minutes of the meetings held on Wednesday, March 22 and 29, 2023 were still unavailable due to an operational challenge within the Secretariat.

## **5. OPENING REMARKS (Chairman and Members)**

- 5.1.** The Chairman spoke to the significant discussion generated in the public sphere over the past week, including about the number of lawyers on the Constitutional Reform Committee. She cited the Senate President, as an example, who was on the CRC as a representative of the Government-side of the Parliament, in the Senate, but who was also a member of the Electoral Commission of Jamaica (ECJ) and a lawyer. He was expected to bring important perspectives during the Committee’s deliberations, including on the holding of a referendum.
- 5.2.** There was agreement on the need to roll out a process to engage the public and for the Committee to keep ahead of the narrative, by providing information in a timely manner, as intermittently misinformation may arise in the media which had not been properly researched. It was noted that messages were appearing in the media and people were genuinely interested. However, if not managed properly the process would become unsteady.
- 5.3.** It was also agreed that the process of public engagement should start immediately and the public be informed on why the reform project was being pursued and the necessity of having a Head of State.
- 5.4.** The Chairman mentioned a suggestion that was made, seemingly in jest, about calling the Head of State “His/Her Irieness”, to make the title truly Jamaican and queried whether the reform would be an opportunity to break with orthodox western traditions and ‘Jamaicanise’ the Constitution.
- 5.5.** Dr Barnett informed the Committee that there were two main issues at hand:
- i.** The appearance of the Committee to the ordinary man; and
  - ii.** Whether the Constitution should be enacted in Jamaica.

- 5.6.** The importance of summarising the matters on which consensus was reached at each stage and the need for public participation in defining the role of the president, whether executive or non-executive, was noted.
- 5.7.** It was suggested that there was wisdom in ensuring that the Head of State was separate from the Head of Government, as there were important differences, especially in the area of the protection of human rights. It was noted that Jamaica was fortunate in that it had not experienced the instability suffered by some Latin American countries with executive presidency. The Chairman pointed out that the foundation of a democracy was a freely, periodically elected Legislature, and suggested that having a non-executive president would keep the State above the competitive politics of democratic governments.
- 5.8.** Consensus reached within the Committee at the last meeting in respect of abolition of the Constitutional Monarchy and the establishment of the Republic of Jamaica was confirmed.
- 5.9.** The attention of the Committee was directed to the Recommendations made by the Joint Select Committee on Constitutional and Electoral Reform (JSCCER) back in 1995 on the issues of public information and public consultation-
- i.** To promote national awareness and understanding of the broad purposes and important provisions of our Constitution. To that end, the Committee recommended to Parliament that a full and effective public education program be undertaken.
  - ii.** That the Constitution that emerged from that process, should command the widest possible level of acceptance and respect.
- 5.10.** Members expressed their full support of those recommendations and reiterated that the people should be consulted on the matter of the type of Head of State, because it was really the people who would decide. In making its recommendations, the Committee should therefore state its reasons in order to secure a positive vote by the people. The symmetry in the conversation on public education should not be the back end of the process. As soon as a decision was made, the Committee should seek the public's affirmation by listening and

explaining, and not to defend. There were various groups of people in the society who needed explanations in relation to the unknown.

**5.11.** In acknowledging that the entrenched two-party system had given rise to a high level of cynicism within the Jamaican political culture, it was pointed out that moving away from the two-party system could raise further difficulties, as one of the dangers in having too many minority parties was that government could be held hostage, in the event of disagreements among those parties in certain situations. It was noted that the issue would need robust discussion and an understanding of what was viable at this time.

**5.12.** The issue of ‘Jamaicanising the Constitution’ was raised, as some people were of the view that the current Constitution was not of Jamaican making and could therefore not be ‘repatriated’.

**5.13.** Dr Barnett clarified that Chapter 3 was inserted in the fourth draft of the Constitution prepared in 1962 by Jamaicans. The Chairman clarified that in using the term “Jamaicanising the Constitution”, the ultimate goal was to have a Constitution passed by the Parliament of Jamaica and approved by the people of Jamaica.

## **6. MATTERS FOR DELIBERATION AND DECISION**

### **a. Review of Summary of Recommendations of the JSCCER:**

- i. Chapter II – Citizenship
- ii. Chapter IV – The President
- iii. Chapter V –
  - A. Qualifications to sit in Parliament.
  - B. Extension of life of Parliament.
  - C. Constitutional Amendment Procedure – Section 49.

### **b. Work Plan**

**6.1.** Discussions began on the office of President i.e. **Chapter IV – The President**, noting that many Jamaicans had expressed the view that they wanted to vote for their Head of State.

## **6.2. Functions of the Head of State**

**6.2.1.** The Committee was advised that there were various **levels of authority** which could be ascribed to the Head of State. A decision would have to be made on the degree of authority to be given to this individual.

**6.2.2.** Once the functions of the Head of State has been agreed, it would be easier to move forward, even though it was usually a contentious road in constitutional discussions and the process may take some time.

**6.2.3.** It was queried whether the term **executive versus non-executive** was a misnomer, as the non-executive Head of State performed certain roles and the label may lead to some confusion in the public arena.

**6.2.4.** As such, it would be necessary to find a term that bypassed the difficulties encountered with the use of the term executive versus non-executive. It was noted that the Head of State would represent all Jamaicans and could have executive power over a limited number of matters. The need for clarity, in the use of the terms executive and non-executive in the public arena, was emphasized.

**6.2.5.** The current Head of State made certain appointments on the advice of the Prime Minister after consultation with the Leader of the Opposition. There were also appointments made in his own discretion. Accordingly, the CRC should examine what appointments should be made by the Head of State in his own discretion.

**6.2.6.** The importance of retaining those features of our system that made us a stable democracy was underscored, while recognising the need to listen to the people and the importance of clearly explaining the decisions of the Committee to them.



### **6.3. Comparative Models**

**6.3.1.** The Committee was advised that Professor Richard Albert would generate comparative models of countries that had transitioned to a Republic. However, Dr Barnett cautioned that the political reality of each country usually determined their outcomes.

**6.3.2.** Preference was expressed for a formal Head of State, who would perform functions in sensitive and other areas, in contrast to what was now in place.

### **6.4. Agreed Recommendations**

**6.4.1.** The decisions agreed for recommendation were as follows:

- 1. The new Constitution would make provision for the creation of the Office of President as the formal Head of State of the Republic of Jamaica, to which certain executive powers may be granted.**
- 2. The Office of President of the Republic of Jamaica was to be separate from the Office of the Prime Minister, as the political Head of Government of the Republic of Jamaica.**

**6.4.2** In response to a query on whether the word “**formal**” should be included, it was agreed that its inclusion was an important qualification. It was noted that Jamaicans may be cynical if they perceived that it was just a matter of changing the position of Governor General to a Head of State.

### **6.5. Nomination of the Head of State**

**6.5.1.** There was prolonged deliberation on the process for selection of the Head of State through nomination by the Prime Minister, in/after consultation with the Leader of the Opposition, followed by confirmation by two-thirds (2/3) vote in the Parliament.

**6.5.2.** The Trinidadian model was cited for consideration, where the Head of State was elected by the Parliament through an Electoral College system.

**6.5.3.** An issue was raised on whether it would be necessary to have a vote if only one (1) candidate were nominated for Head of State. In evaluating the desire for a President who would be above the political fray and party rivalries, it was noted that Trinidad had one contested election which led to breakdown and that Jamaica was likely to have more contested elections.

**6.5.4.** In contrast to Trinidad, it was also noted that the Office of Head of State here in Jamaica had never been in disrepute and we should therefore not seek to veer too far from the present system, but instead maintain what was tried and tested, without problems or concerns, to maintain stability in our democracy.

## **6.6. Fixed Term for Head of State**

**6.6.1.** A query was raised as to whether the Head of State should be given a fixed term of office. A term of not less than seven (7) years and not exceeding nine (9) years was recommended for consideration, so that the term would not coincide with the life of the Parliament.

**6.6.2.** It was agreed that the selection of the Head of State must have national consensus. In reiterating the wisdom of the recommendation for a fixed term, it was pointed out that people should not construe that the new paradigm reflected the present arrangement with the monarchy.

**6.6.3. In confirming the decision of the Committee for recommendation on the issue, it was noted that:**

- i. Consensus was reached within the Committee that the Head of State would be nominated by the Head of Government in/after consultation with the Leader of the Opposition.**

- ii. **Confirmation would be in Parliament via affirmative resolution on a two-thirds (2/3) majority vote, with both Houses sitting together.**

**6.6.4.** It was enquired whether it would be more realistic to appoint the Head of State by an absolute majority of both Houses sitting together and voting.

**6.6.5.** It was agreed that the two Houses should sit together to vote and that a joint sitting would be consistent with the value of unity between both political parties. It was suggested that when such vote took place, the parties should also sit in random positions in the Parliament, as a sign of unity between them.

#### **6.7. Recommendation for Appointment of Vice President**

**6.7.1.** It was also suggested that consideration be given to the appointment of a Vice President

*(Ambassador Meade joined the meeting at that point.)*

#### **6.8. Two-Thirds Majority Vote vs. Absolute Majority Vote**

**6.8.1.** The view was expressed that anyone who could not attract the two-thirds majority vote should hold the office of President of the Republic of Jamaica.

**6.8.2.** In highlighting the importance of being cognisant of the realities of politics- where members may vote along party lines and the two-thirds (2/3) majority vote may not be achieved- it was stressed that where both parties already approved the candidate, it was highly unlikely that the two-thirds (2/3) majority would not be achieved.

**6.8.3.** It was pointed out that a two-thirds (2/3) majority vote was in order to better sustain the apolitical nature of the Office of President. Notwithstanding, it was

acknowledged that although there was a provision for consultation between the Leader of the Opposition and the Prime Minister, there were certain realities when good sense escaped, and that may lead to paralysis within government.

- 6.8.4.** It was queried whether an appointment for a fixed term would resolve the issue.
- 6.8.5.** It was again pointed out that the Head of State must be a symbol of unity. That decision would require maturity and it could not be treated flippantly by the political parties.
- 6.8.6.** It was also queried whether the symbolism of the appointment of the Head of State would really be affected by a two-thirds (2/3) majority vote or an absolute majority vote.
- 6.8.7.** Some reconsideration was voiced about the effect of a two-thirds (2/3) majority vote, if there were doubt that a two-party system would be guaranteed in the new paradigm, which could then lead to a situation like that in Israel.
- 6.8.8.** It was countered that it would be unlikely that a Prime Minister would nominate someone who did not have the confidence of the people.
- 6.8.9.** It was then pointed out that systems, however well designed, were operated by people and were therefore not fool proof.
- 6.8.10.** If a Prime Minister's choice for Head of State were elected by an absolute majority (50% +1) then that individual would inevitably be selected, so there would be no need for a vote. Caution was advised, as the nature of the office of a formal Head of State required consensus.
- 6.8.11.** Situations were highlighted that could arise when parliamentary colleagues were upset with their Leader about a matter and chose to be absent when the vote was taking place. The Committee was asked to consider the design of a system that

worked not only when people behaved well but also when all parties or anyone did not behave well.

**6.8.12.** It was reminded that the task was to create an office that did not exist and a constitutional provision which required that both Houses sat together to vote. The system should ensure that diversity was recognized.

**6.8.13.** In underscoring the requirement for a different approach, it was reiterated that the two-thirds (2/3) majority may be the best way going forward.

**6.8.14.** It was again questioned whether that may cause paralysis and lead to an unintended outcome.

**6.8.15.** Against that, it was then queried what would be the next steps if a two-thirds (2/3) majority vote was not obtained.

**6.8.16. Discussion on proposals for Head of State where the two-thirds (2/3) majority vote was not achieved followed.**

**6.8.17. The Committee agreed that where:**

- i. The term for the Head of State ended by effluxion of time the incumbent may remain in office until the next holder of the office was in place.**
- ii. An interim Head of State may thereafter be appointed, subject to a time limit.**
- iii. The process of seeking confirmation by the two-thirds majority vote should follow, but if the two-thirds (2/3) vote requirements were not met then provisions could be made for an absolute vote (thereby effecting a sliding vote system).**
- iv. A Sub-Committee would be formed to make recommendations on the powers to be vested in the Head of State and for other matters related to that office.**

**6.8.18.** It was suggested that an attractive preamble for the Constitution should be prepared based on “Baugh’s” preamble.

**6.8.19.** The Committee agreed to suspend discussions on the following matters until the next meeting:

- a) **Review of Summary of Recommendations of the JSCCER**
  - Chapter II – Citizenship
  - Chapter V –
    - A. Qualifications to sit in Parliament.
    - B. Extension of life of Parliament.
    - C. Constitutional Amendment Procedure – Section 49.
- b) **Work Plan**
- c) **Formation of other Sub-Committees**

## **7. ADDITIONAL MATTERS**

### **7.1. Report from the Public Engagement and Communication Sub-Committee**

**7.1.1.** The Chair of the sub-committee was invited to present the report.

**7.1.1.1.** Highlights of the report were as follows:

- i. Engagement of independent members:** The resume of one of the nominees was still outstanding.
- ii. Messaging:** In managing the communication process, focus would be on messaging. **It was proposed that the word “reform” would be used in all communications relating to the Committee and the words “review” and “amendment” would not be used.**
- iii.** Clarification was required on the use of the word “patriation” and/or “repatriation”.

## **7.2 Public Engagement and Communication Strategies and Processes**

- a.** It was critical to hear from the public. Therefore, communication with and feedback from the public would be generated through social media platforms such as Twitter, Instagram, WhatsApp.
- b.** A website and email address would also be established. Information would also be disseminated through the local newspapers, the Gleaner and the Jamaica Observer. Representatives from various groups would be encouraged to take part in the discussions.

**7.3** The Chairman reminded of the importance of releasing recommendations on which the Committee had arrived at consensus.

**7.4** The Chairman then apologized for her early departure from the meeting to attend to a critical matter for the next meeting of the Committee and left.

**7.5** Ambassador Rocky Meade assumed the chair and invited Dr Spence to continue her presentation. Dr Spence informed, among other things, that:

- a.** Over the next two (2) weeks, media engagements would be heightened with appearances on the Observer Exchange, the Gleaner's Editors' Forum, including Dionne Jackson-Miller's and Cliff Hughes' radio programmes.
- b.** The Sixth-Form Association would also be engaged, and contact would be made with school principals.

## **7.6 Committee Budget**

**7.6.1** The co-Chairman then invited PS Robertson to speak on the Committee's budget. he advised that the Jamaica Information Service (JIS) had formulated a communication programme with a budget of **\$19m**. It was suggested that that amount was woefully inadequate.

- 7.7** It was noted in summary that the Press Releases should:
- a.** Engage the public.
  - b.** Advise the public on the work of the Committee.
  - c.** Provide clear mechanisms for public engagement.

**7.8 Formation of other Sub-Committees**

**7.8.1** That matter was on-going and would be dealt with at the next meeting of the Committee.

**7.9 Other Concerns**

**7.9.1** It was queried whether the **Bill** intend to be tabled by May 30, 2023 would be informed by public consultations and whether that timeframe was achievable. It was noted that the work would be done in phases. The co-chair then advised that in order to meet the deadline of May 30, 2023 for the Bill to be tabled , priority must be given to Phase 1 issues and the mechanisms that can be used to get public feedback.

**7.9.2** It was further advised that the main component of Phase 1 would be the preparation of the **Bill** and the preparatory work that would lead to a **Referendum**. Then Phase 2 discussions would be initiated as soon as that was done.

**7.9.3** It was reiterated that the Committee must try to keep ahead of the narrative. In the public sphere it was asked whether there was consensus that a “Yes” or “No” vote would be established.

**7.9.4** Senator Tavares-Finson undertook to prepare the documentation on how the Referendum was to be conducted.



**7.9.5** Ambassador Meade noted that there was a wide range of issues on which the CRC had reached consensus. He summarized them as follows:

- i. A new Constitution was to be passed by the Parliament of Jamaica and then approved by the people of Jamaica
- ii. The abolition of the Monarchy and creation of the Republic of Jamaica
- iii. The creation of the Office of President/Head of State
- iv. The methodology for selection of the President
- v. The need for a robust media plan
- vi. The tenure of the President/Head of State. A decision was to be made on term/terms for which a President/Head of State could hold office.

## **8 ANY OTHER BUSINESS**

**8.1** There was no other business.

## **9 CLOSING COMMENTS**

**9.1** Ambassador Meade noted that the deferred matters would be dealt with at the next meeting of the CRC.

## **10 DATE AND TIME OF NEXT MEETING**

**10.1** The next meeting would be held on Wednesday, April 12, 2023, at 10.00 am.

## **11 ADJOURNMENT**

**11.1** The meeting was adjourned at 3.35 pm.

## ACTION SHEET

<b>Action</b>	<b>Responsibility</b>	<b>Deadline</b>
Conduct research and prepare comparative models of countries that have transitioned to a Republic.	Professor Richard Albert	April 12, 2023
Prepare documentation on how the Referendum is to be conducted.	Senator the Hon Tom Tavares-Finson, OJ, CD, KC	April 12, 2023
Prepare speaking points/messages for proposed media engagements.	Dr Nadeen Spence/Public Engagement & Communication Sub-Committee.	April 14, 2023