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MINUTES

2nd Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: Wednesday, March 29, 2023

Time: 9:00 am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Welcome and Apologies
5. Chairman's Opening Remarks
6. Referendum Procedures – Professor Richard Albert
7. Review of Summary of Recommendations of the Joint Select Committee on Constitutional and Electoral Reform
8. Finalisation of Work Plan
9. New Business
10. Any Other Business
11. Closing Remarks – Chairman
12. Adjournment – Date and Time of Next Meeting

1.0 CALL TO ORDER

1.1 The meeting was called to order at 9:45 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)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin)

Secretariat

Ministry of Legal and Constitutional Affairs

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Mr Makene Brown, Legal Officer
- Ms Nastacia McFarlane, Director, Corporate Communication & Public Relations (Actg.)
- Ms Roxene Nickle, Advisor/Consultant

Ministry of Justice

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

2.0 PRAYER

2.1 Prayer was led by Dr David Henry.

3.0 NATIONAL PLEDGE

3.1 The National Pledge was recited.

4.0 CHAIRMAN'S OPENING REMARKS

4.1 The Constitutional Reform Committee should identify, agree on, and obtain consensus on the basic provisions of the new Constitution to be recommended for reform. Members were invited to also comment on issues raised by the Chairman under this item.

4.2 “*Jamaicanising*” the Constitution

4.2.1 The established timeline, as ambitious as it may be, would require actions running parallel to each other. The intention of the Committee was to move ahead with matters on which there was consensus while striving to build consensus where none existed.

4.2.2 The Chief Parliamentary Counsel indicated that references to “*Jamaicanising* the Constitution” followed a decision of Cabinet made by previous administrations resulting in the preparation of a draft bill which dealt with the change of the Head of State. To further ‘*Jamaicanise*’ beyond the change of the Head of State, the Constitution would require an amendment to include a provision that provided for the status of the Constitution deeming it to have been passed by the Parliament and the people of Jamaica.

4.2.3 As an alternative, Dr Barnett proposed that legislation titled ‘the Republic of Jamaica Act’, may be passed by the Parliament and approved by the people of Jamaica, to reflect/set out the new Constitution.

4.2.4 Decision to be taken on whether the Constitution would stand alone or be set out in the schedule of a legislative instrument.

5.0 REFERENDUM PROCEDURES – PRESENTATION BY PROF. RICHARD ALBERT

5.1 The role of Professor Albert, as the International Constitutional Law Expert on the Committee, was to help to illuminate the questions being confronted in the reform process against the backdrop of the global experience and to expose options for choosing what was best for charting Jamaica’s own path forward in that process, consistent with the values and aspirations of the people of Jamaica.

5.2 It was noted that in the global use of referenda, there were five (5) guiding principles that could help to design a ballot question for the referendum which may come after the tabling of the Bill and the preparation of the people for the vote. The principles were:

- 1. Clarity:** The referendum question should be clear to all voters recognising that not all voters were lawyers.
- 2. Duality:** The referendum question should ask the voters to choose between the *status quo* and some new political reality. In that case, the *status quo* would be the constitutional monarchy and the new political reality, a republic.
- 3. Simplicity:** The referendum question should be simple and should invite a simple answer.
- 4. Impartiality:** The referendum question should be phrased in such a way as to not tilt the outcome in favour of one side or another.
- 5. Familiarity:** The voter should be given the opportunity to become familiar with all relevant aspects of the vote prior to referendum day, such as the options that they would be presented with, the implications of their choice and the consequence of their vote. When the voters go to vote, they should know what

to expect and they should know what would follow from their own vote and from the collective vote once it had been aggregated.

- On the point of familiarity, the work of the **sub-committee on Public Engagement and Communication** would be crucial. The goal of the Committee should be to create conditions for an informed vote on referendum day, because an informed vote brought legitimacy. The legitimacy of a referendum was going to hinge on both the process by which it was organized and also the substance and the outcome itself of the national popular vote. The legitimacy of the referendum mattered for two (2) reasons:
 1. It mattered domestically by those who were voting because they wanted to know that the process had been fair and transparent and led to an outcome that reflected the collective wishes of the people.
 2. It mattered externally on the point of how it would be read abroad by the international community. Did it read as clear? Did they read it as simple? Did they read it as impartial?

Those five (5) organizing guiding principles could help to strengthen both the process and the substance and could give legitimacy to the outcome itself, whatever it may be.

5.3 On that basis, due regard must be given to the process of fostering an informed vote. In achieving that, the Committee must embark on a process of public engagement that was:

- Ongoing
- Variable
- Purposeful

Ongoing

There were ways that the Constitutional Reform Committee and its Sub-Committee on Public Engagement and Communication and the

others to be co-opted could convene to engage the public throughout the entire process of Constitutional Reform.

Variable

The process of public engagement was variable which meant that the Committee should use different modalities of engagement with the public and not be limited to town halls, seeking input from online submissions or visiting specific communities.

Purposeful

It was important to establish a targeted purpose for each form of engagement in each of the variable steps of ongoing process of reform. There should be a reason why the Committee chose to have a town hall or a set of town halls, whether it was done at an electoral district level, whether it was done by communities or whether it was done in partnership with civic associations, with churches, with places of worship.

5.4 As far as the different modalities of engagement with the public were concerned, the means chosen should channel people's views in a way that got to the Committee, which would then implement those views so that the product of the Committee reflected the views of the people. In considering that, the channels chosen must be **reliable**. For example, if a website was created it had to be reliable, unfiltered and offered the people a direct way to the Ministry and the Committee.

5.5 Beyond that, the process of good public engagement was guided by three (3) core values:

1. **Inclusion:** All must be welcomed to hear their views across region, age, socio-economic class, culture, religion etc.
2. **Participation:** Efforts must be made by those who were running the public engagement process to make participation both easy and meaningful for the participant, so that they felt like they were being heard. For example, if there were a website designed where persons could submit their views, there should

be a thank you message after they press submit that said “thank you” on behalf of the Minister, Co-chair or the Public Engagement Committee.

3. **Integrity:** Care had to be taken to choose people who were right minded, approachable, understanding, patient and sensitive. The people who possess those qualities should be interlocutors and representatives of the Committee who engage directly with the public.

5.6 Once those principles were borne in mind, there was a need to consider the design of an effective public engagement campaign. In order to achieve that, there must be three (3) parts:

1. **Education** – The first step in a sequence was civic education on the subject. In that case, the focus was on the referendum question. Education on the subject should yield questions such as: “What is a monarchy?”. “What is a republic?”. “How does a referendum work?”. What is the history of constitutionalism in Jamaica?” Those would allow the people to know what it was that the Committee was being asked to do.
2. **Listening** – That stage required inviting public input on issues through unfiltered direct channels. That stage did not allow for debate nor was it argumentative.
3. **Response** – That stage invited a public response to some of the action that was proposed to be taken.

5.7 That specific context required inviting the public to respond to a draft Bill when it was tabled, as it began the process of legislative debate and refinement so as to ensure that the public felt and was heard.

5.8 The totality of the aforementioned ensured that whatever the result of the referendum, the people would feel that it was a reflection of the will of the people of Jamaica.

6.0 REVIEW OF SUMMARY OF RECOMMENDATIONS OF THE JOINT SELECT COMMITTEE ON CONSTITUTIONAL AND ELECTORAL REFORM

6.1 The Committee should be mindful that the public may raise their own issues and the members should therefore be open to hear those issues even where they appeared controversial.

- 6.2 Based on experience, Dr Barnett shared that the more issues put to a referendum, the less likely it would succeed. In the light of that, the Chairman directed the Committee to the guidance provided by Prof. Albert, on duality and also simplicity in design, which would yield a “yes” or “no” response and pointed out that a single question may be helpful. The issue then, was, how would the Committee work to ensure familiarity with everything that would be required to be answered in the ballot question.
- 6.3 Professor Albert indicated that one of the paths to take was to put the question to the voters framed as, for example, whether they approve the Draft Bill or the Bill tabled in Parliament that sought to create the Republic of Jamaica (a Bill which incorporated all the matters upon which an approval by referendum was required), which created a single ballot question that encompassed everything. That approach made public education crucial because it would have to be an engagement campaign that informed the public on all the parts of the Bill that had been approved by Parliament.
- 6.4 It was therefore crucial for **the Committee to clarify what it needed to discuss. It needed to identify what decisions were necessary, the content of such decisions and the form that they took.**
- 6.5 Section 49(3) of the Constitution sets out all the deeply entrenched provisions that required referendum for amendment. **The question to be determined was whether the Committee would try to deal with all the matters requiring referendum at once.**
- 6.6 Of those provisions, the Committee noted primarily the executive authority of Jamaica being vested in the Monarchy. There were also those provisions that related to the Parliament which comprised of His Majesty, the King, the Senate and the House of Representatives, as well as provisions around the life of Parliament (for a period of five (5) years) and when Parliament’s life may be held over. Currently, Parliament may be held over only during a period of war. If Jamaica had been in a certain phase of the pandemic when approaching the end of the constitutional life of Parliament, the nation would have been in a constitutional crisis, as there was no provision for hold-over due to a pandemic.

6.7 There was also the issue of qualification to be a Member of the Parliament and in particular, the matter of dual citizenship; reference to Commonwealth citizenship and concerns raised around the citizen-qualification of Jamaicans who ventured to the United States of America to make a life and became American citizens.

6.8 The Committee must also contend with Section 49 itself, which was designed to be slow and cumbersome.

6.9 **Serious consideration must be given to the issues that a referendum will be required for.**

6.10 The simplest approach, according to Dr Barnett, was to *‘identify the provisions which should be in the new Constitution and put that in an instrument which passes through Parliament and then goes to the people for a “yes” or “no” vote.’*

6.11 Consensus on Transition to Republic

6.11.1 All members of the Committee expressed agreement that the country should move to a Republic, and that the Constitution should be “Jamaicanised.” That is to say, that the Constitutional Monarchy should be abolished and replaced with the Republic of Jamaica and that we should have a Constitution passed by the Parliament of Jamaica and approved by the people of Jamaica.

6.11.2 Dr Barnett advised that in holding a referendum, there must be a Referendum Bill.

7 FINALISATION OF WORK PLAN

7.0 Due to time constraints, it was agreed that the finalization of the workplan would be addressed at the next meeting.

8 NEW BUSINESS

8.0 The Committee discussed the establishment of the Public Engagement and Communication sub-committee. It was agreed that the members of the sub-committee would meet and report to the Committee at the next meeting. It was also agreed generally that the establishment of

sub-committees would also facilitate the co-opting of persons with particular subject matter experience, ultimately strengthening the process.

9 ADJOURNMENT - DATE AND TIME OF NEXT MEETING

9.0 The meeting was adjourned at 3:00PM and a date and time for next meeting was confirmed for Wednesday, April 5, 2023 at 9:00AM

ACTION ITEMS

1. Decide whether the Constitution would stand alone or be set out in the schedule of a legislative instrument.
2. Decide whether all the matters requiring referendum were to be dealt with at once.
3. Decide which matters were to be placed before the electorate in the referendum.

Issues to be examined specifically by members of the Committee:

- a. Whether the Commonwealth citizenship-qualification should remain and to further consider whether dual citizens, particularly Jamaicans with US citizenship should be duly qualified to sit on our Parliament; and
- b. Life of the Parliament after it has been dissolved – consider the extension of the constitutional life of Parliament beyond Jamaica being at war – consider other situations such as a pandemic.