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SHOULD BE ADDRESSED TO THE PERMANENT SECRETARY**

MINUTES

5th Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: Friday, April 14, 2023

Time: 9:30 am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Welcome & Opening Remarks
5. Apologies
6. Confirmation of Consensus Recommendations
7. Presentations:
 - Role of the Electoral Commission in the holding of referendum
 - Proposed Drafting Strategy
8. Matters for Deliberation and Decision:
 - Chapter V
 - i. Constitutional Amendment Procedure – Section 49 [item carried over]
 - ii. The Senate – Section 35
9. Work Plan

LUNCH

10. Additional Matters
 - Formation of other Sub-Committees
11. Any Other Business
12. Closing Comments
13. Date and Time of Next Meeting
14. Adjournment

PRESS CONFERENCE

1. 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-Chairman – Office of the Prime Minister)
- Dr Derrick McKoy, CD, KC (Attorney General of Jamaica)
- Senator the Hon. Thomas 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 Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- 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
- Ms Judith Grant, Chief Parliamentary Counsel
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)

- Mrs Chrystine Wedderburn-Bernard - Legislative Editor
- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel
- Mr Makene Brown, Legal Officer
- Ms Nastacia McFarlane, Director, Corporate Communication & Public Relations (Actg.)
- Mrs Janelle Miller-Williams, Senior Director, Legal Education (Actg.)
- Ms Julia Wedderburn, Senior Legal Education Officer (Actg.)
- Ms Roxene Nickle, Advisor/Consultant

Ministry of Foreign Affairs and Foreign Trade

- Ambassador Sheila Sealy Monteith, CD, JP, Permanent Secretary

Ministry of Justice

- Ms Samantha Blair, Deputy Director, Legal Services

2. PRAYER

2.1. Prayer was led by Dr. Elaine McCarthy.

3. NATIONAL PLEDGE

3.1. The National Pledge was recited.

4. WELCOME AND OPENING REMARKS

4.1. In her opening remarks, the Chairman recapped the matters on which consensus had been reached within the Committee. Those matters were put before the Committee for confirmation as follows:

1. Transforming the form of Government:

- a. Abolishing the Monarchy
- b. Creating the Republic of Jamaica

2. Establishing the Office of the President of the Republic of Jamaica

3. Process of Presidential Selection:

- a. **Nomination by the Prime Minister after consultation with the Leader of the Opposition**
- b. **Parliamentary Confirmation**
 - i. **Both Houses sitting jointly**
 - ii. **Vote of two-thirds of all members**
- c. **Contingencies in the event of confirmation failure in Parliament**
 - i. **Incumbent Holding Over**
 - ii. **Appointment of an Interim President in the absence of the incumbent nominated by the Prime Minister. If that Interim President was being put forward for confirmation by the Parliament, then the process of consultation by the Prime Minister with the Leader of the Opposition must take place before putting the nomination before the Parliament.**

4.2. The Chairman indicated that previous discussions considered whether a simple or super majority would be needed for the selection of the President. It was suggested that there was agreement among members that a super majority signalled consensus on the selection of the President. However, it was also considered that a super majority may not be achieved, and as such, a contingency plan may be needed.

4.3. Dr Barnett confirmed the accuracy of what was indicated by the Chairman and added that if a situation arose, where, due to the illness or absence of the President, an Interim President would be needed, such appointment should only need the approval of the Prime Minister.

4.4. However, it was noted that while there was agreement on the need for an Interim President where the circumstances required it, no agreement was reached on the limitation of the time as it was understood that the Interim President could not serve *ad infinitum*.

4.5. If the Interim President was being put forward for confirmation by the Parliament, consultation between the Prime Minister and the Leader of the Opposition would be required before that Interim President was put forward for confirmation by Parliament.

4.6. In further discussing the recommendations that Jamaican citizenship and residency in Jamaica for the 5 years preceding nomination be made preconditions for eligibility to serve in Parliament, members queried whether consensus was achieved on the point of

residency. Senator Tavares-Finson disagreed with any decision being made that would prevent someone returning from the United Kingdom (UK) from sitting in the Parliament, given Jamaica's large diaspora. He opined that the qualifications for membership in the Parliament should require Jamaican citizenship **only** and no residency requirement. That was justified on the basis that there should be no barrier for persons with dual citizenship to sit in Parliament, especially if they came from a Commonwealth country such as the UK. He conceded that an issue may arise if the person were from the United States of America (USA) but suggested that that issue should be put to the electorate for them to decide.

4.7. In response, it was pointed out that the Committee had considered that the real point of contention was the issue of conflicting allegiance of an individual who was a citizen of both the USA and Jamaica. Senator Tavares-Finson queried whether that disqualified dual citizens generally. Dr Barnett indicated that he believed that a Jamaican citizen who travelled on a US passport to Jamaica to deal with national matters created a conflict of interest, which, in essence, was a problem that the Committee must consider.

4.8. Senator Braham expressed a contrary view that the Constitution in its current form contemplated persons with dual or multiple citizenships and their involvement in the Parliament. Accordingly, he submitted that a Member of Parliament must be resident in Jamaica to serve and suggested that a residency requirement be imposed before such person served and they would be required to swear or affirm that they would put the Jamaican State before all.

4.9. In sharing their perspectives, other members suggested that a test of allegiance would be necessary. Such test could be formulated based on what was already set out in the Constitution at section 41(1)(d) which provided that:

"The seat of a member of either House shall become vacant if he...takes any oath or makes any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Power or State..."

4.10. Senator Braham indicated that once a person was willing to show his/her commitment by living in Jamaica for a specific time and even declared that he/she was loyal to Jamaica in situations of conflict then that person should be given the opportunity to serve.

4.11. In response to a query about experiences in other countries, Professor Albert summarized what he thought were valued that had emerged from the discussion:

1. A recognition that Jamaica consists of a global community of citizens who travel abroad for a number of reasons;
2. Designing rules on eligibility to serve required openness – i.e. openness to all Jamaicans as a means of attracting the best public servants to produce the best outcomes; and
3. A defensive posture of weariness to protect national interest and security and the public institution as those public institutions were subject to attacks even from within.

4.12. Implementing those values evoked two (2) key principles:

1. Workability; and
2. Symbolism of the roles.

4.13. Professor Albert noted that having a mono-citizenship requirement may go against the diasporic nature of Jamaica and eligibility for membership in either House. It could be open to any citizen of the Republic of Jamaica with the following two qualifications:

1. A citizen must reside in Jamaica for [x] years; or
2. If a citizen has not resided in Jamaica for [x] years that citizen must have no demonstrable conflict of allegiance.

4.14. Two consequences flowed: firstly, that dual and tri-citizens would not be excluded from serving in either House, and secondly, the measure of allegiance or loyalty to the country. He maintained that comparative experience was instructive on the latter point. He further suggested that the court could answer the question in cases of conflict or Parliament could be given the opportunity/power to govern its own membership.

4.15. In the interest of time, it was agreed that the Committee would return to the issue of determining allegiance at a later time, considering the scope of the agenda for the meeting.

**5. PRESENTATION BY DR THE HON LLOYD BARNETT, OJ:
“JAMAICANISATION OF THE JAMAICAN CONSTITUTION – A PROPOSED
DRAFTING STRATEGY”**

- 5.1.** Having previously circulated the presentation on “*The Jamaicanisation of the Jamaican Constitution - A Proposed Drafting Strategy*”, Dr Barnett underscored the points that there was consensus that the present Constitution should be replaced by a constitutional instrument made in Jamaica by the Parliament and People of Jamaica; that the monarchical Constitution should be replaced with a republican Constitution; that the King of England be abolished as our Head of State and that the Governor-General be replaced by a President.
- 5.2.** The proposal was for the new instrument of the Republican Constitution to be set out and brought into effect by a new Act entitled “The Republic of Jamaica Act” containing all the new and revised provisions while omitting all the provisions that should be discarded.
- 5.3.** Dr Barnett highlighted the general provisions and suggested that the arrangement of the content for the proposed instrument should include: a Preamble and chapters addressing Citizenship, Charter of Rights, the President and the President’s Advisory Council, Leader of the Opposition, Finance, the Electoral System (and ECJ), the Executive, the Public Service, Police Force, and Jamaica Defence Force, amongst other things. He highlighted that a definition section should also be included at the end of the instrument as well as a Statement of Objectives and Reasons and that the CRC’s recommendations for further changes should be incorporated in the document.
- 5.4.** A Referendum Bill should be drafted in tandem with the new Constitution. The Referendum Bill would direct how the referendum would be conducted reflecting a pattern similar to the holding of national elections as established by the Representation of the People’s Act and its accompanying Regulations. The prescribed question on the ballot paper would simply be “Do you approve the Republic of Jamaica Bill?” and a space for “Yes” or “No” should be provided.
- 5.5.** The Chairman reminded that the Terms of Reference set out a phased process of amending the Constitution. Dr McCarthy added that a comprehensive education campaign was necessary to sensitize the public on what the constitutional reform process entailed.

- 5.6.** Dr McKoy stated that the members of the CRC would not be on the same page with all the matters. Thus, the more contentious issues must be set aside. The draft Bill would therefore only contain the matters where consensus had been achieved and once passed, the CRC could then move to the next phase and address the more contentious issues.
- 5.7.** In response, Dr Barnett reiterated his reason for titling the first section “Imperatives”. However, he shared that if the CRC could reach consensus on the more contentious issues, then they too could be included in the referendum as the process was expensive. He then conceded that some constitutional matters were for the next generation to resolve.
- 5.8.** In further response to a query by Dr Henry on the impact on the ‘savings law’ clause should a new Constitution be tabled, Dr Barnett indicated that the new Constitution would include transitional provisions since the present Constitution would be repealed and replaced with a new Constitution.
- 5.9.** Mr Small asked about the provisions that outlawed obeah practices and Dr Barnett explained that certain pieces of legislation were retained despite the introduction of the Charter.
- 5.10.** Mrs Davis Mattis recommended that specific provisions on State responsibility be included. Dr Barnett, in response, informed members that the South African Constitution contained a chapter on the obligation of the State on the people and government to preserve the fibre of the nation, from a moral perspective.
- 5.11.** In responding to the proposal by Dr Barnett, the Chief Parliamentary Counsel (CPC) advised that a repeal of the Constitution was not recommended at this time. The focus was instead on targeted amendments to specific sections of the Constitution, as replacement of the entire Constitution would require a more protracted drafting process.
- 5.12.** Professor Albert sought clarification on whether the intention was to repeal and replace the Constitution after the completion of the first phase or to merge the proposed three phases.
- 5.13.** Dr Barnett replied that his presentation was both a practical and legal strategy. The essential decision for a Jamaican instrument, which would be a completely different Constitution, required a referendum, as did the removal of the Monarch. He reiterated that if the CRC was able to agree on any other changes that required a referendum, those

changes should be done simultaneously to avoid incurring unnecessary expense; any matter that did not require a referendum would be included in the new instrument.

5.14. The Attorney General stated that while he understood the need for an “indigenous” Act, he articulated that the Committee should not seek to abolish the entire system. The agreement was to remove the present Monarch and detail how a homegrown Head of State may be appointed while resolving any other issues related to the President. He further stated that the other “thorny issues” should be set aside.

5.15. The Chairman indicated that the CPC had a different approach on how the Constitution could be ‘patriated’ but Dr Barnett was of the view that the entire, new Constitution had to be put to the people.

(The meeting took a short break.)

6. PRESENTATION BY SENATOR THOMAS TAVRES-FINSON, OJ, CD, KC: THE ROLE OF THE ECJ IN THE CONDUCT OF A REFERENDUM

6.1. Senator Tavares-Finson pointed out that the deeply entrenched provisions of the Constitution of Jamaica may only be amended by putting the amendment to the electorate in a referendum following its passage through the Parliament. Where the proposed amendment received the two-thirds support of the entire Parliament, those amendments would be “*submitted to the electors qualified to vote for the election of the members of the House of Representatives and on a vote taken in such manner as Parliament may prescribe, the majority of electors voting have approved the Bill*”, as per section 49(3)(d)(ii) of the Constitution.

6.2. He further informed members that Sections 2 and 37 of the Representation of the People Act (ROPA) defined an “elector” and outlined the circumstances related to the qualification and disqualification of an elector respectively. Section 7 of the ROPA spoke to the Director of Elections who acted as the Chief Election Officer and had responsibilities for the daily operations of the Electoral Office of Jamaica (EOJ.)

6.3. A practice of continuous registration obtained at the EOJ. The cut-off dates for registration annually were March 31st and September 30th. There were presently 2,001,759 electors on the Voters’ List and 200,000 new electors were added to the List during each cycle.

- 6.4.** Senator Tavares-Finson highlighted the challenges experienced by the EOJ with respect to removing dead electors from the voter's list as well as the eligibility requirements to participate in a referendum.
- 6.5.** Dr McCarthy remarked that more public education was required to get out the vote for the referendum.
- 6.6.** Dr Barnett queried the reason the EOJ did not introduce compulsory registration once a citizen attained 18 years of age, as well as the reason for the census not being conducted by the EOJ.
- 6.7.** Senator Tavares-Finson pointed out that the census was not intended to cross into the political space. He also stated that the National Identification System (NIDS) was supposed to resolve the issues of registering and keeping a record of citizens, including youth who attained the age of 18 in each calendar year.
- 6.8.** The Permanent Secretary within the Ministry of Foreign Affairs queried why Foreign Affairs' staff were unable to vote and he advised her that it was because of how the law was currently structured. The eligibility of Foreign Service Officers to vote in national elections had been raised in other fora and was being researched.
- 6.9.** The aim was to hold the referendum in the 2024/2025 Financial Year and the Chairman sought clarity on what engagement with the EOJ would entail.
- 6.10.** Senator Tavares-Finson stated that the EOJ had to receive guidance directly from the Parliament or the Minister with responsibility for Electoral Affairs. Therefore, any public voter education campaign required prior parliamentary approval. He recommended that a subcommittee of the CRC be created to address matters for the referendum/electoral affairs which should include a representative from the Jamaica Labour Party, the Peoples' National Party, and a member of the CRC.
- 6.11.** Professor Albert queried whose role it would be to design the ballot. Senator Tavares-Finson thought it was interesting that they included party symbols on the ballot (in reference to the historical document on the referendum provided by Senator Finson).
- 6.12.** Mr Small stated that the reason for the symbols on the ballot was due to the 85% illiteracy rate then. The report also stated that party symbols could not be used. On the referendum ballot presented, the head symbolized the People's National Party (PNP), the hand

symbolized the Jamaica Labour Party (JLP), and the star symbolized the Peoples Political Party (PPP).

- 6.13.** Dr Barnett recommended that the symbols on the referendum should be a Jamaican flag and a wig and that the ballot should be a schedule of the proposed Referendum Act.
- 6.14.** The CPC opined that based on the wording of the Constitution, the method of the referendum was to be determined in the form stated by the Constitution. Section 49 used the word “prescribed” which referred to subsidiary legislation. Therefore, the proper instrument to outline the procedure for the referendum would be a subsidiary instrument.
- 6.15.** Dr Barnett expressed doubt about the interpretation of the CPC as the Parliament did not prescribe subsidiary instrument. However, the CPC advised that Public Services Regulations were prescribed under the Constitution and section 12 provided a definition for prescribing, which spoke to subsidiary instruments under the Constitution.
- 6.16.** Dr Barnett disagreed with the view of the CPC and the Attorney General agreed to provide an opinion of the matter on receipt of a formal request for same.
- 6.17.** The Chairman thanked Senator Tavares-Finson.
- 6.18.** The members of the CRC subsequently shared some perspectives on what symbols could be used for the referendum.
- 6.19.** The Chairman agreed that a subcommittee would be required to assist in the preparation and should focus on matters relating to the holding of the referendum. She asked if Senator Tavares-Finson would be willing to chair the subcommittee, and for Dr Barnett to serve on it.
- 6.20.** Senator Tavares-Finson asked the formation of the subcommittee be held until the process had moved further along as more public education was required. Dr Barnett stated that he had scheduling conflicts in the week but was free on the weekend.
- 6.21.** The Co-Chairman took over to discuss the Press Conference that was scheduled to follow the meeting, while the Chairman had a side meeting with the members of the CRC who were representatives of the church.
- 6.22.** Following deliberations by the CRC, consensus was arrived at on the following:

- Abolition of the Constitutional Monarchy.
- Replacement of the King of England with a Jamaican Head of State.
- Establishment of the Office of the President, as the formal Head of State of the Republic of Jamaica and to whom specific executive powers may be granted. That was separate from the Office of the Prime Minister as the political Head of Government of the Republic of Jamaica.
- Selection of the President via nomination by the Prime Minister after consultation with the Leader of Opposition confirmed by the affirmative resolution of Parliament with both Houses sitting together with a vote of two-thirds majority of all members.
- Any country other than Jamaica should be referred to as a foreign country. That included removing any reference to the Commonwealth and any privilege to be attached to Jamaica's relationship to the Commonwealth from the Constitution of Jamaica. Provision should be made in ordinary legislation.

7. ANY OTHER BUSINESS

- 7.1.** Co-Chairman Ambassador Meade noted that the Committee had not concluded the matter at item 10(a) of the Agenda – Formation of sub-committees – and proposed that it be carried over into the next meeting.

8. CLOSING COMMENTS

- 8.1.** Ambassador Meade, on behalf of the Chair, thanked members for their continued support to the Committee and service to the country.

9. DATE AND TIME OF THE NEXT MEETING

- 9.1.** Wednesday, April 19, 2023 at King's House. Members were expected to arrive by 9:30am so that the meeting could commence promptly at 9:45 am.

10. ADJOURNMENT

- 10.1.** The meeting was adjourned for lunch at 2:30 pm.

11. PRESS CONFERENCE followed.