



**MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS**  
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**JAMAICA**

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**MINUTES**

**7<sup>th</sup> Meeting of the Constitutional Reform Committee (CRC)**

**Venue: RIU Reggae Hotel**

**Date: Wednesday, April 26, 2023**

**Time: 9:30 am**

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**AGENDA**

1. Call to Order
2. Prayer
3. National Pledge
4. Welcome and Opening Remarks
  - a. Perspectives in the Public Domain
  - b. Process of Stakeholder Engagement
5. Apologies
6. Confirmation of Agenda
7. Confirmation of Minutes
  - a. March 22, 2023
  - b. March 29, 2023
  - c. April 5, 2023

- d. April 12, 2023
- e. April 14, 2023
- f. April 19, 2023

## **COFFEE BREAK**

- 8. Focus Group Discussion
  - a. Introductions
    - i. Members of the CRC
    - ii. Ministers' Fraternal (Faith-based)
    - iii. Montego Bay Chamber of Commerce
    - iv. Justice of the Peace
    - v. Kiwanis Club
    - vi. Rotary Club
  - b. Overview of the work of the CRC
  - c. Phase I
    - i. Jamaicanising the Constitution
    - ii. Abolition of the Constitutional Monarchy
    - iii. Establishment of the Office of the President
    - iv. Type of Presidency
    - v. Selection/Appointment Process
    - vi. Term of Presidency
    - vii. Powers of the President
- 9. Summation of Outcome of Discussion
- 10. Additional Matters
- 11. Running Order for Public Meeting at Montego Bay Civic Centre, Sam Sharpe Square
- 12. Adjournment.

## **1. CALL TO ORDER**

**1.1.** The meeting was called to order at 9:43 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)
- Senator the Hon. Tom Tavares-Finson, OJ, CD, KC (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition) via video link
- 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) via video link
- Mr Sujae Boswell (Youth Advisor)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) via video link

#### **Apologies for Absence:**

- Dr. Lloyd Barnett, OJ (National Constitutional Law Expert)

#### **Secretariat**

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

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

- Ms Roxene Nickle, Advisor/Consultant

## **2. PRAYER**

- 2.1. Prayer was led by Dr David Henry.

## **3. NATIONAL PLEDGE**

- 3.1. The National Pledge was recited.

## **4. WELCOME AND OPENING REMARKS**

- 4.1. The Chairman welcomed everyone in attendance physically and virtually, emphasising how beautiful the day was in Montego Bay. She advised that an apology for absence had been received from Dr Lloyd Barnett.

### **A. PERSPECTIVES IN THE PUBLIC DOMAIN**

- 4.2. In discussing the extensive media focus on the work of the Committee and the public calls for the publication of the records of the meetings, as well as requests for the meetings to be broadcast live, it was agreed that the earlier meetings outside of the public glare had allowed the Committee to take stock of the reform work already done, allowed members to get a feel of working together, and afforded members the opportunity to organise the work to be done. The Chairman encouraged members not to be disheartened as they worked in a context of doubt and disbelief.
- 4.3. It was observed that what was unfolding in the public domain was indicative of the public's concern about the process of constitutional reform, amidst a certain level of cynicism, ignorance and a general lack of trust in the process.

### **B. PROCESS OF STAKEHOLDER ENGAGEMENT**

- 4.5 It was recalled that the sub-Committee on Public Engagement and Communication (PEC) had outlined a programme to guide the public engagement process, however the implementation had not happened as swiftly as it ought. It was therefore recommended that

public education be prioritised and that a significant budget be allocated to successfully implement this component of the Committee's work.

**4.6** Members were also informed of a book written by the Hon. Justice David Batts titled "*The Law and Constitution for Every Jamaican*" which was a useful text that could serve as a guide for the general public as it was written in simple terms.

**4.7** Members were urged to spend a significant amount of time listening, receiving comments and feedback and to refrain from assuming a defensive stance. They were reminded of the principles of public engagement – *ask, accept, acknowledge, action and archive*.

**4.8** It was then suggested that although the proposed timeline was overly ambitious, the public, despite their strong concerns, had displayed an active interest in constitutional reform and should be actively incorporated in the process.

**4.9** The Committee reflected on perspectives in the public domain, referenced the history of constitutionalism, and noted that the perception of the wider public was that, in the past, there were a group of persons who sat in a room to decide the future of Independent Jamaica with little consultation, public engagement or dialogue and, that historical perspective had created wide scepticism.

**4.10** It was reiterated that delays in implementing the programme outlined by the PEC sub-committee had sent a negative message to the wider public which was contrary to the intention and efforts being pursued. This had implications on the level of trust exhibited by the public and around the process of engagement. Members were then asked to identify the best approach to repair the public trust and that the Committee should ensure that it was **visible, accessible and responsive**.

**4.11** The Committee considered the need to:

- i. Settle the sequence of the work and to address the perception of it being a 'done deal' should the Bill be tabled prior to adequate public debate and consultation;
- ii. Review the timeline for the tabling of the Bill;

- iii. Apologise for not sharing its process with the public earlier and to reassure them that their voices will be heard; and
- iv. Engage the church groups, even though some groups had already met with the Chairman.

## **5. ADOPTION AND CONFIRMATION OF THE AGENDA**

**5.1** The Agenda was adopted and confirmed without amendment.

## **6 CONFIRMATION OF MINUTES**

### **6.1 March 22, 2023**

- a. The Minutes (in note form) of the meeting held on Wednesday, March 22 were confirmed subject to the following amendments:
  - i. Page 1: The hyphen in Hon. Minister Malahoo Forte's name was removed
  - ii. Page 4: Minor edits were made.
  - iii. Page 5: Item 6.0 the comma after s.49 was replaced with a dash;
  - iv. Page 5: Item 7.0 the spelling of the word Reform was corrected
  - v. Page 5: Item 7.0 the hyphen after Reform was replaced with a colon
  - vi. Page 6: Item 7.1 the words "is not one that requires" at sub-paragraph 1 be substituted with "does not require"
  - vii. A new Section was added marked Paragraph 10 to indicate that Prime Minister Hon. Andrew Holness had addressed the Committee.
  - viii. Due to constraints in time and the early arrival of the focus groups, it was agreed that the confirmation of the other listed Minutes (April 5, 12, 14 & 19, 2023) be deferred to the next meeting of the Committee.

### ***COFFEE BREAK***

## **7. FOCUS GROUP DISCUSSION**

### **7.1 INTRODUCTION**

**7.1.1** The Chairman invited stakeholders present to introduce themselves. A list of the

stakeholders in attendance can be found at **Annex I**.

## **7.2 OVERVIEW OF THE WORK OF THE CRC**

**7.2.1** In giving an overview of the work of the Committee, the Chairman informed the Stakeholders that there were different categories of provisions within the 1962 Constitution of Jamaica with different processes required for amendment:

- i.* Provisions referred to as “ordinary” required an absolute majority vote of each House of Parliament to change them;
- ii.* Provisions referred to as “ordinarily entrenched” required a special process and two-thirds (2/3) vote of each House of Parliament;
- iii.* Provisions referred to as “deeply entrenched” also required a special process and two-third (2/3) vote of each House of Parliament, as well as the votes of the electorate (in the process of a referendum) for approval.

**7.2.2** The Chairman advised that the Constitution set out a number of specific provisions which are ‘deeply’ entrenched. These include:

- i.* The process by which the Constitution itself is to be amendment/alterd.
- ii.* The effect of the Constitution as the supreme law of the land.
- iii.* The establishment of the Parliament.
- iv.* The composition of the Senate.
- v.* Qualification to sit in the House of Representatives;
- vi.* The timelapse between the end of one parliamentary term and the beginning of the other.
- vii.* Sessions of Parliament.
- viii.* The life of Parliament and the circumstance in which such life may be extended (period of war).
- ix.* Powers of the Governor General to dissolve Parliament.
- x.* Vesting of the executive authority of Jamaica in the Monarch.

**7.2.3** She informed the representatives that it had been agreed that the work of the Committee would be done on a phased basis and that the Committee had agreed

to focus on a specific set of issues in the first phase namely the:

- i. *“Jamaicanising”* of the Constitution.
- ii. Abolition of the Constitutional Monarchy.
- iii. Establishment of the Office of the President.
- iv. Type of Presidency.
- v. President’s Selection/Appointment Process.
- vi. Term of Presidency.
- vii. Powers of the Presidency.

**7.2.4** Stakeholders were then invited to share their perspectives and comment on the issues presented and any other issues, beyond the scope of what had already been shared.

### **7.3 JAMAICANISATION OF THE CONSTITUTION**

**7.3.1** It was explained that “Jamaicanising” in simple terms, meant that the highest law of the land, the Constitution, would be passed by the Parliament of Jamaica and be approved by the people of Jamaica.

**7.3.2** Stakeholders noted that the Opposition party was represented on the Committee and that high value had been placed on ensuring the protection of the fundamental rights and freedoms of the Jamaican people.

### **7.4 DECOLONISATION OF THE CONSTITUTION**

**7.4.1** Questions were asked about the process of decolonisation of the Constitution that would facilitate the removal of the current monarchical institutions and structures including the Judicial Committee of the Privy Council (JCPC) which is Jamaica’s final appellate court.

**7.4.2** Professor Albert shared the observation that it was a truly significant and historical moment in the life of the country. He pointed out that the average lifespan of a



constitution was 19 years, and that the Jamaican Constitution has existed for 61 years. He remarked that it was a mark of success, stability and a strong democracy and noted that Jamaica had chosen to remake its Constitution in a moment of peace and stability as Jamaicans come together to effect the shift from a constitutional monarchy to a republic. The Committee had therefore been tasked to confront issues of self-definition and the values that Jamaicans wanted to see reflected in the Constitution.

## **7.5 DISCUSSION**

- 7.5.1** The stakeholders were then invited to voice their concerns and to share their recommendations with the Committee.
- 7.5.2** A representative from the Minister's Fraternal asked "*whether there are any other constitutional experts to provide advice to the Committee?*"
- 7.5.3** It was pointed out that there are varying levels of expertise within the general membership of the Committee, and the members also had the benefit of Dr Lloyd Barnett, a local constitutional law expert who had written his doctoral thesis on the 1962 Independence Constitution. The stakeholders were advised that Dr Barnett was a respected national and regional expert on matters of CARICOM and Commonwealth Constitutional Law.
- 7.5.4** Stakeholders were advised that a bundle of documents containing work previously done in relation to constitutional reform had been provided to guide the work of the Committee.
- 7.5.5** A representative then queried "*what recommendations from the 1995 Joint Select Committee on Constitutional and Electoral Reform would guide their concerns at this time?*"
- 7.5.6** The meeting was advised that a Joint Select Committee (JSC), headed by the late

Justice Kerr, had published a report in 1995 which had set out recommendations similar to those being examined currently. The JSC recommendations had covered a number of issues such as the type of presidency and whether it should be a ceremonial, executive or hybrid presidency. It was noted that the hybrid approach had been preferred. The JSC also looked at the citizenship qualification for membership in the Parliament.

**7.5.7** Considering an earlier reference to the average lifespan of a Constitution, one stakeholder queried “*whether there could be a provisional Constitution whereby the process of becoming a republic could proceed while other issues are reserved for examination later or over time.*”

**7.5.8** It was agreed that it would be possible to create an interim constitution which would achieve some of the steps that were desired. Some countries have used interim constitutions when there was no consensus on certain matters but there was still a need for a constitution. In the context of the Jamaican Constitution, it was possible but not necessary, due to the phased approach being undertaken by the Committee.

**7.5.9** Professor Albert advised that the Jamaican Constitution is a very sophisticated document as it is based on the second generation of constitutional design. The first generation contained one procedure for all amendments, but the advanced and enlightened second-generation document contained multiple procedures, each designated for use in respect of different parts within the Constitution. In the later phases Parliament would be empowered to make the necessary changes.

**7.5.10** A stakeholder from the Montego Bay Chamber of Commerce queried “*the economic, legal and any other material factors that would be impacted by the removal of the Monarchy and becoming a Republic*”. Reference was made to the results of ‘Brexit’ on the United Kingdom.

**7.5.11** Members of the Committee advised that Jamaica had built a system of government

to handle the issues which would arise out of independence. However, there is now a need to complete the process. In commenting on Brexit, it was indicated that Brexit, in reality, saw a group of independent people faced with a decision at a specific time and their decision was made as a sovereign people. In the current context, Jamaica was faced with a decision about holding on to the vestiges of colonialism.

**7.5.12** Members of the Committee also noted that Brexit was based on economic implications and the migratory issues that the UK faced. However, the issues faced by Jamaica concerned history and culture and the concern is focused predominately on addressing colonial ties. As it currently stands, Jamaica does not enjoy any preferential treatment with the UK.

**7.5.13** A member of the Committee emphasised that it would be incongruous for Jamaica to become a republic and retain the JCPC. The meeting was then advised that the removal of the JCPC was an issue that would be given serious consideration. However, there was no consensus currently. It was also noted that views were divided on removing the JCPC among the Jamaican public and if the Committee were to await consensus on all matters, nothing would be done.

**7.5.14** It was noted that it had been necessary to organise the work in phases to achieve the objectives. Both parties have agreed on the process and both parties have also agreed on other matters ancillary to other process. The Committee reflected that the cost and benefit of the separation while not necessarily affecting trade ought to be considered as it may be a question raised in other fora.

**7.5.15** One stakeholder expressed a desire for total independence and opined that the time lost for those stakeholders involved in business had proved costly. An example was shared whereby approaching the JCPC with a commercial matter would cost millions of dollars and business assets were thereby further imperilled. He noted that there was a pressing need for a local court of final appeal for both criminal and commercial matters because the retention of the colonial institutions had

affected the development of the country and had tainted the nature of commercial transactions.

**7.5.16** Other questions/issues raised by the stakeholders included:

- i. Would it be established that Jamaica is a Christian (and not secular) nation because such a determination will provide a compass for the nation?*
- ii. Would an official language be determined?*
- iii. The appointment of the president, whether ceremonial or executive, should be done using a two-thirds vote or a 75% majority.*
- iv. Would there be fixed election dates for Parliament and Local Government?*
- v. Would there be an elected Senate?*
- vi. Would there be term limits for Members of Parliament and the Prime Minister?*
- vii. Would the Privy Council remain as Jamaica's final court of appeal?*
- viii. Would Jamaica remain in the Commonwealth?*
- ix. Would the Constitution include municipal courts to handle all county-council issues related to public health, local ordinances etc?*
- x. Would a macro framework be established to guide the work to be done?*
- xi. Can one road authority be established so that there is only one entity responsible for all roads across Jamaica?*

**7.5.17** In response to the suite of questions, the Committee members indicated that not all of the issues required a constitutional response, but many were longstanding, and therefore it could not be business as usual.

**7.5.18** Another stakeholder sought clarity on “*what are the specific powers that would exist in the hybrid presidency; what would the term limit be for such a presidency; and what exactly is a hybrid form of president?*”

**7.5.19** The Committee advised that deliberations were still underway in relation to the

first aspect of the question and that the previous Committee had recommended some of those powers which included, the appointment of the Chief Justice, President of the Court of Appeal etc. It was also recommended that the President should have an independent voice.

**7.5.20** In relation to the term of the President, it was explained that the current Committee had considered a term of more than five (5) years, with a period of seven (7) to nine (9) years as a good option.

**7.5.21** Another stakeholder suggested that the removal of the Monarchy would have implications on several matters directly related to individuals at the parish level such as the Custodes and Justices of the Peace.

**7.5.22** In response, it was shared that when the Committee met with the Governor General, it was discussed that a number of things may have to change, such as the use of the term ‘Crown’ and the designation of the Governor General’s Privy Council. It was suggested that the latter could be called the ‘President’s Council’.

**7.5.23** In contributing to the discussion, a Committee member opined that many people approach the issue of republican status in an emotional way and as such avoided a very important question that had already been raised during this forum, which is *“what are the material benefits of getting rid of the Monarchy?”*

**7.5.24** Stakeholders were invited to consider why the process of getting rid of the Monarch seemed so difficult in comparison to what was done in Barbados. One member of the Committee advised that this was because the Constitution of Jamaica firstly required a special majority of all members of Parliament in the lower house, a feat that was not easily achievable in the 70s, 80s and 90s because of the political divisiveness in the country.

**7.5.25** It was said that while the idea of becoming a Republic was not new, it was the first time in history that there has been consensus on this issue. Within the context

of the 1960s, it became difficult to do away with the Monarchy because not only was there a requirement for a special majority in the lower house, but also a special majority in the upper house which suggested that one individual from the opposing party could block the process.

**7.5.26** Further, it involved a process and an agenda for putting the legislation before Parliament with a prescribed waiting period of three (3) months. Such legislation must be debated and voted on, following which another waiting period of three (3) months would be required.

**7.5.27** A member of the Committee expressed the view that the reason why Jamaica was in the peculiar position was due to the leaders in the late 1950s and early 1960s being uncertain about how the people of Jamaica viewed Jamaica as a country. The leaders who negotiated in London were middle class Jamaicans who did not know how Jamaicans would vote. At the time, there were three political parties: the Jamaica Labour Party (JLP), the Peoples National Party (PNP) and the People's Political Party (PPP). Middle class Jamaicans were terrified that people would vote for the PPP and take Jamaica down a path like Haiti. As such, Jamaicans sought to make it difficult to get rid of the monarchy and that is why the process was so laborious.

**7.5.28** Whether the Governor-General was elected or not raised a critical notion that Jamaica needed an umpire. It was said that there was no real concern about the process of selecting the President because Jamaica has had a good history of appointing Governors-General. However, Jamaicans were most critical of themselves – one effect of colonialism. There was deep resentment of the systems which was carried over into independent Jamaica. In considering the material benefit to be gained, stakeholders were asked if they had an idea of how much was spent to maintain the Office of the Governor-General as the representative of the Crown.

**7.5.29** Senator Tavares-Finson informed the meeting that approximately \$425 million

Jamaican Dollars per year was spent to support King's House and the Monarchy did not offer financial support to the Office of the Governor-General. Therefore, if the nation were desirous of setting up a system where a man or woman was designated as Head of State, it should be done by Jamaicans to identify someone who is a true representative of Jamaicans.

**7.5.30** It was then emphasised that Jamaicans had the capacity as a people to move forward and that while the abolition of the Monarchy may not “affect the price of rice now,” it would affect the consciousness of Jamaicans everywhere.

**7.5.31** A stakeholder from the Minister's Fraternal then appealed to the persons present to refrain from demonizing the quality work that had been done by the Committee and asked that the benefits of the proposed move be highlighted in moving forward. Accordingly, an extended period of education about the constitution must take place.

**7.5.32** A question was then raised— *“what measures or mechanisms have been identified for the level of wide public engagement, education and communication that will be required going forward?”*

**7.5.33** One stakeholder recommended incorporating the voice and perspectives of the ordinary man to ensure that all walks of life were adequately heard and considered.

**7.5.34** Another stakeholder asked whether it was a pre-requisite for the monarchy to be abolished before looking at any issue and whether other issues could be examined first. It was recommended that the Committee use a well-researched perspective for its recommendations and that the dialogue move beyond mere anecdotes. Committee members were therefore encouraged to share their approach widely as well as the associated benefits.

**7.5.35** Professor Albert then asked the meeting to consider the following benefits of becoming a republican state:

- i.* **Symbolic Benefit** – Severing the colonial ties that bind and subordinate the Jamaican Head of Government to a UK Monarch thereby inevitably costing taxpayers millions of dollars
- ii.* **Legal Benefit** – Terminating the legal authority of the UK Monarch to exercise authority over Jamaica.
- iii.* **Political Benefit** – Terminating the imposed relationship with the UK and to allow Jamaica to determine its own path.
- iv.* **Institutional Benefit** – Designing public institutions for the benefit of Jamaicans. In reviewing what exists currently, examination of the effectiveness and whether they have worked for Jamaicans would be necessary, considering the mentality of self-hate flowing over into the system.
- v.* **Representational Benefit** – Choosing who will represent the Head of State.

**7.5.36** One stakeholder then expressed a major concern that since the first referendum in 1961, there had been a steady decrease in the number of persons who have gone to the poll. Therefore, he asked, *“Is there a benchmark set to say that there has to be a certain percentage of Jamaicans voting in order to proceed with the result?”*

**7.5.37** Additionally, it was also asked *“whether there is an intention to begin with the deconstructing of many colonial symbols such as Kings House?”* A further enquiry was *“whether a preamble would be included in the new Constitution that would encapsulate the spirit and vision of the people of Jamaica”*.

**7.5.38** In response to these questions, the Chairman informed them that the constitutional provision for the referendum only required a majority of the persons who actually voted if the Bill was passed by both Houses of Parliament.

**7.5.39** It was further pointed out that the cost of Jamaica transitioning from Queen Elizabeth to King Charles and to a Republic may amount to billions of dollars, as



for example, the uniforms of every service provider such as members of the Jamaica Constabulary Force, the Jamaica Defence Force, the Fire Brigade amongst others would have to be changed.

**7.5.40** Stakeholders were also advised that a preamble would be considered.

**7.5.41** In the interest of time, the Chairman brought the discussion to an end and concluded the meeting. She invited the stakeholders to attend the Public Consultation Townhall Meeting which would take place at the Sam Sharpe Civic Centre later that afternoon.

## **7.6 SUMMATION OF OUTCOME OF DISCUSSION**

**7.6.1** The stakeholders thanked the Committee for having facilitated the focus group engagement session. They said that they had emerged from the session feeling that it was constructive, engaging, informative, educational, visionary, refreshing and eye-opening, but they noted that a lot of work still needed to be done.

**7.6.2** The members of the Committee invited the stakeholders present to note the email [constitutionalreform@mlca.govjm](mailto:constitutionalreform@mlca.govjm) and WhatsApp number 876-441-9097 for correspondence with the Committee. They were asked to disseminate the contact information widely to ensure meaningful public engagement.

## **8 ADDITIONAL MATTERS**

**8.1** No additional matters were considered due to time constraints in view of the upcoming public consultation.

## **9 RUNNING ORDER FOR PUBLIC MEETING AT MONTEGO BAY CIVIC CENTRE, SAM SHARPE SQUARE**

**9.1** The Chairman briefed the Committee on the procedures to be followed at the Public

Consultation Town Hall Meeting later in the afternoon.

## **10 ADJOURNMENT**

**10.1** There being no other business, the meeting was adjourned at 2:20 pm.

## **ANNEX I: ATTENDEES OF THE MONTEGO BAY, ST. JAMES STAKEHOLDER MEETING**

### **Montego Bay Chamber of Commerce**

- Oral Heaven – President
- Damia Dawes Monthrope
- Sonia Clarke-Bowen
- Karlene Maye
- Winston Dear
- Mark Kerr-Jarrett
- Allan George Causwell
- Sherriann Mercy
- Anthony Cameron
- Lois Spence
- Lemar James – Rotarian

### **Minister's Fraternal**

- Rev. Godfrey Francis
- Rev. Barbara Messado
- Rev. Dr. Peter Burnett
- Rev. Howard Nelson
- Rev. Rahamah Forrester

### **JP's Association**

- Custos Conrad Pitkin
- Mexine Bisasor Bryan
- Marc Mullings
- Lloyd B Smith
- Franklyn Brockett
- Gabrielle Lee
- Natalie Morris