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MINUTES

8th Meeting of the Constitutional Reform Committee (CRC)

Venue: Room 389, Executive Building, Office of the Prime Minister

Date: Wednesday, May 3, 2023

Time: 9:00am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Welcome and Opening Remarks
5. Apologies
6. Confirmation of Agenda
7. Public Engagement and Communication
 - a. Overview of the work of the CRC
 - b. Phase 1
 - i. Jamaicanizing 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
 - viii. Final Court of Appeal
 - ix. Life of Parliament
 - x. Qualification to Sit in Parliament
 - xi. Engagement with Diaspora
8. Summation of Outcome of Discussion
9. Confirmation of Minutes
- a. March 22
 - b. March 29
 - c. April 5
 - d. April 12
 - e. April 14
 - f. April 19
 - g. April 26.
10. Additional Matters
- a. Establishment of Sub-Committees
11. Any Other Business
12. Date and Time of Next Meeting.
13. Adjournment

1. CALL TO ORDER

1.1 The meeting was called to order at 9:32 am.

ATTENDEES:

Constitutional Reform Committee

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Dr Derrick McKoy, CD, KC (Attorney General 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)
- 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)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) – via video link
- Dr Elaine McCarthy (Chairman - Jamaica Umbrella Groups of Churches)

Absent

- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)
- Senator Hon. Thomas Tavares-Finson, OJ, CD (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)
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- Ambassador Sheila Sealy-Monteith, CD, JP, Permanent Secretary, Ministry of Foreign Affairs and Foreign Trade

Secretariat

Ministry of Legal and Constitutional Affairs

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Ms Judith Grant, Chief Parliamentary Counsel

- Ms Nadine Wilkins, Director, Legal Reform
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Ms Nastacia McFarlane, Director, Corporate Communication & Public Relations (Actg.)
- Ms Roxene Nickle, Advisor/Consultant
- Mr Makene Brown, Legal Officer
- Mrs Janelle Miller-Williams, Senior Director, Legal Education (Actg.)
- Ms Julia Wedderburn, Senior Legal Education Officer (Actg.)
- Ms Shaedane Facey, Strategic Planner (Actg.)
- Mr Winston Lowe, Public Relations Officer (Actg.)
- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel
- Mrs Chrystine Wedderburn-Bernard - Legislative Editor

Ministry of Justice

- Ms Samantha Blair, Deputy Director, Legal Services

2. PRAYER

- 2.1 Dr McCarthy led the meeting in prayer, after reciting Psalm 121.

3. NATIONAL PLEDGE

- 3.1 The National Pledge was recited.

4. WELCOME AND OPENING REMARKS

- 4.1 The Chairman informed the meeting of the many positive comments received on the successful staging of the first Constitutional Reform Town Hall Meeting held at Sam Sharpe Square in Montego Bay (on Wednesday April 26, 2023). She noted that it was unfortunate that a spliced video had been put out under the People's National Party (PNP)'s communication logo and circulated on social media. The video sought to discredit the good outcome of the meeting. The said video was edited in a manner to give the impression that she had no answer to questions asked at the Town Hall Meeting.

- 4.2 However, she stated that the decisions to be made by the Committee (by way of recommendations) were too important to merit those distractions. Great care must therefore be taken to remain focused, as the main purpose of this meeting was to address housekeeping matters and to take some time to reflect on the work carried out to date, the work agreed to be done and the outstanding matters.
- 4.3 It was agreed that the comments in the public indicated many concerns about the work of the Committee. One such concern was the process of meaningful public engagement and consultation in light of the proposed timeline for the tabling of the Bill. It was further agreed that this was a legitimate concern and in the absence of the proper flow of information and clear communication, speculation would be rife.
- 4.4 The public wanted an input in the deliberations, as many people felt that they had been shut out of the formal processes in previous constitutional reviews. The Chairman advised that the constitutional changes to be made could only be done *via* the legislative process. She emphasised that if the form of government were not changed from a constitutional monarchy none of the other changes would be made.
- 4.5 The Chairman then indicated a willingness to step back from the initial proposed timeline in order to allay public anxiety and to allow for meaningful consultations and engagement with the public. She reminded the Committee members that the process of amending the Constitution was deliberately designed to be a slow one, and that public engagement would not stop after the Bill has been tabled.

5. APOLOGIES

- 5.1 Apologies for absence were received from Ambassador Rocky Meade, Dr Lloyd Barnett, Ambassador Sheila Sealy-Monteith, Senator Ransford Braham, Senator Donna Scott-Mottley and Senator Thomas Tavares-Finson.

6. CONFIRMATION OF THE AGENDA

6.1 It was proposed and agreed that matters related to public engagement and communication be deliberated prior to the confirmation of the Minutes. The Agenda was confirmed as follows:

6.1.1 Item 8 was switched with Item 7.

6.1.2 Item 7(b) to include:

- i. Statement on the issue of Final Court
- ii. Life of Parliament
- iii. Qualification to Sit in Parliament
- iv. Engagement with Diaspora

6.1.3 Confirmation of the Minutes placed as Item 9.

6.1.4 “Formation of Sub-Committees” inserted as Item 10(a).

7. PUBLIC ENGAGEMENT AND COMMUNICATION

7.1 OVERVIEW OF THE WORK OF THE COMMITTEE

7.1.1 A concern was expressed that despite the press release issued after the last meeting the media had not focused on the issues raised, such as citizenship, qualification to sit in Parliament, and the shift to republicanism. Important recommendations had been formulated, none of which were discussed by the media. Members felt that the Committee needed to be more assertive with the dissemination of information and the engagement process. It was agreed that the integrity of the work of the Committee was critical as it would be recorded in history and the Minutes of the meeting would reflect the scope of the matters deliberated on by the Committee.

7.1.2 The Committee was advised that in a Town Hall discussion the previous evening, Members were classified as the “*silent 15 or secret 15.*” Members agreed that the Committee was operating in an environment in which people viewed the government with suspicion and that there was a historical context in which the government was viewed as a group of elite people looking out for their own interests. Criticisms levelled against the Committee arose out of that context.

7.1.3 Members were reminded that their work would be compared to that of the previous Constitutional Reform Commissions and Joint Select Committee on Constitutional and Electoral Reform (JSCCER), although the role of the Committee was an advisory one and they were not appointed in a manner similar to a Commission nor by Parliament. The Prime Minister had announced the appointment and issued a directive to advise the Cabinet through the Minister/Ministry of Legal and Constitutional Affairs.

7.1.4 The Committee further deliberated on the public perception that its work was being done in secrecy and was not subject to public scrutiny.

Mr. Anthony Hylton joined the meeting.

7.1.5 In considering whether the deliberations of the meeting would be made open to the public, it was also considered how such may constrain the discussions. Members felt that it may be better for the public to have access to the deliberations rather than listen to uninformed speculation, and that any change to the timeline and communication plan should be addressed immediately.

7.1.6 Members were also advised that there were two journalists who had stated that they would be agitating for a ‘no-vote’ in the referendum.

7.1.7 The Committee also considered the importance of having a timetable and process to guide how submissions received from the public were treated. It was noted that some of the matters emerging from the public discussions on constitutional reform were matters which would be dealt with by ordinary legislation.

7.1.8 Members of the Public Engagement and Communication (PEC) sub-committee advised the meeting that a suite of actions had been proposed which would have prevented the predicament currently faced by the Committee. The Cabinet had decided that a Secretariat would be set up to support the Committee by ensuring that the members, who were volunteers, would have full-time support in actioning the steps, measures and mechanisms that would flow from the Committee’s work.

7.1.9 In view of the negative perceptions which had created a “murky environment”, the members of the Committee agreed to:

- i. Revisit the plan which was created by the PEC and settle the public engagement agenda;
- ii. Request an adequate budget;
- iii. Determine the steps to be taken for public education and the process of engagement;
- iv. Identify persons who would be engaged in the process;
- v. Prepare a public consultation agenda; and
- vi. Ensure that the people’s views on the nature, type and powers of the presidency were canvassed instead of communicating the view of the Committee, or when communicating the view, indicate that it was a preliminary view.

7.1.10 In noting the comments, suggestions and concerns raised, the Chairman acknowledged that the Secretariat had been challenged in providing the required support. Mrs. Chrystine Wedderburn-Bernard and Mr. Christopher Harper had been designated to provide further assistance to make the process more efficient.

7.1.11 Permanent Secretary Robertson advised the meeting that the Secretariat team was being expanded. He indicated that even with the paucity of resources, the relevant work was being actioned by the team.

7.1.12 He informed the Committee that a proposal outlining an engagement plan and budget had been submitted to the Ministry by the Jamaica Information Service (JIS), but in light of the greater scope of work now outlined, that plan would have to be augmented. A budget of \$19 million was approved and in place and was expected to substantially move the reform work along. He advised that the budget would have to be expanded and the supplementary budget process would be engaged for additional funding.

7.1.13 In responding to the Committee’s feedback on the work of the Secretariat, he advised that a social media presence had been established across various

platforms which publishes information on a daily basis. He articulated that the Town Hall meeting held in Montego Bay was successful and there was now a proposal for parish-wide consultations instead of regional consultations. Although tiring, he shared that such would require the full participation of the Committee. He further informed the Committee that the development of a website was underway and should be completed within the next 4 weeks.

The Chairman then asked to be excused from the meeting to attend to an urgent matter and for the Attorney General- Dr. McKoy to assume the responsibilities of the chair until she returned.

Dr. McKoy assumed the chair:

7.1.14 In light of the revisions being discussed, one member of the Committee queried the actions to be taken in the interim and sought information on any perceived delays. The member also queried the date of the next public consultation. The meeting was advised that it had been scheduled for May 10, 2023, in Mandeville. However, it was likely that the date would change as a meeting with Jamaica Accountability Meter Portal (JAMP), Jamaicans For Justice (JFJ), the Advocates Network and other civic groups had been scheduled for that date.

7.1.15 Dr. McKoy asked that a clear and definitive timetable be prepared as an appropriate period of public consultation must be accommodated.

Ms. Nadine Wilkins- Director of Legal Reform, joined the meeting.

7.1.16 Questions about the Committee's social media handle and the source of official information were also raised, as Members queried whether such information should come from the Minister's social media, the Ministry's social media or whether it should be disseminated from a specific space/account exclusive to the Committee.

7.1.17 In light of the discussion, the PEC sub-committee Chairman Dr Nadeen Spence noted that a corner had been turned, and she asked the Committee for time to

revisit the proposed engagement plan, to amend same and then to bring an updated proposal to the Committee.

7.1.18 It was then suggested that some form of communication from the Committee to the wider public was necessary to clarify where it was in the process, what had happened, decisions that had been made and what the Committee was about.

7.1.19 At that point, it was agreed that there was consensus that a press release should be prepared and disseminated after each meeting.

7.2 PHASE 1

7.2.1 Dr McKoy then invited the Committee members to consider the matters listed under Phase 1 (Agenda item 7(b)) on which the Committee planned to engage the public.

7.2.2 In light of the foregoing discussions, one member raised the following concerns:

- i. Issues related to the transparency of the Committee should be answered and resolved immediately;
- ii. The publication of the Committee Terms of Reference. While it may be on a website somewhere, the member queried why it was not made available for wider circulation?
- iii. The proposed timeline would not be credible if the people were not consulted. The current timeline suggested that there was no intention to consult the people.
- iv. While the Committee discussions had been rich and robust, the public did not have the benefit of that insight, however, if all the questions raised by the public were answered, the public would be put at ease.

7.2.3 Going back to the agenda, Dr. McKoy asked members of the Committee whether there were any other items to be added to the current list of matters under renumbered Agenda Item #7 – Phase 1 matters which would be put before the public.

- 7.2.4** One member noted that the Committee’s discussions had focused on matters which were deeply entrenched. Whilst regarded as a plausible and logical approach, it should also be noted that such was not the only approach. If the intention was to go to the public, it would be necessary to discuss other critical ancillary issues and it would be a mistake not to include a discussion on the Caribbean Court of Justice (CCJ).
- 7.2.5** The member suggested that in abolishing the Monarchy, there was a view around whether matters should still go to the Judicial Committee of the Privy Council (JCPC). That question had been raised at the forum held on the previous night where members of the public enquired whether that would be a pre-requisite in resolving the issues between the political parties.
- 7.2.6** The meeting was cautioned that it was important to guard against the perception that there was a desire to remove the monarch but there was no clear sense of what would come after. One member opined that it was expected that the public would hold the Committee accountable for the outcome and the Committee therefore needed to decide if the determination of the final court of appeal would be an important antecedent matter in determining whether Jamaica became a republic. Nothing could happen if the two political parties did not agree but that would be a pre-requisite for the referendum Bill. It was further opined that the public wanted to know which institution would be their final appellate court when they voted for the removal of the Monarchy.
- 7.2.7** Another member considered that it would be intellectually, psychologically, and emotionally inconsistent to say that Jamaica was getting rid of the Monarchy, but would still bow to the JCPC in matters of justice.
- 7.2.8** It was therefore proposed that the list be expanded to include one more category termed as “Decision on the Final Court of Appeal.”
- 7.2.9** A member of the Committee opined that that question would naturally be asked when engaging in conversations about the move to a republic. Some people have said that they were not okay with the issue being dealt with at a later stage, but it

was important to note that the Committee must consult on the matter. It was also noted that missing from the current list were those matters dealing with the qualification to sit in Parliament and the life of the Parliament which had been discussed by the Committee during previous sessions.

7.2.10 Accordingly, it was agreed to expand the list of items at Agenda item 7(b) to include the following:

- i. Decision on the Final Court of Appeal;
- ii. Qualification to Sit in Parliament;
- iii. Life of Parliament; and
- iv. Engagement with the Diaspora.

7.2.11 It was also suggested that the agenda item titled “Summation of Outcome of Discussion” be renumbered as 8, with the confirmation of Minutes being renumbered as 9.

7.2.12 It was noted that there was agreement that a revised agenda would be prepared, setting out the details surrounding public engagement; what would be involved in such engagement; a need to address the issues of transparency; and the consensus view that the deliberations should be opened to public scrutiny and be done through live stream as the public needed to see the deliberations.

7.2.13 Members were further reminded about the decision to issue a press release and that the Ministry’s Director of Corporate Communications and Public Relations with the support of the Public Relations Officer both from the Secretariat, would be assigned responsibility for it.

7.2.14 The meeting then considered whether the Committee needed someone in the forefront who would be the face of the Committee to act as its spokesperson. It was agreed that the Committee’s messenger in this regard should be someone with whom the public could identify.

The Chairman- Minister Malahoo Forte returned to the meeting.

7.2.15 In reviewing the matters discussed the Chairman expressed her understanding of the inclusion of a position on the final court on the list of matters. She reminded the Committee that the reason for the phasing of the work was because of the need to build consensus. If matters were advanced without consensus, they could derail the work of the Committee. She also stated that there was logic to the phasing of the work as it could not be done all at once. She also advised that there was no unified view within the current administration on the matter of the final appellate court at this time.

7.2.16 In response, it was stated that the PNP was unanimous in their position on the final court. Its inclusion was important as during public engagement, proposing the Jamaicanising or decolonising of the Constitution without raising the issue of the final court, would affect their credibility.

7.2.17 One member suggested that when approaching the Jamaican people, the Committee should simply explain to the public that the matters related to the final court would be addressed but that it was not a pre-requisite to becoming a republic.

LUNCH BREAK

Chief Parliamentary Counsel (CPC) Grant and Ms. Christal Parris-Campbell joined the meeting.

7.2.18 On resumption after lunch, the Chairman, summarised the previous discussions as follows:

- i. Eleven (11) matters had been itemized on which the public would be engaged;
- ii. It was re-established that the issue of the final court would arise amidst concerns about the credibility of maintaining the JCPC following the move to become a republic;
- iii. The public should be engaged in a manner that made it clear that views within the Committee on the final court were divided but nevertheless,

it would be discussed with the public and their views received on this issue;

- iv. It should be made clear that the issue of the final court was being considered by the representatives of the two political parties with an understanding that a decision is to be made; and
- v. Changing the final court at this time was not a prerequisite to changing the form of government to a republic. However, becoming a republic begged the question of whether Jamaica maintained a court from the colonial past as its final court of appeal

7.3 JAMAICA UMBRELLA GROUPS OF CHURCHES (JUGC) MEETING

7.3.1 The members of the Committee were informed that the Jamaica Umbrella Groups of Churches would be hosting a meeting and an invitation had been extended to the Chairman and the members of the Committee. The meeting would adopt an approach similar to the Town Hall meeting held the week prior in Montego Bay. The reform process would be explained, and the ministers and religious leaders would then be given an opportunity to ask questions. The Chairman agreed that the Committee's Secretariat would provide support for the meeting.

7.4 REQUEST FOR OPINION

7.4.1 A member, at this point, requested a brief note from the Attorney General's Chambers and the Office of the Parliamentary Counsel (OPC) on which deeply entrenched matters now existed in the Jamaican Constitution and more specifically, in addition to the matters that the Committee had examined, whether there were any other deeply entrenched matters which the Committee had not considered.

7.4.2 In considering the drafting strategy to be employed, CPC Grant advised the Committee that the drafting approach would depend on what was finally decided and a vehicle for effecting the amendments could not be recommended without further information.

7.4.3 The Chairman informed the Committee that during the initial stages, prior to the establishment of the Committee, the Attorney General's Chambers was asked to provide an opinion on:

- i. the process of transitioning from a Constitutional Monarchy;
- ii. the procedural steps needed to amend deeply and ordinarily entrenched provisions;
- iii. whether separate Bills should be prepared for entrenched and deeply entrenched provisions; and
- iv. what the requisite three-month period between the introduction of the Bill and the commencement of the debate; and the further three months between the conclusion of the debate and the passing of the Bill were to be used for.

7.4.4 The Chairman advised that she had received the opinion prior to the formation of the Committee and would share it with the Committee members. She asked the members not to share this opinion externally.

7.5 PRESS RELEASE

7.5.1 A press release was drafted by the Chairman and a few members of the Committee and would be issued by the Secretariat after the meeting, after it was finalized and approved.

8. CONFIRMATION OF THE MINUTES

8.1 The Chairman recognized that a quorum was not present for the confirmation of the Minutes. She expressed her deep disappointment that once again the Minutes had not been confirmed, especially as they would be needed as a public record of the Committee's deliberations. It was agreed that this would be deferred for the next meeting of the Committee.

9. DATE AND TIME OF NEXT MEETING

9.1 The next meeting was scheduled for 9:30am on Wednesday, May 10, 2023, at the Banquet Hall, Jamaica House.

10. ADJOURNMENT

10.1 There being no other business the meeting was terminated at 5:56 pm.

ACTION POINTS

Matter	Persons Assigned	Date required
Revisit and settle plan for public engagement	PEC/Secretariat	Immediately
Prepare timetable for Public Consultations	Secretariat	Immediately
Press Releases	Director of Corporate Communications and Public Relations	After each meeting
Timetable for Committees Activities	Secretariat	Immediately
Identification of someone to be “the face” of the Committee	Hon. Minister Malahoo Forte/ PS Wayne Robertson/ Director of Corporate Communications and Public Relations	To be advised.