



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

18th Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: August 11, 2023

Time: 9:30 am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence
5. Welcome & Opening Remarks
6. Confirmation of Agenda
7. Confirmation of Minutes
8. Preparation of Interim Report to Cabinet
9. Report by Dr Lloyd Barnett on behalf of CRC to the National Partnership Council
10. Presentations by stake holders
 - i. *CAFFE*
 - ii. *JAMBAR*
11. Any Other Business
12. Date and Time of the next meeting
13. Adjournment

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 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 Honourable 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 Elaine McCarthy (Chairman of the Jamaica Umbrella Groups of Churches)
- 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) *via video link*
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) *via video link*

Secretariat

Ministry of Legal and Constitutional Affairs

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Miss Judith Grant, Chief Parliamentary Counsel
- Ms Nadine Wilkin, Director of Legal Reform
- Ms Roxene Nickle, Advisor/Consultant
- Mrs Janelle Miller-Williams, Senior Director, Legal Education Division (Actg.)
- Ms Nastacia McFarlane, Director, Corporate Communication & Public Relations (Actg.)

- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel
- Mrs Chrystine Bernard-Wedderburn, Legislative Editor
- Mr Makene Brown, Legal Officer
- Mr Jordan Jarrett, Constitutional Reform Officer (Actg.)
- Yaniek Douglas, Legal Education Officer (Actg.)

ABSENCES

- Senator the Honourable Thomas Tavares-Finson, OJ, CD, KC, JP (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- Ms Julia Wedderburn, Senior Legal Education Officer (Actg.)
- Ambassador Sheila Sealy Monteith, CD, JP, Permanent Secretary, Ministry of Foreign Affairs and Foreign Trade
- Ms Samantha Blair, Deputy Director, Legal Services, Ministry of Justice

1. CALL TO ORDER

- 1.1.** The meeting was called to order by the Chairman, the Honourable Minister Marlene Malahoo Forte at 10:24 am once quorum was achieved.

2. PRAYER

- 2.1.** Senator Ransford Braham offered prayer.

3. NATIONAL PLEDGE

- 3.1.** The National Pledge was recited.

4. APOLOGIES FOR ABSENCE

- 4.1.** An apology for lateness was tendered for Dr Lloyd Barnett.

5. WELCOME & OPENING REMARKS

- 5.1.** The Chairman welcomed everyone back to the meeting of the Committee. She said she was pleased to see that Senator Braham's schedule had allowed him to be back. She said in their private conversation he had indicated how badly he felt and asked that it be conveyed that there was no lack of interest but that his absence was due to matters beyond his control.

- 5.2.** The Chairman formally congratulated Ambassador Rocky Meade on his appointment as Permanent Secretary in the Office of the Prime Minister. She also welcomed a new member of staff, Ms Yaniek Douglas as the Legal Education Officer. She said as the season of politics drew near, she hoped that members would keep their focus in the Committee because the work that they were doing was good, and that they must do all that they could to ensure that they remained focused on achieving the

goals. She thanked the Committee Members for expressing, very candidly, their concerns. She said that she thought that as issues unfolded each day they served as an important reminder and she asked Members to remain focused. She said that she was eagerly looking forward to getting back to the discussion on the reform issues around the abolition of the Constitutional Monarchy, the establishment of the Office of the President and the powers to be exercised in the office. She stated that they had to do some further housekeeping in relation to the outstanding Minutes. She said that there were members of the public who were to make presentations to the Committee. However, she said they would have to get back to the particular reform items that will inform the Bill for an Act of Parliament to amend the Constitution. At that point, she paused to allow others to share if they had anything that they wished to say.

- 5.3.** Ambassador Rocky Meade expressed his appreciation for the congratulatory sentiments and commiserations and gave an assurance that his work with the Committee remained one of his highest priorities.
- 5.4.** MP Anthony Hylton added that he would just like to say best wishes, congratulations and commiserations to Ambassador Meade and Ms Douglas.
- 5.5.** Senator Scott-Mottley said she did not hesitate in offering Ambassador Meade her fullest congratulations as she knew he would be up to the task, that he was chosen for a purpose and that he would bring his discipline, skills and high aspirations to the position. She said she looked forward to seeing the changes that he would make and specifically to having more attention paid to details and to serving the Committee. She also welcomed Ms Douglas.
- 5.6.** The Chairman said that she was so encouraged by the people who staffed the Ministry in spite of the challenges. She said she believed that the Ministry was building out a nice team and though they were challenged on many fronts, she thought Jamaica would be well served as they continued to build out.

6. CONFIRMATION OF AGENDA

6.1. The Chairman invited Members to look at the Agenda for confirmation. She said the preceding items were standard, but if there was anything they wished to add, she invited them to do so. She said Dr Barnett had asked for the report that he made on behalf of the Committee to the National Partnership Council be formally placed on the record. She said that the preparation of the Interim Report to Cabinet was another matter that she would like the Committee to give some focus, particularly, in light of the issues that were raised in the special meeting and also just to ensure that the Cabinet was formally apprised of the progress being made. Other than those matters, she said the meeting would focus on the presentations by the CAFFE and the Jamaican Bar Association.

6.2. Confirmation the Agenda was done by Dr McCarthy.

7. CONFIRMATION OF THE MINUTES

7.1. The Chairman invited the Permanent Secretary to give an update on the status of the Minutes.

7.2. The Permanent Secretary reported that they had made some progress in respect of the Minutes. He said that they were no longer in backlog with the Minutes and that all the Minutes had been prepared. Four were being vetted for quality control before they were dispatched.

7.3. Mr Harper said that the intention was to share edited versions of the outstanding four Minutes that had not yet being confirmed by the Committee by Monday, August 14 which would allow enough time for the Members to review and provide feedback ahead of the next Constitution Reform Committee Meeting. Those minutes were numbered 14, 15, 16 and 17. He apologised for the delay in uploading already confirmed minutes. They were being edited for grammar and should be uploaded by Monday the latest.

- 7.4.** Dr Spence said that she did not know that there were only three Minutes online and that she only knew that when she referred persons to the Minutes and was disappointed to learn that. She reminded the meeting that their credibility was on the line.
- 7.5.** Dr Spence raised another matter: that Mr Andre Earl indicated that he was interested in hosting conversations around the Constitution and said he noticed that she was not copied on the email. She also said that there was a second debate on the great Constitution debate which she did not know about until a couple hours before. She thought the communication part of the Secretariat was not going well.
- 7.6.** The Chairman said she did her best to respect boundaries and roles and understood very clearly the functions of different roles. She said that the Permanent Secretary knew that she was not pleased with some of the matters that were lagging especially with the Minutes. She said there would be a meeting with the Secretariat and she told the Permanent Secretary that there could not be any backlog of Minutes again. She explained that the Minutes served a purpose to refresh the memory and to help support the work and discussions. When they fell too far back, Members struggled with being sufficiently reminded where the discussions were. She said they were also faced with ICT challenges and that she had not been receiving any mail using the “mlca” email address. She also reminded the Secretariat that all correspondences sent to the Ministry that needed her direct attention should be brought to her attention as there were allegations of non-responsiveness.
- 7.7.** The Chairman said that the National Integrity Action took an issue to the public space about a declined invitation to make a presentation to the Committee. She said she found the allegations most unfortunate and that the Committee had failed to accede to the request to stream all meetings online, and that the Committee was authoritarian in their approach. She said that she listened to the exchange on the radio and found it really unfortunate because Members had weathered the criticisms and had not been defensive. Instead, the Committee had endeavoured to make changes. She further stated that the Committee would not be able to do the

level of public education that was required to inform the people about the Constitution. She said that the Constitution was not a layman document, but that was what people aspired for. She stated that while the Constitution was online in many places, some considered it insufficient, but it was available and accessible to the public. She further stated that the Committee had made a commitment which would be honoured to have printed copies provided in different places which included the schools, She said that she did not know how to read the public quarrel that the National Integrity Action had embarked on with the Committee at this stage, save and except that but for the report in the media, she would not have known about the letter dated August, 2023. She said she would reach out [to the National Integrity Action] to understand exactly what was happening because it seemed to be more than what met the eye.

7.8. The Chairman pointed out that Dr Spence had been navigating the civil society space and that she was in constant touch with the groups. She refereed to a presentation made that said that part of the challenge that the civil society coalition was facing was that the views were very divided among themselves.

7.9. The Chairman informed the meeting that Mr Boswell said that the sample of the poll taken with the youths showed that the majority were in favour of abolishing the Monarchy. She said there was a small minority in favour of retaining the Monarchy.

7.9.1. Senator Scott-Mottley asked if the poll simply asked whether they agreed with leaving the Monarchy or whether there were other questions.

7.9.2. Mr Boswell said that was one of the questions and there were other questions asked but he would ask Mr Harper to share them with the Members.

7.9.3. MP Hylton said that a survey has been shared online that had purportedly represented the Ministry.

7.9.4. Mr Harper explained that there was a U-Report Poll which was a data gathering tool that UNICEF used to get information from persons between the ages 13 to 29. He said that it had over 14,000 young persons subscribed to it and for that particular poll, it was to get an understanding from the young people, as well as, educating them about the Constitution. He further

explained that the first question asked was if they knew what a Constitutional Monarchy was and depending on the answer they were then sent another question which led to the final question of what they thought about Jamaica shifting from a Constitutional Monarchy to a Republic, which was the substantive question that would have been polled at the end. He highlighted that it did a little bit of public education and perspective gathering with the intention of gathering as many perspectives as possible from the young people, as to what they believed. He said it also gave them an option to share any feedback that they had around the whole process of Jamaica becoming a Republic. He said the idea behind it for UNICEF was that when school reopened it would provide an opportunity to engage students directly.

7.9.5. Mr Boswell shared that he thought that this would have been a useful exercise to share that the Constitution Reform Committee was doing a lot of engagements to get the views and perspective of the young people across the country. He said that this was one modality that was utilised by a number of agencies and organizations to gather views on different areas that they needed youth voices and perspectives. He said he was looking forward to seeing what the responses would be, which would serve as a report to the Committee as to what the views of the young people were since the process started.

7.9.6. Senator Scott-Mottley asked about a survey that was conducted.

7.9.7. The Chairman said a number of documents would be circulated for information. However, she asked to defer that question until Item 8 for discussion and asked to defer items 8 & 9 of the Agenda until after the presentations.

7.10. Mrs Davis Mattis asked about the way forward regarding public meetings.

7.11. The Chairman said they would get back to that later in the meeting.

8. PREPARATION OF INTERIM REPORT TO CABINET

- 8.1.** The Chairman said that it was important that an Interim Report be formerly sent to the Cabinet. A draft would be done and shared with Members for their input. A summary of the issues raised through public consultations would also be shared. The report would be informed by the transcript and minutes. She said some further work would be done on the draft Report and that the next meeting would be a house keeping meeting where the list of issues and draft Report would be discussed.
- 8.2.** The Chairman said on the issue of the Final Court, a summary of those views that have been expressed would be done and at the next meeting any questions that may be asked could be included. She said the Report was not yet prepared but once prepared, every member would have an opportunity to raise any issue.
- 8.3.** Senator Scott-Mottley said that she reviewed the Minutes of the 4th Meeting and she saw how fulsome her voice was in expressing her view in support of the process which the Committee adhered to until now, which concerned the appointment of the President after consultation between the Prime Minister and Leader of Opposition. She said that she proposed that members revisited it and she further submitted that the methodology that was used in Barbados where both the Prime Minister and the Leader of Opposition agreed on the nomination could be considered, as that formula would involve agreement rather than consider. She expressed that she would like an agreement between the Prime Minister and the Leader of Opposition.
- 8.4.** Mr Small enquired about the proposed date of the next Constitutional Reform Committee meeting. He further shared that the recent Constitutional amendment had been passed and the People's National Party had decided to challenge it. As such, he wanted to know if there would be another meeting before the matter would have been heard. He said that if the next meeting of the Constitutional Reform Committee took place after the appointments had been made, under the amended Constitution, it would have consequences.
- 8.5.** Dr McCarthy asked if the rights' matters raised in Portland would be mentioned in the Interim Report.

8.6. The Chairman explained that it was not sufficient for her to informally discuss the matter with the Cabinet or the Prime Minister. She said that it was important that a formal report be sent to the Cabinet ahead of the Report with the recommendations, so that the Cabinet could be formally apprised of the work done and the concerns raised within the context of the Terms of Reference.

9. REPORT BY DR LLOYD BARNETT ON BEHALF OF CRC TO THE NATIONAL PARTNERSHIP COUNCIL

9.1. Dr Barnett stated that in preparing the report he had proceeded on the assumption that the country would have retained the Parliamentary system rather than go to the Presidential system. He shared that the Committee had started that aspect of the work, however, there had been several submissions in the public domain which suggested that there should be a Presidential system and therefore, he did not present the Committee's assumption as the final situation. He said it was clear that the Prime Minister and other Ministers present were in support of the two things namely the conversion to a Republic and the patriation of the Jamaica Constitution. He reported that those proposals found favour with the persons present. He said that there was considerable doubt as to whether any other change would be practicable. He said that he registered some degree of concern that too many proposed changes would be fatal to the process. Even in respect of the two main proposals, he noted that there was a distinct desire that there should be an intensive public education programme. He stated further that the other proposals which were submitted to the Committee on matters such as term limits, fixed election dates, etc., had no positive response. He also shared that there was no clear indication of the support for anything else. He said that the Committee indicated that they had not reached any final position on the Presidential versus the Parliamentary system and there was an absence of clear evidence that there was strong public support for a change in the basic system.

9.2. The Chairman said that she had asked the Prime Minister to indicate his position on the issue of a fixed Parliament and fixed date election. She said that the feedback she got on the presentation was well received and it was not taken as the final report but

just an update to the Council on where things were. She said that appreciation was conveyed to Dr Barnett for taking the time to do the presentation. She said on the issue of the CCJ for the Final Court, views were divided. However, her commitment was to ensure a full discussion of the matter. It was her hope to have the issue dealt with in the next phase after getting the Bill into Parliament.

9.3. Senator Braham said that there were two (2) issues that were raised that he would like to see addressed:

1. Reference to a Code of Conduct.

2. The entire process of social policy making and law making.

He said he personally would like to have those matters addressed.

10. PRESENTATIONS BY STAKEHOLDERS:

10.1. Citizens Action for Free and Fair Elections (CAFFE)

10.1.1. The Chairman welcomed CAFFE to the meeting of the Constitutional Reform Committee. Members were pleased that CAFFE prepared submissions ahead of the presentation.

10.1.2. The team leader introduced the members of CAFFE present for the presentation and gave a little background on the organization. They are as follows: Anthony Thompson, Audre-Lois Reynolds (secretary), and Neco Pagon

10.1.3. Mr Pagon prefaced the presentation to the Committee with a discussion.

10.1.4. The Chairman said that the Charter included the right of every citizen of Jamaica, who were qualified to be registered as an elector for elections in the House of Representatives who was so registered, to vote in free and fair elections.

Mr Pagon proposed that the Electoral Commission of Jamaica would no longer be a Parliamentary Commission, and moved to have a Constitutional

Commission, to which the Chairman added that there were Constitutional Commissions such as the Public Service Commission, the Judicial Service Commission, Police Service Commission and others.

- 10.1.5. Senator Braham asked what was the thought process that was driving the suggestion that it should not be answerable to Parliament and queried what was wrong with the present model?
- 10.1.6. Mr. Pagon responded to say that there was nothing necessarily wrong with it as it was, however, he suggested that they could consult further with each other as a body and make further submissions in light of the Committee's concerns.
- 10.1.7. The Chairman said on that point she knew that the policy of this Government was to move to have the Electoral Commission of Jamaica entrenched. She said that there was also a draft submission. She further said she had not seen any matter from her research where recommendations of the Electoral Commission of Jamaica had not been accepted because the process of refining those recommendations were inclusive in the best interest of a free and fair election.
- 10.1.8. The Chairman asked them to look at how the concept of lame-duck Government was engaged in fixed date elections.
- 10.1.9. Mr Small asked CAFFE to look at the culture of democracy which saw a decreasing number of Jamaicans who participate in elections. He further said that CAFFE may only be interested in the procedures on election day, but they were heading in a direction in which they faced the rare prospect of as little as 50 percent of the people who were entitled to, voting on election day, and the relevance of the authenticity of the work to which they had committed themselves would be looked at if they got to that stage. He asked whether or not CAFFE could reflect on that and report to the

Constitutional Reform Committee on how it concerned CAFFE. He said the Constitution in Jamaica was now based around a two-party system and Parliament did not accommodate seats for more than two parties. He wanted CAFFE to think about that against that background and to consider if there was anything that could be done.

10.1.10. He said that another matter that he would like CAFFE to consider was the confidence in the Prime Minister, because if they wanted to venture outside of the framework of our Constitutional architecture, the concentration of so much power in one office would be contemplated. However, he recognized that they may be reluctant to think about it. He also said he really thought that CAFFE would widen the scope of their attention to think about the changes that were to be contemplated.

10.1.11. Mr Pagon said they would discuss the points raised by Mr Small at their board level and provide submissions.

10.1.12. The Chairman said that some of the issues raised seemed to be a struggle with the outcome of the democratic process. She said that a low voter turnout was a genuine concern. She asked who would encourage greater participation of people in an election. She opined that enumeration was largely driven by the political parties. She said the data from Electoral Commission of Jamaica suggested that a great number of young people were enumerated so that they could get their National Identification Card, which she said was what the Voter's Identification Card did. She further said that the turnout was an issue. She queried the percentage turnout enabled a level of ownership. She said that there was a reason for that model which was not unique to Jamaica. She said she also wondered whether CAFFE had any concern that they would want the Committee to look out for before entering into the referendum.

10.1.13. Senator Scott-Mottley stated that she wanted to thank CAFFE for the recommendations especially on how the casual vacancies ought to be treated. She further stated that shifting the responsibility to the Electoral Commission of Jamaica whose work had contributed strongly to strengthening democracy was of great significance. She also added that they no local government elections were had for a retractive period of time and she believed that those postponements tended to undermine democracy because it did not consider the fact that people were left unrepresented for retractive periods of time. She said that there were others who believed that the involvement of different entities or bodies demonstrated that they wanted to get the country on a particular path which was critical to the preservation of the democracy. She said, in conclusion, that CAFFE had not convinced her of the need for a fixed election date. She said the arguments were not compelling at all and therefore if they seriously wanted to be more convincing, it had to be far more structured and persuasive.

10.1.14. Senator Braham said that with the Electoral Commission of Jamaica making the decision as to when the election would be called, in this case a by-election, he felt that such would be problematic. He explained that it would bring the Electoral Commission of Jamaica into a political realm at that moment. He further explained that they would come under pressure with questions such as: why the government chose that day, why not that day, etc., and they may be accused of showing favour to one side over the other. He shared that in order to ensure that there was a timely by-election, a time should be fixed, for example, say every six months and leave it to the executive to call the election. He said, otherwise, the very benefit of the Electoral Commission of Jamaica may be destroyed because of the accusations that they may face when that time came.

10.1.15. Senator Scott-Mottley said that she appreciated the point by Senator Braham but asked that he contemplated how the present impasse could be resolved.

- 10.1.16. The Chairman referred to the Privy Council case of **Maharaj v The State [2021]UKPC 27**. She said that it had given a lot of food for thought around timing and what happened when it was the vote of the people that put the officer in place. She said that was an issue that the Committee had to spend some time looking on because the term of the Parliament was one of the politically entrenched matters for consideration.
- 10.1.17. Mr Thompson, in response to Mr Small, stated that in dealing with young people, they found a lot of reluctance to participate in the democratic process, and that reluctance was caused from the fear of citizens about what took place in politics, a lack of interest and concern that it did not affect them. He further stated that the lowest voter turnout was in 2020, and that it was important to understand that the solutions proposed would help to build confidence in the electoral system, which would encourage people to vote.
- 10.1.18. The Chairman asked the Permanent Secretary, along with the Legal Education Officers, to engage CAFFE on Democracy Clubs in the schools.
- 10.1.19. The Chairman asked that when looking at the recommendations of the Electoral Commission of Jamaica that a little time would be spent on the accountability mechanism namely the entrenching of the Electoral Commission of Jamaica and the other, on how critical it was to the democratic process. She stated that the Parliament was the highest democratic institution, so the relationship must be intuitive and actual care given for the design of it. She said the fact that subsequent Commissions of Parliament had worked well as initially designed and expected. She further said that there was a tendency in this country to solve the wrong problem.
- 10.1.20. Dr McCarthy said in terms of schools and the surveys that were conducted, she queried whether it was a case that the young people were not necessarily familiar with the roles and functions of Government and as such they felt

detached from the whole process and therefore did not think it was of great importance to participate in voting.

10.1.21. Mr Thompson stated that he picked up some detachment and open hostility in some cases to the process. He said that they had engaged them in virtual debates on various topics and found that the view of the whole electoral process left some amount of suspicion.

10.1.22. MP Hylton said that with each election cycle, the party heavily stressed the need to get new and young voters but seldom the results matched the expectation. He said his own conclusion was to engage in Democracy Clubs in schools, because at one stage there were no civics classes in schools. He said with Democracy Clubs in schools, civics could be a part of that. He said that efforts must be made because the young people would not get involved until they have responsibility.

10.1.23. The Chairman said she wondered if there could be provision in the national budget under the item called “Appropriation in Aide” for assistance to be provided for programmes that were in keeping with critical Government policies.

10.1.24. Dr McCarthy asked for clarification on whether there was some amount of hostility on the part of the young people.

10.1.25. Mr Thompson said in response that they were in some instances. He said that some persons spoke openly that they did not like politicians and felt that they were corrupt or that they were not doing a good job among other things. He said his response to those comments were that they should not leave the space open but to engage. He shared that he told them that they had a vote and they would begin to be treated differently.

10.1.26. The Chairman referred to the point that Dr Henry made that the Referendum was for the generation to come and so they would need the assistance of CAFFE to get a message to them before the upcoming referendum.

10.1.27. Dr Spence stated that one of the things that was missing was that politicians needed to know that the way they engage was a turn off to young people. She expressed that both parties would engage in preparing young people to be a part of the political culture. She said political parties were not doing enough about it. She said that if persons were turning out in low numbers, it would therefore mean that both political parties had failed to attract youth.

10.1.28. In conclusion, the Chairman said that there was a lot of work ahead and CAFFE's relevance would be heightened going forward.

10.1.29. Mr Hylton said that he disagreed that it was only the political parties that were responsible. He said the way in which politics was introduced, mattered. He further said he liked the role of civics in a non-competitive non-combative way.

(The meeting took a short break at 12:30 pm)

[COFFEE BREAK]

(The meeting resumed at 1:00 pm)

10.2. Jamaican Bar Association

10.2.1. Presenter: Carlene Larmond Assistants: Leslie-Ann Stewart and Ana-Kaye-Brown.

10.2.2. **Questions & Answers:**

- 10.2.3. Dr Henry asked what was the reason why the Republic of Trinidad and Tobago retained the Privy Council?
- 10.2.4. Ms Larmond said they did not appear to have risen above the absence of a consensus.
- 10.2.5. The Chairman said that it was really a matter of arriving at a consensus among the political faction, constitutionally, that was required. She further stated that there seemed to be a split in the society.
- 10.2.6. Ms Larmond further articulated that it was something of concern. She noted that when they spoke of judicial accountability, and developing their own discourse on several issues relating to the law, it was the kind of conversation that would be needed to achieve consensus. She also stated that a number of decisions were quoted from Trinidad & Tobago. She said that the issues which arose out of the cases coming out of Trinidad were so peculiarly sensitive to the Trinidad society that the Judges could not handle them in a way that a Judge believed he or she should really treat the social policy. She said that underscored the need for Trinidad and also Jamaica to get to that level of consensus.
- 10.2.7. Dr Barnett said Trinidad was a very complex society. He said that it was not that they were against the Court as they had offered to provide a headquarters for the Court at their expense and has continued to be very supportive but he did not think that Jamaica would take that as the example that would be followed.
- 10.2.8. Ms Larmond stated that there were situations in the Court of Appeal where matters could be heard on paper. She said it was a different situation because even though those procedural appeals were heard in writing, they were substantively heard. She stated that they were heard and determined by a panel of three Judges.

- 10.2.9. The Chairman asked if JAMBAR had active participation in the Judicial Committee of the Privy Council (JCPC) Caribbean user group.
- 10.2.10. Mr Hylton asked Ms Larmond for her opinion on why Jamaica did not create their own final Court of Appeal rather than dealing with the CCJ or JCPC?
- 10.2.11. Ms Larmond said she was not in favour of that. She explained that Jamaica had already invested \$27M in the dual jurisdiction of the High Court and it was certainly not a prudent use of resources to limit the participation in that Court to its Original Jurisdiction. She further stated that there would be very few cases that might use the Original Jurisdiction as that largely had to do with treaty issues. She also said that those usually emanate largely from companies that were trading. She further expressed that the ordinary citizen would not use the original jurisdiction which she found to be a grand waste. She said the next reason was that the country already had challenges with the administration of the Judiciary. She further explained that the litigants were the ones who had a very difficult time, and to add another tier to that would be asking for trouble. She advised that what could be done was to use the CCJ that had already been paid for, so that time and resources could be devoted to improving the justice system.
- 10.2.12. Mr Small said in respect to Jamaica having its three-tiered Court, he asked JAMBAR to look at some of the concerns that were being expressed in other jurisdiction, particularly in the United Kingdom, about diversity in the composition of the judiciary, not only in respect of gender but also disciplines. He asked when considering the issue of the Final Appellate Court for Jamaica, whether there would be some concern that the appellate level of the local court could have a similar examination particularly in relation to the question of diversity, not only about the branches of laws, but against the background of their practical legal experience as practitioners since they have a predominantly public service judiciary.

10.2.13. Ms Larmond said in response, that they looked at diversity in terms of the Privy Council, its composition and the composition of the CCJ. She said it was therefore an issue that they believed needed to be addressed. She said she also looked at the practice areas for the CCJ, in terms of the jurisdictions because there would need to be that diverse. However, she said she believed that the principle was no different for the local courts. She said the question of the bench which had been predominantly composed of public servants was a question that would be explored in details. She said that it was recognized that most practitioners who left the Bar and went to the Bench in the public service went there from a criminal jurisdiction which gave rise to the issue concerning the wealth of experiences in terms of commercial and other matters upon which they were called to adjudicate. She said it was something that needed to be examined and she wondered about specialist Courts and attracting members from the private Bar who would be willing to serve as Judges.

10.2.14. Dr Barnett said to provide the personnel for a third-tier court, four if you include the Parish Court was challenging for a small jurisdiction. He stated that they had to solve that problem by combing through the Caribbean to provide that fourth tier. He said that most persons who practiced in the Courts did not believe that they could manage on their own in the highest Court.

10.2.15. Senator Braham said that in these modern times, diversity was often used to eliminate people with certain views from Courts and systems, therefore one must be careful as they applied their diversity, for example, persons with Christian world views were eliminated from the Court. He explained that often times those persons were seen as bigots but other persons who had strong views were quickly accepted as even-handed and just. He said another thing about diversity, he queried whether Jamaica would be guaranteed representation on the Court. He asked if it was appropriate for

them to say that Jamaica ought to have representation of the Court at all times, particular in the composition that it had the largest island population.

10.2.16. Ms Larmond stated that in relation to the diversity points made, such depended on the selection process and she did not think that it would be an overwhelming criterion for a Judge's religious sway or background to be factored into their selection. She said that regarding the question of the composition of the bench, she too had her own concerns. She said on the composition of the CCJ, she was not inclined to fully agree that a country's size or population would determine who or how many Judges they had on the Appellate Court. She expressed a view that such would be a question of diversity both in terms of the Judges range of experience and what they brought from a Regional prospective.

10.2.17. Senator Braham raised the question of financing and queried how long it was estimated to continue and whether there would be a time when the Jamaican Government would need to begin replenishing its contribution and at what stage would that be expected to begin.

10.2.18. Ms Larmond said she was not clear on the Trust Fund.

10.2.19. Dr Barnett said that circumstances may change and articulated that the comparison would be what it would cost the Jamaican Government alone to sustain the Court.

10.2.20. The Chairman added that it was a fact that the financial liability of the CCJ had been affected.

10.2.21. Dr McCarthy said that looking onwards there would come a time when Jamaica could establish its own Final Court and as such wondered whether it would be a benefit for Jamaica to have its own.

- 10.2.22. Ms Larmond, in response, said that at some point in time Jamaica should have some self-actualization and should be able to develop its own Appellate Court but at the same time, she indicated that some practical factors would have to be weighed in.
- 10.2.23. Dr Henry said that he believed that Jamaica should get rid of the Privy Council, however, his point was with regard to the selection of Judges and who could serve. He said Judges would be aware and understand the diversity in society and differences that are based on various Judges. He read from the Code of Conduct for Judges on the CCJ's website and asked about the interpretation of the passage and who decided on the qualification for Judges and whether or not persons were a part of an organization which maybe reasonably perceived as practicing discrimination on the basis of irrelevant considerations.
- 10.2.24. Dr Barnett said the criteria /qualification for Judges were set out in the Treaty. He further articulated that the appointment of Judges was made by the Regional Judiciary and Legal Services Commission and the criteria used were in the Agreement.
- 10.2.25. The Chairman stated that from where she sat that was a contentious issue in parts of the Region. She said that the issue would have to be addressed in another forum as there were also additional concerns about the structuring of the CCJ and how decisions were taken. She said as issues came into focus there would be questions to be asked and answered.
- 10.2.26. Senator Braham stated that there were hearings on paper and there were single Judges who were given powers in the system to weed out certain things and it was regarded as procedural and acceptable.
- 10.2.27. Senator Scott-Mottley then stated that the Opposition has supported joining the CCJ. She added that they remained committed even as they

were sensitive to some of the concerns which were articulated throughout the region.

10.2.28. The Chairman thanked the Jamaican Bar Association for their presentation and discussion.

(The meeting took a lunch break at 2:33pm)

LUNCH BREAK]

(The meeting resumed at 3:30pm)

11. ANY OTHER BUSINESS

11.1. The Chairman said there was no other business to discuss except that there were nine (9) individuals and groups who wished to make presentations to the Committee.

11.2. The Chairman explained that one of the many reasons why she wanted to submit an Interim Report to Parliament was because she has had informal conversations with the Prime Minister around the public education matter and to also put the Public Broadcasting Cooperation of Jamaica (PBCJ) and the Jamaica Information Service (JIS) on full disposal of the work of the Committee.

12. DATE AND TIME OF NEXT MEETING

12.1. The Chairman said that there were important housekeeping matters to take care of to ensure that the Committee and the meetings could go forward efficiently and effectively. She further stated that in terms of the break, there would be two and a half weeks break that would allow the Secretariat the time required to work out the arrangements and schedules for the rest of the engagements and some follow up on discussions with JIS and the PBCJ and for the circulation of the schedules. She said the proposed meeting dates would be all Wednesdays in September (6th, 13th, 20th, & 27th) and there could be some flexibility to have one or two Fridays to accommodate public submissions. She suggested that the Secretariat ask the nine individuals and

entities that have indicated their interest, to send their papers so that they could be circulated ahead of their scheduled dates.

12.2. The Chairman said the next meeting date would be Wednesday, September 6, 2023.

13. ADJOURNMENT

13.1. There being no further business the meeting was terminated at 4:12 pm. on a motion moved by Senator Scott-Mottley and seconded by Senator Braham.