



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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PERMANENT SECRETARY

MINUTES

19th Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: September 6, 2023

Time: 9:30 am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence
5. Opening Remarks
6. Confirmation of Agenda
7. Confirmation of Minutes
 - 7.1. 14th Meeting of CRC
 - 7.2. 15th Meeting of CRC
 - 7.3. 16th Meeting of CRC
 - 7.4. 17th Meeting of CRC
 - 7.5. 18th Meeting of CRC
8. Review of Work Plan
 - 8.1. Schedule of Meetings and Activities
9. Summary of Issues raised in Public Consultations, Media Discussions, and Presentations*
10. Interim Report to Cabinet
11. Any Other Business
 - 11.1. Update on State Affairs Sub-Committee
 - 11.2. Agenda for Friday's CRC Meeting
 - 11.3. Response to Letter by Horace Levy dated September 6, 2023 in the Jamaica Gleaner*

12. Date and Time of Next Meeting

13. Adjournment

*Amendments to the Agenda

Present were:

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)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Senator Ransford Braham, CD, KC (Government Senator)
- Senator Donna Scott-Mottley (Parliamentary Opposition – Senate) via video link
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- 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 Reparations)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) via video link

Apologies for Absence

- Senator Hon. Thomas Tavares-Finson, OJ, CD (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- Mr Sujae Boswell (Youth Advisor)

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 Department
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)

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

1. CALL TO ORDER

1.1. The meeting was called to order by the Chairman, the Hon. Marlene Malahoo Forte at 10:01am.

2. PRAYER

2.1. Prayer was offered by Dr the Hon. Lloyd Barnett.

3. NATIONAL PLEDGE

3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE

4.1. Apologies for absence were received from the Hon. Thomas Tavares-Finson and Mr Sujae Boswell

4.2. Apologies for lateness were tendered on behalf of Mr Hugh Small and Mrs Laleta Davis Mattis

5. OPENING REMARKS

5.1. The Chairman welcomed back members after the August break and shared that the break allowed herself and the Ministry, particularly the Secretariat, to reflect on the work that was being done to advance the Constitutional Reform Work Programme. She shared that she received feedback internally and that the

meetings with the Secretariat had been helpful.

- 5.2. She further indicated that the 19th meeting of the Constitutional Reform Committee was to enable Members to finalize a number of housekeeping matters particularly as it related to the confirmation of outstanding Minutes. She noted that the delays with the production and confirmation of the Minutes often caused members to forget what was discussed and the issues that were confronted. Nevertheless, she affirmed that the Secretariat was committed to ensuring that there would be no backlog of Minutes, going forward.

6. CONFIRMATION OF AGENDA

- 6.1. Dr Barnett stated that one of the important aspects of the strategy going forward was to respond promptly to public statements. He highlighted that a letter had been published in the Gleaner on September 6, 2023 by Mr Horace Levy who set out a number of issues which he believed that the Committee would consider. Dr Barnett also indicated that the issues set out in the letter had been the subject of much discourse and presentations to the Committee and encouraged the Committee to respond immediately.
- 6.2. In light of the foregoing, the following amendments were made to the Agenda:
 - 6.2.1. Agenda Item 9 was amended to read “Summary of Issues raised in Public Consultations, Media Discussions and Presentations”
 - 6.2.2. An agenda item titled “Response to Letter by Horace Levy in Jamaica Gleaner dated September 6, 2023” was added as a sub-item to Agenda Item 11

- 6.3. The amended Agenda was confirmed by Dr Elaine McCarthy and seconded by Dr David Henry.

7. CONFIRMATION OF MINUTES

- 7.1. The Minutes of the 14th Meeting of the Constitutional Reform Committee held on June 23, 2023 were corrected and confirmed on a motion raised by Mr Anthony Hylton and seconded by Dr David Henry.
- 7.2. The Minutes of the 15th Meeting of the Constitutional Reform Committee held on July 05, 2023 were corrected and confirmed on a motion raised by Dr Elaine McCarthy and seconded by Dr David Henry.

COFFEE BREAK

- 7.3. The Minutes of the 16th Meeting of the Constitutional Reform Committee held on July 14, 2023 were corrected and confirmed on a motion raised by Dr Nadeen Spence and seconded by Dr David Henry.
- 7.4. The Minutes of the 17th Meeting of the Constitutional Reform Committee held on July 19, 2023 were

corrected and confirmed by Dr Nadeen Spence and seconded by Dr Elaine McCarthy

- 7.5. The confirmation of the Minutes of the 18th Meeting of the Constitutional Reform Committee was deferred until the next meeting of the Committee.

8. REVIEW OF WORK PLAN

- 8.1. The Chairman indicated that during the break in August, time was spent reflecting on the work of the Committee and in particular, the supporting role of the Secretariat. She noted that out of the series of meetings held internally, a number of changes were made to the way in which the Secretariat operated. She highlighted the establishment of a five (5) member Board within the Secretariat comprising of:

- Ms Judith Grant, Chief Parliamentary Counsel;
- Ms. Nadine Wilkins, Director, Legal Reform Department;
- Mrs Janelle Miller-Williams, Senior Director of Legal Education;
- Ms Nastacia McFarlane, Director of Corporate Communications and Public Relations; and
- Ms Shaedane Facey, Strategic Planner

- 8.2. This Board was expected to guide the operations of and give directions to other members within the Secretariat.

- 8.3. The Chairman stated that clear objectives would be set for each meeting and that action items were to be identified and assigned for further action.

- 8.4. The Chairman noted that the work to reform the Constitution would now require specific actions. She stated that while discussions and consultations were important, there was a process that had to be followed. She articulated that having looked at the issues raised in the public domain, she noted that not every issue raised required an amendment to the Constitution and that not every issue would be addressed during Phase 1 of the reform work. As such, she emphasized the need to approach Phase 1 with a new focus.

- 8.5. She further stated that it was never the intention to write a new Constitution during Phase 1 of the work but noted that somewhere along the line, there was a lack of clarity among members of the public. She shared that the focus of Phase 1 was to make certain amendments that would allow Jamaica to change its form of government by abolishing King Charles as the Head of State in order to become a Republic and to deal with all other connected and deeply entrenched matters. She noted the concerns of the public and articulated that members were still learning to respond effectively and had even taken some of the suggestions on board.

- 8.6. She explained that given the level of public education required, it was unrealistic to expect the Committee to do that work. She indicated that public education was primarily the work of the Ministry and the broader

Government, a process which began already.

- 8.7.** The Chairman then suggested that Members refocus on examining the provisions of the Constitution proposed for amendment by reviewing the provisions, considering the direct concerns, issues, and perspectives raised across different spaces and focus their attention on getting a Bill into Parliament during the first Phase.
- 8.8.** The Chairman also expressed appreciation of the Parliamentary Opposition's perspective on the Court and noted the importance of it being addressed. She expressed a commitment that the matter of the Final Court of Appeal would be the first matter discussed after the Bill was tabled in Parliament. She opined that if there was no focus on those matters which were deeply entrenched and on which consensus existed, Jamaica would see Prince William acceding to the throne.
- 8.9.** Mr Hylton, in response, stated that the Opposition's view on the matter was that given its long history as proponents of Constitutional Reform, he would never try to oppose any effort at reform. He articulated that the issue with the Court was one that had legal and practical questions that were to be addressed. He opined that if the Monarch was replaced and Jamaicans were still required to engage the Court and all its formalities, there would be an inconsistency. He shared that any engagement with the public without addressing such a matter was problematic.
- 8.10.** The Chairman stated that the process required consensus in order for changes to be made and noted that while arguments were compelling, a full discussion was needed on the matter. She further noted that the replacement of the Judicial Committee of the Privy Council (JCPC) did not require a referendum and that it was for practical reasons why matters were sequenced the way that they were. She opined that if the matter regarding the Court was raised at every juncture, the Committee would not achieve what was required to abolish the Monarchy.
- 8.11.** Senator Braham opined that any attempt to do an entire Constitutional Reform process would see Members engaged in dialogue for the next 3-5 years. He explained that he had satisfied himself that removing the King was a psychologically important move that he was prepared to make as it was worth pursuing. He suggested that other issues be debated at a later date out of a fear that if those other issues were given focused attention, there would be no abolishing of the Monarchy.
- 8.12.** Ambassador Meade shared that while he agreed that the issue of separating from the JCPC should take place at some point, he struggled with two things. Firstly, he highlighted a concern that in subjectively prioritizing some issues, there were those who could say that their issues were just as important. He therefore felt that it was logical to say that the most complex processes which were referred to as deeply entrenched would be

dealt with first so that there were no arguments about the inconsistent prioritization of issues. Secondly, he stated that while recognizing that it may not be prudent to leave the Crown and remain with the JCPC, he shared that no one actually knew whether the Jamaican people would decide to leave the Crown. He stated that for those two reasons, he believed the current scope and process of work to be logical.

8.13. Dr Spence recalled the process outlined in the Terms of Reference whereby the Committee was required to identify those matters that needed the people's consent. She suggested that more than one referendum may be needed. She also referred to Dr Barnett's prior statements on gradualism and the perspective that the Jamaican people should not be given too many things to consider in one referendum. This, she opined, had not been resolved. She then queried how would the Committee proceed on such a matter. She also suggested that the Committee would have to decide in a very direct way, how it would deal with the fallout from what was thought to be a popular idea in support of the Opposition's perspective. She indicated that the Committee needed to inspire trust and suggested that it step back and examine it.

8.14. The Chairman shared that when she met with the Secretariat, one of the areas identified for discussion and research for which the Legal Reform Department and the Office of the Parliamentary Counsel had been assigned was the impact that the removal of the Monarch would have on the three arms of government, particularly the Judiciary. She informed Members that while they awaited a statement from the Ruling Party on its stance, the legal and Constitutional issues were being researched to inform the position.

LUNCH BREAK

8.15. Mr Small shared that an unexpected benefit of the process was that people from all quarters of Jamaica had emerged and spoken on what they expected of the Constitutional Reform process. He stated that while some expectations were interesting, many did not relate to Constitutional issues nor amendments to the Constitution. He then cautioned members to be careful by not feeding into the cynicism that was alive in Jamaica because if the Committee refocused in such a way that gave the impression that it had noted all the views of the public, it must be careful not to alienate some. He further stated that there was a steep programme of public education to undertake. He also shared that given the limited trajectory outlined, there were people who would campaign against any constitutional amendment. He further opined that a Constitution approved by a low percentage of the people registered to vote would have a dampening impact on how it would be exercised in the country going forward.

8.16. Mrs Davis Mattis recalled a discussion where the Committee agreed to invite members of the Caribbean Court of Justice (CCJ) to participate in the discussion and invited Members to reconsider whether they wished to have those engagements as part of the process.

8.17. The Chairman then thanked Members for expressing their views with such candour and shared that she

would reflect further on the points raised. She then invited Mr. Small to share a suggestion on how the Committee would avoid the fate of previous Committees where time had been spent and despite agreement by and large, Jamaica remained with the Crown. She noted that the path of Constitutional Reform began a decade after independence and wondered whether some of the same errors which left Jamaica stuck at the same point on the issue of abolishing the Monarchy would be unwittingly repeated.

8.18. Mr Small shared that one of the dilemmas faced as a group was that the public was led to believe that the Committee was moving at a different pace. He stated that as the situation stood, he believed that the Committee had abandoned some of the issues spoken about such as the Constitution being a legislative instrument of the Parliament of Jamaica.

8.19. The Chairman responded by saying that the issue had not been abandoned as internal research was being done and Dr. Barnett had put forward a position on it.

8.20. Dr. Barnett reminded Members of what he believed to be the two imperatives where he found no public opposition namely that the Constitution should be a Jamaican document and that the Head of State should be Jamaican.

8.21. The Chair indicated that the Agenda was to be set in relation to the work programme which focused on the replacement of the Monarch with a Jamaican Head of State and the repatriation of the Jamaican Constitution. She noted that issues concerning the Office of the President needed to be explored and that there were a number of sub-questions that would be revisited.

8.22. Dr. Barnett suggested that for the next 6 to 8 weeks, the focus of the Committee should be on the public consultation process before proceeding any further while noting a major criticism that decisions were being made without any regard for the public.

8.23. SCHEDULE OF MEETINGS AND ACTIVITIES

8.23.1. Due to time constraints and the nature of the discussion, this Agenda item was deferred to the next meeting to facilitate discussion around the next Agenda item.

9. SUMMARY OF ISSUES RAISED IN PUBLIC CONSULTATIONS, MEDIA DISCUSSIONS AND PRESENTATIONS

9.1. Dr McCarthy posited that the Committee needed to move with a plan of action and agree on what it would do.

9.2. The Chairman, in response, articulated that a list of issues raised in the public domain had been circulated for the Members' attention. She stated that it may appear to be condensed because some of the issues raised had been repeated so often that they only needed to be documented once. She expressed that the document would help Members to focus their discussions on the matters contained within. She further shared that the document contained issues raised in presentations, media, consultations amongst other fora and would inform the questions that needed to be answered and the work that was to be done. She also indicated that the list would be publicized to signal where the Committee was with its consideration of public sentiment.

9.3. Due to time constraints, this discussion was suspended to allow Senator Braham to update the Committee on the establishment of the State Affairs Sub-Committee.

10. INTERIM REPORT TO CABINET

10.1. Discussion on this matter was deferred until the next meeting of the Constitutional Reform Committee

11. ANY OTHER BUSINESS

11.1. UPDATE ON STATE AFFAIRS SUB-COMMITTEE

11.1.1. Senator Braham informed the Committee that the Sub-Committee on State Affairs was established and had its first meeting on Friday, September 1, 2023. He indicated that the membership comprised himself, Mr. Anthony Hylton, Bishop Dr. the Hon Herro Blair Snr, Major Dwayne Hill and Ms. Vicki Hanson.

11.1.2. He further informed the Committee that the second meeting of the sub-Committee was to take place on Monday, September 11, 2023 where they would review the contents of the bundle prepared by the Secretariat in order to commence the process of making reasoned recommendations on the powers and functions to be conferred on the Office of the President of the Republic of Jamaica.

11.1.3. The Chairman also indicated that she received a nominee from the Trade Unions and would communicate such information to Senator Braham.

11.2. AGENDA FOR FRIDAY'S CRC MEETING

11.2.1. The Chairman indicated that all matters deferred would make up the Agenda for Friday's meeting.

11.3. RESPONSE TO HORACE LEVY NEWSPAPER CLIPPINGS

11.3.1. Discussion on this matter was deferred until the next meeting of the Constitutional Reform Committee Meeting

12. DATE AND TIME OF NEXT MEETINGS

12.1. The next meetings were scheduled for Friday, September 8, 2023 and Wednesday, September 13, 2023

13. ADJOURNMENT

13.1. There being no other business, the meeting was terminated at 5:53pm