



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE PERMANENT SECRETARY

MINUTES

21st Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: September 13, 2023

Time: 10:00 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
 - 20th Meeting of the CRC
8. Matters Arising from the Minutes
9. Matters for Deliberation and Discussion
 - Office of the President of the Republic
 - i. Issues for Consideration in respect of the Office of the President
 - ii. Summary of Views Raised on the Office of the President in Public Consultations, Media Discussions and Presentations
 - iii. Powers of the Head of State
10. Any Other Business

- Concerns Raised Regarding the Recent Amendments to Ordinary Provisions
within the Constitution

11. Date and Time of Next Meeting

12. Adjournment

ATTENDEES:

- 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 Donna Scott-Mottley (Parliamentary Opposition – Senate)
- 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) via video link
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Dr David Henry (Wider Society – Faith Based)
- Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations)
- Mr Sujae Boswell (Youth Advisor) via video link
- 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)

Secretariat:

Ministry of Legal and Constitutional Affairs

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Ms Judith Grant, Chief Parliamentary Counsel via video link
- Ms Nadine Wilkins, Director, Legal Reform Department
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Ms Roxene Nickle, Advisor/Consultant
- Mrs Janelle Miller-Williams, Senior Director, Legal Education (Actg.) via video link
- Ms Julia Wedderburn, Senior Legal Education Officer (Actg.)

- Mr Makene Brown, Legal Officer
- Ms. Christal Parris-Campbell, Assistant Parliamentary Counsel via video link
- Mr Jordan Jarrett, Constitutional Reform Officer (Actg.)
- Ms. Yaniek Douglas, Legal Education Officer (Actg.)
- Mrs Chrystine Bernard-Wedderburn, 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 10:12am.

2. PRAYER

- 2.1. Prayer was offered by Dr David Henry.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE

- 4.1. An apology for absence was received from Senator the Hon. Thomas Tavares-Finson (abroad on official business).

Opening Remarks deferred to a later point in the meeting

5. CONFIRMATION OF AGENDA

- 5.1. The Agenda was confirmed without amendments on a motion by Dr McKoy and seconded by Dr McCarthy.

6. CONFIRMATION OF MINUTES

- 6.1. The Minutes of the 20th Meeting of the Constitutional Reform Committee held on September 8, 2023 were corrected and confirmed on a motion raised by Dr Elaine McCarthy and seconded by Mr Sujae Boswell

7. MATTERS ARISING FROM THE MINUTES

- 7.1. Mr Hylton indicated that despite his commitment (expressed at the previous meeting of the Committee) to attend the meeting with ACORN scheduled for September 12, 2023, he was unable to, due to unforeseen circumstances.
- 7.2. Following Ambassador Meade's request for an update on that meeting, Dr Spence informed Members that ACORN, a collection of individuals from a wide cross-section of organisations and entities in Jamaica, requested audience with the Constitutional Reform Committee to discuss the matters under consideration. She noted that herself, the Chairman, and Messrs Robertson and Boswell were in attendance. After the meeting, participants expressed that they gained a clearer understanding of the Committee's focus, the imperatives of the reform work and would look for opportunities whereby ACORN could assist with advancing the reform agenda.
- 7.3. Mr Hylton further added that the last sentence of paragraph 8.21.11 of the Minutes of the previous meeting, while correct, should reflect that there were different points over the course of meetings of the Committee where persons other than the Members of the Parliamentary Opposition, expressed perspectives on [the Final Appellate Court], especially after the presentation made by the Jamaican Bar Association.
- 7.4. The Chairman reiterated that the relevant section within the Interim Report would be expanded to provide a clearer picture of the perspectives surrounding the issue of the Final Court and that a faithful report would be made to Cabinet.
- 7.5. The Co-Chair queried whether bulleted action items could be prepared and sent out after each meeting. The Chairman, in response, indicated that it was best practice to include Action Items from the decisions made at meetings. As such, a list of items to be actioned could be prepared. She then instructed the Secretariat to prepare the list which would be circulated if not on the same day then by the day after, to enable Members to take the required action.
- 7.6. Dr McCarthy suggested that the list be included in the Minutes.

8. OPENING REMARKS

- 8.1. The Chairman reiterated that the Minutes were on track and that they served as important reminders of the grounds traversed since the work of the Committee began. In refocusing its work, she noted that there were two (2) broad goals to achieve in Phase 1. The first was the abolition of the Constitutional Monarchy as the form of government, by replacing King Charles III, King of Jamaica,

with a Jamaican Head of State for the Republic of Jamaica. The second was the ‘Jamaicanising’ of the Constitution. She indicated that the Committee’s Terms of Reference on the second goal was prepared having regard to the advice of the Chief Parliamentary Counsel, about the use of a drafting device to have the Constitution enacted by the Parliament of Jamaica and then approved by the people of Jamaica in the referendum. Preliminary work by the Committee had revealed that there were divergent views on the process to achieve the second goal. She reminded Members of the ‘Proposed Drafting Strategy’ prepared by Dr Barnett, which had only been discussed preliminarily so far, but which would be considered in detail in due course, in determining which approach to take. She clarified that it was never the intention to write a new Constitution at Phase 1 of the reform work but instead, to amend the existing one.

- 8.2. She then referred to the Editorial in the Jamaica Gleaner published on September 13, 2023 which was shared among Members. She highlighted that there were a number of important issues raised, none of which she wished to downplay. She shared that a major take-away from the engagements and consultations with members of the public was that many persons felt shut out and needed formal processes of engagement with their leaders. What they have shared conveyed how displeased they were in their interaction with Government Agencies, which led to their calls for greater accountability.
- 8.3. She also observed that the numerous calls by members of the public for the Committee to address matters unrelated to amendment of deeply entrenched provisions could be viewed as attempts to broaden the Agenda of the Constitutional Reform Committee and divert its attention away from the core work in Phase 1. Accordingly, she urged Members to return focus on the work required to achieve the goals set out that Phase 1.
- 8.4. Senator Scott-Mottley shared that there were misconceptions in the public space around the reform process and believed that the Ministry of Legal and Constitutional Affairs had a part to play in it. She highlighted a social media advertisement which suggested that a new Constitution was being drafted. She opined that it sent conflicting messages to the public, which led to confusion about the phases of the work and the focus on amending the deeply entrenched provisions.
- 8.5. The Chairman indicated that the advertisements would be looked at immediately, so that going forward there would be no further confusion. She reiterated that gradualism was the approach and that there was no intention to write a new Constitution in Phase 1.
- 8.6. Dr Spence suggested that the Committee proceed with discussing the core issues and focus less on public education which she believed was the responsibility of the Ministry and the Secretariat.

- 8.7. Dr Barnett, in response, expressed that the Committee had a responsibility to ensure adequate public education and consultation. On the matter of writing a new Constitution, he suggested that the process of ‘Jamaicanising’ the Constitution would result in a new legal instrument.
- 8.8. The Chairman suggested that consideration of the matter be deferred until it was on the Agenda, as the competing views would have to be fully considered.
- 8.9. Senator Scott-Mottley reiterated that public education was critical to the success of the Committee. While she did not believe it was the duty of Members to carry out such tasks, she opined that there was a large vacuum around what the public believed the Committee had embarked on.
- 8.10. The Chairman, in agreement with Dr Barnett, expressed the view that the Committee would assist in shaping the public education on the issues, but suggested that the discussion be revisited at a later date, when those substantive issues were being considered.

9. MATTERS FOR DELIBERATION

9.1. OFFICE OF THE PRESIDENT

9.1.1. The Chairman indicated that three resource documents were prepared and circulated from the Secretariat to help inform the discussion on the Office of the President. Referring to the Terms of Reference, she reminded Members that the policy of the Holness Administration was to transition from the Constitutional Monarchy within the context of a Parliamentary Cabinet System. She noted suggestions about adopting an Executive Presidency and advised that she did not have the authority, on her own, to expand or adjust the policy context for the reform work, but she committed to informing the Cabinet about the suggestions.

9.1.2. The Chairman further noted that while she had not disregarded the calls for an Executive President, the focus at this time was to abolish the Monarchy in a context that would assure stability and with which Jamaicans were familiar. The sore point, she believed, concerned the public’s understanding of their role in determining the next form of Government. She opined that people who did not participate in the selection of Party leaders were not satisfied with how the Head of Government was decided. Those who opted out of the democratic electoral process seemed most concerned. Pointing to the recent amendments to the Representation of the People’s Act (ROPA) on the status of political parties which had brought about greater accountability in the democratic and political processes, she suggested that a broader conversation be had on the matter.

9.1.3. Dr McKoy in referring to the use of the term “Ceremonial President” in one of the resource documents, suggested that the proper contrast be between an Executive President and a Non-Executive one.

- 9.1.4.** Mr Hylton queried how the Committee would communicate to the public its direction on the matter of which form of President. In response, the Chairman reminded Members that the Cabinet was the chief instrument of policy and the policy direction of the Government was communicated from as early as her first presentation in Parliament on the matter of Constitutional Reform.
- 9.1.5.** Supporting the Attorney General's point, Dr Spence stated that Jamaicans responded negatively to a ceremonial office as they did not associate any benefit to them with it. She highlighted that there was a lack of understanding about the implications that would flow from an Executive Presidency. It meant radically changing Jamaica's entire structure of government. She suggested that the policy position be clearly stated as the alternative may have a devastating impact on the country.
- 9.1.6.** Dr Henry recalled the Report of the 1995 Joint Select Committee on Constitutional and Electoral Reform (JSCCER) where there was agreement that there should be a Non-Executive President with certain additional powers. He noted that the role of the Governor-General, as it now existed, had additional powers, and shifting from a parliamentary system to a presidential system was not in the best interest of Jamaica. He suggested that the Committee be clear about the retention of a Parliamentary Democracy and determine what a Non-Executive President would look like.
- 9.1.7.** Professor Albert invited Members to recall a document which he prepared that outlined the powers of Presidents in Parliamentary and Presidential Systems. He noted that depending on what the jurisdiction wanted for itself, a country could situate the President's powers along a spectrum. He suggested that Jamaica was not limited to the model of any particular country and that one could situate the President between full powers or few powers.
- 9.1.8.** Ambassador Meade shared that it may be helpful to establish principles from which the Committee could work. Based on the feedback from the public, he noted that the Committee could consider, as a principle, the distinction between the Head of State and the Head of Government which allowed for the identification of some institutions and roles that would be above party politics.
- 9.1.9.** Dr Barnett, concerned about the basic position taken by the Committee, shared that when he reported to the National Partnership Council, he was deliberately cautious. He expressed the views of the Committee as provisional, because there was evidence of a number of persons who were advocating for a Presidential System and the option was not discussed by the Committee yet as public submissions were still being considered. Looking at the Office of the Governor-General, he shared that the Governor-General was essentially a ceremonial

Head of State who performed some functions which were designed to remove political considerations from those offices or functions.

9.1.10. The Chairman indicated that the discussion had to be framed properly, to highlight that the Committee was considering the matter of an Executive versus Non-Executive form of Presidency and the implications of each, against calls by some members of the public for an Executive Presidency in a context where the Government intended to proceed with a Parliamentary Cabinet System.

9.1.11. Dr Barnett suggested that the Committee put forward a recommendation only after it had heard all the submissions from the public, even though he had stated his view on which form of presidency he preferred and supported.

9.1.12. Dr McKoy suggested that a more appropriate comparison would be the Presidential System versus the Parliamentary System. In agreement, the Chairman then suggested that the public education involving the Committee should focus on the issues that arose from its discussions and deliberations, while the wider education would be done through the Ministry.

COFFEE BREAK

9.1.13. Dr Barnett invited Members to consider three (3) models namely:

9.1.13.1. Head of State politically selected or elected with executive powers covering a substantial area of government;

9.1.13.2. Non-Executive President who was a formal Head of State who performed merely ceremonial functions; or

9.1.13.3. Formal Head of State who was a Non-Executive President performing not only ceremonial functions, but who was given specific powers which did not involve the daily administration of government and who was selected in a non-partisan manner

9.1.14. He shared that the third model was more akin to what existed currently and if retained would not see any radical change to the position of the Head of State.

9.1.15. Mrs Davis Mattis queried the approach that would be taken regarding the three models on the basis that the public was familiar with certain terminology and lacked a certain degree of understanding.

9.1.16. Mr Hylton queried how the citizenry would perceive the Committee if it determined the powers of the President without addressing public concerns. While reiterating the importance

of public education and the approach to be taken, he suggested that the Committee clarify its way of communicating around the issues and concerns raised.

9.2. POWERS OF THE PRESIDENT

9.2.1. The Chairman, in advancing the discussion, invited members to examine the resource document outlining the powers of the Head of State. She reminded the Committee that Jamaica's post-independence governance arrangement under the Constitution of Jamaica was a Constitutional Monarchy, with the British Monarch as Head of State and the Prime Minister as Head of Government. The British Monarch was represented by the Governor-General.

9.2.2. She noted that under the Constitution, the Monarch had a number of powers, including holding the executive authority of the State of Jamaica, appointing the Governor-General, through the Governor-General removing Supreme Court and Court of Appeal Judges on the advice of the Judicial Committee of the Privy Council and being a part of the Jamaican Parliament.

9.2.3. She then invited Members to examine the Powers of the Governor-General against the resource document entitled "Modified State Affairs Sub-Committee Bundle Cover Document" and noted that such powers could be divided into five (5) categories namely:

9.2.3.1. Constitutional Powers exercisable in the Governor-General's own discretion;

9.2.3.2. Constitutional Powers exercisable on the advice of the Cabinet or a Minister of Cabinet under the general authority of the Cabinet;

9.2.3.3. Constitutional Powers exercisable by the Governor-General on the advice of another functionary

9.2.3.4. Constitutional Powers exercisable by the Governor-General following consultations with another functionary; and

9.2.3.5. Statutory Powers such as those contained within the Governor-General (Expenditure, Personal Staff, Tax Exemptions and Pensions) Act, the Electoral Commission (Interim) Act, the Integrity Commission Act, the Public Defender (Interim) Act, the Child Care and Protection Act, the Political Ombudsman (Interim) Act, the Fiscal Council Act and others.

9.2.4. The Chairman outlined various powers under various provisions of the Constitution and then indicated that they required deeper consideration by the Committee and the State Affairs Sub-Committee. Detailed review was deferred until the next meeting as some Members had asked to leave early. The Chairman indicated that her presence was required at a Joint Select Committee of the Parliament of the Protected Disclosures Act and so the meeting would be brought to an end early.

10. ANY OTHER BUSINESS

10.1. Concerns raised by some Members about the recent amendments to ordinary provisions of the Constitution

10.1.1. The Chairman informed Members that the concerns raised would be included in the Interim Report to Cabinet.

11. DATE AND TIME OF NEXT MEETING

11.1. The next meeting was scheduled for Wednesday, September 20, 2023.

12. ADJOURNMENT

12.1. There being no other business, the meeting was terminated at 2:00pm on a motion by Dr Spence and seconded by Dr McCarthy.