



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

24th Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: October 4, 2023

Time: 9:30am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Confirmation of Minutes
 - a. 23rd Meeting of the CRC
7. Matters Arising from the Minutes
8. Matters for Deliberation and Recommendations
 - a. Office of the President
 - i. Type/Form of President
 - ii. Selection Process for the President
 - iii. Qualification for the Office of the President
 - iv. Powers of the President
 - v. Term Limit

vi. Disqualification of President

9. Any Other Business

a. Findings of the Don Anderson Poll

b. Clarity on the timing of the Phases

10. Date and Time of Next Meeting

11. Adjournment

*Amendments to the Agenda

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)
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Senator Donna Scott-Mottley (Parliamentary Opposition – Senate) via video link
- Dr David Henry (Wider Society – Faith Based)
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations)
- Mr Sujae Boswell (Youth Advisor)
- 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
- Ms Nadine Wilkins, Director, Legal Reform Department via video link
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Ms Roxene Nickle, Advisor/Consultant
- Ms Nastacia McFarlane, Director, Corporate Communication and Public Relations
- Ms Julia Wedderburn, Senior Legal Education Officer (Actg.)
- Mr Ivan Godfrey, Legal Education Officer (Actg.)
- Mr Makene Brown, Legal Officer
- Mr Winston Lowe, Public Relations Officer (Actg.)
- Ms Shaedane Facey, Strategic Planner (Actg.)
- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel via video link
- Ms Georgette Campbell, Administrative Assistant

1. CALL TO ORDER

- 1.1.** The meeting was called to order at 10:07am by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved.

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/LATENESS

- 4.1.** Apologies for lateness were tendered on behalf of Mrs Davis Mattis and Ambassador Rocky Meade.

5. CONFIRMATION OF AGENDA

- 5.1.** Dr Henry queried whether the findings of the Don Anderson Polls would be a matter considered by the Committee and noted that having reviewed the Minutes of the last meeting, there was a lack of clarity on what was proposed for Phase 1 of the reform work programme and the impact of public consultations on the work of the Committee. He urged Members to clarify the work to be done at Phase 1 and determine when it would be concluded and when Phase 2 would begin. He also expressed concern that elections would overtake the work.
- 5.2.** Mr Small, in agreement, stated that there was no clear perspective on what the Committee hoped to achieve during any particular period and based on experiences, he suggested that it be revisited.
- 5.3.** In light of the foregoing, the following amendments were made to the Agenda:
- 5.3.1.** Agenda item 9, "Any Other Business," was amended to include two sub-items, "Findings of the Don Anderson Poll" and "Clarity on the timing of the Phases"
- 5.4.** The amended agenda was confirmed on a motion by Dr David Henry and seconded by Mr Hugh Small.

6. CONFIRMATION OF MINUTES

- 6.1.** The Minutes of the 23rd Meeting of the Constitutional Reform Committee held on September 27, 2023 were corrected and confirmed on a motion by Dr Nadeen Spence and seconded by Mr Anthony Hylton.

7. MATTERS ARISING FROM THE MINUTES

- 7.1.** Upon the invitation of the Chairman, Mr Small enquired whether Dr Henry Lewis Jr was contacted to which she clarified that the suggestion, at paragraph 9.2, was to prepare a response to him as opposed to immediately contacting him.
- 7.2.** Dr Barnett suggested that when the Committee made decisions it should list the corresponding action items and identify the persons who would be responsible for executing them.
- 7.3.** Dr Henry also enquired whether an invitation was sent to the Private Sector Organisation of Jamaica (PSOJ) as noted at paragraph 7.3.4 as well as to any other group that wished to present to the Committee.
- 7.4.** Mr Robertson asked the Committee whether a response should be prepared to all articles addressed to the Committee or the one written by Dr Lewis Jr, in particular. The Chairman recalled that a similar issue arose when Dr Barnett requested that the Committee responded to Mr. Horace Levy's letter in the newspapers.
- 7.5.** Dr Barnett stated that while there was no absolute rule, if the strategy of the Committee was to engage the public through their participation, the selection of who to respond to should be based on the nature of the subject matter, the content of the proposal, whether it sought to further the objectives of the Committee and whether it would be impolite to ignore them. If the Committee decided that a response should be prepared, it should be done.
- 7.6.** Mr Small expressed that there was no expectation that the Secretariat would respond to every article and opinion published in the printed news media but by parity of reason, if there were discussions that contained misinformation or were misguided, the Committee would not ignore them.
- 7.7.** The Chairman agreed that moving forward, action steps would be clearly stated, persons with responsibility would be identified and timelines would be determined.

- 7.8.** Dr Spence indicated that a suggestion was made to respond to Dr Lewis Jr but noted that not every Member contributed to the discussion around what such engagement looked like.
- 7.9.** The Chairman recalled that the Public Engagement and Communications (PEC) Sub-Committee was created because of the need to be responsive. She therefore suggested that in respect of the article written by Dr Lewis Jr, the PEC considered it more closely and proposed a response to it, taking into account the progress made so far and where there remained a deficit.
- 7.10.** Dr Barnett noted that the Committee had not decided whether it would invite the PSOJ to present to which the Chairman suggested that the matter be deferred, in the interest of time, to allow Members to focus on the matters under the Office of the President and formulate recommendations.

8. MATTERS FOR DELIBERATION AND RECOMMENDATIONS

8.1. OFFICE OF THE PRESIDENT

8.2. TYPE/Form OF PRESIDENT

8.2.1. The Chairman expressed that the Committee came short of formally formulating the recommendation on the form of President having discussed and clarified three (3) useful categories which allowed Members to communicate clearly on the issue. She recalled a:

- (1) Head of State politically selected or elected with executive powers covering a substantial area of government;
- (2) Ceremonial President who was a formal Head of State who performed merely ceremonial functions and was selected in a non-partisan manner; and
- (3) Formal Head of State who was essentially a Non-Executive President performing not only ceremonial functions but who was given specific executive powers which did not involve the daily administration of government and who was selected in a non-partisan manner.

8.2.2. She noted that the latter came closest to the ideals of the people for a symbol of national identity and national unity who was above the political fray and a neutral arbiter.

8.3. SELECTION PROCESS FOR THE PRESIDENT

- 8.3.1.** The Chairman reminded Members of the agreement that, as a starting point, there would be consultation between the Prime Minister and the Leader of the Opposition to yield a candidate that was acceptable and above partisan divide and who would be submitted to the Parliament for confirmation. She noted that the Committee had agreed that symbolically both Houses would sit together but recalled that there was initially some dispute surrounding how the vote was to be taken. Following discussions, it was agreed that the vote of each House would be taken separately to take away any disadvantage or advantage to be gained by putting forward a candidate who would not enjoy the bipartisan support and who did not reflect the necessary ideals.
- 8.3.2.** Mr Small enquired whether there was any fundamental objection to departing from the existing formula in the Constitution and adopting a joint nomination by the Prime Minister and the Leader of the Opposition.
- 8.3.3.** Mr Small queried what would happen if the process was formulated in that way to which the Chairman responded that systems ought to be designed to work even where those who operated them disagreed with each other.
- 8.3.4.** Mr Small noted that under the current formulation, there were provisions that addressed the absence of agreement. In dealing with the creation of a Head of State, he invited Members to think about the considerations that would be taken into account given the four (4) ideals being pursued. He queried whether there was anything fundamentally flawed in making a joint nomination as opposed to putting the initiative in the hands of the Prime Minister. He further queried whether the constitutional reform of the kind being contemplated would succeed in a referendum if reforms were not seen by the public as being for national good or a national platform on which both parties can agree and speak with one voice ensuring the successful passage of the referendum.
- 8.3.5.** Mr Hylton expressed that flowing from what was established as ideals, his view and the views of the People's National Party was that the process chosen should aim for those ideals.

8.3.6. Dr Barnett stated that in order to have someone who was nationally respected and whose appointment was uncontroversial, there were three (3) mechanisms that could be considered:

1. Nomination by Prime Minister;
2. Nomination by the Prime Minister after consultation with the Leader of the Opposition; and
3. Joint Nomination by Prime Minister and Leader of the Opposition.

8.3.7. He noted that in the first two, the Prime Minister had the last word but what he decided may not be agreed to by the Leader of the Opposition. In the third, most the Prime Minister had to agree with the joint nomination. He opined that, though most desirable, the third mechanism may not be achieved or would take too long to be achieved to serve the national interest. To an extent, the second mechanism helped to solve the problem because whatever the determination, the person would have to be approved by an affirmative vote of Parliament.

8.3.8. The Chairman encouraged Members not to look at the process of nomination in isolation. Bearing in mind Dr Barnett's analysis, the confirmation by Parliament, where the votes of each House would be taken separately, was the clincher to whether the nominee would be above the partisan fray.

8.3.9. The Chairman then invited Members to consider Section 32 of the Constitution of Barbados which spoke to the Election of the President. It provides that:

- (1) whenever the office of President was vacant, or if the term of office of the President was due to expire within not more than ninety days, the Prime Minister shall consult with the Leader of the Opposition with a view to their joint nomination of a candidate for election as President.”
- (2) If the Prime Minister and the Leader of the Opposition wrote to the Speaker a joint nomination of a qualified candidate for election as President, being a nomination to which that candidate consented, the Speaker shall notify both Houses of the joint nomination and, at a joint meeting of both Houses, shall ask the members whether any member objected to the candidate being declared duly elected, if no member objected thereto, the Speaker shall declare the candidate duly elected.

(3) If there was an objection under sub-section (2) the Speaker shall not declare the candidate duly elected but shall suspend the joint meeting.

8.3.10. The Chairman enquired whether there were any differences to be taken into account and Mr Small expressed that the wording suited him.

8.3.11. The Chairman recalled discussions surrounding the insertion of another stage in the consultative process set out at Section 32(5) of the Jamaican Constitution and noted that while the Committee could propose a reformulation with a view to a joint nomination, it was suggested that instead of the matter proceeding even if there were disagreement, there could be a re-consultation.

8.3.12. Dr Henry, in commenting on Dr Barnett's proposed mechanisms, suggested a fourth – a general nomination by the respective parties as well as a nomination by civil society confirmed by a vote. While acknowledging the partisan effect, he recalled the public's frustration with appointment processes and their desire to participate in the selection of the President. He expressed a belief that the people wanted to select the President because they wanted to ensure some level of accountability for their Prime Minister.

8.3.13. The Chairman enquired whether voting for the Prime Minister or President achieved the accountability that people desired to which Dr Henry responded that in the mind of the public, being able to select the President would allow them to feel some level of accountability. The Chairman then enquired whether members of the public felt that the Members of Parliament who they voted for were accountable to them in the way they desired, to which Dr Henry responded that a vote without more was not enough but was a step. In examining the Don Anderson Polls, he noted that people were effectively saying that they wanted accountability now.

8.3.14. The Chairman asked Dr Henry whether he had any views on what that accountability looked like to which he responded a number of things such as the inclusion and protection of the Electoral Commission of Jamaica (ECJ) and the Integrity Commission.

8.3.15. The Chairman stated that although the ECJ was in an interim place, the way it operated provided no evidence which suggested interference and its strength also

came from its structure. At the outset, the political representatives deliberated the issues and brought matters of concern to the fore. She opined that its design was sensible and notwithstanding its long interim status, it enjoyed some prestige and earned the respect of everyone.

8.3.16. Mr Small invited members to reflect on Jamaica's experiences and imagine a future conscious of the fact that it took almost two-thirds of a century to get to a point that could have been achieved shortly after becoming independent. What was being designed now was something for the future which took into account the past. He referred to the Electoral Advisory Commission and noted that when society came to a point of crisis, it was designed with perspectives from civil society and both sides of the political system amongst others. Its strength came from the balance of power that was placed into the hands of independently appointed members.

8.3.17. The Chairman invited Members to interrogate who comprised civil society. She also stated that she did not see Government and Opposition solely as the Jamaica Labour Party (JLP) Government and the People's National Party (PNP) Opposition as their role of government and opposition had to be examined regardless of who formed them. She noted instances where existing Opposition did not appreciate the role of Government and vice versa. Noting the call for Members to consider experiences, she recalled that there was little or no controversy surrounding the selection of Governors-General of past. Historically it was not an area of contention. She reminded Members that the role of the President would be different from the role of the Prime Minister and the Committee should be careful that it did not conflate the accountability issues. Furthermore, on the issue of civil society, there needed to be clarity on who comprised it because even in other places which acknowledged the critical importance of it, there was contention about how to define it and who comprised it. She noted that political parties were now required to be registered and therefore Jamaica was now at a different stage than where it was ten (10) years ago.

8.3.18. Mrs Davis Mattis stated that accountability was also invested in the citizenry who must hold persons accountable. She highlighted that many systems and layers were created to achieve accountability and where they failed to work, another layer was

added to it. She opined that voting for the President would not achieve the levels of accountability desired.

8.3.19. Dr Barnett queried the opinion shared by Dr Henry and noted that it was not one in relation to the formal President discussed but concerned the public's involvement in the election of a President with executive powers. He further expressed that if the Committee proceeded with the Formal Head of State with ceremonial and additional powers which did not involve the daily administration of Government, the normal principles of accountability would not apply. He also expressed that giving civil society the opportunity to make nominations would not have any practical value and would lead to confusion.

8.3.20. Dr Henry suggested a need for clarification of what persons expected when they asked to select the President. Demands for a Presidential system would be easy to identify but when persons suggested an Executive President it could be perceived that they wanted someone who exercised some executive powers that achieved a check and balance on the Prime Minister. While recognising that the suggested route of a Formal Head of State was easier, he would like to engage the public around the three models proposed, which the Committee was yet to do.

8.3.21. Dr Spence believed that some Members were of the view that the Committee should outline the three choices to the people and ask them to vote and based on the vote, the Committee would adopt the views of the majority as opposed to deliberating on each type. She opined that if that was what was to be done, the prior 23 meetings would not have been fruitful.

8.3.22. Dr Henry, in clarifying, stated that he was firmly of the view that there needed to be a Parliamentary Democracy. He understood that when the public demanded an Executive President, they lacked sufficient understanding of it. Three forms of Presidencies were proposed, and the Committee agreed on one akin to the recommendations from the 1995 Report of the Joint Select Committee on Constitutional and Electoral Reform (JSCCER). He noted that such a decision was not shared with the general public nor was the public invited to share whether they wanted to be involved in selecting that President as opposed to what was proposed for the selection process.

8.3.23. Mrs Davis Mattis highlighted there was a recommendation on the table about the type of President and the selection process which needed the public's input.

8.3.24. Professor Albert observed two major questions, one related to the selection of the President and the other on how to hold him/her accountable. On the point of selection, he noted that there were three pairs of questions to answer:

1. Was it a parliamentary or popular process?
2. Would it be a majority or supermajority vote?
3. Would the process of selection be partisan or bipartisan if it unfolded in Parliament.

8.3.25. He noted that if the selection occurred in Parliament, a supermajority vote would be bipartisan and would suggest unity. If there was an interest in finding a way to introduce the people to the selection of the President, one possibility to avoid politicisation was to have the vote sent to the people in a confirmatory referendum, an action which risked torpedoing the intentions of the Committee to make the process apolitical. Regarding accountability, there were a number of ways to hold a President accountable; namely the power of recall and the power of impeachment, both of which were used in constitutional democracies.

8.3.26. Mr Boswell stated that if there was a case where people could trigger a recall process thereby lending to greater accountability, the Committee could contemplate popular recall mechanisms and invariably design a functional approach to such a type of system.

8.3.27. The Chairman invited Members to consider what accountability would look like for an office holder who was not involved in the day-to-day administration of Government.

8.3.28. Professor Albert suggested that giving people the power to recall the President and giving Parliament the power to impeach served as escape hatches in the event that a need arose to restrain a President who acted in bad faith. He further noted that even where the powers were not used, they would be a signal to the people that the President was answerable to the people or Parliament for the wrongdoing engaged in.

8.3.29. The Chairman, in suggesting that the matter be dissected, noted that under the current system, people directly elected their Members of Parliament. From her position, she opined that the public would accept a Member of Parliament who came at the end of a political process. She further stated that the people who opted out and chose not to participate in elections often griped about the system. In reiterating the sentiment shared by Mrs Davis Mattis, the Chairman affirmed that Jamaicans should also hold themselves accountable. She reminded Members that there existed a system to move a vote of no confidence against a Prime Minister. She further shared that the Ministry conducted informal polls, the results of which suggested that while the majority wanted a Non-Executive President, they also wanted to have a say on how such person would be selected.

8.3.30. Mr Small expressed concern about the assumptions made about people who opted out of the voting process. He stated that he had reason to believe that there were Members of the Committee who did not vote in the last three elections, including himself and suggested that improper assumptions were being made. He noted that there were many reasons why people chose not to vote, as Jamaica was a complex society with a number of challenges. The growing cynicism in society was not only influenced by the perception of political parties but also by what people stood for individually.

8.3.31. The Chairman stated that constituents often expressed views that people who exercised powers in government were reflective of the plantocracy. The Chairman noted that having examined the work closely, she realized the magnitude of the work to be done and expressed that she would not want the process to fail because the Committee was trying to do it all at once. She acknowledged that there was limited trust and confidence about whether any further reform would be done after the initial phase, particularly amidst the fears around the political processes with start of campaign season, among other things. Many of what was desired would be less difficult to achieve after Jamaica ended its relationship with the Monarchy. A practical approach was required. She therefore encouraged Members to keep the faith, as there was a commitment to do right by the people.

8.3.32. Dr Henry expressed that while there was agreement that the Monarchy should be abolished, there was a feeling that such an action alone was not enough. He stated that having taken 28 years to get to this basic point, people had a challenge and thought that there must be an effort to achieve consensus around other matters such as fixed election dates, the Integrity Commission, the Electoral Commission of Jamaica, among others.

8.3.33. The Chairman acknowledged the concerns around accountability in Government. She explained that she saw such concerns in a broader context beyond Government and the people. She urged Members to consider what people valued the most and opined that the perception that systems were corrupt arose in some cases when someone benefitted over another. She also observed that some of the voices parading for accountability were themselves regarded as corrupt and law breakers. Additionally, the Chairman expressed difficulty in understanding what was regarded as a sufficient first step, particularly since abolition of the Monarchy was not minor in any way. She opined that Members sold themselves short if they believed abolition of the Monarchy to be anything but major. She reminded Members of the need to be practical in its approach.

8.3.34. Dr Spence explained that the matter of removing the Monarchy was a huge accomplishment because the Committee would be able to achieve something that many before were not able to. She also expressed that constitutional reform continued throughout the life of the country and could not therefore be spoken about in finite terms. The Committee was at a point where constitutional reform met information technology and the information revolution which resulted in more people engaged than any other moment in Jamaica's history. The Committee, therefore, needed to do more and would continue to do more even after removing the Head of State and changing the final Appellate Court.

8.3.35. Mr Hylton conveyed that the People's National Party wanted constitutional change in a fundamental way. He noted that the educational process was fundamental and should continue in an effort to keep interest and engagement alive. The Opposition, from the outset, had not asked for anything that burdened the process nor prevented results from being achieved.

8.3.36. The Chairman highlighted that the records demonstrated how often Members strayed from substantive subject matters and invited the Committee to pay attention to that going forward. She then invited the Secretariat to prepare an attendance register to give Members of an idea of what their attendance was like. She acknowledged that the Committee was made up of volunteers and explained that her observations were not meant to cast judgement but to help Members grapple with their role in the process. She recalled Dr Spence's compilation of views outlining public submissions and invited Members to take some time to reflect on them. She encouraged Members to perish any thought that she came to the table with a preconceived idea on the existing systems and noted that there was a lot to learn from the attempts to reform those systems. She then asked the PEC to examine the calls among the public for greater accountability and determine a strategy to help shape the communication around the Office of the President, particularly in relation to the types/forms of Presidencies, qualifications, process of selection, powers, term limit and removal/disqualification.

9. ANY OTHER BUSINESS

9.1. FINDINGS OF DON ANDERSON POLL

9.1.1. The Chairman suggested that Don Anderson be contacted to determine whether he would be available to present the findings of his poll, on questions relevant to our constitutional reform work, to the Committee.

9.2. Mr Small enquired into what the Committee hoped to achieve before the end of 2023 to which the Chairman responded tabling the Bill.

9.3. Dr Barnett suggested that the work could be done immediately but expressed that he did not understand the objection to his Proposed Drafting Strategy. The Chairman informed Dr Barnett that it was not an objection and that she would ask the CPC to reduce her advice in writing.

9.4. Mr Robertson noted that there were two requests for public consultations:

1. Mico University College on October 26, 2023; and
2. Sensitisation Session with Webster Church on November 19, 2023, virtually

10. DATE AND TIME OF NEXT MEETING

- 10.1.** The Chairman informed Members that she would be travelling on official duties and would use the opportunity to educate and engage on the reform work. She would be out of the jurisdiction the following Wednesday. The Committee was at liberty to still meeting as the co-Chairman could chair the meeting. After discussions the Committee agreed to take a meeting break and use the time to reflect on the issues on deliberation.
- 10.2.** The meeting would reconvene on Wednesday, October 18, 2023, at 10:00am.

11. ADJOURNMENT

- 11.1.** There being no other business, the meeting was adjourned at 3:14pm on a motion by Dr Nadeen Spence and seconded by Mrs Laleta Davis Mattis.

ACTION ITEMS

ACTION	RESPONSIBILITY	DEADLINE
Propose a response to the article written by Dr Henry Lewis Jr entitled “Where is the CRC’s Public Education Campaign?” published in the Jamaica Observer on September 27, 2023 taking into account the progress made so far and where there remains a deficit.	Public Engagement and Communications Sub Committee	Wednesday, October 18, 2023
Prepare attendance register of CRC meetings to inform Members of their attendance to date	The Secretariat Christopher Harper	- Friday, October 6, 2023
Examine the calls among the public for greater accountability and determine a strategy to help shape the communication around the Office of the President, particularly in relation to the types/forms of Presidencies, qualifications, process of selection, powers, term limit and removal/disqualification.	Public Engagement and Communications Sub Committee	Wednesday, October 18, 2023