



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

27th Meeting of the Constitutional Reform Committee (CRC)

Venue: Jamaica House Banquet Hall

Date: November 1, 2023

Time: 10:00am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Confirmation of Minutes
 - 26th Meeting of the CRC
7. Matters Arising from the Minutes
8. Matters for Deliberation and Recommendations (cont'd)
 - Office of the President
 - i. Selection Process for the President
 - ii. Qualification for the Office of the President
 - iii. Term Limit
 - iv. Disqualification of President
9. Report from the State Affairs Sub-Committee

10. Any Other Business

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 (Parliamentary Opposition – House of Representatives)
- 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 (joined meeting later)
- 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) 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)
- Ms Nadine Wilkins, Director, Legal Reform Department
- Ms Janelle Miller-Williams, Senior Director, Legal Education
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Ms Roxene Nickle, Advisor/Consultant
- Ms Nastacia McFarlane, Director, Corporate Communications and Public Relations
- Mr Makene Brown, Legal Education Officer
- Mr Ivan Godfrey, Legal Education Officer (Actg.)
- Ms Shaedane Facey, Strategic Planner via video link
- Ms Georgette Campbell, Administrative Assistant

1. CALL TO ORDER

- 1.1.** The meeting was called to order at 10:37am by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved.

2. PRAYER

- 2.1.** Prayer was offered by the Chairman.

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 Dr Nadeen Spence, Dr Elaine McCarthy, Mr Anthony Hylton and Mrs Laleta Davis Mattis.

5. CONFIRMATION OF AGENDA

- 5.1.** The Agenda was confirmed without amendments on a motion by Ambassador Rocky Meade and seconded by Dr Nadeen Spence.

6. CONFIRMATION OF MINUTES

- 6.1.** The Minutes of the 26th Meeting of the Constitutional Reform Committee held on October 25, 2023 were corrected and confirmed on a motion by Dr Derrick McKoy and seconded by Mr Anthony Hylton.

7. MATTERS ARISING FROM THE MINUTES

- 7.1.** There were no matters arising from the Minutes.

8. MATTERS FOR DELIBERATION AND RECOMMENDATIONS

8.1. OFFICE OF THE PRESIDENT

8.2. SELECTION PROCESS FOR THE PRESIDENT

- 8.2.1.** The Chairman noted the stage at which deliberations on the selection process for the President had advanced, and which deliberations were succinctly captured at paragraph 8.3.59 of the Minutes of the 26th Meeting of the Constitutional Reform Committee (hereinafter referred to as “the Committee”). She recalled that Messrs. Hylton and Small and Senator Scott-Mottley requested additional time to consider the matter. Senator Scott-Mottley informed Members that she needed additional time because she was proceeding to a meeting of the People’s National Party’s (PNP) National Executive Council (NEC) where she would raise the matter. The Chairman indicated that although she intended to complete the deliberations in order to formulate a recommendation, she appreciated the reason proffered and would therefore facilitate the request.
- 8.2.2.** The Chairman recalled that Members considered a number of options which included a nomination by the Prime Minister after consultation with the Leader of the Opposition with a view to arriving at consensus, or even a joint nomination; or a nomination by the Prime Minister after consultation with the Leader of the Opposition having considered a pool of candidates nominated by a body to be determined. In addressing concerns raised about how consultations between Prime Ministers and Leaders of the Opposition took place in the past, it was pointed out that neither the Prime Minister nor the Leader of the Opposition would consult with each other in isolation and without consulting with their broader constituents.
- 8.2.3.** The Chairman reminded that another matter for consideration was the proposal where in the event the candidate failed to achieve the required two-thirds majority vote in the Parliament, s/he could be put to the people for confirmation. Alternatively, Members also considered separate nominations by both the Prime Minister and the Leader of the Opposition where there was an absence of consensus between them. It was discussed that where two candidates were nominated, the nominee who achieved a two-thirds majority vote in Parliament would be elected. However, where neither received the two-thirds majority vote but one received a majority vote, that one could either be put to the people for confirmation, or the nominator withdraw the nomination and the process of consultation between the

Prime Minister and Leader of the Opposition commence afresh for another opportunity to achieve consensus or a joint nomination.

Mrs Laleta Davis Mattis arrived at 11:18am

- 8.2.4.** Dr Barnett enquired whether Mr Small gave the matter of the selection process for the president further thought, to which Mr Small responded that he had forgotten about the matter, and it was only upon reading the Minutes that his mind was drawn to the specific proposals that were put forward. Mr Small then requested further time.
- 8.2.5.** The Chairman indicated that the Committee needed to proceed to formulate its recommendation on the selection process and also complete its deliberations on the remaining issues related to the Office of President, in order for the Committee to get to the other important matter of Jamaicanising the Constitution. Having reflected on what was contained in the Minutes, Mr Small said he wondered whether the circumstances that were defined as to when the public would be asked to participate in the process would only be prompted if the legislature disagreed. He said he believed that that would not address the concerns that were expressed by the members of the public, including civil society. He referred to the Don Anderson Polls indicating that the people wanted to have a say and opined that the proposal was a bit short of what was considered in the public interest in determining the Head of State.
- 8.2.6.** Dr Barnett expressed that he understood Mr Small's concern to be that the person who was to represent a symbol of national unity would be involved in campaigning, if the failure to obtain the prescribed majority in Parliament was followed by an election.

Ms Nadine Wilkins joined the meeting at 11:27am

- 8.2.7.** Mr Hylton stated that he, alongside Senator Scott-Mottley, discussed the matter of the selection of the President with the PNP's NEC, which provided them with an opportunity to garner their thoughts. He stated that it was clear that initially a number of persons wanted the public to be involved in the process. He also noted that having debated it, the pros and cons of the executive and non-executive forms

of presidencies were considered and the weight of the evidence shifted. He stated that there was a sense that the executive form of presidency had its weaknesses, having observed what happened in the United States of America. He also stated that there were some who wished for the matter to be debated in Parliament.

- 8.2.8.** In relation to the matter of the process of selection, he observed from the discussions within the NEC that many persons did not reflect deeply on the issue of what would happen in the instance of a non-executive president, having regard to the four values previously discussed. He further observed that persons appreciated the risk of politicizing the selection which caused some to acquiesce. He noted that many NEC members came with a view about an executive form of president which shifted after the debate.
- 8.2.9.** Mr Hylton also recalled Senator Finson's recommendation that Members should focus on the stage of consensus building and stated that the Committee had not satisfactorily identified the exact process. Reflecting on the concerns raised by Mr Small, he invited Members to consider the situation where there was the possibility of an election and how such would work, mindful of the values pursued.
- 8.2.10.** The Chairman stated that the issues were discussed sequentially starting with the values around the Office of the President, as the foundation. She pointed out that the views of the public were considered, and that the Committee only arrived at this position about the role of the people after it considered the form of presidency and the orienting values around the Office of President.
- 8.2.11.** Dr Spence expressed difficulty in following the conversation having regard to the fact that the concerns being raised were discussed on several occasions. She observed that the Committee spent a considerable amount of time discussing the views of the public and the principles and philosophies which guided the determination. She noted that everyone spoke at large and enquired what would enable the Members of the Committee to decide definitively on where their perspectives were. She found it troubling that Members could not make a decision and stick to it.
- 8.2.12.** The Chairman urged Members to keep pace with the work and not limit their review of the issues discussed to only when they attended meetings of the Committee. She

then suggested that Members look at the records to refresh their memories, in order to move forward without undue delay.

- 8.2.13.** Mr Hylton, having contemplated the sentiments expressed by Dr Spence, noted that there was no consensus in the first instance around building consensus. The Chairman, in response, invited Members to refresh their memories with paragraph 8.3.59 of the Minutes of the last meeting. She also observed that the Committee was not efficient in its use of time and suggested that Members reflect on the proposal in order to formulate a recommendation after the coffee break. She noted that there would be sufficient time to debate the issues once the Bill was tabled, as the process was designed to be slow, deliberative and allow for debate. She opined that the real debate would be on what was actually put before Parliament.

Coffee Break at 11:42am

- 8.2.14.** The Chairman noted that Members appeared to be converging on a recommendation which included the people having a say in the event that the nominee failed to obtain the prescribed two-thirds majority vote in Parliament but achieved a majority vote of over 50%. She opined that that may prove difficult for reasons previously stated.
- 8.2.15.** Mr Hylton said that in the discussion with the PNP's NEC, questions were posed from some quarters as to the cost of a ceremonial presidency. He informed them that the President performed very important functions, particularly in relation to sensitive posts and appointments which were aptly suited for a President of that kind and the values attached to the office. He noted that the matter was not conclusive and that they would continue to engage in discussions. He also observed that the Members of the NEC did not raise any new ideas outside of what the Committee already considered.
- 8.2.16.** The Chairman noted that having interpreted the calls by the people and their demands for an Office that was above partisan politics and a symbol of national identity and unity, the Committee had taken care to ensure that in recommending a selection process it did not violate those ideals. She highlighted that some members of the public expressed the view that it would not be wise to expend the kind of

funds that would be required to hold an election for a non-executive President. She then invited the Attorney General, Dr McKoy to weigh in on the discussion.

- 8.2.17.** Dr McKoy stated that there was a need to make some trade-offs and that the Committee should consider the things that were most important. He acknowledged that it was imperative to have a consensus President and recalled Jamaica's history in selecting Governors-General. He stated that if Jamaica embarked on the process of a direct election, by definition, half of the electorate would not be satisfied, which would bring an element of division in the society and risk destroying consensus as people would campaign on one side or another. He opined that a direct election could not coincide with a consensus President and a decision should be made between the two options. He noted that if consensus was important, consideration of a direct vote should be taken off the table. He further noted that there were examples of functional democracies working both ways. He also observed that Members, from the beginning, expressed desire for a consensus candidate and as such, he recommended that the Committee adopt it and identify ways to make it work. Anything else distracted the Committee from its objectives.
- 8.2.18.** The Chairman, in response, stated that the policy of the Government was that the best form of government embraced a balance of powers, as a just government must be founded on a system of checks and balances. The ideal government was said to be one which combined the best qualities of a monarchy, an aristocracy and a democracy. When one type of government alone ruled, it frequently decayed into the corresponding degenerate form – the King became a tyrant, the aristocracy turned into a factional oligarchy, and democracy became mob rule and anarchy.
- 8.2.19.** Dr McKoy expressed that he could not understand the inherent distrust in persons elected to make decisions.
- 8.2.20.** Dr Spence queried whether 36% of the electorate participating in a general election meant an illegitimate government. She opined that even if 5% of the electorate showed up to vote, democracy recognized the outcome of the election as a legitimate government. She observed that society would be at risk if people continued to question the legitimacy of the process of free and fair elections.

- 8.2.21.** Mrs Davis Mattis observed that the profile of the President as someone who represented national unity and identity prompted her to query whether such was the profile of the Prime Minister, the Leader of the Opposition and every Member of Parliament. She noted that the values pursued were attributes that anyone should have.
- 8.2.22.** The Chairman stated that, as a Member of Parliament, she represented everyone in her constituency after she was elected and until another was elected. She also observed that regardless of how encamped people became, they accepted the results after the election, a reality that was commended by those who studied elections and democracies.
- 8.2.23.** Mr Hylton, while noting the points raised, stated that accountability had its place and that those who ran astray should be subject to a mechanism that reinforced the desired standard and encouraged adherence. He also noted that what was defined for the Governor-General was different from Parliamentarians and that certain decisions were not allocated to the Governor-General for good reasons. The decisions taken on a day-to-day basis invariably had an element of partisanship which he opined was unavoidable.
- 8.2.24.** The Chairman, in response, stated that there was no contrary view on accountability. The issue at hand was whether voting for a non-executive president would yield higher accountability. She recalled that having gone through the Minutes she observed a lot of diversion from the core work. The failure to keep focus in the forum of the Committee was reflective of the short attention span in the nation.
- 8.2.25.** Mr Hylton stated that he saw nothing wrong with what was being addressed and indicated that if consensus failed, the Committee would find a mechanism. He noted the public's request for participation and reminded Members of the options considered. He regarded the effort to achieve consensus as useful and encouraged Members to be efficient in determining the best way forward.
- 8.2.26.** The Chairman stated that if a consensus candidate was desired to reflect the agreed values, the Committee should explain to the people how it sequenced the issues deliberated upon, starting with the orienting values for the Office of President as

the foundation, and then moving to the deliberations on the process of selection. She invited Members to consider the failsafe mechanism for selection and stated that instead of proceeding with a nomination in the absence of consensus, in keeping with what obtained under section 32 of the Constitution of Jamaica, there should be another round of consultation, with a view to arrive at consensus, before a recommendation/nomination was made. She also recalled that Members considered putting forward a recommendation for two candidates to be nominated in the event of the absence of consensus and queried whether a recommendation would also be made that in such a case, the candidate who obtained the majority vote in Parliament would be elected as the President. She considered that it would practically result in deference to the ruling party, which was often allowed by convention.

- 8.2.27.** Mr Hylton stated that if consensus was the goal, which he supported, such should be confirmed by a two-thirds majority.
- 8.2.28.** The Chairman enquired whether Members were agreed to recommend that in the event of a failure to arrive at consensus on the nomination then both the Prime Minister and the Leader of the Opposition may propose a candidate for confirmation by the Parliament.
- 8.2.29.** Mrs Davis Mattis indicated that she was not clear about the steps outlined at 8.3.59 of the Minutes of the 26th Meeting.
- 8.2.30.** The Chairman explained that the Committee examined the different points at which the people could be accommodated, as was set out by Professor Albert.
- 8.2.31.** Mrs Davis Mattis, in response, stated that she was not clear how the failsafe mechanism would be activated if the original objective was not achieved. The Chairman, in response, provided anecdotal examples to which Mrs Davis Mattis enquired about the length of the process and whether it was in the best interest of the people, mindful of what was to be achieved at the end of the day. The Chairman expressed that it was the lesser of the two evils as putting it to the people would be a lot more decisive.
- 8.2.32.** Mrs Davis Mattis then enquired whether there would be some criteria for selection if the public made a nomination. The Chairman responded that the power to nominate would be vested in the Prime Minister after consultation. Mrs Davis

Mattis expressed that she was unsure of the role of the Nomination Committee if the Prime Minister nominated and queried whether the involvement of the people in such a manner would be a viable option, if the matter went to Parliament regardless. She also sought clarity on the status of the people in a republic.

- 8.2.33.** The Chairman explained that her understanding of the people-centred nature of the Republic was that as a form of government, it offered a great degree of equality among citizens, unlike an aristocracy and a monarchy. That was not to be confused with powers being conferred on some people, as different people could be assigned different roles according to the wishes of the people. It was unlike having a monarchy with rule by divine right or an aristocracy, distinct from the ‘commoner’.
- 8.2.34.** Professor Albert stated that his understanding of the republican form of government was similar to Minister Malahoo Forte’s. He suggested that educating the public about how their new President would be selected would be a crucial component of the public education. He observed that any kind of change was an opportunity for disruption and misinformation and reinforced the importance of clarity around the Committee’s recommendations.
- 8.2.35.** The Chairman observed that the Head of State, King Charles III, was not Jamaican nor was he symbolic of the Jamaican people. She further noted that many were trying to attach “bread and butter” concerns to the transition and observed that it was not so much about what the country looked like but more so about whether Jamaicans understood nationality and citizenship, especially when Jamaica was a nation not headed by a Jamaican.
- 8.2.36.** Professor Albert recalled points made by Dr McKoy and stated that Jamaica was a representative democracy where people acted through their elected representatives in Parliament. He opined that unless that changed, it would be difficult to answer the question about what would change for people if Jamaica transitioned to a republic. He highlighted that the change would see a Head of State chosen locally whose legitimacy was derived from a process of selection by local actors.
- 8.2.37.** Mrs Davis Mattis indicated that the people needed to know that. The Chairman thanked Mrs Davis Mattis for teasing out the issue and stated that part of the Committee’s struggle was how to explain the matter to the people. She highlighted

that the *de-facto* Head of State was appointed by the King and convention required that the nomination by the Prime Minister be sent to Buckingham Palace. She observed that change would see the nomination confirmed by the people through their Parliament as opposed to the King putting the person in the position.

8.2.38. Professor Albert stated that there were examples of Republics where there was no direct participation by the people, such as the United States, where people voted for the President indirectly through an electoral college. The Chairman observed that such was not the thinking of people in Jamaica, to which Professor Albert opined that there was a difference between reality and perception. The Chairman, in response, stated that people did not want to adjust their perception against reality and noted that many were of the view that when there was an election for the President of the United States, everyone went to the polls. She noted the importance of effectively communicating, to avoid the spread of misinformation.

8.2.39. Professor Albert highlighted other examples where the public did not choose their President, such as India, where the public acted through their elected representatives and Switzerland where the public acted through a referendum. The latter, he further highlighted, was different from the reality in Jamaica.

Dr Elaine McCarthy joined the meeting at 1:15pm

8.2.40. The Chairman stated that there must be sound policy on which a legal and constitutional framework was built. A mixed and balanced system did not usually turn into something else; instead, it remained stable, unless the leaders became corrupt. She noted that where the Committee started need not be where the process ended, because in time, persons may want an executive presidential system. At the moment, pursuing such a system risked destabilising the country, a matter regarded as too great, especially since Jamaica sought to stabilise its economy. She thanked Professor Albert for bringing the discussion together with a certain degree of clarity, in addition to that outlined by Dr McKoy.

8.2.41. Professor Albert added that while it was true that the process of constitutional change should focus on local needs, norms and politics, the reform was taking place in a larger global context. There was a thirst for people to be involved in the

selection of their leaders, an impulse which was felt around the world. He noted that people lived in an age of popular participation across democracies whether through referendum, public consultations or by any other means and people were asking to be heard. He observed that it was not unique to Jamaica and having regarded the challenge faced by the Committee to address the concerns of the public, he noted that while it did not have to be a direct vote, there were other options available.

8.2.42. Mr Hylton stated that the discussion was useful and observed that there was an acceptance that the Committee need not have all the answers. He noted that while Members deliberated and examined the issues, answers to some of the questions may be found elsewhere. He stated that it was sufficient for the Committee to communicate that it recognized the issues and spent some time deliberating them, but encountered difficulty in determining an agreed and satisfactory response but was nevertheless able to suggest a number of options.

8.2.43. The Chairman stated that the Committee would formulate alternatives and acknowledge that that was the furthest the discussion could be taken.

8.3. QUALIFICATION FOR THE OFFICE OF THE PRESIDENT

8.3.1. Mr Hylton opened the discussion by stating that the person should be a Jamaican to which the Chairman indicated that there was agreement on the point, but Members did not settle the issue of whether such qualification should include Jamaican by birth or through the process of descent or naturalisation.

8.3.2. Mr Hylton, in response, indicated that it would be desirable that the President be born in Jamaica. He also recalled discussion about dual citizenship which brought up the issue of allegiance.

8.3.3. The Chairman stated that if the office was to be symbolic of national identity, the President could not hold another citizenship. Mr Hylton, in response, stated that if the person had another citizenship by virtue of naturalisation, he or she should be required to give it up.

8.3.4. Mr Small stated that Members should be careful in the wording used to establish the criteria. He highlighted the Constitution of the USA which required that a person must be born in the USA to hold the office of the President. He stated that

the President should be a citizen of Jamaica and if it was the intention of the Committee to include *at birth* then it should be inserted into the Constitution. He, however, noted that there were many circumstances where persons born outside of Jamaica to two Jamaican parents were not any less Jamaican than someone born in Jamaica and therefore the Committee should be surgically precise in its use of language on the matter.

Dr Barnett physically joined the meeting at 1:34pm

8.3.5. Ambassador Meade in agreeing with Mr Small noted that someone born in Jamaica to non-Jamaicans could be deemed eligible for the Presidency in the absence of other requirements such as residency. He recalled discussions to remove the eligibility of Commonwealth citizens, to only have Jamaican citizenship and regarded it as a major step. He noted that having removed such reference, he would be comfortable in just stating a Jamaican with further qualifiers such as residency. He recalled that Members spoke about residency, referencing 5 years and that such person should also not swear allegiance to another country.

Lunch Break at 1:42pm

8.3.6. The Chairman invited Members to recall the discussion around whether there would be any qualification on the type of Jamaican nationality i.e. by birth, descent or naturalisation. She noted that two views were shared, one by Mr Hylton who suggested Jamaican at birth and the other by Mr Small and Ambassador Meade who both countered by highlighting that issues may arise that ran contrary to the spirit of what was to be achieved.

8.3.7. Dr Barnett suggested three criteria:

- 1) person must be a Jamaican citizen by place of birth or heritage;
- 2) Person must have been ordinarily resident in Jamaica for 10 of the last 15 years; and
- 3) Person must not be under a duty of allegiance to a foreign state by his own and not other acts.

- 8.3.8.** The Chairman expressed agreement with the framing of the residency requirement, to which Dr Barnett indicated that it was the most flexible option that achieved the objective, without a technical disqualification.
- 8.3.9.** Ambassador Meade expressed support for Dr Barnett’s proposal and highlighted that the example of a person renewing his or her passport upon becoming an adult would be regarded as an act of their own.
- 8.3.10.** The Chairman recalled discussions around Jamaican citizenship as the qualifying citizenship and invited Members to consider Professor Albert’s submission that regarded Jamaicans not only as Jamaicans on the island but global Jamaican citizenship which covered descent and took into account the migratory nature of Jamaican people. She stated that the Committee should not disqualify those Jamaicans.
- 8.3.11.** The matter of age was raised by the Permanent Secretary, Mr Roberston and the Chairman invited Mr Godfrey to share the provision of the Constitution of Singapore which included age as a criteria. He stated that Article 19(2) of that Constitution provided:

‘A person shall be qualified to be elected as President if he –

- (a) Is a citizen of Singapore;*
- (b) Is not less than 45 years of age;*
- (c) Possesses the qualifications specified in Article 44(2)(c) and (d)*
- (d) Is not subject to any of the disqualifications specified in Article 45*
- (e) Satisfies the Presidential Elections Committee that he is a person of integrity, good character and reputation;*
- (f) Is not a member of any political party on the date of his nomination for election; and*
- (g) Satisfies the Presidential Elections Committee that –*
 - i. He has, at the date of the writ of election, met either the public sector service requirement in clause (3) or the private sector service requirement in clause (4); and*

- ii. *The period of service counted for the purposes of clause (3)(a), (b), or (c)(i) or 4(a)(i) or (b)(i) or each of the 2 periods of service counted for the purposes of clause (3)(d) or 4(c), as the case may be, falls partly or wholly within the 20 years immediately before the date of the writ of election.*

8.3.12. Article 19(3) further provided that *the public sector service requirement is that the person has –*

- (a) *Held office for a period of 3 or more years as Minister, Chief Justice, Speaker, Attorney-General, Chairman of the Public Services Commission, Auditor-General, Accountant-General or Permanent Secretary;*
- (b) *Served for a period of 3 or more years as the chief executive of an entity specified in the Fifth Schedule*
- (c) *Satisfied the following criteria:*
 - i. *The person has served for a period of 3 or more years in an office in the public sector;*
 - ii. *The Presidential Elections Committee is satisfied, having regard to the nature of the office and the person's performance in the office, that the person has experience and ability that is comparable to the experience and ability of a person who satisfies paragraph (a) or (b); and*
 - iii. *The Presidential Elections Committee is satisfied, having regard to any other factors it sees fit to consider, that the person has the experience and ability to effectively carry out the functions and duties of the office of President; or*
- (d) *Held office or served, as the case may be, for a first period of one or more years in an office mentioned in paragraph (a), (b) or (c) and a second period of one or more years in an office mentioned in paragraph (a), (b) or (c) and the 2 periods add up to 3 or more years.*

8.3.13. Article 19(4) provided that *the private sector requirement is that the person has –*

- (a) *Served as the chief executive of a company and –*

- i. *The person's most recent period of service as chief executive (ignoring any period of service shorter than a year) is 3 or more years in length;*
- ii. *The company, on average, has at least the minimum amount in shareholders' equity for the person's most recent 3-year period of service as chief executive;*
- iii. *The company, on average, makes profits after tax for the entire time (continuous or otherwise) that the person served as the chief executive officer of the company; and*
- iv. *If the person has ceased to be the chief executive of the company before the date of the writ of election, the company has not been subject to any insolvency event from the last day of his service as chief executive of the company until –*
 - A. *The date falling 3 years after that day; or*
 - B. *The date of the writ of election,*

Whichever is earlier, as assessed solely on the basis of events occurring on or before the date of the writ of election;

(b) Satisfied the following criteria:

- i. *The person has served for a period of 3 or more years in an office in a private sector organisation;*
- ii. *The Presidential Elections Committee is satisfied, having regard to the nature of the office, the size and complexity of the private sector organisation and the person's performance in the office, that the person has experience and ability that is comparable to the experience and ability of a person who has served as the chief executive of a typical company with at least the minimum amount of shareholders equity and who satisfies paragraph (a) in relation to such service; and*
- iii. *The Presidential Elections Committee is satisfied, having regard to any other factors it sees fit to consider, that the person has the experience and ability to effectively carry out the functions and duties of the office of President; or*

(c) Subject to clause (5), served for a first period of one or more years in an office mentioned in paragraph (a) or (b) and a second period of one or more years in an office mentioned in paragraph (a) or (b), and the 2 periods add up to 3 or more years

- 8.3.14.** Article 44(2)(c) and (d) which spoke to Qualifications for membership of Parliament provided that ‘*a person shall be qualified to be elected or appointed as a Member of Parliament if his name appears in a current register of electors and he is resident in Singapore at the date of his nomination for election and has been so resident for periods amounting in the aggregate to not less than 10 years prior to that date*’, respectively.
- 8.3.15.** The Chairman noted that integrity and probity stood out for her, while Mr Small noted that the provisions in the Singapore Constitution were very specific to the political culture in Singapore and cautioned using it for guidance. He further noted that they had a very austere criminal law and other procedures that would not be tolerated in a democracy. He referred to the written work by Prime Minister Lee Kuan Yew titled “From Third World to First: The Singapore Story: 1965 – 2000” where the author approached it on the basis that there was an assumption coming from the Chinese dominance and that they sought to have a state not dominated by Confucianism. He suggested that Members not use Singapore as the litmus test for Jamaica’s situation, because it was too far removed and further recommended a simpler criterion, rather than the smorgasbord listed in the Constitution of Singapore.
- 8.3.16.** The Chairman agreed that provisions should never be adopted from elsewhere without having regard to their own unique set of circumstances and context. At the same time, she acknowledged that the public made observations and wondered why such a system could not work in Jamaica.
- 8.3.17.** Dr Barnett noted that that was an area in which Jamaica enjoyed success and therefore cautioned against experimenting with other jurisdictions. On the matter of integrity, he stated that a Prime Minister who nominated a person without integrity would result in a condemnation.

- 8.3.18.** The Chairman then suggested that the proposed qualification for membership in Parliament be added to Dr Barnett's proposed three criteria. Mr Small suggested that an age criterion be included and opined that 35 was neither too high nor too low.
- 8.3.19.** Mr Hylton, in agreement, stated that there may be an exceptional person who comes to office with extraordinary skills and noted that it was not likely to have the range of experiences required of the office at 21 or 25 years of age.
- 8.3.20.** Mr Small stated that having regard to the responsibilities of the president and the criteria that such person be a symbol of national unity, one would have achieved the kind of recognition in society by that age. He also noted that 35 would dispel criticisms that the Committee was casting an ageist exclusion.
- 8.3.21.** Dr McCarthy observed that having reflected on the proposed age, there was a range of experiences that was required for the office holder.
- 8.3.22.** Dr Spence expressed ambivalence on the matter of age and indicated that she would support the majority sentiment. Dr McCarthy said that at 35 years of age, people would have a certain degree of experience to which Mr Hylton stated, in support, that an age criterion allowed for the person to be exposed and have some experience.
- 8.3.23.** Ambassador Meade noted that there were some who, on the face of it, checked certain boxes but did not necessarily display the characteristics expected of a Head of State, whereas, there were some who checked no box but displayed characteristics beneficial to the country. He highlighted the President of Ukraine who studied law at university but went into an acting career and noted that stipulating certain criteria may exclude people whose character allowed them to function well.
- 8.3.24.** The Chairman noted that some of the provisions set out in the Constitution of Singapore could provide the rationale for an age criterion. She then stated that Members were converging on Jamaican citizenship by descent or birth; ordinarily resident in Jamaica for at least 10 of the last 15 years; must not be by his own act pledge allegiance and be qualified for election to the Parliament.
- 8.3.25.** Mr Small suggested that Jamaican citizen by birth would be more precise than by descent as someone could claim citizenship through a grandparent. He explained

that such was far more direct, both in terms of the thought and philosophy behind the residential qualification.

- 8.3.26.** Ambassador Meade enquired whether naturalized citizens were consciously being excluded to which the Chairman responded in the affirmative.
- 8.3.27.** The Chairman pointed out that citizenship by descent under Jamaican law was unlimited. Mr Hylton then suggested that limits be imposed on the scope of that citizenship, more specifically the degree of descent. The Chairman suggested a limit of three generations.
- 8.3.28.** Professor Albert added that the standard should be a bit more onerous for eligibility to the Office of President because he or she would be representing the nation. He recalled discussions around eligibility in the House and points raised about allegiance and noted that if anyone should have unquestioned allegiance, it should be the President.
- 8.3.29.** Mr Small opined that the Constitution should include a very simple statement of entitlement to become the President. He gave the example of a person born prematurely to two Jamaican nationals who happen to be abroad at the time, who would be entitled to Jamaican citizenship in those circumstances.
- 8.3.30.** The Chairman agreed that in such an example, the child would be entitled to citizenship because the Constitution specified such at Chapter II.

8.4. TERM LIMIT

- 8.4.1.** The Chairman recalled a previous suggestion of seven to nine years and Mr Hylton stated that the objective was to ensure that there was no overlap with a change in administration. Acknowledging the stature of the office, Mr Hylton noted as a relevant factor that the officer holder could serve for two terms.
- 8.4.2.** The Chairman recalled a comment made by Dr Barnett whereby he expressed difficulty in understanding the need to change someone who performed well and who executed the functions of the office well. Mr Hylton, in response, stated that he found it more palatable if there was some form of term limit involved as it would convey the sense that it was not a permanent position.
- 8.4.3.** Dr McCarthy invited Members to consider the effect of an extension of the life of Parliament on the proposed 7-year term. Mr Small added that the Committee could

not rationally consider limiting the tenure of the President of the Republic in terms of the life of Parliament until and unless it was prepared to recommend fixed election dates. He observed that the activity on the road left persons in doubt as to whether it was preparatory only for local government elections or for a general election as well. He recalled a statement made by Senator Finson that the cost of preparing for a parish council election was the same as a general election and a general election following local government elections would achieve some amount of savings.

- 8.4.4.** The Chairman agreed that if the Committee were to be consistent, it needed to think about the outer limit of the life of Parliament in relation to the term limit.

8.5. DISQUALIFICATION OF PRESIDENT

- 8.5.1.** Matter deferred until next meeting.

9. REPORT FROM THE STATE AFFAIRS SUB-COMMITTEE

- 9.1.** The Matter was deferred until the next meeting.

10. ANY OTHER BUSINESS

- 10.1.** Mr Robertson requested an updated schedule of meetings to which the Chairman responded that there would be a few more meetings. She also invited Members to assume that there would be a meeting in the week of November 4th unless communicated otherwise.

11. DATE AND TIME OF NEXT MEETING

- 11.1.** The date of the next meeting was tentatively scheduled for November 8th, 2023 at 10:15am.

12. ADJOURNMENT

- 12.1.** There being no other business, the meeting was terminated at 4:16pm on a motion by Mr Anthony Hylton and seconded by Dr Elaine McCarthy.