



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

33rd Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: April 3, 2024

Time: 9:30am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Remarks by the Chairman
7. Confirmation of Minutes
 - 32nd Meeting of the Constitutional Reform Committee
8. Matters Arising from the Minutes
9. Proposed Schedule of Activities going forward
10. Report of Drafting Strategy Sub-Committee
11. Review of Draft Report of Constitutional Reform Committee
12. Public Engagement and Communication Strategy going forward
13. Any Other Business
 - Requests from Jamaica Coalition for Healthy Society and Colonel Richard Currie
14. Date and Time of Next Meeting

15. Adjournment

ATTENDEES:

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Permanent Secretary, Office of the Prime Minister)
- Dr Derrick McKoy, CD, KC (Attorney General of Jamaica)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives) *via video link*
- 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)
- Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations)
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Dr David Henry (Wider Society – Faith-Based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- 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 Judith Grant, Chief Parliamentary Counsel
- Mrs Janelle Miller Williams, Senior Director, Legal Education
- Mrs Cheryl Bonnick Forrest, Senior Director, Strategic Planning, Policy, Research and Performance Management (Actg.)
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Ms Julia Wedderburn, Senior Legal Education Officer
- Ms Nastacia McFarlane, Director, Corporate Communications and Public Relations
- Mr Makene Brown, Legal Officer

- Ms Shadane Facey, Strategic Planner
- Ms Yaniek Douglas, Legal Education Officer (Actg.)
- Ms Christal Parris-Campbell, Assistant Parliamentary Counsel

1. CALL TO ORDER

- 1.1. The meeting was called to order at 10:35am by the Chairman, the Honourable Marlene Malahoo Forte when quorum was achieved.

2. PRAYER

- 2.1. Prayer was led by Dr David Henry.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE/LATENESS

- 4.1. An apology for lateness was tendered on behalf of Mrs Laleta Davis Mattis who indicated that she had a class at 10:00am.

5. CONFIRMATION OF AGENDA

- 5.1. The Chairman suggested that a request for audience from the Jamaica Coalition for a Healthy Society (JCHS) and Mr Richard Curry, Colonel and Chief of the Accompong Maroons be itemised under “Any Other Business.”
- 5.2. The amended Agenda was confirmed on a motion raised by Ambassador Rocky Meade and seconded by Dr Elaine McCarthy.

6. REMARKS BY THE CHAIRMAN

- 6.1. The Chairman welcomed Members back and expressed hope that the break did everyone well. She noted that it was the first time the Committee was meeting at the Corporate Office of the Ministry of Legal and Constitutional Affairs at 1a Fairway Avenue, although the space

was not fully built out. She indicated that the open concept was a reflection of the work in progress.

- 6.2.** The Chairman went on to explain that the meeting was preceded by other meetings of the Secretariat, the Drafting Strategy Sub-Committee and the Public Engagement and Communications Sub-Committee. She pointed to the draft Reports of the Drafting Strategy Sub-Committee and the CRC itself containing the recommendations for adoption and review, respectively. She advised that the draft CRC Report was to be further revised for form and clarity but the recommendations would essentially be the same as set out in the draft. She impressed upon Members the exercise of prudence with external communication of the recommendations. That although they were not a secret, it was of vital importance that they be settled and approved by the Committee before communicating them externally. She recalled examples in the past, where confusion reigned when matters still under deliberation made their way into the media and public domain. She reminded that the Committee operated in choppy waters and concerns continue to be raised. Therefore Members were encouraged to do their best to respond credibly and orderly to those concerns. She then invited comments from the Members.
- 6.3.** Mr Small stated that when addressing the matter of the draft Report, the Committee should dedicate some time to consider the impression that may be left, among members of the public, if the Report was published without reference to the apex court. He was of the view that if such was excluded from the draft report it would distort a significant part of the work and would likely be controversial.
- 6.4.** The Chairman noted Mr Small's remarks.

7. CONFIRMATION OF MINUTES

- 7.1.** The Minutes of the 32nd Meeting of the Constitutional Reform Committee held on January 31st 2024 were corrected and confirmed on a motion by Dr Nadeen Spence and seconded by Dr David Henry.

8. MATTERS ARISING FROM THE MINUTES

- 8.1. Mr Small requested that the Chairman provide an update on the proposed amendment of section 61 of the Constitution which provided for the words of enactment. The Chairman and Dr Barnett indicated that they also intended to raise the issue, as a matter arising.
- 8.2. Dr Barnett expressed concern that a Bill was presented without reference to the Committee and that Members were ignored on a matter that fell distinctly within the Committee's Terms of Reference (ToR).
- 8.3. Mr Small stated that the issue had been the subject of public commentary which reflected poorly on a Committee that was established by the Cabinet to deal with the question of amendments to the Constitution. He opined that the Bill to amend the Words of Enactment that went before the House was intimately related to aspects of the Constitutional reform process in which the public expressed a great deal of interest and with which they have come to expect that the Committee would have been engaged in. He stated that it therefore required a frank discussion among Members as it vored heavily on how the work of the Committee was viewed in the public domain.
- 8.4. Senator Scott-Mottley, in referencing the Minutes of the last meeting, expressed that she saw no support from the Committee for the Bill which was tabled and noted the reservations that were expressed. She suggested that there was a dissonance between the Committee and the Government, which was of concern. She stated that the success of the Committee was based on frank discussions, openness and trust.
- 8.5. Dr McKoy stated that he had difficulty in identifying the dissonance or controversy between a report that was yet to be made and the Government's position. Senator Scott-Mottley, in response, stated that she was addressing the fact that there was a Committee within which views about the tabling of the Bill were expressed. She observed an overwhelming view that the Bill was not necessary, at this time.
- 8.6. Dr Barnett stated that his objection was because it would have been a poor reflection on him by putting him at a disadvantage in the public domain, given his responsibility, as a Member of the Committee, for making recommendations on constitutional reform. He expressed dissatisfaction with putting a Constitutional Amendment Bill before Parliament without the knowledge of the Committee. That, he regarded, was bad strategy.
- 8.7. Dr Spence recalled a conversation where it was established that not every matter fell within the purview of the Committee. Senator Scott-Mottley stated that there was no agreement

from any Member of the Committee and if the Government decided to proceed regardless, common courtesy ought be extended.

- 8.8. Dr Spence enquired whether the protestation of the matter was fitting based on its level of importance. She recalled that the discussion of the issue came to a standstill and cautioned the imposition of road blocks to the work being done. Senator Scott-Mottley enquired whether it would not have been common courtesy to inform Members before the Bill was tabled. Dr Spence stated yes, but only if the product was a part of the Committee's work. She expressed that the ToR delineated the work to be done and queried whether every single issue put to the Cabinet or the Parliament on Constitutional Reform should be put to the Committee first.
- 8.9. Senator Scott-Mottley said the matter was brought to the Committee for its opinion and therefore it would be courteous to have been informed of its tabling. Dr Spence enquired whether the lack of notice about the tabling of the Bill should be a road block to the work done.
- 8.10. The Chairman, having regard for the concerns raised, invited Members to examine paragraphs 10.3 of the Minutes of the last meeting (of January 31, 2024) which noted that the conversation around the proposed amendment concluded on the point that the issue was one of timing. See paragraphs 9.24, 9.29 and 10.3 for example. As reflected in the confirmed Minutes, notwithstanding the differences in opinions, Members were agreed that the Bill would best be tabled closer to the tabling of the substantive Bill with matters in Phase 1. She recalled that on February 6, 2024, the day the Bill was tabled, she wrote to Members, via the Committee's WhatsApp Group as follows:
- 8.10.1. " Dear Colleagues, the Bill to amend section 61 of the Constitution to provide for new Words of Enactment was tabled in the House today without any instruction or participation from me. I was absent from the Parliament. I had advised the Cabinet that the Bill would not be tabled until the Report from the Committee was prepared and presented and the substantive Bill ready. The House Leader said the Clerk advised that the Bill had to be carried over. However I am investigating how it got to Parliament in the first place because up to yesterday it was not printed. This turn of events is truly regrettable."

- 8.11. The Chairman again apologised and stated that the points raised were understood clearly. If the intention was to table a Bill contrary to what was agreed, it would have been courteous to inform Members. However, she reiterated that it was never the intention to table the Bill at the time. There was an unfortunate turn of events. She stated that the Minutes of the Cabinet Meeting would accurately reflect that the Bill was not to be tabled, however it went to the House in error. She informed everyone that the Bill was not carried over into the new term and reiterated that she would not have tabled the Bill contrary to what was agreed among Members.
- 8.12. Dr Barnett stated that while he was not casting blame on the Chairman, there was no rational basis given as to how it happened. He also made reference to the inclusion of the proposed amendment to the Words of Enactment in the Throne Speech of the Governor-General.
- 8.13. The Chairman expressed understanding of the hurt feelings and how the matter could have been interpreted, but the outcome was not what was intended. She also stated that the reference in the Throne Speech was an accurate reflection because the Ministry had to report on its work on the legislative programme. She stated that neither the Minister nor Ministry represented the entirety of Government, but that both were part of a larger eco-system.

Coffee Break at 12:02pm

Meeting resumed at 12:26pm

- 8.14. The Chairman invited Professor Albert to weigh in on the matter.
- 8.15. Professor Albert indicated that having followed the conversation, he wondered whether it would be possible to pause the discussion on the most immediate matter and move to the Draft Report of the Drafting Strategy Sub-Committee of which himself, the Chairman, Dr McKoy, Senator Scott-Mottley and Dr Barnett were involved in. He commended the brevity of the Report and expressed that its presentation and adoption would allow for swift progress.
- 8.16. The Chairman enquired whether Members were amendable, to which all agreed. Ambassador Meade expressed support of Professor Albert's recommendation but queried whether the discussion needed to be suspended or the record could indicate that there were some Members who voiced concerns and offered explanations.
- 8.17. The Chairman summarised that concerns were raised against the backdrop that it was agreed that the Bill to amend the Words of Enactment would not be tabled until the Report from the

Committee was prepared and presented. Unfortunately, the Bill was tabled through no act of the Chairman, as Minister with responsibility. The unfortunate turn of events was communicated to the Committee on the day in question.

9. PROPOSED SCHEDULE OF ACTIVITIES GOING FORWARD

- 9.1. The proposed activities and timeframes are appended to the Report to be considered next. If there was no contrary view both could be taken together. No contrary view was expressed.

10. REPORT OF DRAFTING STRATEGY SUB-COMMITTEE

- 10.1. The Chairman then stated that Agenda items 9 and 10 would be taken together as the proposed schedule of activities was captured within the Annex of the draft sub-committee's draft Report. She then invited Dr Barnett to present the recommendations set out in the Report.
- 10.2. Dr Barnett stated that the report presented the results of an examination of the recommendations of the Committee. The sub-committee sought to identify the most effective method of implementing those recommendations on which there was agreement. In order to Jamaicanise the Constitution, it was recommended that the Order in Council be revoked pursuant to the legislative powers of Parliament and that the Constitution, as contained in the Second Schedule be preserved.
- 10.3. The sub-committee further recommended the inclusion of a Preamble which, according to Dr Barnett was more important for gaining popular support, as a matter of the ideals that would appeal to the people, as expressions of their feelings, aspirations and patriotism. He noted that he previously circulated a questionnaire on the matter of the Preamble and invited Members to revisit it.
- 10.4. It was also recommended that the Constitution be restructured to shift the interpretation provision from Chapter I to Chapter X and amendments should be made to the Interpretation Act in relation to the general interpretation of the Constitution. He pointed out that the Constitution was governed by the UK instrument, UK Interpretation Act, 1889 which was outdated. While there was need to look at the adoption of an interpretation provision, having regard to the existence of the Jamaican Interpretation Act, such an adoption required great

care and a lot of work because every provision would have to be examined to identify any possible implication.

- 10.5. On the matter of the recommendations in relation to the treatment of Commonwealth citizens, it was decided that provision be made empowering Parliament to confer various privileges on CARICOM citizens by way of ordinary legislation.
- 10.6. He also noted that the sub-committee considered and proposed a timeline of activities that preceded the tabling of the constitutional reform Bill.
- 10.7. Mr Small enquired whether the sub-committee envisaged that there would be a two-step approach to amending the Constitution; namely the revocation of the Order in Council followed by the incorporation of the recommendations made by the Committee.
- 10.8. Dr Barnett clarified that the new constitutional instrument would contain those matters on which there was consensus and which could be done at the same time. Mr Small then enquired further whether there would be two separate pieces of legislation, to which Dr Barnett informed that it would be one Bill and one Referendum.
- 10.9. At the end of a robust discussion of the issues, the Chairman thanked Dr Barnett for his presentation of the recommendations of the sub-committee. The depth of the discussion seemed to have brought clarity, which ensured that Members were on the same page. She stated that the work would continue on other issues for which changes were required.
- 10.10. The Report of the Drafting Strategy Sub-Committee, with the proposed timelines and activities was then adopted by the Committee.
- 10.11. Dr Barnett then went on to express concern that the Leader of the Opposition stated that he would oppose any constitutional change if the matter of the court was excluded. That, he believed, placed at risk the success of the work, unless the Government and Opposition were able to agree to some solution, or a method on how to solve the problem. He recalled his previous suggestion to let the people decide through the inclusion of another question on the referendum ballot.
- 10.12. Senator Scott-Mottley stated that the issue had not been debated. She explained that she understood that the Prime Minister would meet with the Committee to explain the position of the Jamaica Labour Party (JLP). She stated that the Opposition did not know what the divergence or disagreements were. She noted that the Members of the Committee came to the table with different views on matters and after discussion arrived at consensus. There

had been no discussion around the Government's position. She invited Members to recall the sentiments of (former Prime Minister the Most Hon.) Edward Seaga, whose thought was to reconsider the issue after five years from the establishment of the Caribbean Court of Justice (CCJ).

- 10.13. Dr Barnett stated that the Committee was not in a position to solve such a problem. He, however, suggested that the political leaders be formally asked to inform the Members of their positions. Senator Scott-Mottley, in agreement, expressed that it was a simple thing to do. She further stated that having regard to the fact that the life of the Parliament was nearing its end, the conversation was important.
- 10.14. Dr Spence enquired whether that was an issue to be solved by the Committee. Senator Scott-Mottley reminded Members that the Committee was established to provide expert guidance and oversight to the Government and the people of Jamaica during a phased constitutional reform process to, *inter alia*, implement the recommendations of the 1995 Joint Select Committee on Constitutional and Electoral Reform (JSCCER) on which consensus remained, while helping to build consensus where it had eroded or was non-existent on other related matters. On the matter of implementing the recommendations, she opined that the vocal part of the public was resigned from it as many were not interested in what took place in 1995 because they did not participate in that process. She stated that she was a part of the Committee because she wanted a successful outcome.
- 10.15. Dr Spence enquired of the powers of the Committee such that it would insist that the issue of the Final Court be resolved within the Committee. She recalled the phased work of the Committee and noted that it was agreed, that the matter of the final court would not be dealt with at this time, as it was not a deeply entrenched provision and did not require a referendum. She then queried whether Senator Scott-Mottley was merely suggesting that a meeting be convened with both leaders, to which Senator-Scott-Mottley responded yes.
- 10.16. Dr McKoy opined that the job of the Committee was to give advice. He stated that Members could not tell how Parliamentarians would respond to the issue and that the Committee should focus on what it was charged to do.
- 10.17. Senator Scott-Mottley stated that there was dissonance as to why the Committee was established and the approach taken by the government on some matters but went on to express that she was present for a successful outcome for the work.

- 10.18. Dr Barnett stated that constitutional reform in the Jamaican context was predicated on a certain degree of consensus. A special majority was provided for in a two-party system and substantive change required consensus and the support of the people. If the political parties were not agreed, it was extremely difficult to achieve the desired change since a consensus would be necessary.
- 10.19. Dr Spence stated that Members need not agree on all points. She opined that the Committee should be willing to allow all thoughts and ideas to contend recognizing that some matters would not achieve consensus. That was reflected in the records.
- 10.20. Dr Barnett, in response, stated that the division was not within the Committee.
- 10.21. The Chairman stated that she observed that whenever the Committee was being focussed to achieve progress, a particular path was always taken to distract from the work. She said that she understood that the tension between the political parties would be present, as was expected at this stage of the life of the Parliament. She expressed that the representatives nominated by the Leader of the Opposition did justice to their instructions, as the matter of the CCJ was put on the table at all relevant points. She further stated that she considered it reasonable to ask that the conversation on the final court be had at the highest level. She reminded Members that the phasing of the work was agreed by the Committee. She also indicated that because of where she was positioned politically, she understood the sentiment of the Opposition. While there would be tension and contrary views expressed, the Committee was agreed that it would focus on the matters on which there was consensus in order to advance the work. She encouraged Members to continue the work that was within its powers and hope that those who also had a role to play would do their part. She reassured Members that she would faithfully report the concerns, as she had always done. She then stated that she would report the request for another meeting to be convened between the political leaders.
- 10.22. Dr Barnett stated that there should be a focus on the matters that stood in the way of success and reminded Members of their duty and obligation to see whether a solution could be identified.
- 10.23. Dr McKoy stated that a stumbling block was identified. He opined that the Leader of the Opposition may change his mind and the Parliament would decide what it wished to address. The Committee, he believed, could only do the best that it could; and while there may be an

impediment which could be overcome, Members needed to appreciate that it was not in their hands.

10.24. Mr Small enquired whether the Leader of the Government was prepared to state a position on the apex Court in the foreseeable future to which the Chairman responded that the position of the Government was that the issue required a full debate of all the merits. The major question was when that debate would take place and that, she believed, could commence in the second phase of the work, after the tabling of the reform Bill. Mr Small, in response, acknowledged the consistent sincerity of the Chairman but stated that his concern related to the decision to phase the work before any consultation between the Opposition and the Government and before the Committee was established. The Chairman stated that in the scheme of things, the Government took the lead and the policy approach taken was a phased approach. She reminded Mr Small that the matter was properly considered by the government and the rationale for the phased approach provided in the ToR, to which the Committee agreed.

10.25. Dr Henry asked what was the anticipated timeline for the commencement of the second phase since some sections of the public were of the view that there would not be a second phase.

10.26. Dr McCarthy queried whether an independent party could be charged to bring the political leaders to discuss the matter of the final court, bearing in mind the current trajectory of the work. The Chairman noted that it was a suggestion worthy of consideration.

10.27. Mrs Davis Mattis stated that the Committee had a clear ToR. Dr Barnett, in response, indicated that the ToR was unclear. Mrs Davis Mattis stated that where there was disagreement they needed to be clarified. She further stated that the Committee should conclude its work and indicate, where relevant, that some matters were to be resolved.

10.28. Ambassador Meade stated that his impression was that the phasing of the work was not without consideration and merit, as from a practical standpoint, the work was to be scheduled in some way. There was no just way in deciding which issues were to be afforded greater significance. If matters to be dealt with at Phase 1 were subjectively determined, stakeholders would raise an issue. He queried whether success would be defined only after persons raised agreement or would the Committee look objectively at issues based on consensus. He stated that the options put forward by Dr Barnett whereby either party could

change its position, both parties could agree, or the matter be put to the people should be indicated for resolution by the political directorate.

Lunch Break at 1:47pm

Meeting resumed at 2:47pm

10.29. The Chairman enquired again whether Members were accepting the recommendations from the sub-Committee to which all responded favourably. She then advised that the report would be edited in the usual ways, to facilitate signing at the next meeting of the Committee.

11. REVIEW OF DRAFT REPORT OF CONSTITUTIONAL REFORM COMMITTEE

11.1. The Chairman noted that the report commenced with the establishment of the Committee and its ToR. It outlined the composition of the Committee and lists the number of public education/engagement sessions held to date. It further outlined the various sub-committees that were established along with their mandates. She recommended that the reports of the sub-committee be appended to the Report.

11.2. The Chairman stated that the section on the patriation of the Constitution would have to be redone and informed by the recommendations of the Drafting Strategy Sub-Committee.

11.3. She then outlined the sections of the deeply entrenched provisions which were considered: Section 2 which provides for the supremacy of the Constitution; section 34 which spoke to the establishment of the Parliament; section 35 which refers to the Senate; section 39 which outlined the qualifications for membership in the Parliament; section 64 providing for the prorogation and dissolution of Parliament; section 68(1) which provides for the executive authority of Jamaica.

11.4. She then went to the recommendations on the establishment of the office of the President, setting out the type of president, process of selection, qualifications, term of office, powers, disqualification, immunities, vacancy and resignation.

11.5. Review of the other recommendations would continue at the next meeting.

12. PUBLIC ENGAGEMENT AND COMMUNICATION STRATEGY GOING FORWARD

- 12.1.** Dr Spence, at the invitation of the Chairman, informed Members that the Public Engagement and Communication Sub-Committee met on Tuesday, April 2, 2024 virtually to discuss some of the challenges faced as they related to communicating its intention and work. She stated that Members considered some of the misgivings in the public domain, how they were addressed or were not addressed and how they should be dealt with going forward. She advised that issues related to the work of the Ministry were extensively discussed, as detailed reports of the work undertaken were presented. It was noted that the Committee was not aware of the work being done on the ground by the Ministry to advance the reform agenda, but that the matter could be resolved by consistent reporting to the Committee. Reference was made to the timeline proposed by the Drafting Strategy Sub-Committee, which was accepted.
- 12.2.** Another meeting of the sub-committee was scheduled for Thursday, April 4, 2023 from 3pm to 5pm at the Ministry of Legal and Constitutional Affairs' Corporate Office.
- 12.3.** Dr Barnett stated that the Committee was on the verge of the most critical part of its activities and encouraged Members to be prepared for the conversations. He recommended that a strategy be developed to create the best atmosphere for the presentation of the Report.

13. ANY OTHER BUSINESS

- 13.1.** The Chairman recalled itemising a request for audience from the Jamaica Coalition for a Healthy Society (JCHS) and Colonel Richard Currie. She read the correspondence received from both stakeholders and invited perspectives from Members.
- 13.2.** Mr Small suggested that Members be apprised of the legal situation regarding the Maroons ahead of any meeting with them, so as to not approach the situation blindly.
- 13.3.** Regarding the JCHS, the Chairman invited Members to think about it for discussion at the next meeting.

14. DATE AND TIME OF NEXT MEETING

- 14.1.** The Chairman informed Members that the meeting would reconvene on Friday, April 5th 2024 at 10:00am.

15. ADJOURNMENT

15.1. There being no other business, the meeting was adjourned at 4:09pm on a motion by Dr David Henry and seconded by Dr Nadeen Spence.