



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

34th Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: April 5, 2024

Time: 10:30am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Confirmation of Minutes
 - a. 33rd Meeting of the CRC
7. Review of the Draft Report of the Constitutional Reform Committee
8. Any Other Business
9. Date and Time of Next Meeting
10. 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) *via video link*
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition) *via video link*
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations) *via video link*
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Dr David Henry (Wider Society – Faith-Based) *via video link*
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- 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

- 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 Nastacia McFarlane, Director, Corporate Communication and Public Relations
- Mr Makene Brown, Legal Officer

1. CALL TO ORDER

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

2. PRAYER

- 2.1. Prayer was led by Dr Elaine McCarthy.

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 the Hon Lloyd Barnett, Dr Derrick McKoy and Ambassador Rocky Meade.
- 4.2. Apology for absence were received from Senator Donna Scott-Mottley.

5. CONFIRMATION OF AGENDA

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

6. CONFIRMATION OF MINUTES

- 6.1. At the request of the Chairman and with the approval of Members, the confirmation of the Minutes of the 33rd Meeting held on April 3, 2024 was deferred until the next meeting.

7. REVIEW OF THE DRAFT REPORT OF THE CONSTITUTIONAL REFORM COMMITTEE

- 7.1. The Chairman expressed regret that so many Members would be at a disadvantaged from not having the hard copy of the draft Report to hand, because they were present virtually. She reiterated how unfortunate it was that steps had to be taken to reduce the risk of leaking the said Report before it was finalised and the recommendations adopted. Members were well aware of a leak of a draft document, which prompted the current action. It was her expectation that everyone, except Prof. Richard Albert, would have been present in person, based on what was agreed at the last meeting. She went on to remind Members that the Report previously shared was still in rough draft, which made it even more important to guard against a leak, although the recommendations were no secret. The Report had to be restructured and some recommendation amplified and rephrased for clarity. She advised that the aim was to have the revised version available at the next meeting. She then invited Members attention to a continuation of the discussion, from the last meeting, on 'The Office of the President of the Republic of Jamaica'.
- 7.2. Mr Small stated that he was at a disadvantage, as he did not have the document from which the Chairman was presenting. The Chairman, in response, noted that the concern was already acknowledged and reminded that there was agreement that the meeting would be done in-person. Mr Small then indicated that he would be unable to participate without having access to the document.

The Chairman again acknowledged the challenge and again explained the need to manage the risk of having draft documents leaked. Unauthorised access to the draft report may lead members of the public to believe that the contents were final. She also reminded Members that the matter was discussed at length last week and invited them to attend in person, where possible, to mitigate the challenges.

- 7.3. Mr Hylton stated that having not physically attended the last meeting, he understood the challenge. Given the hybrid nature of the meeting, he suggested that screenshare be enabled on the Zoom platform so that Members present online would have the benefit of following the presentation of the Report and discussion.
- 7.4. Mr Small enquired how putting the information on the screen would help when the Report was a summary of deliberations over a few months and Members still had no access to the verbatim transcripts to check for accuracy. Mr Boswell indicated that he would appreciate if the document was shared on the screen.
- 7.5. The Chairman reminded Members that the Report was prepared and checked against the verbatim transcript, in the same way that the Minutes of every meeting were checked. Mr Hylton recalled the discussion about access to and use of the verbatim records. The Chairman reminded that the verbatim records were for the purpose of archives and that the Committee developed a system where the Minutes accurately captured the salient points of the deliberations. The verbatim transcript contained every detail of the discussions, many aspects of which would not be relevant to the production and consideration of the Report. At the same time, the Minutes captured all the relevant points, were checked for accuracy and corrected and confirmed at every meeting. She reminded Mr Small that he was in possession of the said confirmed Minutes, which could be checked by him for accuracy. The Chairman went on to enquire of Mr Small whether she should believe that he would have checked the over two-hundred pages of transcript when he had not even bothered to check the on average less than twenty pages of Minutes, which recorded the deliberations and decisions of each meeting and which were confirmed for accuracy.
- 7.6. Dr Spence asked about the length of a transcript, to which Mr Harper responded that on average each meeting had about two-hundred (200) pages. The Chairman reminded Members that Minutes were available and accessible, to which Mr Small stated that one had to see the document in order to check it against the Minutes.
- 7.7. The Chairman acknowledged as valid the challenge of accessing the document virtually, but again reminded Members that it was agreed that in order to facilitate meaningful discourse, they would attend physically. While she appreciated that unforeseen circumstances could arise to prevent some Members from joining the meeting physically, the record ought reflect that in light of internal

breaches of confidence in the past, the draft was prepared, shared in hard copies and then retained by the Secretariat for redistribution at the subsequent meeting. It was thereafter agreed that, all things considered, a screenshare of the document appeared to be the only practical compromise. Mr Small then expressed that he would be unable to participate in any meaningful way, as he was using a mobile device, but indicated that he would remain present in the meeting.

7.8. The Chairman asked a Member of the Secretariat to enable screenshare, following which Members expressed gratitude, as they were then able to follow the content of the presentation and discussion.

7.9. Dr Barnett then indicated that he had sent a proposed Table of Content that would make the Report more reader friendly. The contents of the proposed Table of Contents were outlined as follows:

A. Establishment

- Appointees
- Terms of Reference

B. Operations

- Meetings
- Interviews and Submissions
- Public Education and Outreach

C. Jamaicanisation of the Constitution

- Replacement of the Order in Council by a Jamaican Instrument
- Insertion of a Preamble
- Reform of Presentation
- Transitional Provisions

D. Replacement of the Monarchy by a Republic

- Removal of reference to the British Monarch
- Creation of the Office of President
- Method of Appointment
- Tenure of Office
- Immunities
- Functions

E. Retention of the Parliamentary Cabinet System

- Comparison of the Parliamentary Cabinet System and the Presidential System
- Factors to be considered in making the choice

F. Reform of the Parliamentary System

- Qualifications for Membership
- Limitation on Terms of Office

- Propositions for adoption of an impeachment process
- Fixed General Election Dates
- Extension of the life of Parliament in cases of Emergency

G. Composition of the Senate

- Increase of Membership
- Retention of the Constitutional Amendment Safeguard

H. Citizenship

- Modification of provisions relating to Commonwealth citizens
- Rationalising language of the citizenship

I. Incorporation of Election Commission

- Reasons for inclusion of Electoral Commission of Jamaica (ECJ)
- Appropriate level of entrenchment

J. Preparation for Referendum

- Public Education and Engagement
- Creation of Drafting Instructions
- Preparation of Referendum Bill

7.10. Members regarded Dr Barnett's submission as helpful.

7.11. The Chairman then advised that the technical team would work towards producing a revised version for the next meeting and encouraged Members to focus on the gist of the recommendations and indicate whether they were in agreement. She then guided the review of the draft Report.

7.12. Following the review of the draft Report, Members adopted the recommendations set out in the draft Report, pending further revision to reflect their suggested edits and re-formatting, as proposed by Dr Barnett.

8. ANY OTHER BUSINESS

8.1. There was no other business.

9. DATE AND TIME OF NEXT MEETING

9.1. The Chairman informed Members that the meeting would reconvene on Wednesday, April 10, 2024 at 10:00 am.

10. ADJOURNMENT

10.1. There being no other business, the meeting was adjourned at 1:30pm on a motion by Dr Nadeen Spence and seconded by Dr Elaine McCarthy.