



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

40th Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: May 8, 2024

Time: 10:30am

AGENDA

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. **Opening Remarks**
7. Confirmation of Minutes of the 35th, 36th, 37th, 38th and 39th Meetings
8. Timeline of Constitutional Reform Activities
9. **Public Outreach**
10. Any Other Business
11. Date and Time of Next Meeting
12. Adjournment

***amendments to Agenda**

ATTENDEES:

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Dr the Hon. Lloyd Barnett, OJ (National Constitutional Law Expert)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)

Secretariat

Ministry of Legal and Constitutional Affairs

- Mr Wayne O Robertson, JP, Permanent Secretary
- Ms Nadine Wilkins, Director, Legal Reform Department
- Ms Cheryl Bonnick-Forrest, Senior Director, Strategic Planning, Research and Performance Management (Actg)
- Ms Nastacia McFarlane, Director, Corporate Communications and Public Relations
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Mr Makene Brown, Legal Officer
- Ms Shaedane Facey, Strategic Planner
- Mr Winston Lowe, Public Relations Officer

1. CALL TO ORDER

- 1.1. The meeting was called to order at 12:03pm by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved

2. PRAYER

- 2.1. Prayer was offered by Mr Anthony Hylton.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE/LATENESS

- 4.1. Apologies for absence were received from Dr David Henry, Senator Donna Scott-Mottley, Senator Thomas Tavares-Finson and Mr Sujae Boswell.
- 4.2. Apologies for lateness were tendered on behalf of Professor Richard Albert and Dr Derrick McKoy.

5. CONFIRMATION OF AGENDA

- 5.1. The Agenda was amended to insert, as new Agenda items, “Opening Remarks,” before “Confirmation of Minutes” and “Public Outreach” before “Any Other Business.”
- 5.2. Following these amendments, the Agenda was confirmed on a motion by Mr Anthony Hylton and seconded by Dr Elaine McCarthy.

6. OPENING REMARKS

- 6.1. The Chairman advised Members that the **Report of the Constitutional Reform Committee on the Transition to the Republic of Jamaica and other Matters** has been signed by all Members except Mr Anthony Hylton, Senator Donna Scott-Mottley and Mr Hugh Small. She stated that all of the matters included were matters on which there was consensus up to the point of signing. She reminded the Committee that some Members, at the last meeting, indicated that they had done some further reflection on some of the issues on which there was consensus previously. Accordingly, some of the recommendations were revised and at least one (1) recommendation that was initially agreed was removed as there was no longer consensus on the matter.
- 6.2. The Chairman then expressed her appreciation to the Members and the Secretariat. She stated that while there were other matters to be addressed, the matter of the Final Court, which was of particular importance to the Parliamentary Opposition, was to be determined sooner, rather than later. She explained that she understood the Opposition to be asking for clarity on the Government’s position. She recalled Dr Barnett’s perspective on the matter who noted that if the issue of the Final Court was not properly managed, it would stand in the way of the progress that was needed to advance the work done.
- 6.3. She stated that she was firmly of the view that the Constitution required consensus and agreement, despite the process being led by the governing party. She noted that the changes desired would only begin with the tabling of a Bill which would come after other processes were completed. She stated that she was mindful of the risks to be managed including the risks related to the current stage of the

life of the Parliament. She noted that for reform to succeed, a posture of unity and agreement between the two parties in the Parliament was required to inspire confidence in the electorate to approve the changes proposed. She noted that the work would become more difficult closer to the general parliamentary elections because of the competitive environment in which each side sought to set itself apart. She noted, however, that if real progress was not made on the reform effort, it would be extremely difficult to regain the interest of the Jamaicans having regard to the false starts and previous attempts.

- 6.4.** She then advised that whether the other signatures came or not, the Report would go forward. It was, however, her hope that having participated in the process and having honoured the decision-making process, the Report would not advance without the endorsement of all who have participated in the process. She described herself as a person of faith and not in an impractical way. She further stated that she believed in a school of thought around leadership that required progressive steps in addressing problems. She expressed that she remained excited and committed to, what she believed to be, a righteous cause.
- 6.5.** Dr McCarthy advised that where the Chairman explained that some recommendations were revisited, reference should be made to the specific recommendation i.e. the matter of the Senate, as someone reading the Minutes may wonder what it was.
- 6.6.** The Chairman then acknowledged that there was some discomfort about the recommendations in respect of the expansion of the Senate. She noted that the specific aspects that were re-opened concerned the process of appointment and the power to recommend a termination of the appointment. She also noted that after the matter was discussed, there was consensus that the proposal was to be removed from the Report.
- 6.7.** Mr Hylton, in his remarks, advised Members that there were a number of matters left unaddressed as a result of his spending the last couple days preparing for the Sectoral Debate. He stated that he was absent from the last meeting due to prior commitments and further advised that he was awaiting the comments on the Report from the Leader of the Opposition on matters which he expressed reservation on in a previous sitting of the Committee, namely the matter of impeachment on which the Leader had submitted a Private Members Bill and the matter of the Senate.
- 6.8.** He informed the Members that he has had meetings with the Leader of the Opposition, who has since then, written to the Prime Minister. He further informed those present that the Leader of the Opposition sent him a correspondence outlining comments on the Report which he received on his way to the meeting. He proposed to examine the content of the correspondence following which he

would share for consideration. He stated that while he did not know the extent of the comments, it raised some questions against the signing which had taken place. Whether there were any opportunities to examine the concerns raised before the Report was submitted to Cabinet, My Hylton stated that the Leader of the Opposition had commented on the reserved positions among others. He further stated the Committee was to decide on how it handled the correspondence and how to move forward.

- 6.9.** The Chairman then enquired whether Mr Hylton was able to share the gist of the comments on the impeachment proposal. She also invited Members to recall that she asked both Mr Hylton and Senator Scott-Mottley to share the latest version of the Report with their Leader as the CRC was, at the time, in the process of tidying it up. She encouraged the discussion to take place bearing in mind the more recent recommendations.
- 6.10.** Mr Hylton expressed that he came to the process as one of the representatives of the Parliamentary Opposition. He stated that he and Senator Scott-Mottley were chosen because of their interests in the subject and the somewhat independent views they brought to the fore. He stated that they were appointed to represent their party and had done so to the best of their ability. However, he stated that it was never up to them to simply sign off on a Report, at the end of the day. He also stated that as the process evolved, for reasons related to risks of leaks, they were unable to see a Report outside of the meeting while it was examined.
- 6.11.** The Chairman, in response, stated that such was not the case as having regard to previous conversations with Mr Hylton and Senator Scott-Mottley, an exception was made which allowed them to take copies of the draft Report.
- 6.12.** Mr Hylton then stated that while there was a sense of the views, at the end of the day, they were required to consult internally as Reports came with conclusions. The Chairman, in response, stated that every stage at which there was a conclusion on a matter, a recommendation was formulated subject to changes in proposed wording. This, she noted, was the reality as not only were recommendations to be made but rationales were to be developed.
- 6.13.** Mr Hylton stated that they utilised what was available to them, reminding Members that he had not seen the near final report as at that date. The Chairman, in response, stated that the changes made would have been favourable having regard to the Committee's understanding of the concerns raised by Senator Scott-Mottley.
- 6.14.** Mr Hylton stated that consultations were always necessary noting two (2) things which emerged: 1)

a letter to the Prime Minister and a letter from the Leader of the Opposition setting comments, the scope of which, he had not seen. He then indicated that these were the matters he had to Report on.

- 6.15.** The Chairman thanked Mr Hylton for his contribution and stated that any comment she made responsively should not be taken as a lack of understanding on her part of the necessity to discuss the issues with the Leader of the Opposition. She further stated that, even though steps were taken to prevent leaks of draft versions of the Report because of what happened in the past, it was to be made abundantly clear that the Report would be given to the representatives of the Parliamentary Opposition; She reinforced that at no time was the decision to embargo draft documents applicable to the two (2) representatives from the Parliamentary Opposition.
- 6.16.** Dr Barnett stated that whatever the misunderstanding or failure to achieve a tidy conclusion or arrangement, a solution was needed. While it had been represented to the public that the Committee had a final report, three (3) Members had not signed that Report. He then suggested that if there were issues within the Report which the Members of the Opposition were opposed to or unable to agree to, a minority report could be prepared and signed by those Members as a means of indicating their support for the recommendations save for one (1) or two (2) matters on which there was disagreement or need for further consideration. He opined that leaving it without more would be untidy.
- 6.17.** Mr Hylton, in agreement, expressed that the concern was not with the Report overall as they did not resign from any of the decisions to the extent of the concerns raised. He stated that subject to his review of the letter from the Leader of the Opposition, he was not of the impression that there were fundamental issues but rather points to be taken into consideration. He then reinforced that it was for the Committee to decide how to proceed noting that a minority report may not be necessary. Dr Barnett, in response, stated that to leave the matter as is, was not wise.
- 6.18.** The Chairman then invited Members to consider another dimension of the work. She explained that there was a timeline for the Sectoral Debate and a major part of the Sectoral Presentation was what flowed from the work. The longer it was delayed, the longer it would risk delaying the Sectoral Presentation. She noted that the Sectoral Presentation was a major part of the Ministry's work on the matter noting the many things that were to flow from the Report. She further stated that she had ensured that the Prime Minister's perspectives were reflected without prejudice to her own views, as she came to the table with instructions as well. She then invited Members to identify a solution.
- 6.19.** Dr Spence opined that unless the Government and the Opposition kept hand-in-hand the same level of enthusiasm, there would be no constitutional reform. She expressed frustration having regard to the fact that there deemed to be discord between the two factions and enquired whether the current

engagement could not be pursued through another process, such as the Parliament. She emphasized that there was another opportunity to work through the challenges. She then enquired of the representatives of both the Government and the Opposition, why they chose to play out their differences at this stage when they could do so at a later stage.

- 6.20.** Dr Barnett, in response, stated that in dealing with any matter where consensus was important and where representatives from both Parliamentary parties were present, one must acknowledge the risk to success where the start of the process was seeped in dispute.
- 6.21.** Dr Spence stated that this Committee was expected to advise Cabinet following which the matter would proceed to Parliament. She then expressed concern that the Report may not move beyond the Committee.
- 6.22.** The Chairman, in offering another perspective, recalled that Dr Barnett had, on several occasions expressed some views that the Constitutional Reform Committee was one that reported to Cabinet as opposed to the Parliament. She noted that the decisions of the Cabinet did not rest in isolation as it was collectively responsible to the Parliament for the general direction of Government. Cabinet, as the principal instrument of policy, accounts to the Parliament as legislation was informed by the policy. The Committee informed the decision to be made by Cabinet in a bipartisan way. She stated that the design of the Committee also took into account the process required by the Constitution.
- 6.23.** She noted that while the matter of the referendum was to be addressed, deeply entrenched provisions had been dealt with. Her approach was to take the policy direction to the Parliament, noting that once Cabinet made a decision, she would have reported to the Parliament.
- 6.24.** Dr Barnett encouraged Members to identify a solution as the problem persisted. He then restated his earlier suggestion.
- 6.25.** The Chairman then expressed that she was inclined to adopt the proposal made noting Mr Hylton's view that there was no issue with the Report generally, but a few matters contained within.
- 6.26.** Dr Barnett stated that based on his understanding, most of the Report was not in contention and the method proposed would be the safest route to take. Dr McCarthy, in support, stated that a minority report would demonstrate that all views were able to contend. She then invited Mr Hylton to examine the correspondence from the Leader of the Opposition and reach out to Senator Scott-Mottley for a perspective.
- 6.27.** Dr Barnett opined that the credibility of the process was at risk.

Lunch Break at 1:00pm

Meeting resumed at 1:48pm

- 6.28.** The Chairman indicated that if the Committee was unable to get the work done, the matter would have to be followed up in the Drafting Sub-Committee. Dr Barnett, emphasized the need to address the fact that three (3) Members of the Committee had not signed the Report. Dr Spence then enquired whether all Members of the Joint Select Committee on Constitutional and Electoral Reform signed the 1995 Report. Dr Barnett noted that the Members of the Constitutional Reform Commission who did not sign the Report of the Commission indicated publicly that they believe that the Commission should have presented a draft Bill of Rights.
- 6.29.** The Chairman then enquired of Mr Hylton the available options as the Committee would have to be informed by him, as the Member who received the correspondence from the Leader of the Opposition. She noted that the indicative timeline provided earlier in April 2024 was no longer tenable as it was two to three-weeks beyond the initially intended signing date. She explained that she had to put the matter before the Cabinet as there was agreement to have Members of the Committee present at the Cabinet. She asked Mr Hylton to explain the difficulty in pursuing the proposed solution.
- 6.30.** Mr Hylton, in response, stated that before such could be addressed, he needed to see what was reasonable and required of him and that he needed to engage Senator Scott-Mottley on it. Dr Barnett enquired whether additional time was needed to consider all the recommendations. Mr Hylton responded that he just needed time to consider the comments of the Leader of the Opposition. He stated that during the lunch break, it was suggested that since he received the comments from the Leader of the Opposition as he was heading to the meeting, thereby not having enough time to properly read it, he would be given some time to examine and consult with other Members of the CRC. He indicated that having reviewed the letter, the scope of the comments was wider than he initially thought. He noted that some of them were technical issues such as the way in which the Committee described the name of the Republic of Jamaica. He also stated that some of the issues raised could be addressed through dialogue; the other comments were more substantive. He then indicated that he, along with Senator Scott-Mottley, would engage quickly to clarify comments as he believed the scope of the comments could be reduced significantly.
- 6.31.** The Chairman enquired whether there were substantive issues beyond the matter of impeachment. Dr Barnett noted three (3) matters namely: 1) impeachment; retention of the safeguard in the Senate;

and the position on the Final Court. He explained that his understanding on those matters was that the Members of the Parliamentary Opposition were not, at this time, in a position to support those recommendations.

- 6.32.** Mr Hylton, in response, stated that the scope of the comments was wider than those three (3) matters. Dr Barnett enquired whether there were any parts of the Report that could be signed off upon to which Mr Hylton held his position.
- 6.33.** The Chairman expressed that Dr Barnett was simply trying to ascertain what the contentious matters were to which Mr Hylton responded that he was not resigning from the recommendations. Dr Barnett, in response, stated that if such was the case and having regard to the positioning, further enquired whether the Members would be willing to communicate that it accepted the Report save for a number of specific matters.
- 6.34.** The Chairman then enquired how much time was needed to consider and report on the substance of the letter. Dr Spence invited Members to recall that the Chairman had consulted with the Prime Minister on certain matters. She then stated that since Mr Hylton was unable to comment on those matters that the Leader of the Opposition took issue with, the matter could be revisited at a later date. Dr McCarthy stated that she understood Mr Hylton's position to be that he would consult and report to the Committee after which Mr Hylton expressed that Friday would be convenient.
- 6.35.** The Chairman, having regard to the request for additional time, advised that there was a need to maintain the credibility of the process which required an explanation, at this juncture, as to why three (3) Members of the Parliamentary Opposition did not sign the Report, noting Dr Barnett's proposed solution. She then indicated that she was prepared to wait until Thursday May 9th 2024 for clarity as Friday, May 10th 2024 would be too late. Mr Hylton expressed that he would make his best effort to provide a response by Thursday.
- 6.36.** Dr Barnett enquired whether the contents within the letter were enough to delay the Report to which Mr Hylton responded that he did not want to share any aspect of the letter until he had a chance to properly review it. Dr Barnett, in response, stated that the Committee was at a point where it could not rewrite or reverse the Report as it had already been presented as final. Mr Hylton explained that there was no ask for a reversal to which Dr Barnett, stated that, if there were reservations rather than objections or opposition, then such could be highlighted. Having regard to the fact that there was agreement on major sections of the Report and that some matters required further time for consideration, Dr Barnett enquired whether his proposal could work.

6.37. The Chairman then stated that it did not appear that the discussion could be taken any further. She reiterated that all the recommendations set out within the Report without exception were arrived at by consensus. She reminded Members that some matters were revisited upon further reflection and where consensus was no more, the recommendation was removed.

6.38. Dr Barnett opined that silence was not an option and if Members heard nothing from Mr Hylton by the proposed deadline, it was to be communicated that the three (3) Members had not signed as there was need for additional time to consult further.

6.39. The Chairman stated that having regard to the timeline, she would hold until Thursday at 10:00am trusting that Mr Hylton would engage the Leader of the Opposition before that time. She also agreed with Dr Barnett that silence was not an option noting that the process had been enriched by their contributions. She expressed gratitude to both Mr Hylton and Senator Scott-Mottley for their participation as they had brought the concerns of their Party and the Leader of the Opposition to the fore at every stage.

6.40. The Chairman then invited Members to assist in crafting a statement.

7. CONFIRMATION OF MINUTES OF THE 35th, 36th, 37th, 38th and 39th MEETINGS

7.1. The Chairman suggested that the Minutes be reviewed and any suggestion for correction be done by way of a Round-Robin via email.

8. TIMELINE OF CONSTITUTIONAL REFORM ACTIVITIES

8.1. The matter was deferred to the next meeting.

9. PUBLIC OUTREACH

9.1. The matter was deferred to the next meeting. The Chairman, however, noted that important matters relating to public engagement would be done through the sub-committee.

10. ANY OTHER BUSINESS

10.1. There was no other business

11. DATE AND TIME OF NEXT MEETING

11.1. The Chairman advised Members that the date and time of the next meeting was to be agreed.

12. ADJOURNMENT

12.1. There being no other business, the meeting was terminated at 2:50pm on a motion by Dr Lloyd Barnett and Dr Nadeen Spence.