



## **MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS**

*c/o 1 DEVON ROAD, KINGSTON 10 & 61 CONSTANT SPRING ROAD, KINGSTON 10  
JAMAICA*

Telephone Nos.: (876) 927-9941-3, 929-8880-5 & 927-4101-3 (Minister & Permanent Secretary)  
(876) 906-4923-31 (Legal Reform Department & Law Revision Secretariat)  
(876) 906-1717 (Office of the Parliamentary Counsel)

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### **MINUTES**

#### **44<sup>th</sup> Meeting of the Constitutional Reform Committee (CRC)**

**Venue: Ministry of Legal and Constitutional Affairs**

**Date: July 10<sup>th</sup>, 2024**

**Time: 11:00am**

### **AGENDA**

1. Call to Order
2. Prayer
3. National Pledge
4. Apologies for Absence/Lateness
5. Confirmation of Agenda
6. Remarks
7. Confirmation of Outstanding Minutes of CRC Meetings
8. Matters Arising
9. Drafting Instructions
10. Kingston and St Andrew Town Hall
11. Any Other Business
12. Date and Time of Next Meeting
13. 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) *via video link*
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Senator Donna Scott-Mottley (Parliamentary Opposition – Senate) *via video link*
- 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)
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mr Sujae Boswell (Youth Advisor)

## **Secretariat**

### **Ministry of Legal and Constitutional Affairs**

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Mrs Janelle Miller-Williams, Senior Director, Legal Education
- Ms Nastacia McFarlane, Director, Corporate Communications and Public Relations
- Mrs Cheryl Bonnick-Forrest, Director, Strategic Planning
- Mr Christopher Harper, Senior Constitutional Reform Officer
- Ms Julia Wedderburn, Senior Legal Education Officer
- Mr Makene Brown, Legal Officer
- Ms Yaniek Douglas, Legal Education Officer
- Mr Ivan Godfrey, Legal Education Officer
- Mr Winston Lowe, Public Relations Officer
- Ms Shaedane Facey, Strategic Planner
- Mrs Shawna-Kaye Taylor Reid, Administrative Assistant
- Ms Cedri-Ann Brown, Legal Intern

## **1. CALL TO ORDER**

- 1.1. The meeting was called to order by the Chairman, the Hon. Marlene Malahoo Forte at 11:54am when quorum was achieved.

## **2. PRAYER**

- 2.1. Prayer was offered by Dr Lloyd Barnett.

## **3. NATIONAL PLEDGE**

- 3.1. The National Pledge was recited.

## **4. APOLOGIES FOR ABSENCE/LATENESS**

- 4.1. Apologies for absence were received from Mrs Laleta Davis Mattis, Professor Richard Albert and Dr David Henry.
- 4.2. An apology for lateness was tendered on behalf of Mr Anthony Hylton.

## **5. CONFIRMATION OF AGENDA**

- 5.1. Dr Spence enquired whether a conversation around public engagement took place during her absence. The Chairman advised that the matter was discussed at the last meeting where it was also decided that a Town Hall should be hosted in Kingston and St Andrew. Dr Barnett advised that in any event, the issue of public engagement could be revisited as a matter arising.
- 5.2. There being no other points raised, the Agenda was confirmed without amendment on a motion by Ambassador Rocky Meade and seconded by Dr Nadeen Spence.

*Anthony Hylton arrived at 12:10pm*

## **6. REMARKS**

- 6.1. The Chairman expressed gratitude to the Co-Chair for facilitating a meeting of the Committee in her absence and for the report provided thereafter. She indicated that she tried to join the meeting virtually but due to challenges in accessing the internet, she was unable to. She noted that a number of matters were left unresolved such as the confirmation of Minutes and advised that the issues were addressed.

- 6.2. The Chairman took note of an Editorial published in the Jamaica Gleaner on July 9, 2024 entitled “*Constitutional reform in limbo.*” She stated that it sought to examine whether the work to advance constitutional reform was dead, whether time had been spent and what could be done to address such issues. She highlighted that some Members of the Committee expressed similar concerns. She noted, in particular, the view held by some that the work to achieve reform should be postponed until the conclusion of the next General Elections. She expressed disagreement with such a view. She then stated that the work was being done in a very distracting environment and that there were issues to be resolved between the two political parties.
- 6.3. On the matter of the Final Appellate Court, the Chairman stated the Committee proceeded with the knowledge of the position of the Opposition. She expressed that the Committee took stock of the issue and stated that it would not be decided at this time nor in this context even though the Government was aware that it was a matter that must be decided on. She therefore reaffirmed that the issue of the Final Appellate Court was set for the second phase of the reform work and the intention was to proceed with amendments to the deeply entrenched provisions of the Constitution.
- 6.4. Mr Small enquired whether the Opposition was in agreement with such an approach. Dr Barnett, in endorsing the query, invited Members to recall that the Leader of the Opposition stated that the reform process should have included, from the very beginning, the issue of the Final Court.
- 6.5. The Chairman, in response, stated that such was not the case. She explained that when the Government commenced the work, it proceeded on the basis that there was agreement between the Government and the Opposition that this process of reform would focus on the abolition of the monarchy. She also reminded Members that the Constitution prescribed the technical rules for amendment noting the uncertainty as to whether amendments to different categories of provisions (ordinary, entrenched and deeply entrenched) could be incorporated into a single piece of legislation. That, she stated, was the premise for phasing the work.
- 6.6. While acknowledging that the approach may have been different if it was led by the Opposition, the Chairman stated that she did not hear of any opposition to the abolition of the monarchy. She then enquired whether the process should come to a complete halt or proceed with those matters on which consensus existed. She advised that her instructions

were to proceed with the abolition of the monarchy with focus thereafter on the other critical matters.

- 6.7. Mr Small enquired whether the proposals set out in the Report, that were approved by the Cabinet and the subject of public education, sought to change aspects of the Constitution - deeply entrenched or not. The Chairman, in response, recalled that there was agreement among the Committee that the process would proceed with the deeply entrenched provisions and any other matters on which there was consensus.
- 6.8. Senator Scott-Mottley reiterated that consensus could not be achieved without a discussion. She then invited Members to recall that at all opportune times, the Opposition called for a discussion to identify the sticking points in determining the matter of the Final Appellate Court. She further recalled that the Chairman promised, from as early as last year, that the matter would have been discussed in the Parliament. Reference was then made to the 1995 Report of the Joint Select Committee on Constitutional and Electoral Reform where it was stated that if a Court was established, Jamaica should be a part of it. She stated that there was a basis to have the discussion. She then highlighted that some matters, such as impeachment, on which there was consensus among the Members of the 1995 Committee, had since been departed from by this Committee. She opined that there was no one approach taken by the Constitutional Reform Committee. She then expressed concern as to why there was no discourse around the matter of the Final Appellate Court from the Government.
- 6.9. The Chairman expressed that she was aware of the position of the Opposition in respect of the Court. She explained that when the work began, there was an understanding between Government and Opposition that it would commence with the abolition of the Monarchy as the form of Government. This issue, she stated, propelled the reform work. She acknowledged that there were other matters that came before the Committee which were discussed at length. She further explained that those matters were discussed in the context of whatever could be achieved, would be proceeded with regardless of the level of constitutional protection they were afforded. She also expressed doubt as to whether she could take the matter any further in her role as Minister. While she agreed that more work needed to be done, she enquired whether Members were comfortable with nothing being done.

- 6.10. Senator Scott-Mottley agreed that the work should continue and opined that the members of the public, while desirous of the work continuing, were anxious about being properly educated about the process. The process, she believed, should be accelerated and supported by the nation. She was also of the impression that the door for further dialogue was closed and could not be reopened, which she found regrettable.
- 6.11. The Chairman in response, articulated that the door was not closed as matters requiring dialogue must be discussed. She stated that the matter was of such importance that there ought be agreement among all. She recalled expressions of fear that should the abolition of the Monarchy be achieved, nothing else would follow. She highlighted the magnitude of the work and explained that she was under no illusion that the issue of the Final Court was of grave importance. She recalled that when the Prime Minister and the Leader of the Opposition spoke, there was recognition among them that while there may be no agreement, there was a desire for clear statements.
- 6.12. Mr Small stated that Members had been waiting for more than half of a year to hear the Leader of the Government address the citizenry on the position of the Government in respect of the Final Appellate Court. He highlighted that the Prime Minister was the only member who sat in the Parliament of Jamaica as a member of His Majesty's Privy Council. He further recalled that promises were made within the Committee and in the Parliament that the Prime Minister would speak on the matter.
- 6.13. Dr Spence enquired whether there was any intention to proceed beyond this matter. She recalled a conversation among Members that the Constitutional Reform Committee was not the forum within which the issue of the Final Appellate Court would be resolved. She further recalled suggestions within the Committee for a meeting with both the Prime Minister and the Leader of Opposition. Having regard to the perspective shared by both Leaders that a meeting would be of little value among other reasons, she sought clarity on the point of the discussion at that stage.
- 6.14. Mr Small stated that the Committee achieved a lot. He also noted that there were many who were energized about the subject of governance. He expressed that while he was not of the same position as the Gleaner Editorial mentioned earlier, the political environment brought about as a result of the normal functioning of government would not facilitate Jamaica having a referendum. The Chairman, in response, stated that it was not the intention to have

a referendum before the next general election. Mr Small expressed that such a view should be made clear to the public.

- 6.15. Dr Barnett expressed that it was his first time hearing that the referendum would not be held before the general election. He noted that as a matter of law, a referendum was possible before the next general election and that there was no agreement among the Committee to the contrary. The Chairman, in response, stated that the Government's intention was to take the matter as far as it could go. The primary focus, at this stage, was to ensure that the relevant Bill was passed in Parliament.
- 6.16. Dr Barnett stated that while there was a desire to see efforts succeed, it was not wise to ignore the fact that in order to conclude the work of the Committee, a Bill must be passed by a special majority in Parliament. As a result of this, he opined that the Committee could not ignore the nature of the matter which stood in the way of it achieving the desired outcome. He opined that it was not a question of the position taken but the reality. He stated that he could not imagine a situation in which Jamaica continued to operate on the basis of King Charles III as Jamaica's Head of State and the Constitution remaining as part of a UK Order in Council. He stated that it was necessary to take any strategy that avoided perpetuating such a status quo. If the Government and Opposition could be persuaded to take a different route, the Committee should not drop its hand.
- 6.17. Mr Small yielded to Dr Barnett having regard to the fact that his life's contribution had been towards constitutional development and ensuring that the ordinary citizen understood what was contained within. He noted that there was a vast amount of public education that was required which was more difficult than getting a Bill through the Parliament. He opined that the ultimate litmus test was whether the Jamaican public would buy into the process of reform noting that the work that was required, was yet to be done.
- 6.18. In response to Dr Spence's view that there was agreement within the Committee that the position on the Final Appellate Court could not be advanced any further [at this time], Senator Scott-Mottley opined that such a view was not shared among the entirety of the Committee. She believed that there was a role for the Committee in facilitating some form of discourse.

*Mr Boswell arrived at 12:30pm*

- 6.19. The Chairman, in response, stated that it had been said repeatedly that what remained to be done was beyond the scope of the Committee. She reiterated that when the Government proceeded on the reform programme, it did so on the understanding that the Government and the Opposition were agreed that the abolition of the Monarchy should be pursued without delay. She highlighted that the Opposition asked for other matters to be discussed and where possible, be dealt with at the same time. There was never an understanding that the twinning of the Monarchy with the issue of the Final Appellate Court was a condition precedent. The matter of the Court, as reflected in the Terms of Reference which outlined the policy approach of the Government, was set for the second phase.
- 6.20. Having regard to Dr Barnett's point that the matter could not be considered in isolation, the Chairman explained that the change being pursued was to be determined by the people and people often took cues from the political parties they supported; they were the ones who ordinarily turned up to vote. Accordingly, the approach took into account the posture of both sides of the Parliament. She then expressed that it was not lost on her that the current posture could lead to failure.
- 6.21. She further noted that the conversations required in the public domain were not closed. She explained that while the knowledge gap was wide, the conversations would continue at large until the Bill was put before the people. She reminded Members that the electorate would not be voting on every aspect of the Constitution but on what was contained the Bill. While the work of the Committee ignited interest among members of the public, she opined that the knowledge gap could not be closed by the Committee. Instead, an all of government approach would be required.
- 6.22. The Chairman opined that the statement required to appease or bring clarity to the process was not required of her, though she acknowledged her role in helping to clarify it.
- 6.23. Dr Barnett stated that the Committee should work towards achieving a successful outcome. He noted that there was an issue which stood in the way of this outcome which could only be solved by the political directorate. He recalled that there was agreement among Members to identify a method of obtaining consensus from the political leaders. The entire objective of the constitutional reform programme faced defeat if some obvious obstacles were not overcome. The Committee was therefore tasked with identifying a solution.



- 6.24. Mr Hylton apologized for being late as he had to attend to urgent work in his constituency as a result of the passage of Hurricane Beryl. He stated that the People's National Party (PNP) had a sustained interest in constitutional reform and would wish to move the process forward.
- 6.25. On the matter of how the Opposition participated in the process, Mr Hylton recalled that the Leader of the Opposition was hesitant in nominating members to the Committee because of a need for clarity around particular matters. As a result of this, a meeting was held at Vale Royal where the issue of the apex court was discussed and the Leader of the Opposition expressed, at the time, a great interest in the matter which he regarded was not a condition precedent. In that context, he stated that the Prime Minister issued an undertaking to engage in consultations with his constituents around the issue of the Final Court and provide a response thereafter. While there were concerns with the Terms of Reference, the Opposition took faith in the response of the Prime Minister and the work of the Committee to build consensus where it did not exist. This he believed was a reasonable basis.
- 6.26. He then reaffirmed that the Opposition was always interested in engaging in dialogue on the matter of the Final Court and remained desirous of a formal response on the matter. He further advised that the Leader of the Opposition enquired of them about the status of the Government's position on the Court and in the absence of such, he decided that there was a need for clarity. This, he explained, prompted the Leader of the Opposition to signal at their Conference that unless there was some understanding, a position would be taken. He noted that while it was clear that the matter of the Final Court was not subject to a referendum legally, any change required a two-thirds majority vote in each House of the Parliament.
- 6.27. He then recalled the more recent discussion at the Parliament where the Prime Minister reiterated the position shared at Vale Royal that not much progress was made and that he had nothing to report. The Chairman, in response, stated that such did not mean that work was not being done.
- 6.28. Mr Hylton, having acknowledged that perspective, explained that he left with an understanding that the Prime Minister would recommit to engaging in consultations. He then invited Members to recall that subsequent to the publication of the Report of the Committee, the Leader of the Opposition wrote to the Prime Minister requesting a meeting. He reiterated that the PNP remained interested in the subject matter of constitutional reform because the

current state of the Constitution was unacceptable. He then expressed the view that consensus was required in order to move forward.

- 6.29. Dr McKoy enquired of the role of the Committee in helping to resolve any dispute among the political directorate. He opined that there was no place for the Committee in helping to resolve such an issue as he believed its role was to engage the public and inform the Government. He further opined that this expectation went beyond the Committee's scope of work.
- 6.30. Dr Barnett, in response, reminded Members that, as per its Terms of Reference, one of functions of the Committee was to build consensus where it had eroded and since the question of the Court was one which loomed large over the Committee's undertaking, the issue must be considered. He rejected the notion that the Committee was acting beyond its scope of work as the issue of the Final Appellate Court affected the general question of constitutional reform.
- 6.31. Dr Spence opined that on the matter of consensus, she believed that where two persons were engaged in a conversation and there was disagreement, those persons would have to identify other means of arriving at a consensus when the conversation was revisited.
- 6.32. Dr Barnett, in response, recalled that several possibilities were explored one of which included a meeting with both Leaders. He recalled the many attempts to find solutions to what was perceived to be an obvious problem. He opined that without a solution, any major proposal for reform would not succeed at a referendum.
- 6.33. Dr Spence stated that the posturing of both political parties was bad. Mr Hylton, in response, stated that if this Committee was going to add value to the work already done, the Committee should agitate for certain actions.
- 6.34. Dr McCarthy suggested that the Church be engaged to facilitate a meeting of the Leaders similar to that which took place at Vale Royal. Additionally, since there was agreement on the abolition of the Monarchy, she enquired whether the work around the Final Court could be done concurrently. Dr Barnett, in response, stated that the work to remove the Monarchy was done as Drafting Instructions were issued. He reminded Members that the Leader of the Opposition stated that he would not support any constitutional amendment unless it included the question of the Final Court. He opined that the abolition of the Monarchy should not be sacrificed in favour of the pursuit of the matter of the Final Court.

- 6.35. The Chairman expressed uncertainty as to whether the time was being used efficiently as there was hardly any new perspectives being shared. Nevertheless, she thanked Members for their views. She then asked whether the Members of the Opposition would be able to share any perspectives that could better aid the Committee in identifying solutions.
- 6.36. Mr Small reminded the Chairman that there were Members of the Committee who did not represent the Opposition and may have opinions on the issue of abolishing the Monarchy while retaining the Final Court.
- 6.37. The Chairman acknowledged the concern expressed and stated that the issue of the Final Court would not be resolved in the meeting.
- 6.38. Dr Barnett stated that if the Committee could not influence or persuade resolution on the Final Court, the issue should be put to the people. He then indicated that he had not heard anything from the Government regarding its position on the Final Court.
- 6.39. Dr Spence stated that such a matter was not being discussed in the context of the available options and that the issue was being presented as if the Caribbean Court of Justice was the only option. There were mixed views and people had a right to their perspectives. The Committee was obligated to hear all the issues and regardless of the personal politics of Members, the Committee should be a space that provided an opportunity for perspective sharing. She reminded Members of the many calls for public debate on the issue as there were persons who wanted to hear more. She further stated that more work was to be done on the matter of the Court in order to pave the way for meaningful discourse and that patience, leadership and maturity must be exercised in order to build consensus.
- 6.40. Mr Boswell stated that the political tension was creating division within the Committee and opined that multiple matters could be pursued in parallel. There was no need for a standstill. He noted that Members who signed the Report were available to speak to the content of the Report and would continue to execute the work required of them. He opined that if the Opposition and the Government continued to make a scene out of one issue, it would be difficult to obtain public buy-in at the level of a referendum, regardless of who took the matter to a referendum.

**7. CONFIRMATION OF OUTSTANDING MINUTES OF CRC MEETINGS**

7.1. Confirmation of Minutes deferred until the next meeting due to constraints in time. The Chairman asked the Members to review the Minutes circulated and provide comments ahead of the next meeting via email.

**8. MATTERS ARISING**

8.1. There were no matters arising.

**9. DRAFTING INSTRUCTIONS**

9.1. The Chairman advised that the matter of the Drafting Instructions would be deferred until the meeting of the Drafting Strategy Sub-Committee which was proposed for Wednesday, July 17, 2024 at 12 noon.

**10. KINGSTON AND ST ANDREW TOWN HALL**

10.1. Mr Robertson advised Members that planning of the Town Hall was underway and that a tentative date and location have been identified for July 25, 2024 and Emancipation Park respectively. The Chairman requested that further details, as soon as they become available, be communicated to her before submitted to the Committee.

**11. ANY OTHER BUSINESS**

11.1. There was no other business.

**12. DATE AND TIME OF NEXT MEETING**

12.1. The Chairman advised the Members that the next meeting of the Constitutional Reform Committee will be held on Wednesday, July 24, 2024 at 10:00am.

**13. ADJOURNMENT**

13.1. The meeting was terminated at 1:42pm on a motion by Dr Elaine McCarthy and seconded by Dr Nadeen Spence.