



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

49th Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: October 2, 2024

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 the Minutes of the 47th and 48th Meetings of the CRC
7. Matters Arising
8. Revisiting the Recommendations of the Constitutional Reform Committee
 - a. Qualification for Membership in the Parliament;
 - b. Office of the President – Process of Appointment;
 - c. Office of President – Process of Removal;
 - d. Alteration of the Constitution (Section 49);
 - e. Impeachment Process; and
 - f. Presentation of the Bill
9. **Public Engagement and Education***

10. Any Other Business

11. Date and Time of Next Meeting

12. Adjournment

*Amendment to Agenda

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) *via video link*
- 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)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mrs Laleta Davis Mattis, CD, JP (National Council on Reparations)
- 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, Permanent Secretary
- Ms Nadine Wilkins, Director of Legal Reform
- Mr Christopher Harper, Senior Director, Constitutional Reform
- Ms Nastacia McFarlane, Director, Corporate Communication and Public Relations
- Mrs Cheryl Bonnick Forrest, Senior Director, Strategic Planning
- Ms Julia Wedderburn, Senior Legal Education Officer
- Mr Ivan Godfrey, Legal Education Officer
- Ms Shereika Mills, Constitutional Reform Officer (Actg.)
- Mr Makene Brown, Legal Officer
- Mrs Shawna-Kaye Taylor Reid, Administrative Assistant (Actg.)

1. CALL TO ORDER

- 1.1. The meeting was called to order at 10:33am by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved.

2. PRAYER

- 2.1. Prayer was led by Dr the Hon. Lloyd Barnett.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR LATENESS/ABSENCE

- 4.1. Apologies for lateness were tendered on behalf of Dr Derrick McKoy, Dr Nadeen Spence and Dr Elaine McCarthy.
- 4.2. An apology for absence was received from Dr David Henry.

5. CONFIRMATION OF AGENDA

- 5.1. The Agenda was amended to insert a new agenda item, “Public Education and Engagement,” as item 9. Consequently, the remaining Agenda items were renumbered.
- 5.2. The amended Agenda was confirmed on a motion by the Hon. Marlene Malahoo Forte and seconded by Ambassador Rocky Meade.

6. CONFIRMATION OF THE MINUTES OF THE 47th and 48th MEETINGS OF THE CRC

- 6.1. The Minutes of the 47th Meeting of the Constitutional Reform Committee held on August 28, 2024 were corrected and confirmed on a motion by the Hon. Marlene Malahoo Forte and seconded by Dr the Hon. Lloyd Barnett.
- 6.2. The Minutes of the 48th Meeting of the Constitutional Reform Committee held on September 18, 2024 were corrected and confirmed on a motion by Dr the Hon. Lloyd Barnett and seconded by the Hon. Marlene Malahoo Forte.

7. MATTERS ARISING

- 7.1. Mr Boswell stated that he was pleased with the presentations made by members of civil society to the Committee. He noted the recommendation by Jamaicans for Justice that in order to achieve greater democratisation in the method of appointing the President, local government councillors should be incorporated in the confirmation process. He stated that he was uncertain whether the public's call for greater democratisation meant further inclusion of Members of the political directorate. He further opined that their call was for greater civil society participation. He stated that he would rather support democratisation by the public rather than through political parties.
- 7.2. Mrs Davis Mattis stated that she felt re-energized by the discussions reflected in the Minutes noting that the Committee sought to revisit a number of its recommendations.
- 7.3. The Chairman advised Members that the revision of the recommendations was a direct response to the feedback from the public on the recommendations of the Committee set out in its Report.
- 7.4. Dr Barnett stated that the recommendation on the method of appointing the President was one of the first matters discussed at length. He stated that, generally, while there was an undesirability for having an election, Members felt that there could be an opportunity to get the people involved. He therefore felt that the recommendation made by Jamaicans for Justice for the expansion of the pool of people who participated in the confirmation of the Presidential nominee was worthy of consideration.
- 7.5. Mrs Davis Mattis enquired what was meant by the term "democratisation." The Chairman stated that Mr Boswell was not in favour of the proposal to include the local government councillors in the process of appointing the President as a means of achieving greater democratisation.
- 7.6. Mrs Davis Mattis stated that she sought to rationalise the participation of the people and the process of democratisation. She then stated that while she agreed with the need for greater public participation in the selection of the President of Jamaica, there was a need to look at how such an approach could be implemented.
- 7.7. Mr Boswell invited Members to consider whether the e-voting platform that was used in Portmore could be replicated and used across the country. He reiterated that he was not in support of more members of the political directorate being infused in the process

of selecting the President. He then stated that Jamaica had a system of nominations for National Awards and similarly suggested that in nominating the President, a call for nominees could be published and selections made from the pool of nominees submitted based on established criteria.

- 7.8. Dr Barnett stated that the essence of democracy was the people's choice which was expressed through their political representatives. He opined that dispensing with their representatives was an improper action.
- 7.9. Mr Boswell, in response, stated that while Jamaica had an indirect democracy, there was an opportunity to create a system which involved greater participation of the people as using elected representatives was not the only way to do so.
- 7.10. Senator Scott-Mottley stated that any recommendation published hereafter should be able to withstand public scrutiny. She therefore suggested that the various perspectives in relation the recommendation for the appointment of the President be compiled so that Members could determine whether to adopt or vary them in putting forward their proposal. She further stated that she did not feel properly equipped at this meeting to agree on any recommendation and suggested that Members be afforded additional time to properly contemplate the options presented. She then stated that the Committee could find a formula that accommodated the public's desire for greater participation and accountability.
- 7.11. The Chairman invited Members to consider the proposed method of appointing the President against the type of President being recommended as the discussion unfolded.
- 7.12. Dr Barnett stated that there was merit in Senator Scott-Mottley's suggestion and encouraged those with proposals on the matter of the method of appointing the President to put them forward.
- 7.13. Mr Boswell opined that there was a disconnect between the President being a symbol of national unity and being solely selected using a political process.
- 7.14. Dr Barnett, in response, stated that throughout Jamaica's existence, the representatives of the Head of State were appointed through a straight forward process. He stated that the proposed method of appointment sought to democratise that process and due regard should be given to the nominees of political parties who were elected to represent the people – a foundation of Jamaica's democracy. He further stated that while the

Committee did not initially consider incorporating local government councillors in the confirmation process, their inclusion would allow for wider participation. He noted that representatives from various parts of Jamaica would therefore be asked to confirm the nomination which would symbolically and substantively achieve the objective of a popular selection.

- 7.15. Mr Boswell opined that some Jamaicans did not feel represented by nor did they accept the Head of State. He stated that people wanted to select their President. He further opined that if the President was to be a symbol of national unity, the people should be able to make some contribution to the process.
- 7.16. Mrs Davis Mattis invited Members to examine the fact that voter turnout trended downwards over the years in respect of local government and general elections. She opined that such a trend was a reflection of people's disengagement with a process designed to be highly representative.
- 7.17. Dr Barnett stated that it would be unlikely that the public would disagree with a nominee on which there was agreement between the political parties. He further stated that approval of the nomination, as has been proposed in the Report, was a democratic process. He then invited Members to propose any alternative processes that could be practically implemented.
- 7.18. The Chairman stated that there appeared to be consensus among Members for the retention of the two-tier process: 1) nomination; and 2) confirmation. She said that based on the presentations made last week, no issue was raised with the nomination stage. As such, a nomination to the Office of President would be made by the Prime Minister after consultation with the Leader of the Opposition and the consultation process would seek to yield consensus. She noted that since publishing its Report, the Committee further considered its recommendation on the nomination process. Members reaffirmed that one could not force an agreement between the Prime Minister and the Leader of the Opposition. However, having regard to the criticisms levelled by others including former Prime Ministers Percival James "P.J." Patterson and Bruce Golding on the recommendation about what should happen in the absence of an initial agreement, the Committee reformulated its proposal so as to provide for a process of referring back similar to what currently obtains in the Constitution.

- 7.19. The Chairman noted that this item had been discussed in Matters Arising consideration of who would be involved in the confirmation process was expanded based on the suggestion made by Jamaicans for Justice for the inclusion of local government councillors. She invited Members to recall the contributions made by Dr Barnett and Mr Small on the matter. She then stated that the essence of the proposal was that elected officials were a reflection of the people's choice which was an essential aspect of Jamaica's democracy.
- 7.20. Dr Spence stated a distinction was to be made between the move for greater democratisation and the desire to involve more people in the process of selecting the President. She then enquired how one could make a representative democracy more democratic. She noted the suggestion made by Jamaicans for Justice to include more representatives of the people. Alternatively, she recalled the suggestion for a directly elected President noting that if such was pursued, the type of consensus desired may not be achieved. She then asked Members to consider whether there was a desire for someone who could build consensus and who could bring people together or a greater commitment to the principle of involving the people in the selection process directly. She then opined that the mischief which needed to be rectified did not relate to the democratic process but rather to the lack of trust in a political system.
- 7.21. The Chairman then enquired whether any of the representatives of the Parliamentary Opposition had any comments on the matter. Mr Hylton stated that the representatives of the Parliamentary Opposition were present at the meeting because they understood that some of the recommendations were being reconsidered. He noted that the Members of the Committee reflected further, having engaged in a number of meetings and consultations. As such, new views and perspectives had emerged. He stated that their approach was to take stock of the progress of the Committee and to examine the ideas presented. Whether there would be agreement on the issues identified, he stated that he was unable to say. He then reiterated the suggestion made by Senator Scott-Mottley for the examination of the various proposals and views.

8. REVISITING RECOMMENDATIONS OF THE CONSTITUTIONAL REFORM COMMITTEE

8.1. OFFICE OF PRESIDENT – PROCESS OF APPOINTMENT

8.1.1. The Chairman noted that the matter was discussed in Matters Arising.

8.2. OFFICE OF PRESIDENT – PROCESS OF REMOVAL

8.2.1. The Chairman noted that the Committee decided to revise its recommendation on the process of removing the President from Office as a direct response to the suggestion proffered by the Leader of the Opposition. As such, it was proposed that the investigation stage would be done through a quasi-judicial process.

8.2.2. Dr Barnett stated that he was uncertain whether Mr Hylton was aware of the reformulated recommendation as there was no feedback on it.

8.2.3. Mr Hylton reiterated his position that he was simply in attendance to take stock of the progress of the Committee noting, in particular, the views which emerged.

8.2.4. The Chairman stated that the Committee took note of the feedback on the recommendations made since the tabling of the Report in the Parliament. She said that Members were not confined to formal submissions made to the Committee. She said that the Committee also considered and gave particular attention to the statements made by the Leader of the Opposition wherever they were made.

8.2.5. Dr Barnett recalled that the recommendation for a process of appointing the President was criticised by very eminent persons with political experience without any practical method of solving the problem proposed.

8.2.6. Mr Hylton stated that his attendance at the meeting was not to proffer any perspective having been absent for a while but to understand the context of the discourse. He stated that the Members of the Parliamentary Opposition were willing to hear the other views.

8.2.7. Mr Boswell invited Members to recall the extensive dialogue between the Members of the Committee and the Opposition on a number of issues. He stated that, at this juncture, there was an expectation that there would be a clear level of communication on which comments, recommendations and proposals would have been made for the opposition's response. He further stated that while there were matters which required further consultation, the members of the Opposition were not present at the most

recent meetings where matters were settled. Mr Boswell further stated that based on stage of the deliberations, there was an expectation that consultation, despite being ongoing, would have, at least, taken place.

8.2.8. Mr Hylton stated that there were views expressed which needed to be considered. Mr Boswell, in response, stated that the Opposition had not adjusted any of its views.

8.2.9. Senator Scott-Mottley said she thought that the recommendations were being reviewed in light of the concerns raised throughout the public domain. She opined that if the Committee opened the conversation further, Members would have to spend time to deliberate. She made reference to the suggestion proffered by Jamaicans for Justice noting that the Committee had not spent enough time to carefully consider it and the variety of divergent views shared. She then stated that there seemed to be a fear of criticism by the Committee and a fixation on comments made by the Opposition.

8.2.10. Mr Boswell, in response, stated that there had to be a fixation on the comments made by the Opposition as the Committee stopped to address those matters raised by the Members of the Opposition. He stated that while the Committee paused its work to consider the perspectives raised by the public, it could not disregard the dialogue around unsettled matters. He further stated that if there was a desire to proceed, matters needed to be settled.

8.2.11. Dr Barnett invited Members to recall that the Committee discussed specific proposals, came to conclusions and presented its Report. He recalled that there were a number of matters which were not endorsed by the Opposition. He further recalled the suggestion that a minority report be prepared out of a desire for progress. Dr Barnett then stated that the Leader of the Opposition prepared a document outlining a number of comments, some of which were requests for clarifications while others provided alternative recommendations. He noted that the Committee had responded to all of the concerns raised. He further noted that the only matter which the Committee indicated that it did not accept concerned the process of impeachment. He then informed Members that he would prepare a detailed paper on the matter of impeachment for consideration by the Committee.

8.2.12. Dr Barnett then suggested that the Members of the Opposition consider the revised recommendations and indicate whether they disagreed with them or needed to discuss them further.

8.2.13. Professor Albert opined that there was some risk involved in revisiting recommendations made earlier. He stated that the Committee needed to communicate carefully and properly the process undertaken in deciding to reconsider recommendations and proposing revised ones. He said that this would add credibility and bring legitimacy to the decision-making process.

8.2.14. Dr Barnett stated that as a normal consequence of how the Committee determined its initial recommendations was a need to explain the pros and cons of any alternative considerations. He noted that consensus was essential and where someone raised doubt or objection, the Committee was expected to reconsider it until Cabinet determined that their service as a Committee was no longer required.

8.3. ALTERATION OF THE CONSTITUTION (SECTION 49)

8.3.1. Dr Barnett suggested that a proposal be circulated among Members of the Drafting Strategy Sub-Committee before the next Sub-Committee meeting for their consideration.

8.4. QUALIFICATION FOR MEMBERSHIP IN THE PARLIAMENT

8.4.1. The matter was deferred until the next meeting to facilitate a more fulsome discussion.

8.5. IMPEACHMENT PROCESS

8.5.1. The Chairman noted that on the matter of impeachment, Dr Barnett indicated earlier that he would circulate a memorandum.

8.6. PRESENTATION OF THE BILL

8.6.1. The Chairman advised Members that she updated the Parliament by way of a Ministerial Statement on September 24, 2024 that the Drafting Strategy Sub-Committee was reviewing a draft of the Bill.

Lunch Break at 2:15pm

Meeting resumed at 3:01pm

9. PUBLIC ENGAGEMENT AND EDUCATION

- 9.1. The Chairman informed Members that on October 21, 2024 she and Mr Boswell were panellists at a Constitutional Reform Town Hall hosted by the Caribbean Maritime University in conjunction with the Ministry of Legal and Constitutional Affairs. She stated that they were asked to summarise the differences between a non-executive President and an executive President for circulation among students and faculty. She noted that many accepted the Committee's recommendation for a non-executive President. However, in light of the conversations that took place, there was a general view that the public could benefit from more information on the respective subject matter.
- 9.2. Mr Boswell advised that the University expressed interest in circulating such materials through their own intranet which could be facilitated over the course of the next few weeks. He further advised that the Students Union expressed an interest in being information ambassadors on constitutional reform.
- 9.3. The Chairman noted that in engaging the students, many expressed a desire to participate in the referendum while encouraging others to do the same. The Chairman then invited Dr Barnett to report on his most recent engagement.
- 9.4. Dr Barnett stated that the Brotherhood of St Andrew, St Phillips Church, had commenced the hosting of a seven-part virtual Christian Formation webinar series under the theme "Christian Mission in today's Jamaica." The first session featured a presentation by him on the subject of constitutional reform and the responsibilities of Christians. The third session entitled "Health and Wellness: The Responsibility of Christians," would be held on October 10, 2024.
- 9.5. The Chairman stated that she was in attendance and found the engagement to be rich and meaningful. She then invited the Permanent Secretary, Mr Wayne O Robertson, to provide an update on the work being done by the Secretariat to prepare the public for the receipt of the Bill.
- 9.6. Mr Robertson advised that Ms Julia Wedderburn, Senior Legal Education Officer, would be providing those updates. In addition, Mr Robertson informed Members that the Ministry

initiated tender for the procurement of a Public Relations firm to deal with the matter of public education. He stated that the firm would manage the myriad of activities associated with the Road to Republic public education campaign. He then advised that the firm would be managed by the Corporate Communication and Public Relations Division.

- 9.7. Dr Barnett enquired whether any town hall meetings were organised for the remainder of the year. Mr Robertson, in response, stated that to date, six town halls have been executed across the three counties with the remainder to be organised over the coming months.
- 9.8. Mrs Davis Mattis enquired whether the remaining town halls would depend on the engagement with the public relations firm. Dr Barnett stated that the Committee issued an undertaking publicly to host Town Halls meetings as a means of engaging the public on the matter of reform.
- 9.9. Mr Robertson advised that the Secretariat was in the process of planning other engagements and encouraged the Members of the Committee to participate.
- 9.10. Ms Wedderburn informed Members that the Legal Education Division started engaging the public in June 2023. Initially, the members of the Division sensitised Ministries, Departments and Agencies on general constitutional matters while simplifying technical matters of constitutional law. She stated that after the Report of the Committee was tabled in Parliament in May 2024, the Division expanded its engagement to include church groups, tertiary institutions and the private sector. The focus of the presentations had since shifted to the recommendations set out in the Committee's Report.
- 9.11. Ms Wedderburn further advised that the Division sought to deepen its engagement with the private sector by targeting a minimum of 3000 persons. She stated that the team had sent out letters and were in receipt of a number of confirmations. Having regard to public sector engagement, Ms Wedderburn advised that the Division would reengage civil servants on a much larger scale having regard to the tabling of the Bill.
- 9.12. Ms Wedderburn then informed Members that the Division planned to engage Secondary Schools across Jamaica. The Division would seek to liaise with the Ministry of Education and Youth and propose some dates before addressing the Committee formally. She also advised that the Division sought to host a National Debate after the Bill was tabled as people would be primarily interested in the content of the Bill. Ms Wedderburn stated that three debates were proposed with the following groups: 1) People's National Party Youth

Organisation (PNPYO) and Generation 2000 (G2K); 2) Secondary/Tertiary Schools; and 3) the Legal Fraternity or Civil Society

- 9.13. Dr Barnett advised that Citizens Action for Free and Fair Elections (CAFFE) operated a programme called “Democracy Clubs” in secondary schools. He stated that these clubs addressed matters related to civics and constitutional reform. He suggested that they be engaged.
- 9.14. The Chairman enquired how updates regarding public education would be communicated to the Members of the Committee. Ms Wedderburn, in response, stated that a Report would be sent to the Permanent Secretary. The Chairman advised that a Report sent to the Permanent Secretary was not separate and apart from the Secretariat.
- 9.15. Mrs Davis Mattis enquired into the role of the Public Engagement and Communications Sub-Committee. Ms Wedderburn recalled that during the earlier stages of the Committee there was a discussion about the relationship between the Sub-Committee and the Legal Education Division. She further recalled a decision to keep them separate notwithstanding any requests for support that could be facilitated by the Division.
- 9.16. The Chairman stated that on the subject matter of constitutional reform, the Committee was supported by the Secretariat which comprised Ministry personnel. She further stated that the work of the Secretariat was not separate and apart from the Ministry. She further stated that while it was clear that the work of the Legal Education Division was not confined to constitutional reform and that the Committee and its sub-committees did not have to go through the Ministry to engage the public, wherever engagement required the organisation of activities, the Secretariat was responsible for arrangements and logistics. She noted that the work of the Secretariat could not be done independently of the Committee. She then stated that at this stage of the reform work, it was not education at large as there were recommendations to be implemented. She further stated that order to achieve the goals in a more targeted way, the Secretariat must spend some time to clarify the approach.
- 9.17. The Chairman also stated that the education around the reform efforts, particularly on the constitution and democracy, should begin internally before going externally.

10. ANY OTHER BUSINESS

- 10.1. The Chairman asked Mrs Davis Mattis to provide the Committee with an update on the relevant aspects of the work around reparations for consideration. She then advised that she was recently approached by a member of the Maroon community. She stated that notwithstanding the challenges in the community, there were some of them who wanted an opportunity to speak with the Committee. She also stated that there were some who did not support secession.
- 10.2. Mrs Davis Mattis noted that there were a number of groups who prepared a joint submission and asked the Secretariat to check whether it received the submission.

11. DATE AND TIME OF NEXT MEETING

- 11.1. The Chairman advised that the next meeting of the Constitutional Reform Committee would be held on October 16, 2024 at 10:00am.

12. ADJOURNMENT

- 12.1. There being no other business, the meeting ended at 3:53pm on a motion by Dr Nadeen Spence and seconded by Ambassador Rocky Meade.