



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

51st Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: October 30, 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 50th Meeting of the CRC
7. Matters Arising
8. Revised Recommendations for the Constitutional Reform Committee
9. Recommendations for Implementation in the Bill
10. Any Other Business
11. Date and Time of Next Meeting
12. Adjournment

ATTENDEES:

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chairman – Office of the Prime Minister)
- Dr Derrick McKoy, CD, KC (Attorney General of Jamaica) 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 (Former Chairman – Jamaica Umbrella Groups of Churches)
- Dr David Henry (Wider Society – Faith-based)
- 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 Nadine Wilkins – Director of Legal Reform
- Mr Christopher Harper – Senior Director, Constitutional Reform
- Ms Nastacia McFarlane – Director, Corporate Communication and Public Relations
- Ms Julia Wedderburn – Senior Legal Education Officer
- Mr Makene Brown – Legal Officer
- Ms Shereika Mills – Constitutional Reform Officer (Actg.)
- Mrs Shawna-Kaye Taylor Reid – Administrator (Actg.)

1. CALL TO ORDER

- 1.1. The meeting was called to order at 10:47am by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved.

2. PRAYER

- 2.1. Prayer was offered by Dr David Henry.

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 and Mr Sujae Boswell.
- 4.2. Apologies for lateness were tendered on behalf of Dr Elaine McCarthy and Dr Nadeen Spence.

5. CONFIRMATION OF AGENDA

- 5.1. The Agenda was confirmed without amendment on a motion by Dr David Henry and seconded by Mr Hugh Small.

6. CONFIRMATION OF THE MINUTES OF THE 50th MEETING OF THE CRC

- 6.1. The Minutes of the 50th Meeting of the Constitutional Reform Committee held on October 16, 2024 were corrected and confirmed on a motion by the Dr Lloyd Barnett and seconded by Dr David Henry.

7. MATTERS ARISING

- 7.1. The Chairman noted that the Matters Arising included: the body to confirm the nominee for President, the proposed alteration to section 49 of the Constitution, the CRC's recommendation in respect of an impeachment process and the qualification for membership in the Parliament.
- 7.2. On the matter of the confirmation of the presidential nominee, the Chairman stated that there were two contending views. The first was whether the nominee would be confirmed by both Houses of Parliament sitting jointly, with the votes for each House counted separately; and the second, whether the nominee would be confirmed by an expanded body which included the democratically elected local government representatives (in addition to the members of Parliament).
- 7.3. The Chairman noted that there was no consensus on the latter view. She then invited Members to recall the discussion around the matter. She stated that of the contrary views shared, some believed that the request for greater people participation did not necessarily

mean participation by more members of the political directorate. She also stated that others were of the view that the pursuit of greater people participation need not be loaded in the selection process, mindful of the desired ease in administering the process of confirmation by the Parliament. She further noted that legislating a joint sitting of both Houses of Parliament would be novel. Ordinarily, custom or convention guided joint sittings of parliament rather than legislative provisions.

- 7.4. The Chairman further recalled that there was consensus around the high symbolism that a joint sitting of the two Houses represented, and the importance of constitutionally prescribing it. Since then, she stated, Jamaicans for Justice (JFJ) made a presentation proposing an expanded body to confirm the presidential nominee that was being considered by the Committee. She also noted that although Dr Barnett had since done a written memorandum on the proposal from JFJ, there was no consensus on it.
- 7.5. She emphasized that processes had to be administered and while proposals seemed appealing, there may be challenges in implementing them.
- 7.6. Dr Henry enquired about the other ways in which participation of the people could be ensured. The Chairman responded that the call for greater people participation was not confined to the process of selecting the President. She said that as the Minutes reflected, it seemed like Members were caught in the crosshairs of considering a process more suited for an Executive Presidency where the President was both Head of State and Head of Government, because of the call by some people for an Executive President. However, she noted that the Committee recommended the retention of the Parliamentary Cabinet System, where the Head of State was not involved in the day-to-day running of government. She said that the deliberations on the matter of how the President should be selected began with the tension between people wanting to have their say and also some wanting a radical change in the form of government.
- 7.7. Mr Small made reference to a point raised in the Minutes of the 50th Meeting which suggested that the incorporation of the local government representatives into the selection process was merely a formality as those persons often voted based on their instructions from the Leader of the Opposition and the Prime Minister. He stated that as Members contemplated whether or not to include the local government representatives, they should be mindful that the selection of the President was a high ask. He opined that having a Minister

whose portfolio was local government was contradictory. He further opined that persons elected to municipal authorities were closer to the people and derived their authority from the people, not the Minister. He then stated that some consideration must be given to ensure that the polling of the votes to confirm the President was done by way of a secret ballot.

- 7.8. Dr Barnett stated that he was deeply concerned by the suggestion that he would support a proposal without having regard to the practical considerations. He recalled that there was consensus among Members that the President should be the choice of the nation and be representative of national identity. As such, various methods were considered to achieve those goals. He further recalled that if an election was used to determine the President, it would fall to the dangers of partisan campaigning and the elected candidate may not be capable of demonstrating the goals desired. He then stated that if another group of elected representatives could be involved in the process of selection without directly engaging the electorate, it was worthy of consideration as it gave the image of an all-island participatory process involving all elected representatives.
- 7.9. On the matter of local government, he stated that having regard to the statutory framework, the existing legislation minimised the importance of local government by giving extraordinary ministerial powers of control over local administration. Regarding administrative challenges with the local government representatives voting simultaneously with Parliamentarians, he stated that he foresaw no problem as municipalities had managers, clerks and electoral officers. He then suggested that returning officers could be put in charge of recording the votes.
- 7.10. The Chairman, in response, stated that while she was satisfied that the proposal restated by Dr Barnett was duly considered, she had been giving further thought to the matter. She said that while she appreciated the novelty of the proposal, she wondered whether consideration could be given to a mechanism to achieve a high symbolism at first transition from a monarchy to a republic and thereafter exploring a different method of confirming the nomination for subsequent President. She invited Members to recall that the confirmation was not meant to be contentious but rather an important formality. The high symbolism involving the people's representative i.e. Parliament in confirming the nomination was important and she further interrogated the call to extend the body doing so.

- 7.11. Professor Albert recalled a discussion last year where Members considered whether to create a body similar to the electoral college in the United States of America in the process of selecting the new President. He further recalled suggesting to the Committee the inclusion of local leaders as part of the electoral college. In response, he was advised that while it was a good suggestion in principle, there was a lot of controversy surrounding the local municipalities and therefore their inclusion would not have been ideal. He then enquired whether anything had changed between then and now to have prompted the Committee's consideration of this proposal to include them.
- 7.12. Dr Barnett, in his recollection, stated that when the matter of the electoral college was raised, it did not have anything to do with the suggestion for local government representatives to participate in the process. He opined that the proposal currently before Members was a more precise formulation.
- 7.13. Professor Albert expressed gratitude for the clarity but stated that whether the discussion was in relation to the electoral college or not, he recalled the sentiment that there was controversy around local government. Dr Barnett, in response, stated that there was no such controversy that he could recall.
- 7.14. The Chairman stated that in respect of the observation made by Mr Small about how local government representatives voted, she had conducted her own research across party lines and that it was true that votes were often taken in the current system along party lines.
- 7.15. The Chairman emphasized that the Committee was recommending the retention of the Parliamentary Cabinet System and proposing a Non-Executive President who served for a fixed period. Accordingly, the process of selecting a President would take place often. She explained that she favoured a simpler form whereby the process of nomination and confirmation would take into account the need for the President to be accepted as a symbol of Jamaican identity and national unity. Having stated that a decision was needed on the matter, she reminded Members that the recommendations of the Committee were subject to the decision of the Cabinet. She noted that when the Bill is laid before the Parliament, an opportunity would be presented to hear from the public which would require the Committee to explain why it pursued one option over another.
- 7.16. Dr Henry stated that the issue was one of inclusiveness. He noted that while there was a general desire among people to participate in the process of confirming their President, there

was a need to balance that desire against the possibility of divisive partisan politics that could affect the process. He stated that while the body empowered to confirm the President could be expanded, he was uncertain whether that sufficiently answered the call for greater people participation.

- 7.17. The Chairman commended the perspective shared by Dr Henry, noting that she also grappled with the issue. She enquired whether the call for greater participation would be satisfied with the inclusion of more persons from the political directorate where political culture often dictated a certain approach.
- 7.18. Mr Small, in revisiting the issue, stated that the proposal for the expansion of the body to confirm the President came from JFJ, and whereas JFJ may be viewed as an organisation with a special focus, he was of the view that they put a lot of thought into their proposal, mindful of the concerns raised in the public domain. He then stated that the proposal had an appeal that may benefit from being widely circulated for consideration. This, he believed, was a good response to the public perception that the Committee was not listening, or that it was insensitive, to the nuances of consultation.
- 7.19. Dr Henry then suggested that both positions be put to the Parliament for consideration.
- 7.20. Dr Barnett stated that while the essential requirement for recommendations was consensus, there were none of the representatives from the Parliamentary Opposition present at the meeting. He opined that the process could advance no further without seeking the involvement of the Opposition.
- 7.21. The Chairman, in response, stated that the Committee was continuously battling the perception that it was not listening to members of the public. She explained that JFJ's presentation was made possible, because the Secretariat followed up with them. She stated that the published Minutes of each meeting summarised the deliberations and views considered. Additionally, the Chairman stated that the proposal by JFJ was a recommendation being considered in India, as pointed out by them.
- 7.22. The Chairman said that whereas a presenter would be preoccupied with his or her own perspective, the decision maker was required to cut across and consider several areas and perspectives. In illustrating this further, she stated that whereas people who wanted a share of a million dollars came to the table with their ask only, the person distributing the million dollars had to consider the ask of everyone when dividing up the whole figure.

- 7.23. The Chairman stated that the process of constitutional reform was a national matter. She reminded Members that the process was designed to get a sense of what could be agreed by both sides of the Parliamentary aisle ahead of going public. She stated that any further delay would be disrespectful to those Members of the Committee who showed up weekly.
- 7.24. Dr Barnett opined that it was still necessary to seek consensus as it determined whether the process of reform succeeded.
- 7.25. The Chairman stated that the burden of leadership required her to make a decision at some point. She opined that while all Members came to the table in good faith, everyone had roles beyond the responsibilities of the Committee.
- 7.26. Dr McCarthy enquired whether any consideration was given to the staging of a public forum to gauge the temperature of the public perspectives around the matters being revisited.
- 7.27. The Chairman reminded Members that the Bill to amend the Constitution would be subject to review by a Joint Select Committee of the Parliament which would receive and hear submissions from the public. She encouraged Members to focus on putting a Bill in the Parliament with a commitment to hearing more from the people then.
- 7.28. Dr Barnett opined that the Committee should, as far as possible, strive to achieve consensus. He stated that while the process of consultation could be frustrating and difficult, the strategy for wider participation in symbolically accepting the President as a national figure had neither been discussed with the representatives from the Parliamentary Opposition nor in the public domain.
- 7.29. The Chairman stated that there would be other avenues for widespread discussion of the matter, and that she would invite a response from the Members of the Opposition once the revised recommendation was properly formulated.
- 7.30. The Chairman, in setting out what was considered, stated that the Committee discussed the process of nominating the President at length and came to a consensus on the nomination stage. The Committee was now tasked with deciding the confirmation stage. She noted that the Committee received a submission from JFJ for a suggestion that the local government representatives be included in the confirmation process. She further noted that since then, while the Committee was unable to arrive at consensus, there were two proposals being considered: 1) a process of confirmation involving the two Houses of Parliament sitting jointly but voting separately by secret ballot; and 2) a process of confirmation involving the

two Houses of Parliament sitting jointly and local government representatives sitting in their respective municipalities simultaneously voting by secret ballot.

7.31. Dr McCarthy enquired whether a public forum could be organised to clarify perspectives on those matters being reconsidered while the Bill was being drafted. The Chairman, in response, stated that a Bill went through several stages before it was presented to the people. Dr Barnett opined that constitutional change was doomed to fail if there was no measure of consensus at the point when the Bill was tabled.

7.32. The Chairman noted the importance of formulating a revised recommendation mindful of the amount of time spent going over the issues without achieving anything.

Lunch Break at 12:38pm

Meeting resumed at 1:38pm

8. REVISED RECOMMENDATION OF THE CONSTITUTIONAL REFORM COMMITTEE

8.1. The Chairman invited Members to recall the recommendation of the Committee set out at paragraph 4.3 in its Report tabled as a Ministry Paper on May 24, 2024. She stated that paragraph 4.3.1 remained. It read:

8.1.1. "From the public consultations carried out, the CRC is of the understanding that the people's aspirations for the Office of the President of the Republic of Jamaica are that it should be the embodiment of national identity, national unity and a neutral arbiter for the nation."

8.2. The Chairman noted that based on the discussions of the Committee paragraph 4.3.2 would be revised to change the requirement of a two-thirds majority vote to an absolute majority vote. She then stated that paragraph 4.3.3 was being revised to speak to a meaningful process of consultation with at least one reference back, thereby eliminating the need for separate nominations proceeding for confirmation as currently proposed in the Report of the Committee. She further stated that paragraph 4.3.4 would be revised to explain a concession to the application of the majority rule and that the proposal did not intend to provide, in effect, a veto by the Opposition. The paragraph would also state that after receiving the presentation of JFJ and upon deliberations by the Committee, further consideration was given to the question of whether the confirmation of the nomination for President should be

done by a body wider than the two Houses of Parliament. Reference would be made to the recommendation for the inclusion of the local government representatives.

- 8.3. Dr Henry enquired whether the absolute majority vote required would be in each of the three voting bodies. Dr Barnett, in response, stated that it would be an absolute majority of all the votes.
- 8.4. The Chairman questioned whether the high symbolism of confirmation in a single place (a joint sitting of the House of Parliament) would be lost because tallies would have to be done across parishes. She suggested that the high symbolism was more readily displayed where the body doing the confirmation was in one place voting together and less so in the respective parishes, as even where a single parish arrived at its vote, that did not determine the matter. Dr Barnett, in response, stated that the returning officers did not need to wait as they could simply tally the number.
- 8.5. Dr Barnett reiterated that the system being recommended required a nomination by the Prime Minister after consultation with the Leader of the Opposition and a vote on confirmation. He stated that Members needed to decide whether the vote would be a contested vote or a confirmatory vote. Where the consultation process did not yield a consensus nominee, he enquired whether the Leader of the Opposition could put forward a different nominee.
- 8.6. The Chairman advised that the issue appeared to have been settled as the Minutes of the last meeting reflected a consensus that the power to nominate would be given to the Prime Minister after meaningful consultation with the Leader of the Opposition and once the process had a reference back, the Prime Minister could proceed with his or her nominee.
- 8.7. Dr Barnett stated that for all practical purposes, the choice of President would be that of the Prime Minister because after consultation with the Leader of the Opposition, whatever the outcome, he would proceed with the nomination. He opined that it was likely for the Prime Minister's nominee to gain an absolute majority in both Houses of Parliament. He also stated that where a motion to confirm the Prime Minister's nominee was put before the Parliament, such a motion could expose the person to scrutiny and debate if it was a controversial nominee.
- 8.8. The Chairman stated that the issue raised of who to confirm the nomination was a separate question from the vote required to do so. She stated that where the Prime Minister exercised the power to nominate, where there was disagreement between the Prime Minister and the

Leader of the Opposition, deference would be given to a Prime Minister in a democracy on the application of the majority rule. She invited Members to recall that the recommendation for the Leader of the Opposition to nominate a candidate for President was heavily criticised. She further recalled that the gist of the feedback was a call for a process for both Leaders to work it out. She also stated that the Committee took into account complaints that consultations were not meaningful. Therefore, a timeframe for meaningful consultation and process of reference back was included, but much would ultimately depend on the personalities of the Leaders.

- 8.9. Dr Barnett encouraged Members to pay keen attention to the distinction between having a competing candidate as against confirmation of a singular candidate.
- 8.10. The Chairman, in response, invited Members to revisit paragraphs 10.5 and 10.6 of the Minutes of the 50th Meeting of the Committee. From the discussion, she understood Dr Barnett to be questioning the wisdom of putting forward a single candidate where the consultation did not yield consensus.
- 8.11. Dr Barnett, in response, stated that he was concerned about an opposing candidate or even the chance of a negative vote exposing the nominee to a sort of political conflict that was not desired. He recalled stating that anyone put forward for confirmation should be able to secure a two-thirds vote.
- 8.12. Ms Wilkins invited Members to consider an approach where a national committee, constituted by the Prime Minister, could be appointed to canvas the popular view and come up with a recommendation that would be made to the Prime Minister.
- 8.13. The Chairman stated that such a process could work and that the Prime Minister, Leader of the Opposition and representatives from wider society could be given a Terms of Reference. Dr Barnett indicated that he was not against the approach while noting that it would require a specialist committee. The Chairman further stated that people could nominate and the committee would be tasked with shortlisting from those nominated.
- 8.14. Dr McCarthy invited Members to recall the submission made by JFJ where something similar was proposed.
- 8.15. Since the issue would not be finalised in the meeting, the Chairman then invited Members to discuss the matter of impeachment and enquired whether there was need to revisit the recommendation. Dr Henry stated that he wanted to hear the perspective of the Opposition

on the matter. Dr Barnett stated that none of the representatives of the Opposition have responded nor put forward a view since he sent a copy of his submission on the matter.

- 8.16. The Chairman stated that having considered the matter, she was persuaded to retain the recommendation. She noted that people were calling for greater accountability. As such, she invited Members to note that the Constitution made provision for the ousting of Members. She stated that the Constitution placed a duty on parliamentarians to attend the Parliament and that where they were absent for a prescribed number of consecutive sittings, they could be removed.
- 8.17. Dr Henry invited Members to recall that there was a majority and minority view on impeachment and enquired whether both could be set out in the Report of the revised recommendation. Dr Barnett stated that there was a general distrust of politicians and as such, people believed that they should be disciplined. Any suggestion which sought to achieve this would be superficially popular without an appreciation of how impeachment has not worked. He stated that there was clear evidence that the impeachment process did not work properly.
- 8.18. Dr Henry stated that having seen the ways in which impeachment did not work and having regard to the desire for greater accountability, he enquired whether there was some other way to make the system work. Dr Barnett, in response, stated that one could vote out the person. Dr Henry asked that he be allowed to return to the next meeting with something in writing on impeachment, even if it means agreeing with Dr Barnett.
- 8.19. The Chairman then stated that having reconsidered the matter, the recommendation was to retain the formulation set out at paragraph 6.3 of the Report of the Committee.
- 8.20. Ms Wilkins then stated that it should also be pointed out that the Constitution, at sections 40 and 41, provided for removal in a number of instances such as criminal convictions and failure to disclose contracts.
- 8.21. On the matter of Section 49, the Chairman noted that there was agreement among Members for the alteration of section 49 to allow greater ease of reform without the need for a referendum while retaining the protection afforded to the provision.
- 8.22. Dr Barnett suggested that the question of dual citizenship be deferred until the next meeting so as to afford him some time to put forward a proposal on how the provision should be framed.

9. RECOMMENDATIONS FOR IMPLEMENTATION IN THE BILL

- 9.1. The Chairman advised Members that the Draft Bill was approximately 58 pages and titled **A BILL ENTITLED AN ACT** to repeal the Jamaica (Constitution) Order in Council 1962; to Amend the Constitution of Jamaica to provide for a non-monarchical Head of State, thereby establishing Jamaica as a republic; to make other amendments in respect of certain provisions of the Constitution of Jamaica; and to provide for connected matters.
- 9.2. Mr Small enquired whether there was a Bill to provide for the holding of the referendum and if so, whether it would be tabled at the same time as the Bill to establish the republic of Jamaica. The Chairman, in response, advised that the referendum Bill would be tabled before the referendum.

10. ANY OTHER BUSINESS

- 10.1. There was no other business.

11. DATE AND TIME OF NEXT MEETING

- 11.1. The Chairman advised that the next meetings of the Constitutional Reform Committee would be held on Wednesday, November 6, 2024 and Thursday, November 7, 2024.

12. ADJOURNMENT

- 12.1. There being no other business, the meeting was terminated at 3:07pm on a motion by Dr David Henry and seconded by Dr Elaine McCarthy.