



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 51st Meeting of the CRC
7. Matters Arising
8. Revised Recommendations for Implementation in the Bill
 - a. Body to Confirmation Nomination of President
 - b. Citizenship Qualification for Membership in Parliament
 - c. Impeachment – Yes or No
9. Any Other Business
10. Date and Time of Next Meeting
11. 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 David Henry (Wider-Society – Faith-based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mr Sujae Boswell (Youth Advisor) *via video link*
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin) *via video link*

Secretariat

Ministry of Legal and Constitutional Affairs

- Ms Nadine Wilkins – Director of Legal Reform
- Mr Christopher Harper – Senior Director, Constitutional Reform
- Ms Nastacia McFarlane – Director, Corporate Communication and Public Relations
- Mr Philip Cross – Senior Constitutional Reform Officer (Actg.)
- Mr Makene Brown – Legal Officer
- Mr Ivan Godfrey – Legal Education Officer
- Ms Shaedane Facey – Strategic Planner
- Mrs Shawna-Kaye Taylor Reid – Administrator (Actg.)

1. CALL TO ORDER

- 1.1. The meeting was called to order at 10:50am by the Chairman, the Hon. Marlene Malahoo Forte. She advised Members that since the meeting was not quorate, proposed decisions would be recommitted once quorum was achieved.

2. PRAYER

- 2.1. Prayer was offered by Dr David Henry.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

The meeting was quorate at 10:54am with the arrival of Mr Boswell via video link.

4. APOLOGIES FOR ABSENCE/LATENESS

- 4.1. Apologies for absence were received from Dr Elaine McCarthy, Mr Anthony Hylton, Senator Donna Scott-Mottley and Mrs Laleta Davis Mattis.

5. CONFIRMATION OF AGENDA

- 5.1. The Agenda was confirmed without amendment on a motion by Ambassador Rocky Meade and seconded by Dr David Henry.

6. CONFIRMATION OF THE MINUTES OF THE 51st MEETING OF THE CRC

- 6.1. The Minutes of the 51st Meeting of the Constitutional Reform Committee held on November 6, 2024 were corrected and confirmed on a motion by Ambassador Rocky Meade and seconded by Dr David Henry.

7. MATTERS ARISING

- 7.1. The Chairman directed the attention of Members to paragraph 8.18 of the Minutes, and enquired of Dr Henry whether he had prepared his written submission on impeachment. He responded that he had not been able to but did not wish to delay the process any further. The Chairman then advised that there would be other opportunities to further discuss the matter, once the Bill was tabled.

8. REVISED RECOMMENDATIONS FOR IMPLEMENTATION IN THE BILL

The Chairman advised Members of her intention to advance the work on the Bill for tabling in November. She highlighted the less than ideal context, but reminded everyone that there was no disagreement between the Government and the Opposition about the abolition of the monarchy as the right thing to do. She stated that every recommendation for implementation in the Bill had been agreed to by those who have spoken, notwithstanding the differences in views about some matters and the desire by the Opposition for more to be done immediately.

8.1. BODY TO CONFIRM NOMINATION OF PRESIDENT

- 8.1.1. The Chairman pointed out that in respect of the Office of President, there was still no consensus on the proposal by Jamaicans For Justice (JFJ) to expand the body to confirm the

nomination for President, even after extensive deliberations of the proposal by the Committee. However, it was recommended that the two options under consideration be put forward to the Cabinet for a decision. She explained what was involved in settling policy for legislation and reminded Members of the proposed scheme involving a joint sitting of the two Houses of Parliament to deal with matters related to the President, which was not limited to the confirmation of the nomination. She invited Members to further recall that the joint body would also deal with the removal of the President from office. She then enquired how such a process would work, practically, with the proposed expanded body. She stated that while the proposal to expand the body appeared attractive, it was important that Members appreciated that processes had to be administered and that complex, multi-layered processes were difficult to administer with efficiency and ease.

- 8.1.2.** Mr Small enquired whether a copy of the submission made by JFJ was available on hand as he did not recall the suggestion for the creation of a new body or assembly that would only sit in one place. He recalled Dr Barnett's submission that an appointed day notice would be published as to when the decision would be taken to facilitate everyone sitting at the same time irrespective of their geographical locations so that the results could be readily verified.
- 8.1.3.** The Chairman invited Members to recall that when the recommendation for a joint sitting of both Houses of Parliament was made, it was for high symbolism. Furthermore, it would be the first time the matter would be provided for in law, as currently it was only done by convention at the start of the legislative year or when foreign Heads of State or Heads of Government were visiting and addressing the Parliament. She noted that JFJ did not go into the level of detail that Dr Barnett did in his follow-up submission on the proposal. She said that it appeared to her that the Committee was struggling to accommodate the calls of the people for processes more suitable for an Executive Presidential System. She reminded Members 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 the government. She highlighted the Local Governance Act, as an example, where the model for local government had mixed up features of the executive presidential system, with a number of inconsistencies in need of reconciliation.
- 8.1.4.** Mr Small suggested that provision could be made in the Constitution for both Houses of Parliament and the Municipalities to meet on an appointed day.
- 8.1.5.** Dr Spence stated that when the Committee first deliberated, there was an agreed set of principles guided by a number of ideals and practices. She opined that the suggestion by JFJ did not have the kind of formative structure and justification as the initial recommendation.

She noted that JFJ relied heavily on the example of India and suggested that Members examine the Indian model. She, however, stated that she was convinced by the high symbolism initially pursued. While the call from the public for wider participation was important, she stated that she was uncertain whether that proposal would be a sufficient response.

Dr Barnett arrived at 11:18am

- 8.1.6.** The Chairman invited Dr Spence to restate her intervention so that Dr Barnett could benefit from the discussion. Dr Spence, in response, said that the first methodology proposed for the confirmation of the President was adequately thought out and agreed. She opined that the proposal made by JFJ was not sufficiently justified.
- 8.1.7.** The Chairman stated that the Committee seemed to have been grappling with the issue of how to provide for greater people participation. She probed whether it was as important as it appeared on the surface for the people to have a say in determining a Non-Executive President who was not involved in the day-to-day affairs of the country. She said that, on one hand, while she appreciated the high symbolism of the transition from a Constitutional Monarchy to a republican form of government, on the other hand, the President would serve for a term of office, not an extended duration. Therefore, she wondered whether it would matter as much to the people once the novelty wore off, after the initial transition.
- 8.1.8.** Ms Wilkins asked Members to consider that the very important but lesser appreciated functions of the Governor-General would be transferred to the President and they were not well known to the members of the public. She stated that while a lot had been said about the ceremonial functions of the Governor-General, much more needed to be said about his role in determining serious matters related to, for example, the Public Service and the Prerogative of Mercy.
- 8.1.9.** Dr Spence opined that a part of the challenge with the office of Governor-General, which was impacting the Office of President, was that it was shrouded in secrecy, as the office did not communicate with the people of Jamaica. She recalled the earlier meeting between the Governor-General, His Excellency Sir Patrick Allen and the Committee where Members were exposed to the full extent of the work and responsibilities of the office of Governor-General.
- 8.1.10.** The Chairman, in an effort to refocus the discussion, reminded Members that a decision was needed on the body that would confirm the nomination for President. She stated that among the things that the Committee sought to demonstrate was that the Members of the CRC actively addressed the views of those outside the Committee, and where proposals were made

they were meaningfully considered. She noted that the published Minutes demonstrated that due consideration was given to a number of views expressed in the public domain and to proposals presented to the Committee.

- 8.1.11.** The Chairman then enquired whether the call for greater people participation would be answered by expanding the body to confirm the nomination from only Parliamentarians to other elected representatives at the local government level. She highlighted a number of views put forward, namely, that the local government representatives were a larger body than the Parliament and more reflective of the people; that local government representatives took their cues from their political leaders; and that expanding the pool of persons to confirm the President would make the nomination more acceptable to the people. She then encouraged Members to conclude on the matter by formulating the proposal for inclusion in the Committee's revised recommendations. She reminded Members that there was consensus on the revised process to nominate the President.
- 8.1.12.** Dr Spence suggested that each Member indicate whether he or she was in support or against the proposal. The Chairman then invited Members to so indicate.
- 8.1.13.** Dr Henry stated that he was still struggling and suggested that both proposals be put to the Cabinet for a decision to be made. He also invited Members to recall that in the Report of the 1995 Joint Select Committee on Constitutional and Electoral Reform, there were several instances where those Members highlighted alternative proposals in the absence of consensus. He suggested that such an approach could be adopted by the CRC.
- 8.1.14.** Mr Small stated that the formal recognition of the local government through their inclusion in the confirmation process was of practical substance as it would allow persons to understand and appreciate that local government had a role to play in the governance of the whole country.
- 8.1.15.** Dr Barnett stated that he had nothing more to add beyond that which had already been stated by him both orally and in writing.
- 8.1.16.** Dr McKoy stated that in transitioning from one form of government to another, Members ought be careful that it was not creating a creature that could not be managed and would inevitably become an impediment to good governance generally. He stated while he understood the great importance placed on the office of President, he was reticent about creating new institutions. He noted that the system that was inherited had a different centre of power unlike the system of government in United States of America (USA). He also noted that in Jamaica, Parliament reigned supreme rather than the Executive. He therefore suggested that Members exercise caution in creating a system which gave the impression that the

President was the preeminent authority. He further stated that he liked the symbolism of a so-called electoral process and if broadening the body meant greater symbolism then he could support. He then reiterated that once it would not be suggested that the President was an independent functionary, the proposal could be pursued.

8.1.17. Professor Albert endorsed the comments made by Dr McKoy. He then stated that while he believed the electoral college to be a good idea, it was important for those ratifying the nomination to know that their role was a formality, in order to avoid problems that the USA, for example, confronts with government extremists disrupting the system.

8.1.18. Dr McKoy stated that there were examples of symbolic statement that did not diminish the overriding authority of the legislature. He noted that when the Indian Constitution was amended in 1948, it signalled the birth of the concept of a symbolic electoral college consisting of the members of the legislatures of various states. He, however, stated that once the electoral college was broad, there was no guarantee that the President would win.

8.1.19. The Chairman reminded Members that the first stop in the republic may not be the final stop.

8.1.20. Mr Boswell stated that while he was still in the process of considering the views expressed, he understood that it would not rationally make sense to make the process of selecting the President cumbersome.

8.1.21. Dr Spence stated that when JFJ indicated that their proposal was influenced by India, she thought about the complexity of the Indian democracy and the fact that it was the most populated country in the world. She noted that those were important factors that influenced and shaped their approach. She said that Members ought think about the system being planned for, how it was meant to work and what could be built into it so that it did not become ineffective.

8.1.22. The Chairman stated that she favoured a simpler process noting that greater people participation could come in many other forms. She further stated that while she took the calls of the people seriously, the onus was on the Committee to help the public understand the many different ways in which they could be involved and that the process of selecting the President need not be a proxy for other issues.

8.1.23. The Chairman then noted that the revision of the process, as agreed so far, was that there would be a nomination by the Prime Minister after meaningful consultation with the Leader of the Opposition, to be confirmed at a joint sitting of the Parliament on the vote of an absolute majority, by secret ballot.

8.2. CITIZENSHIP QUALIFICATION FOR MEMBERSHIP IN PARLIAMENT

- 8.2.1.** Dr Barnett stated that there were two issues to be considered. Firstly, whether the existing provision in the Constitution should be altered to provide for conflicting allegiance to be a disqualification for membership in Parliament rather than the possession of dual or multiple citizenship. Secondly, whether the approach agreed should be applicable to other constitutional offices.
- 8.2.2.** The Chairman stated that the matter of citizenship qualification for membership in the Parliament was a difficult issue because Jamaicans could possess many other citizenships by virtue of descent or being born in Jamaica to parents from foreign countries.
- 8.2.3.** Dr Barnett invited Members to recall that citizenship in Jamaica, as per the Constitution, could be obtained by birth, descent or through marriage. He stated that the substantive issue was that based on the law of another country, a Jamaican could automatically possess foreign citizenship through descent.
- 8.2.4.** Dr Spence enquired whether a person born in the USA to Jamaican parents were automatically a Jamaican citizen. The Chairman, in response, stated that there was a big gap in the legislation as provisions were not fully fleshed out. She stated that in an effort to clarify the entitlement to Jamaican citizenship, there ought to be a clear process for acquiring it, to accompany the entitlement. She then stated that when she attended a Constitutional Reform Town Hall in Washington DC, one of the issues raised was whether there should be a generational limit to citizenship by descent. She noted that her research led her to India, for example, which limited their citizenship by descent. She noted that Jamaica's provision in respect of citizenship by descent was open ended and that she was of the view that it had an economic bearing on the country. She then enquired whether consideration should be given to a limit to the claim of Jamaican nationality.
- 8.2.5.** On the matter of the qualification for membership in Parliament, the Chairman pointed out that the public seemed to be of the view that Parliamentarians should not hold multiple citizenship. She stated that there was a general sentiment that the work of the Parliament was too important to allow persons escape routes to foreign countries when faced with the consequences of their decisions in challenging circumstances.
- 8.2.6.** Dr Spence stated that many grew aware of the issue after it was heavily politicised. She further stated that the political conversation made it very clear that many were of the view that Jamaican citizenship only should qualify one to serve in the Parliament.
- 8.2.7.** Dr Barnett invited Members consider that complexity which arose whereby persons may be citizens of other countries without knowing it. The Chairman, in response, opined that having

a right to something did not make it automatic as such right had to be exercised. Dr Barnett stated that registration did not apply to all situations. The Chairman then enquired whether there was any situation where a child born outside the USA, for example, was automatically entitled to US citizenship. Professor Albert stated that a person born to American parents overseas was entitled to US citizenship. At least one parent had to be American and the birth had to be registered.

8.2.8. Ms Wilkins stated that a person born in Jamaica to American parents had a right to both citizenships.

8.2.9. Mr Small enquired whether the discussion related to the matter that was being considered for inclusion in the Bill to be tabled.

8.2.10. Dr Barnett recalled that the Committee considered and noted that since 1949 there were a number of countries which joined the Commonwealth that had no historical ties to the British Empire. He also recalled that the relationship with the Commonwealth had evolved with reduced reference to the Monarch. The Committee was therefore of the view that Commonwealth citizens should not be automatically qualified to be elected to the Parliament. As such, Members recommended that the qualification for membership in Parliament be restricted to Jamaican citizenship. However, after publishing the recommendation, the question arose in relation to persons who possessed dual or multiple citizenships and it sparked controversy. He then stated that the Committee did not decide on the question of dual citizenship but rather that Commonwealth citizenship would not be the qualifying citizenship.

8.2.11. The Chairman invited Members to consider section 39 of the Constitution of Jamaica, which stated that –

‘Subject to the provisions of section 40 of this Constitution, any person, who at the date of his appointment or nomination for election –

(a) is a Commonwealth Citizen of age twenty-one years or upwards; and

(b) has been ordinarily resident in Jamaica for the immediately preceding twelve months

shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives and no other person shall be so qualified.’

8.2.12. The Chairman stated that the recommendation was to change the words “Commonwealth Citizen” to “Jamaican Citizen”. She then invited Members to consider section 40(2) which provided that –

“No person shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives who –

(a) is by virtue of his own act, under any acknowledgment of any allegiance, obedience or adherence to a foreign Power or State

(b) [...]

8.2.13. The Chairman stated that the question was whether to change the qualification from a test of conflicted allegiance as already provided for to a provision which prescribed that no person should be qualified to be appointed or elected if they held citizenship of a country other than Jamaica.

8.2.14. Dr Barnett enquired whether a recommendation was made in respect of section 41(1)(d) of the Constitution. The Chairman noted that it would be consequentially amended having regard to the removal of the reference to “Commonwealth citizen” in section 39.

Lunch Break at 12:53pm

Meeting resumed at 1:39pm

8.2.15. The Chairman advised that the question to be resolved was whether a person should be disqualified from being a member of the Parliament if he or she possessed citizenship of a country other than Jamaica.

8.2.16. Professor Albert stated that in Canada, there was no legal impediment to anyone serving in a position either elected or appointed in government. In the United States, he stated that while one must be a natural born citizen to become President, there were variances in other political offices.

8.2.17. The Chairman then enquired whether the existing provision should be simplified, mindful of how it had been interpreted in recent case law. Dr Barnett, in response, stated that clarity could be brought to the provision by specifying the circumstances that would constitute acts suggesting allegiance to a foreign power or State. He further stated that Jamaican citizenship was an entitlement that was sacred. He suggested that the premise began with Jamaican citizenship as the basic qualification noting that it could only be lost where one pledges allegiance to another country.

8.2.18. The Chairman then enquired into the circumstances that would be provided for. Examples cited included applying for and obtaining a passport, serving in the armed forces of another country, serving in the diplomatic corps of another country and other similar acts. The Chairman stated that one of the reasons for a disqualification by virtue of allegiance was to ensure that no Member of Parliament would protect another realm to the detriment of

Jamaica. Furthermore where someone had other citizenships, he would have to revoke the foreign citizenship as a demonstration of no conflicting allegiance.

8.3. IMPEACHMENT – YES OR NO

8.3.1. Members agreed that the matter was settled with a “no”.

9. ANY OTHER BUSINESS

9.1. There was no other business.

10. DATE AND TIME OF NEXT MEETING

10.1. The Chairman advised that the next meeting of the Constitutional Reform Committee initially set for Thursday November 7, 2024 would be rescheduled to Wednesday, November 13, 2024.

11. ADJOURNMENT

11.1. There being no other business, the meeting was terminated at 2:00pm on a motion by Mr Hugh Small and seconded by Dr Nadeen Spence.