



MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS

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MINUTES

54th Meeting of the Constitutional Reform Committee (CRC)

Venue: Ministry of Legal and Constitutional Affairs

Date: December 4, 2024

Time: 11:30am

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 53rd Meeting of the CRC
7. Matters Arising
8. The Constitution (Amendment) (Republic of Jamaica) Bill
9. Preparation for the Tabling of the Bill
10. Any Other Business
 - a. Visit of International IDEA
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)
- Dr the Hon Lloyd Barnett, OJ (National Constitutional Law Expert) *via video link*
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- Dr Elaine McCarthy (Chairman – Jamaica Umbrella Groups of Churches)
- Dr David Henry (Wider Society – Faith-based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mrs Laleta Davis Matis, 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, JP – Permanent Secretary
- Ms Nadine Wilkins – Director of Legal Reform *via video link*
- Ms Judith Grant – Chief Parliamentary Counsel
- Mr Christopher Harper – Senior Director, Constitutional Reform
- Mrs Janelle Miller-Williams – Senior Director, Legal Education
- Mrs Cheryl Bonnick Forrest - Senior Director, Strategic Planning
- Mr Philip Cross - Senior Constitutional Reform Officer (Acting)
- Ms Shereika Mills - Constitutional Reform Officer (Acting)
- Mr Makene Brown - Legal Officer
- Mr Ivan Godfrey - Legal Education Officer
- Ms Shaedane Facey – Strategic Planner

1. CALL TO ORDER

- 1.1.** The meeting was called to order at 11:47am by the Chairman, the Hon. Marlene Malahoo Forte when quorum was achieved.

2. PRAYER

- 2.1. Prayer was led by Dr David Henry.

3. NATIONAL PLEDGE

- 3.1. The National Pledge was recited.

4. APOLOGIES FOR ABSENCE/LATENESS

- 4.1. An apology for lateness was received from Mr Sujae Boswell.

5. CONFIRMATION OF AGENDA

- 5.1. The Agenda was amended at the request of Dr Spence to include, as a sub-item under “Any Other Business”, the visit of International IDEA.
- 5.2. The amended Agenda was confirmed on a motion by Ambassador Rocky Meade and seconded by Dr Nadeen Spence.

Hugh Small arrived at 11:51am

6. CONFIRMATION OF THE MINUTES OF THE 53rd MEETING OF THE CRC

- 6.1. The Minutes of the 53rd Meeting of the Constitutional Reform Committee held on November 13, 2024 were corrected and confirmed on a motion by Mrs Laleta Davis Mattis and seconded by Dr Elaine McCarthy.

7. MATTERS ARISING

- 7.1. Matters arising were set out and taken at Agenda items 8 and 9.

8. THE CONSTITUTION (AMENDMENT) (REPUBLIC OF JAMAICA) BILL

- 8.1. The Chairman reported significant progress in the work to reform the Constitution of Jamaica, acknowledging the challenges encountered. She advised that an update was provided to Parliament on December 3, 2024 as a “Statement by Minister”, which was a lead item in the news. She indicated that the Leader of the Opposition expressed concerns about not being informed of any developments. She was of the view that his complaint was misdirected as it was the responsibility of the Members who were nominated by the Leader of the Opposition to update him. Nevertheless the Chairman acknowledged the importance of dialogue with the Parliamentary Opposition.

- 8.2. The Chairman then highlighted two major challenges: firstly, the constraints of how much could be achieved within the current Parliamentary session/term, given the constitutional timelines and secondly, the uncooperative stance of the Parliamentary Opposition. The Chairman stated that the Committee did not have the luxury of wishing away its context. She reminded Members that the work could not be completed in the life of the current Parliament, but depending on when the Parliament was dissolved, the Bill could be passed in the House and sent to the Senate.
- 8.3. The Chairman expressed disagreement with the perspective that the work should have been halted, having commenced in the middle of the Parliamentary life. She reiterated that the goals being pursued were national goals on which there was no dispute. She expressed gratitude to Members for their dedication despite any difficulty experienced. She encouraged Members to remain committed to overcoming obstacles.
- 8.4. The Chairman then advised that subject to Cabinet approval, a Bill could be tabled in the House at the next sitting. She also stated that she was grateful for the clarity which emerged from the process – clarity on governance issues and what it meant to be entrusted with the responsibility of Ministerial and Parliamentary offices.

Sujae Boswell arrived at 12:03pm

- 8.5. The Chairman then went on to inform the Committee of the clauses of the Bill.
- 8.6. **Clause 1** made provision for the short title and commencement. She noted that an earlier version of the Bill made reference to the “Republic of Jamaica”. When the matter was reviewed, a decision was taken to remove the reference to “of Jamaica” because there was no intention to change the name of Jamaica to the “Republic of Jamaica.” She also stated that the commencement provision, as written, was one of the standard ways in which laws came into operation.
- 8.7. **Clause 2** sought to repeal the *Jamaica (Constitution) Order in Council 1962* and save the *Constitution of Jamaica*. The Chairman noted that the provisions, when passed, would advance the goal of patriating the Constitution of Jamaica.

Dr Barnett joined virtually at 12:09pm

- 8.8. **Clause 3** inserted a Preamble in the Constitution. The Chairman reminded Members that the proposed Preamble was the product of the process approved by the Committee.
- 8.9. **Clause 4** made provision for the repeal and replacement of section 1 of the Constitution, with a new short title whereby the Constitution would be referred to as the Constitution of Jamaica. The Chairman stated that the short title came from a process led by Dr Barnett who did a poll among Members of the Committee.

- 8.10. **Clause 5** sought to tidy up what was currently provided for at section 2 of the Constitution, while making provision for existing laws, having regard to the repeal of the *Jamaica (Constitution) Order in Council, 1962*.
- 8.11. **Clause 6** provided for a new interpretation provision at section 2A. The Chairman noted that while not every sub-section was new, having regard to the feedback about the cumbersome nature of deleting parts of words and parts of sentences, the drafting device utilised repealed and replaced entire sections or sub-sections, for readability. It was important to preserve some existing provisions since the entire Constitution was not being rewritten at this time to ensure that no gaps were being created or to avoid reasonable foreseeable constitutional crises.
- 8.12. Ambassador Meade enquired whether the definition of “appointed day” would create any confusion as there was a reference to an appointed day in the Bill and in the Constitution.
- 8.13. The Chief Parliamentary Counsel (CPC), in response, stated that it was a technical issue which required explanation to mitigate any confusion that may arise. She stated that there was an appointed day for the Act and an appointed day for the Constitution which was being preserved from 1962.
- 8.14. The Chairman then continued with the provisions of the Chapter II of the Constitution, on citizenship, which were being tidied up, as a consequence of the recommendation re: Commonwealth citizenship. Those changes were reflected at **clauses 7 to 10**.
- 8.15. **Clause 11** amended Chapter IV of the Constitution by making provision for the Office of the President.
- 8.16. Dr McCarthy enquired whether a timeline for notice should be given in the case of a resignation by the President. Dr McKoy, in response, stated that for such offices, there could be no notice requirement as the office holder must be able to leave immediately, as it was not a job but rather a post. He stated that the office holder may give notice but the law cannot require it.
- 8.17. On the matter of the removal from Office, the Chairman noted that the Committee accepted the proposal of the Leader of the Opposition that the investigation should be done by a quasi-judicial body external to the Parliament.
- 8.18. Mr Small asked the Chairman to explain the immunity provision set out at the proposed section 27. The Chairman, in response, stated that it gave effect to the recommendation that the President would be immune from prosecution while performing the functions of office. Mr Small opined that the provision was wider than what was recommended as it proposes that the office holder may not be subject to any legal proceedings. The chairman read the provision aloud once more. Mr Small stated that the provision would likely go to court as it limited it to civil and criminal proceedings. He noted that there were other proceedings that were justiciable.

- 8.19. The Chairman then enquired of Mr Small whether he had any suggestion for improvement noting that the provision faithfully reflected the extent of the immunity. She stated that the intention was to provide immunity to the person in office exercising the functions of that office, while in office.
- 8.20. Mrs Davis Mattis stated that from her reading of the provision, the immunity appeared to relate to the functions of the President under the Constitution - anything beyond that would not be applicable.
- 8.21. Mr Small did not make any suggestion for improvement but asked the CPC to advise whether the language was taken from another constitutional instrument. The CPC, in response, stated that it was crafted in accordance with the drafting instructions.
- 8.22. Ambassador Meade enquired whether it was deliberate to exclude an appointment from among the Custodes in the case of a vacancy following the removal of the President from office. The Chairman reminded Members that there was consensus in keeping the scheme of appointing from among the Custodes where there was a temporary incapacity in the office of the President.
- 8.23. **Clause 12** sought to tidy up references to the “President of the Senate” by substituting a reference to “Senate President”. **Clause 13** replaced references to the Governor-General, where appropriate, with references to the “President.”
- 8.24. Mr Small enquired whether any consideration was given to establishing a constitutional architecture that only had one office of President. He noted that in Canada, Kenya and other countries, the nomenclature given to the presiding office of the Senate was Speaker of the Senate. He stated that if the intention was to establish the Republic of Jamaica and create the office of President, for the purpose of greater understanding, the Constitution would be much clearer if reference was made to only one office of President. The Chairman, in response, invited Mr Small to consider page 41, paragraph 8 of the Report of the Constitutional Reform Committee. She then stated that while a lot of time was spent deliberating this particular matter, any further consideration would have to be taken up in the Joint Select Committee.
- 8.25. **Clause 14** sought to tidy up references to the “Crown or Monarch.” **Clause 15** sought to change the heading of Chapter V from “The Parliament” to “The Legislature”. **Clause 16** amended section 35 of the Constitution which made provision for the establishment of the Parliament. The Chairman invited Members to recall the recommendation to remove the Head of State from the Parliament. However, after an internal review of the Constitution, it became noted that there was an elaborate interwoven scheme which involved the Head of State as part of the Parliament. Accordingly, any decision to implement the recommendation would therefore be delayed until we had the benefit of a more in-depth review of the Constitution. She stated that the decision retain the Head of State as Part of the Parliament was taken out of an abundance of caution.

- 8.26. **Clause 17** addressed the composition of the Senate. **Clauses 18 and 19** amended section 37 and 39 of the Constitution respectively. **Clause 20** amended section 40 of the Constitution which spoke to disqualification from membership in the House of Representatives and the Senate. **Clause 21** amended section 41 of the Constitution. **Clause 22** proposed amendments to the alteration provision of the Constitution set out at section 49.
- 8.27. At the request of Members, the Chairman used the remainder of the time to highlight those remaining clauses in the Bill which proposed major changes to the Constitution.
- 8.28. **Clause 29** incorporated the Electoral Commission of Jamaica.
- 8.29. Mrs Davis Mattis congratulated Members of the Committee noting that they were at a stage where the public would have something to deliberate on.
- 8.30. Dr McCarthy stated that a lot of work went into the preparation of the Bill.
- 8.31. Professor Albert stated that as the Chairman read the Bill, he was reacting using the online features for all the work done to get to this point. He regarded it as a remarkable achievement.

9. PREPARATION FOR THE TABLING OF THE BILL

- 9.1. The Chairman advised that the intention was to table the Bill sooner rather than later noting the progress that was made. She also stated that reforming the Constitution did not begin significantly until a Bill was laid before the Parliament.

10. ANY OTHER BUSINESS

10.1. VISIT OF INTERNATIONAL IDEA

- 10.1.1. Professor Albert reminded Members that a team from International IDEA would be visiting Jamaica in the new year. The Chairman stated that the Ministry would do whatever it could to facilitate their visit.

11. DATE AND TIME OF NEXT MEETING

- 11.1. The Chairman advised that the date and time of the next meeting of the Committee was to be confirmed and details provided in advance.

12. ADJOURNMENT

- 12.1. There being no other business, the meeting was terminated at 2:29pm on a motion by Dr Elaine McCarthy and seconded by Dr Derrick McKoy.