



**MINUTES OF THE MEETING OF THE JOINT SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT ON A BILL SHORTLY ENTITLED,
“THE CONSTITUTION (AMENDMENT) (REPUBLIC) ACT, 2024,”
HELD ON WEDNESDAY, JANUARY 15, 2025, AT 10:20 A.M.**

1. ATTENDANCE

Present were:

Hon. Marlene Malahoo Forte, KC, MP - Chairman
Miss Tamika Davis, MP
Miss Kerensia Morrison, MP
Mr Duane Smith, MP
Mr Mark Golding, MP
Mr Anthony Hylton, MP
Senator Charles Sinclair, CD
Senator Ransford Braham, CD, KC
Senator Sherene Golding Campbell
Senator Donna Scott Mottley

Absent was:

Senator Peter Bunting – apology

Also present were:

Ministry of Legal and Constitutional Affairs
Mr Wayne O. Robertson, Permanent Secretary
Mr Christopher Harper, Senior Director, Constitution Reform
Mr Philip Cross, Senior Constitutional Reform Officer
Ms Shereika Mills, Constitutional Reform Officer
Mr Ivan Godfrey, Legal Education Officer
Ms Shawna-Kaye Taylor Reid, Administrative Assistant

Legal Reform Department

Ms Nadine Wilkins, Director
Mr Makene Brown, Legal Officer

Office of the Parliamentary Counsel

Ms Judith Grant, Chief Parliamentary Counsel
Ms Christal Parris-Campbell, Assistant Parliamentary Counsel

Houses of Parliament

Ms Ashleigh Ximines, Senior Legislative Counsel (Acting)
Ms Tracy Cohen, Committee Coordinator

CALL TO ORDER

The Chairman called the meeting to order at 10:20 a.m.

PRAYER

The opening prayer was said by Member Mark Golding

APOLOGIES FOR ABSENCE

Apologies for absence were tendered on behalf of Senator Peter Bunting.

WELCOME AND OPENING REMARKS

The Chairman welcomed everyone to the meeting, noting that procedural matters would be its focus. She reminded the Committee that in the 1970s it had been decided that, in furthering the goals of independence, Jamaica should seek to depart from constitutional monarchy as a form of government. During that period, the Constitution Reform Division in the Ministry of Justice had been formed with this objective in mind, and much work had taken place over the years, but thus far, the tabling of the Bill was the greatest advancement that had been achieved. She stated further that the Constitution included a difficult amendment procedure in respect of the role of the Monarch, ultimately requiring the people's approval, and this only after the approval of a Bill by Parliament.

The Chairman emphasised that a bipartisan approach was preferred, as voters had a tendency to take signals from their political party and registered voters would be the ones to approve the change. She also noted that the present Administration had decided on a phased approach to the process, as stated in the Terms of Reference of the Constitution Reform Committee. This had been agreed, except to the extent that the Opposition wished to resolve the question of Jamaica's final appellate court simultaneously. She then stated that the general approach would involve proceeding with matters on which there was consensus, which did not include the issue of the final court at that time. She added that the Opposition wished to have the Caribbean Court of Justice (CCJ) as the final appellate court for compelling reasons and that a Bill to effect this had been tabled but not approved. Member Golding revealed that it had been passed in the House of Representatives, but not in the Senate.

The Chairman noted that the nation had reached the present stage in the exercise with divided views both within and across Parliament. She stated further that while she understood the position taken by the Opposition in respect of addressing the three arms of government simultaneously, there were differences in the approach taken by the Government and the Opposition and the matter was extremely important. She stated that some citizens perceived the CCJ as a People's National Party supported Court and the Judicial Committee of the Privy Council as a Jamaica Labour Party supported Court, but in fact the judicial branch of government was independent and should not be viewed as being aligned to any side in the Parliament; the issue of the final court for Jamaica was about which final court was in the best interest of the people of Jamaica, especially those who use the court to settle their disputes. Nevertheless, she indicated that in the Jamaican society, issues of justice were paramount. She also stated that the final appellate court was not the first point of contact for most persons who interacted with the justice system and only a small proportion of cases reached that tier of the judiciary. Consequently, a reform of the entire branch was needed, and some progress had been made in that area. She then explained that she had taken the time to address the question of the final appellate court because she had become aware that it had been said that there would be no cooperation unless it was resolved.

The Chairman alluded to statements allegedly made by the Leader of the Opposition to the effect that it was disrespectful not to hold discussions with their representatives. She assured him that that had not been the intention, but, instead, there was a desire for increased dialogue. She explained that she did not wish to see the matter put before the people of Jamaica if there was no consensus, even though the Constitution included a mechanism for such circumstances, as research had shown that referenda were more likely to achieve the desired result if there was agreement on the matter at the parliamentary level.

The Chairman stated that the Bill did not address all the pertinent issues but had two main goals, namely, putting the Constitution in its proper form and enabling the establishment of a Jamaican head of state who was reflective of the country's identity and nationality.

There were provisions dealing with the establishment of the office of President, appointment to the office and matters related to it. She explained that there was an innovation in the Constitution in that regard because, for the first time, it would make provision for the joint sitting of the two Houses of Parliament, which was currently done by convention for the Ceremonial Opening of Parliament or when there was a visiting head of government or head of state. She went on to say that the matters relating to the office of President would require both Houses coming together to deal with those matters.

The Chairman further informed the Committee that the Electoral Commission of Jamaica would be entrenched in the Constitution, as originally intended. She noted that the interim Act was interim in name and nature, pending completion of the steps to incorporate the Commission. She also said that very important goals that had been set for the nation for some time were now being pursued, and they would have to decide how far to go in light of the importance of the issue of the final court, discussions on which were not closed since there were time gaps at different stages of the process. She explained that their ability to progress beyond the passage of the Bill in both Houses of Parliament would be dependent on cooperation and could be affected by the stage reached in the life of the Parliament and the potential for it to be shortened.

The Chairman revealed that in the preceding week, the work had had the benefit of the views of international observers who studied constitutional reform globally and comparatively. They had commented that in the Commonwealth Caribbean and in Africa and other parts of the world, a lot of constitutional reform processes took place, but very little constitutional reform was accomplished due to the length of time spent talking about it and resolving issues instead of moving the process forward. She noted that Members of the House of Representatives would become occupied with elections sooner rather than later and even members of the Senate would be assisting their parties with the work, and nothing would be put to the people if agreement on the main goals of the exercise could not be achieved. She expressed optimism while acknowledging that in the past and across administrations, there had been difficulties in achieving cooperation between both sides of the aisle on constitutional issues, with the notable exception of the passing of the Charter of Rights. She indicated that there were persons who were of the view that the party that forms the Opposition should not cooperate with the Government unless and until the issue of the final court is agreed, but the matter was not about a Court for either political party but for the people of

Jamaica and making progress to achieve the goals of Independence should be viewed as a national goal.

The Chairman concluded her opening remarks by stating that she was unable to speak about the sentiments of the parties, generally, but she had been assigned a task, and she believed that the goals that were being pursued were in the best interest of Jamaica going forward. She then indicated that she intended to proceed by considering the schedule of meetings to review the Bill and she had already consulted the committee calendar for available dates. She added that, in keeping with the Standing Orders, it was the Bill itself that would come under review during the deliberations and there would not be a general discussion about constitutional reform. They would also make a determination on how to deal with invitations to members of the public for their feedback on the Bill and other administrative arrangements.

Statement by the Leader of the Opposition

The Leader of the Opposition made the following statement:

Madam Chairperson, I wish you all the best for 2025.

Before this Joint Select Committee gets into the full business of today's initial meeting, please allow me to make a brief clarifying statement on behalf of the Opposition, so that both sides, and the public, are all clear on where we are.

The Opposition has acceded to the request of the Government to be a part of this Joint Select Committee of Parliament to deliberate upon this Bill which seeks, among other things, to have Jamaica move to become a Republic within the Commonwealth; and we are now meeting for the first time.

The aim for Jamaica to abandon the British monarchy has long been the settled public position of the PNP. Indeed, for several national elections it has been prominent in the Party's campaign manifesto.

From as far back as the 1970s it was the subject of consideration by a Committee established under the Michael Manley-led administration. Then, thirty years ago in 1995 in the Report of the David Coore-chaired Joint Select Committee on Constitutional and Electoral Reform, there was full and firm acceptance by Parliament of a recommendation that the matter of Jamaica becoming a republic should be pursued in earnest.

Neither Party has ever veered from that well-documented position throughout the years.

I reaffirm today that the Opposition wants Jamaica to become a republic, delinking from the British monarchy, and more.

I also say to this Committee and to the nation that, as far as I am concerned, the rights, interests, benefits and privileges of the people of Jamaica are paramount in this matter, over and above everything else in the remit of the Opposition and of myself as leader. And it is with that in the forefront of my mind that I make this preliminary statement today.

Madam Chairperson, during this 21st century the Jamaica Labour Party, in or out of government, has never given to the public any indication of its support for Jamaica to withdraw from the British Monarch's Court; not even as an interim measure.

Furthermore, by the tabling of this Bill the Government has cemented its intention for Jamaica to move away from the British monarchy while still remaining tied to the British Monarch's Court.

The Opposition that I lead, on the other hand, far from seeking to block either initiative, seeks the pursuit and success of both: Two instead of One! We say, time come for full decolonisation.

Our position rests on the foundational principle to which all political parties in democracies must abide. It remains the sacred duty of the People's National Party. That principle asks the abiding question:

"How can the vast majority of the Jamaican people be left behind, particularly in a process of decolonisation? Is it not they who colonisation had made 'less fortunate'? Why should they continue to remain deprived of the fundamental right of access to justice?"

On behalf of the Jamaican people, therefore, the Opposition is forced, dutifully, to pose certain questions to the Government, and which we are concerned should, at this historic juncture, be recorded by Hansard; hence we agreed to be a part of this Committee from the beginning.

These are our questions for the Government:

1. The Bills to move to the Caribbean Court of Justice (CCJ) as Jamaica's final court of appeal were tabled in this Parliament for the second time ten years ago. Are the people of Jamaica not entitled to be told why the Government has not tabled the CCJ Bills again now, thereby signalling that both sides, Government and Opposition, will work together to accomplish the twin objectives of transitioning both from the British monarchy and from the British Monarch's Court?
2. Bearing in mind that the history of the constitutional reform process over the past 30 years has undeniably birthed a distrust factor, would the Government not, like the Opposition, wish for that to be put behind us, before embarking on this leg of the historic legislative process and referendum for Jamaica to become a republic?
3. Is the Government not under a fundamental duty to explain, in clear and unambiguous terms, why it is determined to proceed in this piecemeal fashion, instead of using the historic opportunity of this constitutional reform process to ensure that the majority of the Jamaican people enjoy the benefit of access to justice at their highest court? After all, the CCJ as a globally respected regional institution has long been provided to serve this purpose, and is doing so with excellence that is internationally acclaimed.
4. Would the people, and we ourselves, not regard it as a welcome sign of maturity and wisdom to witness an agreement between the Parties on the settled way

forward for success on these new constitutional arrangements, regardless of which party wins the upcoming national elections? And is this not a most appropriate juncture for that consensus to be accomplished?

In considering those four questions, we should remind ourselves that former Prime Minister Bruce Golding, when he opened the Charter of Rights debate in the House of Representatives in 2011, made it clear to his colleagues that for success in these initiatives consensus is essential. That is as true now as it was then, because that is what a constitutional reform process requires.

These four questions are not posed for you to answer, Madam Chairperson. These are matters relating to consensus in the reform of our Constitution, and require answers to be provided by the Head of Government himself. The answers are long overdue.

Madam Chairperson, the answers that are forthcoming will determine the character of the Opposition's co-operation in this exercise.

The Opposition is pushing for both sides to work together on both initiatives. The Opposition needs to be convinced that there is a better way forward.

Let me repeat and stress: We need answers to these questions because the way in which the process is moving will condemn the majority of our citizens to remaining way out of sight back there, without their fundamental right of access to justice being assured, and with no guarantee of their interests ever reaching the front page. The current approach leaves the people's interests behind. It our sacred duty to bring them forward.

Madam Chairperson, in the name of all that is good, all that is caring, considerate and true, this situation must, in all conscience, be remedied before there can be Opposition support.

The Opposition has sought the answers to these questions before, and now seek them of the Government again, at this game-changing juncture of the country's history!

As it stands, the Government is leading Jamaica into a situation in which the British monarchy would have been ditched; the head of state would no longer be in Buckingham Palace; but Jamaicans would have to obtain a visa, and would have to pay many, many millions of dollars, to enjoy the privilege of gaining entry into their highest court, the court of the very same abandoned British monarch.

What justification can there be for preserving such a backward, self doubting and undesirable state of affairs?

The Government must answer that question, and explain its insistence on a piecemeal approach which could only be premised on a lack of self-respect and shamelessness as a people.

This Opposition must reject that approach. We could not support or facilitate such a proposal; and certainly not under the roof of George William Gordon House!

Madam Chairperson, I wish to make it pellucidly clear that we also have some other serious concerns in relation to some of the contents of this Bill, which we would wish to tackle in the deliberations of this Joint Select Committee. However, the fundamental question of access to justice in the interests of the people of Jamaica must be addressed first.

As such, as from the adjournment of this morning's meeting, we ask to be excused from further participation in this committee, pending the answers to these questions being given to the public.

Member Golding Campbell commented that the meeting was historic but noted that the procedures appropriate to a Joint Select Committee should still be observed, including the provision of copies of Statements to be made during the proceedings and a file containing all pertinent documents for each member of the Committee, neither of which she had received. The Chairman read into the record the motions moved in either House to establish the Committee and informed the Members of the other documents that had been made available to her. She instructed the Committee Clerk to prepare the files. She also expressed concern about the deviation from the Agenda in respect of the main business of the meeting, which had been identified as "Procedural Matters."

Member Hylton stated that he had followed the Chairman's extensive contextual statement intently, had understood the substance and intent of it, and had found that it enriched and clarified the proceedings. He expressed the view that the Leader of the Opposition had been obliged to respond in kind.

The Chairman commented that the present approach to the reform of the Constitution was not a piecemeal one. She explained that the Terms of Reference which informed the work of the advisory Constitutional Reform Committee had clearly set out the overarching goal of the current Administration in relation to the subject. She added that research had shown that attempts to do everything at once had failed miserably across the globe and in the Commonwealth Caribbean and it would be most unwise not to heed those lessons. She stated further that there had not been a referendum in independent Jamaica and while different administrations had spoken passionately about constitutional reform, there appeared to be the fear of engaging the mechanism for altering deeply entrenched provisions of the Constitution, which required that a referendum be held. She stated further that in the present political culture there were anecdotes that referenda are really not on the subject matter that goes to the electorate but on the performance of the Government. She went on to say that the Most Honourable Andrew Holness, Prime Minister, had decided that he would take the political risk to move Jamaica forward, but all risks had to be managed and it had been seen that even smaller changes had been extremely disruptive. She reiterated that the approach was not piecemeal, but the reform goals were being implemented in phases to avoid creating instability in Jamaica's democracy.

The Chairman also stated that the Government and the Opposition were not agreed in respect of the perspective that not addressing the issue of the final Court in the present phase of the exercise would leave the majority of Jamaicans behind and disregard their rights. She again made reference to data that showed that the smallest

category of appeals consisted of those made to the final Court, not just in Jamaica but generally, even in jurisdictions where the final court was resident within their borders.

The Chairman also made the observation that the delays that had been built into the procedure for amending the Constitution allowed deep reflection and serious deliberation. She noted that the first three-month period had already passed, but there was another after the conclusion of the debate and the taking of votes. In addition, there would be a further waiting period when the matter entered the Senate. She commented that her understanding of the difference between the approach being pursued by the Government and the Opposition's position was that the Opposition wanted everything to be done at once and there was no room for discussing which final court would be in Jamaica's best interest. She went on to say that full decolonization would not be effected simply by removing the Court because the most significant problem in Jamaica had to do with deep cultural issues which had been succinctly captured by Robert Nesta Marley, OM, in a song about emancipating the mind.

The Chairman also noted that there was distrust on both sides of the conversation and deeply broken trust was a feature of the society as a whole. She remarked that the work that needed to be done was extensive and could not be completed all at once, but she would like to establish a programme that showed commitment to dealing with the matter in stages. She reminded Members of the impending campaign season and promised to report to the Head of Government on the Leader of the Opposition's questions in respect of the final Court. She added that she did not think it was wise to dismiss any of the views on the matter, and a systematic review of the merits and drawbacks of each position was needed.

Member Scott Mottley commended the Chairman for her historic role in bringing the constitution reform endeavour to the present phase. She then indicated that the Opposition understood that the constitution reform process was highly complex and they were not in fact asking for everything to be done at once. She emphasised the significance of process and noted that the question of the final court was of significance nationally. She added that people should at least understand why the Government had so many reservations about the CCJ and seemed to be wedded to the Privy Council as the final Court of Appeal. She stated further that the wavering on the part of the government was of concern and the reasons for not acceding to the CCJ had not been presented in a manner that would allow persons to dissect, deliberate on and appreciate them. She opined that the Government had a duty to provide such explanations at this stage of the process and not at some future stage when a Bill had been passed and a referendum was imminent. She also said that it was incongruous for the country to retain the Privy Council as the final Court while leaving the monarchy and several persons, including representatives of the Press and the Jamaican Bar Association, had expressed inability to understand the rationale for it. She also stated that it was only on the part of the government that there appeared to be resistance to the change. The Chairman said that she did not believe that this statement was accurate and she would not describe the Government's position as one of resistance. She went on to say that there was a high level of concern about how justice is administered in Jamaica and this had serious implications. She also noted that she found it unsettling that there should be an outright rejection of the view of those who were not convinced that the CCJ was the better alternative.

Member Morrison asked whether resolving the issue of the final court was indispensable to the transition to a republic, whether the CCJ and the Privy Council were Jamaica's only options in that respect and whether there were other countries that had retained the Privy Council as their final Court of Appeal after departing from the monarchy. She said that if such options existed, then the question ought not to hinder the transition, as the work could be undertaken in stages.

The Chairman stated that a team from the International Institute for Democracy and Electoral Assistance had shared that when parties came to the table with preconceived ideas that they were unwilling to change, the process of constitutional reform became very difficult and this was part of the reason that the present Administration had decided to proceed with those matters on which there was consensus.

Senator Braham stated that he would not reveal his position on the CCJ debate at that time but was of the view that the transition from the British monarch as Jamaica's Head of State was of sufficient social and psychological importance to require them to proceed with alacrity. He stated further that both matters were not inextricably linked and he feared that if the question of the Monarch was not addressed at this stage, it would remain as is for at least another thirty years, and he found this prospect disturbing.

The Chairman opined that progress would have to be made in respect of the final court before the Bill was put to a referendum. She also stated that her understanding of the Opposition's request was that they were seeking clarity on the Government's view on the matter. She said that she had no issue with this position. She then signalled that the Committee would now move to consider procedural matters.

PROCEDURAL MATTERS

Member Golding Campbell asked that they be mindful of the fact that the Joint Select Committee process was distinct from the work of the Constitution Reform Committee and members of this present Committee should have the opportunity to consider the Bill and related matters in full and independently of what had gone before in that other setting. The Chairman noted that the Constitution Reform Committee's report had been tabled and asked that all members be provided with a copy. She then noted that the Joint Select Committee was part of the commitment made by the Constitution Reform Committee.

The Chairman also made the point that the Committee's deliberations would be confined to the content of the Bill. She then indicated that the Committee would seek input in writing from members of the public and, having received same, they would then decide whether to invite them to appear before the Committee in person as well. She noted that both approaches had advantages and disadvantages.

The Chairman also expressed a desire to proceed with the clause-by-clause review of the Bill while awaiting submissions from the public. Member Golding and Member Scott Mottley expressed reservations about proceeding in this manner if it would imply

asking the public to comment on the provisions of the Bill after the Committee had already deliberated on them and taken decisions on their content. The Chairman indicated that this was not intended. Instead, the objective of the exercise was to allow members to get an appreciation of the details of the Bill while they awaited feedback from the public. Member Scott Mottley asked that they be given sufficient time to consider the matter thoroughly before making their submissions.

The Committee decided that letters requesting input on the Bill should be sent directly to the following entities:

- The Norman Manley Law School
- The Jamaican Bar Association
- Citizens Action for Free and Fair Elections
- Jamaicans for Justice
- The Jamaica Accountability Meter Portal
- The Central Executive of both major political parties
- The Cornwall Bar Association
- The Department of Government and the Faculty of Law at the University of the West Indies
- The Faculty of Law at the University of Technology
- The Faculty of Law at Northern Caribbean University

Member Braham suggested that they diversify the list of invitees.

Member Hylton enquired about the scope of the submissions that the public would be required to make and the Chairman responded that they should be limited to the provisions of the Bill.

The Committee also decided that advertisements inviting submissions should be placed in the Press, and Member Sinclair asked that they be prominently positioned. It was also decided that the Director of Corporate Communications and Public Relations should liaise with the Chairman to develop an appropriate communications strategy in relation to the Committee's work. Member Hylton asked that it be made clear that members of the diaspora were invited to take part in the activities.

DATE OF NEXT MEETING

The Chairman indicated that the Committee would meet on January 22, 23, 29 and 30, as well as February 5, 19, 20, 26 and 27, 2025.

ADJOURNMENT

There being no further business, the Committee adjourned at 12:17 p.m.

Houses of Parliament
January 2025