



**MINISTRY OF LEGAL & CONSTITUTIONAL AFFAIRS**  
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**JAMAICA**

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ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE PERMANENT SECRETARY

**MINUTES**

**Inaugural Meeting of the Constitutional Reform Committee (CRC)**

**Venue: Jamaica House Banquet Hall**

**Date: Wednesday, March 22, 2023**

**Time: 9:00 am**

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**AGENDA**

1. Call to Order
2. Prayer
  - Dr David Henry
3. National Pledge
4. Welcome and Opening Remarks
  - Hon. Marlene Malahoo Forte KC, JP, MP
  - Minister of Legal and Constitutional Affairs
  - Introduction of Committee Members
5. Introduction of Committee Members
6. Terms of Reference
7. Procedural Matters
8. Remarks by the Prime Minister
9. Press Conference

## **1.0 CALL TO ORDER**

**1.1** The Meeting was called to order by the Chairman at 9:10 am.

### **ATTENDEES**

#### **Constitutional Reform Committee**

- Honourable Marlene Malahoo Forte, KC, JP, MP (Chairman)
- Ambassador Rocky Meade, CD, JP, PhD (Co-Chair – Office of the Prime Minister)
- Dr Derrick McKoy, CD, KC (Attorney General of Jamaica)
- Senator the Hon Tom Tavares-Finson, OJ, CD, KC (President of the Senate and Commissioner of the Electoral Commission of Jamaica)
- Senator Ransford Braham, CD, KC (Government Senator)
- Senator Donna Scott-Mottley (Parliamentary Opposition – Senate)
- Mr Anthony Hylton, CD, MP (Parliamentary Opposition – House of Representatives)
- Mr Hugh Small, KC (Consultant Counsel and Nominee of the Leader of the Parliamentary Opposition)
- Dr David Henry (Wider Society – Faith-Based)
- Dr Nadeen Spence (Civil Society – Social and Political Commentator)
- Mrs Laleta Davis Mattis CD, JP (National Council on Reparation)
- Mr Sujae Boswell (Youth Advisor)
- Professor Richard Albert (International Constitutional Law Expert – University of Texas at Austin)

#### **ABSENT**

- Dr the Hon Lloyd Barnett, OJ (National Constitutional Law Expert)

#### **Secretariat**

##### ***Ministry of Legal and Constitutional Affairs***

- Mr Wayne O. Robertson, JP, Permanent Secretary
- Mr Christopher Harper, Senior Constitutional Reform Officer (Actg.)
- Mr Makene Brown, Legal Officer

- Ms Nastacia McFarlane, Director, Corporate Communication & Public Relations (Actg.)
- Ms Roxene Nickle, Advisor/Consultant

*Ministry of Justice*

- Ms Samantha Blair, Deputy Director, Legal Services (Actg.)

**2.0 PRAYER**

2.1 Prayer was led by Dr David Henry.

**3.0 NATIONAL PLEDGE**

3.1 The National Pledge was recited.

**4.0 WELCOME AND OPENING REMARKS**

4.1 The Constitutional Reform Committee must aim to achieve a workable Constitution – one that struck the right balance between protection of rights and obligations and one that was not constrained or influenced by latest views or foreign trends; many of which were either extreme or not necessarily suitable for the Jamaican society.

4.2 During the opening remarks, concern was raised about how Jamaica would be governed. The importance of having a proper system of accountability, with checks and balances in place, was stressed, so that people in all areas of governance fulfilled their responsibilities and were held accountable.

**5.0 INTRODUCTION OF COMMITTEE MEMBERS**

The Chairman invited members to introduce themselves and share how they hoped to contribute to, or desired to take away from, participating in this process.

## **5.1 Process of Law-Making**

**5.1.1** After introductions, for the benefit of the wider Committee, the Chairman then advised that the process of law-making was a very involved one. By way of brief overview she outlined that the policy had to be determined first and then a formal draft Cabinet Submission prepared and circulated for comments by relevant stakeholders. The draft Submission and comments were then opined on by the Attorney General's Chambers. Following that round of review, it was then submitted to the Cabinet for deliberation and approval, including the issuance of Drafting Instructions, which thereafter had to be prepared clearly and unequivocally. Bad policy and bad Instructions often resulted in bad legislation.

**5.1.2** Thereafter, the Bill had to be drafted, checked for errors and circulated. It would then move to the Legislative Committee of Cabinet for deliberation. If changes were made to the Bill, it had to be revised and checked once more by the Legislation Committee and then reported to the Cabinet. Once Cabinet approved, the Bill was then sent to the Printing Office for printing and when printed it had to be checked for accuracy before tabled in the House.

**5.1.3** The Constitution, in setting out its procedure for amendment/alteration, stipulated that there had to be three months between the first reading of the Bill (tabling of the Bill) and the second reading (commencement of debate on the whole Bill) and another three months between second reading (conclusion of debate on the Bill) and third reading (passing of the Bill). The Constitutional Reform Committee must decide what was to be done/accomplished during those three months' periods.

## **5.2 Process of Reform – The Referendum**

**5.2.1** As indicated by the Terms of Reference, the work would be carried out in three phases. Phase One would focus on matters for which a referendum was needed. Broadly, those

included the abolition of the constitutional monarchy, the establishment of the Republic of Jamaica and related matters.

**5.2.2** Members of the Committee welcomed the idea of the people participating in the process through a referendum. The process of engaging citizens meant taking the conversation to the streets and talking to people about what it meant to be a citizen and to participate in a democracy. That also meant ensuring that the members of the Jamaican society were interested in it and committed to it. The value of civic education was underscored.

**5.2.3** In the act of modernising the Constitution, the process of reform must ensure that it reflected the culture of Jamaica, so that it could be easily understood by those it governed. The new Constitution of Jamaica should therefore be a home-grown Constitution, rooted in the values, traditions and aspirations of the people of Jamaica. A Constitution should reflect the values and the norms and aspirations of those who will be governed by it.

**5.2.4** Jamaica's democracy was a representative democracy. Generally, the electorate did not pass laws directly. The only time members of the electorate voted to pass a law was in a referendum, because they had to approve the law, as it could not be passed without their vote. The process therefore included putting the proposed legislation through the two Houses of Parliament with the two-thirds vote in each House, guided by the process outlined at section 49 of the Constitution. However, before the Bill could be sent for Assent, the people had to vote on it and that would be the first time that Jamaica would have that experience as an independent nation.

**5.2.5** In approaching the question to be put before the electorate, it should be framed in simple terms, such as, "Do you wish to become a republic? 'Yes' or 'No'. Or by proposing a series of questions.

- 5.2.6** There was a proposal for the Secretariat to find examples of ballots prepared and used during referenda in other countries, to inform the referendum in Jamaica because the way in which the ballot was presented was critical to the result anticipated.
- 5.2.7** The desired result must come through the full co-operation and consensus of the political parties and the society. The more complicated the ballot, the more difficult the process would be and the less favourable the outcome.
- 5.2.8** It was also suggested that the Committee, in determining the substance of the ballot, be laser-focused on the question of the republican status of the country, as opposed to a suite of issues for determination, despite the risk of losing the opportunity for wider amendment to the Constitution. The experience in Bahamas was cited in support of the suggestion. During the Bahamian referendum, five (5) issues were put before the people at once which resulted in the referendum being unsuccessful. One particular question about whether a Bahamian mother could give Bahamian citizenship to her child conflated the other questions that were present on the ballot and people who had strong feelings about it just focused and campaigned on that singular issue, which created negative implications for the remaining issues.
- 5.2.9** Regarding the process of amending the Constitution with approval through referendum, it was reiterated that the focus should be on becoming a republic.
- 5.2.10** It was indicated that the world would be observing closely what the Committee and country were doing. The process was an historic one, not only for the country but also for democracy in the world. Jamaica was the first major democracy to adopt a new constitution in the past generation. In determining the status of a country as a “major democracy” there were several indices around the world that ranked countries in terms of whether they were democracies or not. Those included full democracies, flawed democracies, hybrid regimes and authoritarian regimes. Jamaica was the highest-ranking country in those ranks that would adopt a new constitution. Reference was made to Chile which almost adopted a new constitution but failed in their referendum. Their referendum process had several issues packed into it and when voters were faced

with the question of deciding “yes” or “no”, many single-issue voters who took issue with certain aspects of the proposed constitution, chose to vote “no”.

### **5.3 Process of Reform: Section 49 – The Amendment Clause**

**5.3.1** The sections of the Constitution that required a referendum for altering their provisions included:

- Section 1- Application to deeply entrenched provisions
- Section 2 – Effect of the Constitution
- Section 34 – Establishment of Parliament
- Section 35 – Senate
- Section 36 – House of Representatives
- Section 39 – Qualifications for membership of the Senate and House of Representatives
- Section 49 – Alteration of the Constitution
- Section 63(2) – Sessions of Parliament
- Section 64(2)(3)(5) – Life, Extension and Dissolution of Parliament
- Section 68(1) – Executive Authority of Jamaica
- Any provision of the Jamaica Independence Act, 1962

**5.3.2** A decision must be taken as to whether the country would go to a referendum with all the issues or go with just a singular issue, given the number of provisions requiring a referendum to alter. In the alternative, focus could be placed on section 49 itself, by amending it to determine what matters would require a referendum going forward.

**5.3.3** Another suggestion was for everything to be put in entirety in the reform Bill. Concern was expressed about the extent of the public education that would be required if everything were to be put at once. Also, there were dangers in such an approach which must be carefully considered.

## 5.4 Process of Reform: Complete Abolition of the Monarchy and What May Be Required

5.4.1 It was also suggested that the Committee should identify a set of issues directly tied to the Monarchy. Appealing to the Judicial Committee of the Privy Council was seen as tied and related to the Monarchy itself. Two perspectives were shared on that point:

- Since the decision to replace the final appellate court did not require a referendum, the Committee should proceed now with the matters for which a referendum was constitutionally required, particularly the move to become a republic; and
- The move to republic which suggested/required the complete abolition of the monarchy necessitated the removal of the Judicial Committee of the Privy Council as the final court of appeal.

5.4.2 Considering those two views, it was further suggested that the Committee should **distinguish between a constitutional referendum and an indicative referendum.** For the former, the Constitution sets out what matters required a referendum; while for the latter, it was understood that there were some matters on which the views of the people were desired, where the proposed shift was of a monumental nature. That was a distinction to be considered by the Committee.

## 5.5 Other Considerations

5.5.1 Reservation was also expressed about the proposed timeline and likelihood of the reform work coinciding with campaign season for general elections. If the intention were to go before the public with a united front on the matter of becoming a republic, how would that impact the adversarial aspects of political campaigning? How would public education be carried out? How would people respond to such during an election campaign?

5.5.2 Those were the wider questions to be considered by the Committee.

## **6.0 TERMS OF REFERENCE**

- 6.1** In reviewing the Terms of Reference, account was also taken of suggestions previously made, including those sent in via email. With respect to the scope of work at section 3.2 (Phase 2), the recommendation was to re-word as follows: *“Review other ordinarily entrenched provisions of the Constitution for which amendments are desired and required including the wordings and provisions of the Charter of Fundamental Rights and Freedoms as set out at Chapter 3.”*
- 6.2** In respect of the first bullet point at 3.4, under the Section titled Scope of Work, *“examine the provisions of the Order in Council, Constitution of Jamaica, and the Jamaica Independence Act and identify the provisions that may require amendment”* the recommendation was for the inclusion of the words *“or revocation to give effect to the reform recommendations”* at the end of the word *“amendment”*.
- 6.3** In respect of the second bullet point at 3.4, the recommendation was to amend the sentence by adding *“the manner of selection of the Head of State”* to read as follows: *“Advise and make recommendations on the shift from the Constitutional Monarchy to a Republic, including the manner of selection of the Head of State, powers to be exercised by the Head of State, and the power dynamics within the Jamaican governance structure.”*
- 6.4** At page 5, it was recommended to amend the fourth bullet point by including reference to Phase 2 to link it to that phase of the work. The recommendation was to re-word as follows: *“As for Phase 2, conduct an in-depth review of the provisions of Chapter 3 of the Constitution (Charter of Fundamental Rights and Freedoms) to clarify the legislative intent and to make recommendations for reform of any of its provisions, where necessary or advisable.”*
- 6.5** In respect of 10.2, the recommendation was to re-word as follows: *“the Committee is expected to meet face-to-face or is at liberty to meet face-to-face or in hybrid format.”*
- 6.6** It was also noted that at 3.3, the Committee is expected to regulate its own proceedings to ensure that all aspects of the work are completed on time and within agreed budget. It was accordingly agreed that decisions of the Committee would be made by consensus.

## **7.0 PROCEDURAL MATTERS**

**7.1** The Chairman, at this juncture, presented a proposed schedule that would guide the frequency of meetings going forward.

## **8.0 REMARKS BY THE PRIME MINISTER**

**8.1** The Prime Minister then joined the meeting. He greeted and thanked the members of the Committee and wished them success in that important national undertaking.

**8.2** *The Committee Members were then invited to take a picture with the Prime Minister for the media. (See picture below)*

## **9.0 ADJOURNMENT**

**9.1** The meeting was adjourned and followed by a Press Conference, where Members of the Committee were announced to the public by the Prime Minister.



**The Constitutional Reform Committee, with Prime Minister the Most Hon. Andrew Holness on Wednesday March 22, 2023.**

**Front Row L-R:** Sujae Boswell (Youth Rep.); Hon. Marlene Malahoo Forte, KC, MP (Minister of Legal & Constitutional Affairs-Chair); the Most Hon. Andrew Holness, ON, MP (Prime Minister); Ambassador Rocky Meade (Office of the Prime Minister & Co-Chair); Dr Derrick McKoy, KC, Attorney-General; Mrs Laleta Davis Mattis (Chairman of the National Council on Reparation).

**Middle Row L-R:** Dr Nadeen Spence (Civil Society Rep.) and Senator Donna Scott-Mottley (Parliamentary Opposition, Senate)

**Back Row L-R:** Senator the Hon. Tom Tavare-Finson, OJ, CD, KC (President of the Senate and Commissioner of the Electoral Commission of Jamaica); Mr Hugh Small, KC (Nominee of the Leader of the Opposition); Dr David Henry (Faith-based community); Mr Anthony Hylton, CD, MP (Parliamentary Opposition, House of Representatives); Prof. Richard Albert (International Constitutional Law Expert).

*(Absent from the picture are Dr Lloyd Barnett- National Constitutional Law Expert and Senator Ransford Braham- Government Senator)*

## **ACTION ITEMS**

- Identify examples of ballots prepared and used during referenda in other countries to inform/guide the referendum on matters of Constitutional Reform.
  
- Determine whether the referendum on matters of Constitutional Reform will present a single issue, particularly the issue of the abolition of the monarchy in order to become a republic or will present multiple issues guided by the parameters of Section 49 of the Constitution.
  
- Consider the risks associated with the vote on a single Bill which sets out a number of constitutional reform aspirations and the implications that such approach will have on public engagement and education.