

REPORT

of the

**CONSTITUTION
REFORM COMMISSION**

to the

**National Assembly of
Guyana**

**July 17, 1999
Georgetown, Guyana**

**TRANSMITTAL LETTER
FROM THE
CHAIRMAN, CONSTITUTIONAL REFORM COMMISSION**

**RALPH RAMKARRAN, S.C., M.P.
CONSTITUTION REFORM COMMISSION
DDL Building,
44B High Street, Kingston, Georgetown**

17th July, 1999.

The Honourable Mr. Reepu Daman Persaud,
Chairman,
Special Select Committee,
Parliament Buildings,
Georgetown.

Dear Sir,

I present to you the Report of the Constitution Reform Commission pursuant to Section 15 of the Constitution Reform Act which provides as follows:

The Special Select Committee established by resolution of the National Assembly to determine the terms of reference and composition of the Commission shall remain constituted and shall, on behalf of the National Assembly, be responsible to facilitate the due and efficient functioning of the Commission and shall have authority to receive the Report of the Commission for transmission to the National Assembly (See Appendix i).

As you are aware, among the Measures for Resolving Current Problems recommended by the Caribbean Community Mission to Guyana dated the 17th day of January, 1998, and signed by Janet Jagan of the People's Progressive Party/Civic and Desmond Hoyte of the People's National Congress, known more popularly as the "Herdmanston Accord", is the following:

4. **Constitutional Reform.**
 - (1) A Constitution Reform Commission will be established by law, with a wide

mandate and a broad-based membership drawn from representatives of political parties, the Labour Movement, religious organisations, the private sector, the youth and other social partners. The Terms of Reference of the Commission and its membership will be determined by the National Assembly after a process of consultations with the political parties. It will be mandated to consult with civil society at large (See Appendix II).

Following the Report of the Special Select Committee, the Constitution Reform Commission Act No. 1 of 1999 was passed by the National Assembly and assented to by President Janet Jagan on January 13, 1999. Commissioners were sworn in on January 22, 1999 and the Commission held its first meeting on January 25, 1999.

Section 4 of the Act provided for a wide membership of the Commission consisting of twenty members nominated by the People's Progressive Party/Civic, the People's National Congress, the United Force, the Alliance For Guyana and representatives from farmers, the private sector, Indigenous Peoples, women's organisations, youth organisations, the Guyana Bar Association, Hindu religious organisations, Muslim religious organisations, Christian religious organisations and the Labour Movement.

The Act also provided at Section 12 that the quorum of the Commission shall be thirteen members and that a valid decision requires the support of twelve members where all twenty are present and a simple majority plus two where less than twenty members are present.

The practical effects of Sections 4 and 12 of the Act were that the proposals which the Commission received from public hearings, written submissions and the submissions made to the Special Select Committee on Constitutional Reform received the attention of the most representative cross-section of the Guyanese society and that the recommendations could only be made by a majority which is sufficiently large to be in the nature of a consensus.

The Commission received 4,601 proposals which were carefully considered in extensive debates both at committee and plenary levels. In addition, we received the invaluable views and opinions of seven foreign and seven Guyanese experts.

Our debates were lengthy, intensive, frank and stimulating. Commissioners successfully sought every opportunity to resolve differences by debates and discussions which were always characterised by mutual respect and an atmosphere of cordiality. Much common ground was found by Commissioners whenever it was possible to reflect on issues outside of plenary sessions. Commissioners have formed from this process bonds of commitment to a common purpose and a significant amount of mutual understanding for the basis of the point of view which they might not have found it possible to support.

Commissioners hope that the completion of this aspect of the Herdmanston Accord, the tone and manner of the deliberations in the course of so doing and the large measure of agreement on the recommendations would create the impetus for a successful conclusion of the other tasks under the Accord.

The Commission was constrained by a time frame provided for in Section 6 (6) of the Act, which required the Commission's Report to be presented to the National Assembly not later than the 17th July, 1999. Our Report therefore is based on what was achievable within the period of six months which was the time the Commission had available to it. In this regard it is important to note that the Commission was required by Section 6 (2) (m) of the Act to consider the representations which had been made to the Special Select Committee on Constitutional Reform established in accordance with the Resolution of the National Assembly passed on December 1, 1994. These submissions were received by the Special Select Committee over a period of eighteen months in writing and from public hearings in several parts of the country.

The Commission is of the view that the public had a reasonably adequate opportunity to submit views to the Commission. Our view is that they took advantage of that opportunity.

The Commission's work could not have been effectively and efficiently concluded without the generous assistance and co-operation of numerous individuals and organisations. It is impossible for me to mention all of those whose unstinting efforts contributed to the success of our work. To them all I express my own thanks and those of the Commission. By no means an exhaustive list of those who contributed immeasurably to our work are the following whom I should like to thank on my own behalf and on behalf of the Commission.

Members of the Commission, for their support and cooperation;

Mr. Haslyn Parris, C.C.H., Secretary to the Commission, for his expertise and commitment;

The Speaker of the National Assembly for permitting the use of Parliament Chambers;

Mr. Frank Narain, Clerk to the National Assembly and the Staff of the Assembly for facilitating our work in the first months;

The Government of Guyana for its financial and other support and assistance;

The United Nations Development Programme for its co-ordinating efforts, rapid response, financial assistance, keen interest and strong support;

The Governments of the United States and the United Kingdom, the European Union and the Organisation of American States for their generous assistance and support;

The National Democratic Institute for its generous assistance and support, and Dr. Jean Freedburg, its Guyana Director, for her indefatigable commitment to the success of our work;

The experts for sharing their time and expertise: Justice Albert Sachs, Mr. Rodney Brooke, Mr. Karl Dundas, Dr. Theodor Hanf, Mr. Augusto Willemsen-Diaz, Professor Kathleen Mahoney, Professor Anund Hylland, and from Guyana Professor Keith Massiah, Professor Harold Lutchman and Professor Rudolph James, all of the University of Guyana, and Mr. Francis Cumberbatch, Mr. Howard London, M.S., Mr. Dennis Patterson and Mr. Maurice Henry.


The Leadership and Staff of the Commission, including Rapporteurs, for their disciplined commitment and dedicated efforts (See Appendix III).

The Editor, the Editorial Committee and the writers who produced this Report with miraculous speed (See Appendix III).

The Media for its support, particularly the Stabroek News and its Managing Editor Mr. Patrick Denny, and the Guyana Chronicle and Ms. Michelle Elphage.

The Demerara Distillers Limited, the Park Hotel, the Mayor and Councillors of the City of Georgetown, Mr. Ron Robinson and Prime Time, Mr. Alex Graham and Tagman, and Kirkpatrick Catering, for their support and assistance.

I should like to thank the people of Guyana for participating in this historic exercise, the first of its kind, which will hopefully establish a pattern for the future and a Guyana of which we can all be proud.



.....
RALPH RAMKARRAN, S.C., M.P
CHAIRMAN
CONSTITUTION REFORM COMMISSION

ERRATA

The attached pages comprise a list of errata relevant to the Report of the Constitution Reform Commission, dated July 17, 1999. There are also two documents appended for addition to the Report.

These errors are regretted, and fortunately are not substantial in the sense of changing significantly the content of the Report. The Secretariat of the Commission is in the process of doing a final edit of the Report, and would therefore welcome any information concerning errors that recipients of the Report may identify. Please feel free to send or telephone these to the Secretary of the Commission, Mr Haslyn Parris (Tel: 63103).

On behalf of the Secretariat, I apologize for any inconvenience which the errors listed may have caused readers.



W. H. Parris
Secretary
Constitution Reform Commission

July 20, 1999

ERRATA

1. LIST OF ACRONYMS

NDI National Democratic Institute

NDC Neighbourhood Democratic Council

2. LIST OF APPENDICES

(VI) Executive Summary of the Report of the Select Committee of the 6th Parliament

3. CHAPTER 2

Page 31, Para 2.7, Line 2, Second Sentence: Insert “the” between “in” and “view”

4. CHAPTER 3

Page 40, Paragraph 3.11 (4): The persons referred to here and listed in Appendix IX are **not** the individuals being referred to in the previous sentence as experts in Constitutional matters from whom the Commission considered soliciting advice. They are persons who had made submissions to the Special Select Committee and who were invited to update those submissions if they so desired.

5. CHAPTER 4

Page 61, 4.3.4 (3): Insert National Award “A.A.” after “Dennis Patterson”

6. CHAPTER 5

Page 75, 5.17, Penultimate Line: Replace “for” by “with”

7. CHAPTER 9

Page 187

(a) 9.2.3.2 (10), Line 3: Insert Semi-colon after “Child”

(b) 9.2.3.2 (10), Line 4: Insert “shall” after “these”

Page 193, 9.4.3 (10), Line 3: Delete “be” after “person” and replace “br” at end of line by “be”

ERRATA

7. CHAPTER 9 (Continued)

Page 194, 9.5.3 (1), Penultimate Line:

Insert "of" after "non-payment"

Page 198, 9.6.3.12, Line 1:

Delete "the" before "decision making"

Page 207

(a) 9.9.4, Line 1:

Replace "3" with "9.9.3.2"

(b) 9.9.4, Line 3:

Replace "3" with "9.9.3.2"

Page 211, 9.11.3 (5):

This recommendation was later reversed when, in response to the Commission's request that research be carried out to ascertain whether the right of Commonwealth citizens to vote in our elections was as a result of a protocol at the level of the Commonwealth, it was reported that at a meeting of the Commonwealth Heads of Government in Singapore in 1971 a declaration was made from which it could be inferred that Commonwealth citizens had the right to participate in elections in the Commonwealth countries in which they lived. It was then recommended that Articles 59 and 159 should remain unchanged, by the following vote:

In Favour: Mr. Ramkarran, Hon. Reepu Daman Persaud, Mrs. Shury, Mr. De Santos, Dr. Frank Anthony, Mr. Alexander, Mr. Bernard, Mr. Collins, Dr. Roopnaraine, Rev. Haley, Mr. V. Persaud, Mr. Mc Doom, Mr. Bhookmohan, Mr. Jaffarally, Mr. Fitzpatrick and Mr. Mahadeo.

Against: Mr. Parris and Ms. Trotman.

Page 226, 9.18.3 (2), Last Line:

Replace "Constitution" with "Constitutional"

Page 228, 9.19.2.3, Line 1:

Corrected spelling of "inappropriate"

Page 233, 9.21.3:

There should have been a final sentence to the section on page 235 indicating that the Recommendations were all agreed by consensus.

Page 239, Recommendation 3:

Total Attendance should read "17" not "18".

Page 241,(Voting re Articles 69 & 70): The Vote Against should be "4" not "9".

ERRATA

- Appendix I, Page 4, Sec 6 (2) (a), Second Line:** Replace "Freedom" by "Freedoms"
- Appendix II, Page 3, Sec 4 (ii), Penultimate Line:** Reverse "will which" to "which will"
- Appendix III**
- (a) Page 1:** In note at bottom delete "the following page" and replace by "Page 4"
- (b) Page 3:** The proper name of the Deputy Secretary is "Mrs. Mitradevi Ali"
- (c) Page 4
(Staff of Constitution Reform Secretariat):** Please replace this page by the enclosed new page 4 which contains accurate descriptions of job titles and is categorised by departments.
- Appendix IV, Page 2, Section 4, Last Line:** Insert "the" between "of" and "country" at the beginning of the line.
- Appendix V**
- (a) Page 1, 4th Paragraph, 5th Line:** Insert "to" after the second word "able"
- (b) Page 1, 4th Paragraph, 7th Line:** Insert "will" before last word in line, i.e. "have"
- (c) Page 2, 3rd Paragraph, 1st Line:** Insert colon (:) after second word i.e. "result"
- (d) Page 2, 5th Paragraph, 5th Line:** Replace third word "counters" by "countries"
- (e) Page 2, 6th Paragraph, 1st Line:** Correct spelling of word "Industrialized"
- (f) Page 2, Last Paragraph, 7th Line:** Replace 5th word "to" by "at"
- (g) Page 3, 1st Paragraph, 4th Line:** Delete third word "to"
- (h) Page 3, 1st Paragraph, end of 8th Line:** Hyphenate "high-technology"
- (i) Page 3, 4th Paragraph, 8th Line:** Replace "business" by "businesses"
- (j) Page 3, Last Paragraph, 1st word, 2nd Sentence:** Replace "the" by "they"

ERRATA

Appendix V (Continued)

- (k) Page 3, Last Paragraph, 4th Line: Replace “low” by “law” and insert colon (:) after “conditions”
- (l) Page 4, 1st Line: Replace “increasing” by “increasingly”
- (m) Page 4, 2nd Paragraph, 3rd Line: Insert “which” between “in’ and “people”
- (n) Page 4, 3rd Para, 4th Line, Penultimate word: Replace “thee” by “the”
- (o) Page 4, 3rd Paragraph, 7th Line: Replace “deceptor” by “receptor”
- (p) Page 4, 3rd Paragraph, 8th Line: Add “and radio” after “newspapers”
- (q) Page 4, 4th Paragraph, 3rd Line: Replace “thee” by “the”
- (r) Page 4, 5th Paragraph, 3rd Line: Delete 2nd word “of”
- (s) Page 4, 5th Paragraph, 12th Line: Replace 4th word from the end i.e. “an” by “and”
- (t) Page 5, 3rd Line: Insert “is given” between “attention” and “to”
- (u) Page 5, 2nd Paragraph, 6th Line: Replace 1st word by “livelihoods”
- (v) Page 5, 2nd Paragraph, 8th Line: Replace third word “he” by “be” and “/” by “?”

Appendix VI, Executive Summary

- (a) Page 3, Paragraph 12, 5th Line, 3rd word: Replace “Secretarial” by “Secretariat”
- (b) Page 3, Paragraph 17, 1st Line, 9th word: Replace “villingness” by “willingness”
- (c) Page 4, Paragraph 24, 1st word: Replace “Committee” by “Committees”

Appendix VIII

- Item (i): Correct spelling to read Dr. “Theodor” Hanf
- Item (v): Insert Country of Origin, “Guatemala”
- Insert Enclosed “Terms of Reference for Expert on Electoral Systems”

Appendix XI:

Change title of Ms J. La Rose from “Assistant to the Chairman” to “Vice-Chairperson”

ERRATA

Appendix XII:

In Contract #6 change "refridgerator" to "refrigerator"; and in Contract # 3 change contractor's name to "Ms Faye Valrie Hunte."

Appendix XIV:

For ease of understanding the sequence of memoranda should have been:

Memorandum by Dr. Roopnaraine,
Pages 2 and 3

Memorandum by Mr. Fitzpatrick,
Pages 10 to 12

Memorandum from Mr. Parris
appended to this errata

Memorandum from Mr. Ramkarran
and Mr. Mc Doom, Pages 5 to 7

The Constitution List, Page 8

Secretariat List, Page 9

Memorandum from Dr. Roopnaraine
(Recommendations) Page 1

Memorandum by Mr. Parris, Pages
4 and 5.

W. H. Parris

July 20, 1999

CONSTITUTION REFORM COMMISSION SECRETARIAT

Staff employed as at 4^h May, 1999

	First Name	Surname	Appointment
1.	Haslyn	Parris	Secretary to Commission
2.	Alicia	Cox	Confidential Secretary to the Secretary
3.	Mitradevi	Ali	Deputy Secretary
Documentation and Research Department			
4.	Arlene	Munro	Head, Documentation and Research
5.	Cavelle	Lynch	Supervisor, Research and Analysis
6.	Kevin	Bryan	Supervisor, Document Preparation
7.	Wanda	Phillips	Computer Operator
8.	Drupati	Lall	Computer Operator
9.	Deslyn	West	Computer Operator
Public Education and Information Department			
10.	Karen	Davis	Head, Public Education and Information
11.	Nills	Campbell	Supervisor, Media
12.	Wanda	Chesney	Supervisor, Outreach
13.	Wazir	Mohamed	Assistant Supervisor, Media
Document Replication and Distribution			
14.	Fiona	Duesbury	Head, Document Replication and Distribution
15.	Alisha	Fairbairn	Assistant Replication and Distribution
16.	Dwight	John	Procurement Clerk/Office Assistant
Logistics			
17.	Maurice	Henry	Head, Logistics
18.	Sabrina	Garraway	Confidential Secretary, Head Logistics
19.	Faye	Hunte	Administrator, Physical Arrangements
20.	Oscar	Moore	Administrator, Recording Proceedings
21.	Alverna	Inniss	Assistant Administrator, Physical Arrangements
22.	Seepersaud	Sookram	Assistant Administrator, Physical Arrangements
Financial Administration and Project Monitoring			
23.	Hazel	Marshall	Head, Financial Administration and Project Monitoring
24.	Romona	Rodney	Confidential Secretary, Financial Administration and Project Monitoring
25.	Horace	Kirton	Supervisor, Project Monitoring
26.	Franklyn	Cumbermack	Office Manager
27.	Allison	Victor	Senior Accounts Clerk
28.	Allison	Major	Accounts Clerk
29.	Padwanti	Sukhu	Accounts Clerk
30.	Rukhmin	Chand	Computer Operator
31.	Oliva	Bissoon	File Attendant/Telephonist
32.	Trevor	Balgobin	Office Assistant
33.	Vanda	Morgan	Maid
34.	Bissondai	Budhu	Cleaner

CONSTITUTION REFORM COMMISSION

MEMORANDUM

TO: Chairman, Constitution Reform Commission
(cc. Commissioners)

FROM: W. H. Parris
(Secretary, Constitution Reform Commission)

March 30, 1999

SUBJECT: Comment on Memo from Commissioner Fitzpatrick dated March 26, 1999.

1. The Fitzpatrick memorandum makes recommendations in respect of the manner in which the Commission should proceed to review public submissions and begin discussion on the Constitution. The success of the Commission depends significantly on it getting its methodology "right," and the memorandum therefore deserves the prompt and intense attention of all Commissioners. The following paragraphs are my contribution to discussion of this important matter.
 2. The recommendation in Paragraph 1 of the memorandum is uncontentious, necessary, and totally acceptable.
 3. The recommendation in Paragraph 2 seems to suggest that there should be a **single** report, covering **all** submissions; and in accord with the recommendation given in Paragraph 3, this single report from the Secretariat to the Commission should be tendered and studied as the basis for the report of the "carefully selected sub-committee" of Commissioners on "core issues." I have several concerns about this proposed procedure. These include:
 - (a) That there can be considerable difficulty in selecting a sub-committee acceptable to all Commissioners that meets the criterion that it reflects the real balance of or interests on the Commission. Unless there is a near unanimous acceptance of the sub-committee, its recommendations will be doomed to contention and delay in the work of the Commission.
 - (b) That the sub-committee of Commissioners would do no analytical work until the Secretariat has reviewed all submissions and has prepared its report; and consequently that the plenary work of the Commission would be delayed.
- These concerns are ones related entirely to the pace of work as envisaged by the agreed timetable of tasks, which (see e.g. Tasks 30 & 31) presuppose an overlap of work, and without which there will be a grave jeopardy of not meeting the 16 July target date.
4. More important than the issue of time, however, is the fact that the proposal does not provide

CONSTITUTION REFORM COMMISSION

a satisfactory answer to a fundamental question that is perhaps best posed by performing the following thought experiment.

The Experiment

(a) Pick any issue that is conceivably related to the Constitution.

(b) Assume that each Commissioner is fully apprised of what each individual Guyanese thinks about that issue, including the Guyanese who chose each Commissioner.

(c) How should Commissioners, jointly and severally, use the information alluded to in (b) to determine what should be recommended for Constitutional change?

5. I am of the view that the answer to the question in 4 (c) **cannot** be that of simply picking the statistically most prevalent views, since if that were so there would be no need for Commissioners to exercise any judgement - the empirical statistical evidence would rule.
6. I am also of the view that the main purpose of garnering the views from written and oral submissions is to catalogue as wide a range as possible of ideas for change, and allowing those ideas to contend. If this is so, then the task of Commissioners is to choose from the population of ideas tendered (including those tendered by themselves or on behalf of those they purport to represent) on a "which and why" basis.
7. Decisions on a "which and why" basis require criteria to be established. It is some combination of these criteria that determines which of the ideas put forward should be accepted.
8. I am of the view that it is these criteria that Commissioners need to establish for each item that is to be considered; and the information in 4 (b) above would then serve two purposes:
 - (i) To identify items that by popular demand should be considered; and
 - (ii) To identify ideas for change for each item, from which Commissioners must choose, using criteria which they establish and specify transparently (the which and why aspect), with the exception that mere popularity of an idea will not be a sufficient criterion for its choice.
9. The Terms of Reference of the Commission includes a subset of items which must be considered; and the submissions will augment this subset. Accordingly, it is possible for Commissioners to **begin** their analytical work by focusing on the mandatory subset, and trying to establish criteria of choice for choosing among competing ideas related to this subset. I suggest that the Fitzpatrick concept of "*core issues*" be looked at in this manner of the establishment of criteria - the "why" part of the "which and why" conundrum.
10. If the amendment of the Fitzpatrick memorandum inherent in Paragraph 9 above is accepted,

CONSTITUTION REFORM COMMISSION

we could use the five groups of Commissioners already proposed and accepted (see Note dated March 12, 1999), and allocate items from the Terms of Reference of the Commission for their consideration, without awaiting the output of the Secretariat's compilation of submissions.

11. For each group of Commissioners, its terms of reference would be:

"To identify the criteria that should be used to choose among any set of suggested changes or proposals related to the item under consideration."

12. I suggest the following allocation of Items to groups, the 12 topics having been chosen from the Terms of Reference of the Commission [*See Section 6. (2) of the Constitution Reform Commission Bill 1999*] as the mandatory items:

Dr Frank Anthony	Items (h) & (j)
Mr Ramdial Bhookmohan	
Mr Aubrey Collins	
Mr Faizal Jaffarally	GROUP 1
Mr Deryck Bernard	Items (c), (d), (e)
Mr Randolph Kirton	
Mr Shahabudin McDoom	
Mr Ralph Ramkarran	GROUP 2
Mr Vincent Alexander	Items (k) & (l)
Rev. Keith Haley	
Mr Harrichand Mahadeo	
The Hon. Reepu Daman Persaud	GROUP 3
Mr Miles Fitzpatrick	Items (a), (b), & (i)
Ms Jean La Rose	
The Hon. Moses Nagamootoo	
Dr Rupert Roopnaraine	GROUP 4
Mr Bernard De Santos	Items (f) & (g)
Mr Haslyn Parris	
Mr Vidyanand Persaud	
Ms Anande Trotman	GROUP 5

13. Each of the five groups would be allowed to organise its business as it sees fit, but must produce its report by **Wednesday 14 April, 1999** for subsequent presentation, discussion, and endorsement at plenary sessions of the Commission.

W. H. Parris
March 30, 1999

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LIST OF ACRONYMS

AFG	Alliance For Guyana (WPA/GLP/Citizens)
CCH	Cacique Crown of Honour
CRC	Constitution Reform Commission
CARICOM	Caribbean Community
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
GBC	Guyana Broadcasting Corporation
GDF	Guyana Defence Force
GTV	Guyana Television and Broadcasting Company
GALA	Guyana Association of Local Authorities
GIFT	Guyana Indian Foundation Trust
GLP	Guyana Labour Party
MP	Member of Parliament
MS	Medal of Service
NDI	National Democratic Institute
NGO	Non-Government Organisation
OR	Order of Roraima
PIEU	Public Information and Education Unit
PM	Prime Minister
PNC	People's National Congress
PPP/Civlc	People's Progressive Party/Civic
RDC	Regional Democratic Council
TUF	The United Force
UG	University of Guyana
UNDP	United Nations Development Programme
UNCTAD	United Nations Conference on Trade and Development
VP	Vice-President
WPA	Working People's Alliance

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PREFACE

THE VANTAGE POINT OF THE CONSTITUTION REFORM COMMISSION

*Haslyn Parris, CCH,
Secretary of the Constitution Reform Commission*

The task assigned to the Constitution Reform Commission had three aspects that were main contributors to determining the vantage point that the Commission was forced to assume. These aspects were:

- (a) The target date which the Commission was required to observe for the presentation of its Report. *(See Section 6 (6) of the Constitution Reform Commission Act which states: "The Report shall be presented to the National Assembly not later than July 17, 1999.")*.
- (b) The time horizon, with its inclusion of the "future," that the Commission was required to use for its deliberations. *(See Section 6 (1) of the Constitution Reform Commission Act [CRC Act] which states: "The Commission shall review the Constitution of Guyana, to provide for the current and future rights, duties, liabilities and obligations, of the Guyanese people...")*.

- (c) The focus on Guyana as a plural society with problems of ethnic divisiveness. (*See Paragraphs 4(iii) of the CARICOM Agreement and 3(d) of the St. Lucia Statement, that together led to Section 6 (2) (e) of the CRC Act requiring the Commission to take into account measures for "improving race relations and promoting ethnic security and equal opportunity."*). The St. Lucia Statement is at Appendix IV.

The first aspect determined that the Commission could not take a position of theorising at leisure on the matters before it. Instead, there had to be a stance of pragmatism within the constraint of a time-bound project approach. Accordingly, the Commission's proposals for a redrafting of the Constitution had to conform to a hierarchy of recommendations, perhaps best described as follows:

- (i) Proposals that are **complete in the sense of being stated in implementable detail**, with implementation being dependent only on final approval by the National Assembly.
- (ii) Proposals that were not ready for implementation in the sense mentioned in (i) above, but for which the **principles that should be adhered to were clearly specified** as those to which an implementable system had to be made to conform.
- (iii) Proposals that were less complete than those mentioned in (ii) above, but for which the **most fundamental criteria to be satisfied had been identified**, even though further determinations would be required on both principles and other criteria prior to implementation.

- (iv) Proposals that emanated from the incapacity of the Commission to unravel intractable issues, and that therefore comprised **recommendations about areas of further research to be conducted by appropriate experts.**

This vantage point was used by the Commission in its interpretation of what should comprise "Recommendations."

The other two aspects, listed as (b) and (c) above, determined the other dimension of the Commission's vantage point. It was clear that the Commission could not embark on its task without an appropriate world view that would see Guyana as a plural society in the global context emerging in the new millennium. In order to deal with this matter, the Commission availed itself of the fortuitous presence of Mr Hugh Cholmondeley in Guyana, and of his willingness to draft a discussion paper on the relevant issues. Mr Cholmondeley's paper, entitled "**The Coming Millennium: Comments relevant to the future rights, duties, liabilities and obligations of the Guyanese people**" (See Appendix V) was discussed at a plenary session of the Commission; the following sections represent the views that were adopted and adapted from that paper as adequately and appropriately representing the background of ideas, sentiments, and perceptions against which the Commission would pronounce on the matters under its purview.

Unity In Development

People look forward to the day when their expectations will be understood, their efforts valued and their sacrifices respected. They look forward to personal safety in a harmonious plural society, a chance to educate themselves and their children and the challenge to work

hard, to sacrifice and to save in order to improve their livelihoods.

They are distressed when no accommodations between political parties, groups and individuals seem possible, and disagreement becomes the currency of political relations. They look forward to the country's leaders working together so that their aspirations can be fulfilled. There are deep historical bonds which have created and sustained togetherness and community spirit in Guyana and many other societies. Persons perceive that these strengths enabled different peoples in the past to live peaceful and productive lives in their various villages and towns. Today, these strengths are weakening under the strain of divisive tendencies which have had adverse consequences on social relations, ethnic accord and economic activity.

Guyana is not unique as a plural society. For many peoples throughout the world, the clash between reality and aspirations is the defining characteristic of the new millennium. The recent trends in ethnic discord, in globalisation and in information which have emerged as the twentieth century draws to a close, have created instability amidst great potential. Countries that understand these trends will be able to exploit many opportunities to secure a stable future for their peoples. Countries unable to grapple with these challenges will undoubtedly be unable to exploit their full potential. Countries that will be successful in the future will be so because they have found ways to unite their peoples and overcome obstacles to development. They will have been able to create just and secure plural societies in the new millennium.

Failure to address problems of social and economic insecurity will create fertile conditions for highlighting and promoting ethnic, racial and religious differences. The demonisation of one group by another, leading to an absence of dialogue, will facilitate the creation of conditions for violence and disorder. The result of these failures: Five million persons - mainly children, women and the aged - have perished in sixty-nine conflagrations in nearly thirty countries. Thirty million persons have been displaced within borders of their own countries. Twenty million others have sought refuge in neighbouring countries. All these countries have been unwilling and unable to mobilise the civility, energy, knowledge and experience to begin a credible healing process and resolve the problem of different groups living together harmoniously in a plural society.

It is to be noted that countries engaged in conflict are unable to recover from the destruction of human resources, physical infrastructures, social systems and economic activity. The resulting divisions are so deep that it is difficult if not impossible to create conditions which will aid the processes of reconciliation and recovery. Additionally, global business and investment, main catalysts for economic growth and development, have no interest in unstable countries.

Industrialised and developing countries alike are engaged in searching for imaginative ways to re-create and re-energise their plural societies. Guyanese must take part in these deliberations and search for ways of creating adequate social, political and economic space so that all families, taking account of the peculiarities of population and history, can coexist, learn to live together harmoniously, and face the future with confidence. Ongoing international examination of these issues acknowledges that the process of affirmation of

ethnic and cultural identity, on the one hand, and the process of exclusion of social and economic inequalities, on the other, are closely interconnected.

Consequently, the practice of democracy must not be disassociated from the debate on how various cultures live together and the struggle for social progress and equality. If social and economic development are not even and balanced, attempts to build a plural, democratic and multi-cultural society will be difficult. The challenge is not to be met by isolation, but by full participation with others and the sharing of experiences in order to enrich the search for solutions to problems of human beings living together harmoniously.

Globalisation

Globalisation has released the most intimidating, coercive and intrusive of forces. Its processes leave people feeling that whatever the quality of democracy at home, whatever choices are being exercised in local or national elections, whoever is elected to manage their various societies - all these issues are just illusions. Illusions, because the larger, distant and faceless global markets increasingly determine political developments in all countries. Globalisation represents the organisation of capital, production, management, markets, labor, information and technology **across** national boundaries.

Globalisation is driven by economics and technology, never by demands for social cohesion. Developing countries, with fledgling businesses, little money and less technology, are all potential victims unless they shoulder their responsibilities for social cohesion. These countries are forced to function as units of the global economy. No longer are developing countries protected enclaves of economic activity where successes with

reform, adjustment and stabilisation are celebrated. Accomplishments in the provision of health, education and other social services now require even greater efforts to maintain positive developments and achieve more. Response to globalisation raises questions for policy-makers about how best to accomplish effective domestic management of political, economic and social affairs. Where external competition or technological change is likely to destroy domestic industries, government must act in combination with business and local community organisations to promote renewed economic development. The task is to assist national identity and national purpose against a global backdrop.

The threats to survival cannot be overcome without establishing goals to which all groups in society subscribe. The strategies to accomplish these goals must aim to provide a predictable political environment based on good governance and respect for human rights and the rule of law; stable economic conditions; adherence to international financial reporting standards; complete transparency, full public accountability and the absence of corruption; and a critical mass of increasingly literate, skilled human resources and a well-educated populace. These are fundamental pre-conditions for mobilising domestic and external investment sufficient to fuel growth and development.

An absolute pre-condition for survival in the new millennium is national consensus on, and implementation of, a national development strategy with agreed goals of rapid economic growth; poverty alleviation; equitable distribution of economic activity; satisfaction of basic needs; a participatory economy and environmental sustainability. The concept of environmental sustainability must also be widened to encompass, not only the traditional issues of species preservation in the context of bio-diversity and ecological balance, but

also the issues of cultural preservation in the context of ethnic diversity and societal balance.

The Information Revolution

The new millennium will witness the death of mass communication as the concept is now known. Technological innovations are providing awesome changes in the ways people receive, process and use data and information which enable them to more easily take decisions about political, economic, social, cultural and other issues that affect their personal lives. In short, the manner in which people acquire knowledge has changed. At the same time, the nature of business has changed because of the possibilities for electronic commerce and personalised communication. The new delivery and distribution methods and the elimination of distance as a constraining factor, are driving forces for the new global systems of financial, commercial and economic activity.

Consider the Caribbean which is served today by 17 daily newspapers, 64 weeklies, 100 periodicals, 93 radio stations, 43 television stations, 56 satellite and cable systems and just under 40 Internet service providers. The words "*readers*", "*listeners*" and "*viewers*" which describe the relationship between "*reporters*" of events and "*receivers*" of information are changing their meaning. All at once, these words "*readers*", "*listeners*" and "*viewers*" have been replaced by the word "*consumer*", denoting now an "*active*" participant in the communication process, rather than a "*passive*" acceptor of information.

To put it very simply, these developments are possible because of the "fusion" of several commonplace household items such as the telephone, the personal computer, the

television set, the radio and the newspaper. In turn, this fusion provides for the words "print", "radio" and "television" to be replaced by "text", "audio" and "video". The Internet, an important product of the new technologies, is now the medium by which any text, sound, picture, data or still image can be recorded, compressed, transmitted and reconstituted with little loss in quality and at a fraction of previous cost. Momentous changes will continue to flow from the ongoing processes of technological innovation.

A few examples illustrate the pace of the coming changes: (a) by the end of 1999, every television set manufactured anywhere in the world will provide for access to over 200 channels; (b) within a few years delivery and distribution methods will enable every consumer anywhere in the world to access 200 channels or sources of text, audio and video material at minimal cost; (c) the power of personal computers continues to double every 18 months with significant reductions in cost; (d) twenty years ago, phone calls over copper-wire carried one page of text every second; today, a single strand of fibre-optic cable carries 90,000 volumes of material every second, and, (e) so far, Internet traffic has doubled every 100 days and this year 100,000,000 people will use this medium.

These developments have expanded concepts such as the right to information and freedom of the press. The new technologies provide almost limitless opportunities for the consumer to create and disseminate all forms of information about his or her life, interests, needs and aspirations. Simultaneously, because it is global, this new environment will demand the highest professional standards of balance and objectivity. In this ever-changing environment people are learning that they *create* rights, rather than are *given* rights. The new context is one in which there is the pervasiveness and paramountcy of ideas and

imitation, flowing freely from brain to brain around the world, and determining both the behaviour and the aspirations of peoples. Concomitantly, the responsibilities of policy makers, the duties of media owners and the obligations of practitioners will require that the principles, policies and practices that guide the new media must continually evolve with changing circumstances.

Precisely how people will use these emerging new instruments of communicating is still to be determined. Notwithstanding this uncertainty, the fact is that people all over the world will not be deterred in their demand for a better life for themselves and their children. Their cries for participation will become more strident and they will insist on partnership in planning and implementing all decisions which affect their lives. As channels for all forms of communication expand, so will demands intensify for improving the practice of democracy and for more democratic, accountable and open systems of governance. In turn, the fundamental questions for which answers must be provided will include: to what extent will globalisation help, or hinder, national efforts to improve lives, build livelihoods and strengthen the communities in which people live? How will hatred, racism, violence, corruption and intolerance be arrested and cooperation be made to evolve? And, finally, what will be the consequences of failure to cope?

GUYANA - REGIONS AND TOWNS

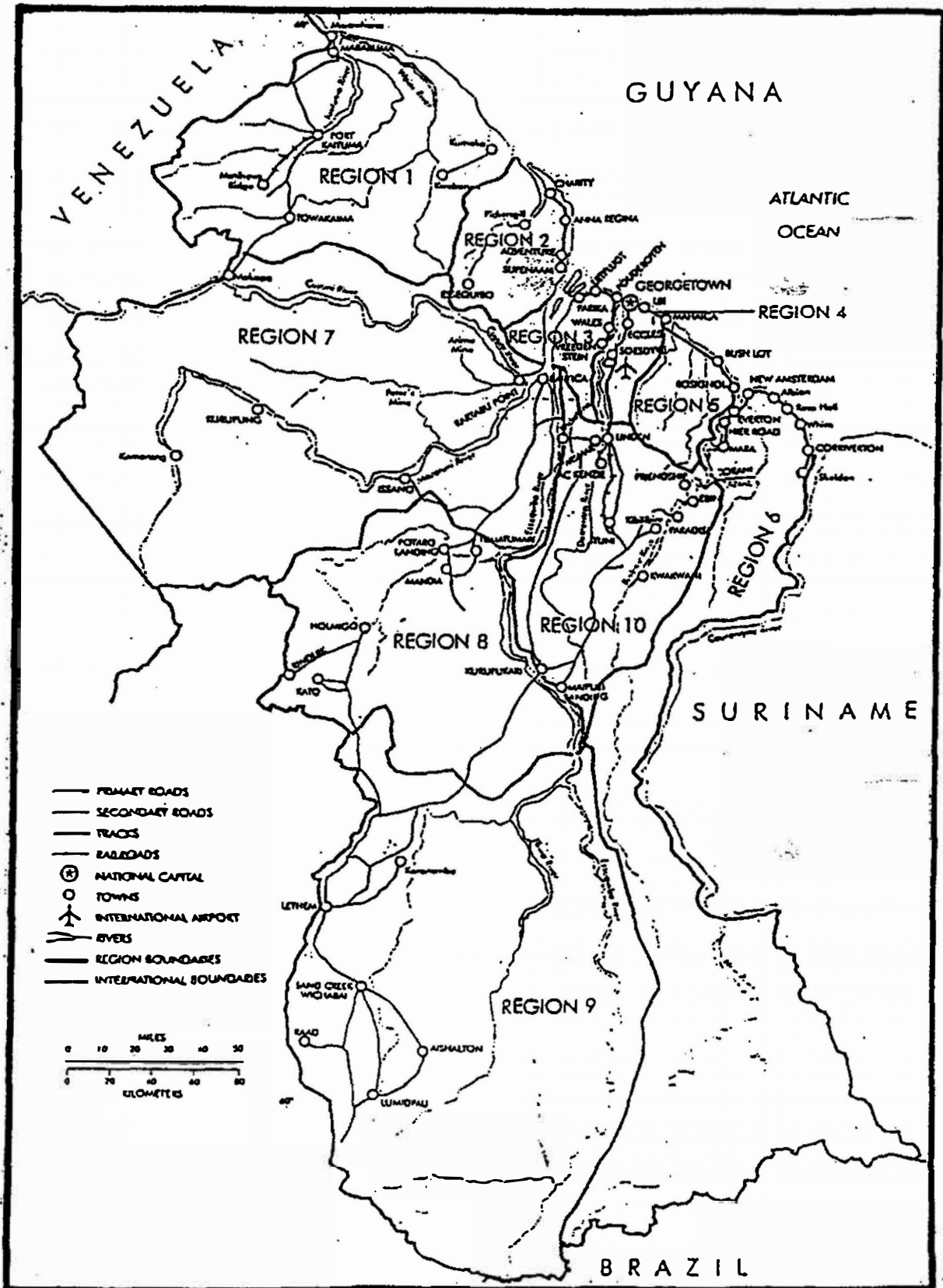


TABLE 1.1 GUYANA: HUMAN DEVELOPMENT INDICES

HDI Rank	Caribbean countries	Life expectancy at birth (year) 1997	Adult literacy rate (%) 1997	Combined first, second and third level gross enrolment ratio % 1997	Real GDP per capita (PPPs) 1997	Life expectancy index	Education index	GDP index	Human development index (HDI) value 1997	Real GDP per capita (PPP's) rank minus HDI rank
29	Barbados	76.4	97.6	80.0	12,001	0.86	0.92	0.8	0.857	8
31	Bahamas	73.8	95.8	74.0	16,705	0.81	0.88	0.85	0.851	-3
38	Antigua & Barbuda	75.0	95.0	76.0	9,692	0.83	0.89	0.76	0.828	5
46	Trinidad & Tobago	73.8	97.8	66.0	6,840	0.81	0.87	0.71	0.797	11
51	St. Kitts and Nevis	70.0	90.0	78.0	8,017	0.75	0.86	0.73	0.781	-1
52	Grenada	72.0	96.0	78.0	4,864	0.78	0.90	0.65	0.777	22
53	Dominica	74.0	94.0	77.0	4,320	0.82	0.88	0.63	0.776	27
75	St. Vincent & the Grenadines	73.0	82.0	78.0	4,250	0.80	0.81	0.63	0.744	8
81	Saint Lucia	70.0	82.0	74.0	5,437	0.75	0.79	0.67	0.737	-14
82	Jamaica	74.8	85.5	63.0	3,440	0.83	0.78	0.59	0.734	15
83	Belize	74.7	75.0	72.0	4,300	0.83	0.78	0.59	0.732	-1
99	Guyana	64.4	66.1	64.0	3,210	0.66	0.87	0.58	0.701	2
152	Haiti	53.7	45.8	24	1,270	0.48	0.39	0.42	0.43	-4

Total # of countries = 174

Note: To place Guyana's HDI in context, data for other Caribbean countries are provided.

Source: UNDP Human Development Report 1999

PART I
CONTEXT

CHAPTER 1

INTRODUCTION

STRUCTURE AND PURPOSE OF THE REPORT

Structure

1.1 The Report is structured in four parts:

PART I - Context – discusses the purpose and structure of the Report; the human and physical geography of Guyana; its Constitutional and electoral history; and the Herdmanston Accord and the situation that gave rise to it.

PART II - Methodology and Process - explains the Terms of Reference and composition of the Constitution Reform Commission, its administrative framework, sources and methods of evaluating information, and rules for decision-making. It also includes a critique of the process.

PART III - Public Submissions for the Proposed Constitution and Dimensions considered by the Commission - summarises the public submissions offered in relation to both the mandatory issues laid down by the Herdmanston Accord and other issues; and the dimensions of the issues that the Commission needed to consider.

PART IV – Recommendations – provides recommendations, supporting arguments and the votes for each proposed area of change. Minority views are included.

Purpose

- 1.2** This Report has been prepared for submission to the National Assembly as required by the Terms of Reference of the Constitution Reform Commission Act 1999. The Act requires the Commission "to review the Constitution of Guyana to provide for the current and future rights, duties, liabilities and obligations of the Guyanese people" (Section 6 (1)), and on conclusion of its deliberations, to "prepare a Report, inclusive of the proposals of any minority, giving details of the recommendations and the reasons therefor in a clear and comprehensive manner to enable the Constitution to be drafted therefrom" (Section 6 (5)).
- 1.3.** The Constitution Reform Commission itself was provided for by Section 4 of the Act which was passed on January 11, 1999 and assented to on January 13, 1999. It became effective when its members were sworn in by the President on January 22, 1999. The Commission was mandated by the Herdmanston Accord of January 17, 1998 whose formal title is the "Caribbean Community Mission to Guyana: Measures for Resolving Current Problems".

HUMAN AND PHYSICAL GEOGRAPHY OF GUYANA

- 1.4** The following analysis attempts to place recent developments in the context of the physical environment and demographic characteristics of Guyana. Some of the analysis is taken from the 1996 Guyana Human Development Report.

Geographical Context

1:5 Guyana occupies a total land mass of approximately 215,000 km² (83,000mi²). Its coastline is approximately 434 km (270 mls) long, while the depth inland is about 724 km (450 mls). It is located on the north-eastern coast of the continent of South America. Guyana is bounded on the north by the Atlantic Ocean, on the east by Suriname, on the south and south-west by Brazil and by Venezuela to the west. About 35 percent of Guyana lies within the Amazon Basin. In spite of its location on the South American continent, Guyana is regarded as an integral part of the English-speaking Caribbean, because of similarities in its past colonial affiliation (British), culture and peoples. It is a member of the Caribbean Community (CARICOM), whose headquarters is located in Guyana.

1.6 There are four natural geographic regions:-

The Coastal Lowlands

The Sand Belt

The Highland Region

The Central Peneplane

However, to accommodate the political administration of the country, Guyana has been divided into ten administrative regions.

1.7 **The Coastal Plain** is the smallest physical region of Guyana, but the only densely-occupied area. It occupies a mere 7.5 percent of the country, yet

most of Guyana's activity and population are found here. The coastal plain is wider to the east of the country where it is 77 km, whereas it is only 26 km wide at the western end. Guyana's coastal plain is flat, the land being generally under 2.5 metres below sea level. It is very much influenced by the large rivers whose flood plains occupy the coast, and by the changes in the sea level due to the ebb and flow of the tide.

1.8 The fact that the coastal plain lies below sea level has made it necessary for the construction and maintenance of a complex sea-defence system which includes sea walls which stretch for approximately 240 km (150mils) along the coast. An intricate network of drainage and irrigation canals is also characteristic of the physical features of this area, which is the most important part of Guyana for agricultural purposes, as about 80 percent of its cultivated land is located here.

1.9 The level of economic activity on the coastal plain, the location of educational facilities, and the transportation network, are all contributing factors to this being the most populous natural region, as approximately 85 percent of the total population live here. Of the ten administrative regions in the country referred to above, part of Region 1 and all of Regions 2-6 are located in the coastal plain.

1.10 The pattern of settlement is predominantly linear, following the main roadways with clusters of villages and little townships. Five of Guyana's six

municipalities are located on the Coast. Georgetown, the capital city and the largest municipality, is also located here on the eastern bank of the mouth of the Demerara River. The population of Greater Georgetown and its environs is now approximately 200,000 people.

1.11 **The Sand Belt** extends from the coastal plain southwards to the central peneplane. It occupies 12 percent of the country's surface. This region is covered chiefly by a porous, loose layer of white sand, though there are small areas of brown sand and hills capped with red soils. The hardwood and other timber found in this region are a valuable natural resource and are a source of fuelwood, charcoal and timber for construction purposes. Bauxite, which up to the late eighties was a significant foreign exchange earner, underlies the white sand in large deposits.

1.12 Relative to the coastal plain, the population distribution is sparse with a density of about 6-25 persons per km² . There are a few villages and Amerindian settlements along the banks of the Demerara and other rivers located in this region. The largest settlement is Linden, a conglomeration of three communities (Wismar, Mackenzie and Christianburg) which developed as a result of the activities of the bauxite industry along the Upper Demerara riverbanks. Linden is one of the municipalities in Guyana.

1.13 **The Highland Region** occupies the mid-western portion of Guyana and extends for 30,000 km² or 14 percent of Guyana. The area is dominated by

the Pakaraima mountain range and its highest point, Mt. Roraima, is the meeting point between Guyana, Venezuela and Brazil. It is a difficult environment with flat-topped plateaus and steep-sided ridges, densely covered with rainforest. The rivers are characterised by rapids and waterfalls, including the famous Kaieteur Falls. Here can be found some of the valuable deposits of gold and diamonds as well as interesting resources of wildlife, birds, orchids and other plants. This is a sparsely populated area, where in some places population density is below 1 per km². Guyana's Indigenous Peoples, the Amerindians, occupy settlements in this region.

- 1.14** **The Central Peneplane** is the largest physical area, occupying more than half the land surface of Guyana. It consists of gently hilly country, with hills reaching 300 metres in the northern half of the country and 900 metres in the south. In general, the land varies from 90 to 200 metres above sea level. The region includes varied environmental conditions, ranging from dense tropical forests to the open vegetation of the Rupununi Savannahs, situated in the south-west.

Population Characteristics

- 1.15** Compared to its present land area (215,000 km²), the population of Guyana is small, estimated at only 770,000 persons at mid-1996; i.e., the population density is only 3 persons per km². After a century of continuous growth (1881-1980) in which the population trebled, the data since 1980 have

shown an absolute decline in numbers, brought about largely by the outward migration rate which has exceeded the rate of natural increase.

1.16 The increase in the population between 1881 and 1980 was in large measure due to immigration into Guyana. First, there was a period of indentured immigration which followed after African slavery was abolished in 1834 and which lasted up to 1916, during which the sugar planters imported labour from a number of countries, mainly India. After World War II, immigration resumed, this time voluntarily and from the rest of the Caribbean. Population growth after 1946 peaked at 2.86 percent per annum.

1.17 Table 1.2 shows the available census data since 1946 with an estimate of the population size in 1996. Between 1970 and 1980 the population grew at 0.4 percent per annum, and between 1980 and 1991 it declined at an annual average rate of about 0.1 percent. Since 1991 there has been an estimated 0.1 percent increase annually.

Table 1.2: Population Census Data

Census Year	Amount ('000)
1946	375.7
1960	560.3
1970	701.7
1980	759.6
1991	723.8
1996 (estimate)	770.1

Source: Bureau of Statistics

1.18 Two important factors in the demography of Guyana have been changes in fertility and the high rate of external migration. There has been a fall in birth rate and the average size of families. Between 1961 and 1991, the average number of children born to each woman of childbearing age fell from 6.1 to 2.6. The net migration from Guyana has been a very high proportion of its population. In 1991, the net loss was 23,554 or 3.2 percent of the total population. The average net loss from the period 1887 to 1998 has been in the order of 15,000 a year.

1.19 In mid-1996, the **urban/rural distribution** of the population was estimated at 36:64. The percentage distribution by **administrative region** in the 1991 census is shown in Table 1.3 below:

Table 1.3: Regional Distribution of the Population (1991)

Region	% of Total Pop.
1	2.6
2	6
3	12.7
4	41.4
5	6.9
6	19.1
7	2.1
8	0.8
9	2.1
10	5.5

Source: Bureau of Statistics

1.20 The **sex distribution** of the population shows slightly more females than males. Over the five census dates reported in Table 1.1 the percentage of females ranged from 50.3 to 50.9.

1.21 The ethnic distribution of the population shows that East Indians form the largest group (48 percent) but do not constitute a majority. Next are the Afro-Guyanese (33 percent), followed by Mixed persons (12 percent), and Amerindians (6 percent). These data are shown in Table 1.4. There is a marked degree of geographic, occupational and political segmentation among the ethnic groups.

Table 1.4: Population by Ethnicity (1991)

Ethnic Group	% of Total Pop.
East Indians	48.3
Afro-Guyanese	32.7
Mixed	12.2
Amerindians	6.3
Others	0.5

Source: Bureau of Statistics

1.22 Finally, the age distribution of the population is shown in Table 1.5. The **median age** of the population has been rising, reaching 21.7 years in 1991, up from 17 in 1966. While the population aged 0-14 years was still the largest category in 1991 (35 percent), this figure was considerably down from the censuses of 1970 and 1980 which gave this category 47 percent.

Table 1.5: Population by Age Group (1991)

Age Group (years)	% of total Population
0-14	34.8
15-24	22.0
25-34	17.2
35-44	11.1
45-54	6.6
55-64	4.2
65+	4.1

Source: Bureau of Statistics

1.23

The population characteristics of Guyana are clearly not those typical of a developing country. Moreover, several of those characteristics give cause for concern, particularly as they relate to the overall size, regional distribution and age distribution of the population. Also, while the ethnic distribution reflects the diversity and great cultural potential of Guyana, this unfortunately provides a basis in numbers for concerns over ethnic security and the successful advancement of Guyanese nationalism as well.

A BRIEF CONSTITUTIONAL AND ELECTORAL HISTORY OF THE COUNTRY

1.24

For a long time during the colonial era, the Constitution of Guyana (the former British Guiana) was regarded as "unique in the British Empire". This was so because when the former Dutch colonies of Essequibo, Demerara

and Berbice were finally ceded to the British through conquest in 1803, the British inherited the Dutch system of government with governmental institutions such as the Court of Policy, the College of Electors or Klezers, the College of Financial Representatives and the Combined Court. Such a strange situation was allowed to persist through Article 1 of the 1803 Capitulation Treaty which stated that the colonists were to retain the existing laws, customs and political institutions.

1.25 These Dutch-inherited institutions prevailed almost throughout the nineteenth century. Only minor amendments in the governmental structure and administration were made, and these came mainly through various Orders-in-Council. It was not until 1891 that some significant change was made in the Constitution through Ordinance Number One of 1891 - "An Ordinance to Alter and Amend the Political Constitution of the Colony." Some of the material changes which were effected through the 1891 Constitutional reforms were the enlargement of the Court of Policy, the abolition of the College of Electors or Klezers, direct election of the unofficial section of the Court of Policy in their respective constituencies, the widening of the franchise, an additional property qualification for electives of the Court of Policy, the right of the Governor to dissolve the Court of Policy at any time, and a specified quorum. These reforms of 1891 laid the basis for the decline of the plantocracy from the political field in the early twentieth century.

1.26 Guyana's Constitutional position was reviewed in 1922 by the Parliamentary Under Secretary of State for the Colonies, Mr. E.F.L. Wood, later Lord Halifax. This was followed by the Snell-Wilson Commission of 1926, which gave a comprehensive critique of the colony's Constitution and its inherent weaknesses.

1.27 These developments were followed by the July 13, 1928 Act through an Order-in-Council which abolished the Court of Policy and Combined Court. In effect, this 1928 Constitutional change introduced the Crown Colony form of Government to Guiana with a Legislative Council and an Executive Council. Further changes to the Constitution took place following the recommendations of the West Indian Royal Commission of 1938-39 headed by Lord Moyne. This Commission made a thorough investigation of the surge of labour unrest that swept the British Caribbean, including British Guiana, in the 1930's. As a result, there were further reforms to the Legislature and Executive Councils in 1943.

1.28 Another significant change took place following the Waddington Commission and Report of 1953, which led to the introduction of the Waddington Constitution, undoubtedly one of the most advanced in the British colonies at the time in terms of preparation for internal self-government and Independence. This Constitution paved the way for universal adult suffrage and under general elections in 1953, the mass-based, multi-racial organisation, the original People's Progressive Party (PPP), scored a

landslide victory.

- 1.29** However, after only one hundred and thirty-three days of the PPP in office, the British Government suspended the Waddington Constitution and ousted the legally-elected government under the guise that it posed a "Communist threat". In its place emerged an Interim Constitution and Government. By the mid 1950s, the PPP had split into two factions, paving the way for a political landscape largely dominated by the two main parties - the People's Progressive Party (PPP) and the People's National Congress (PNC).
- 1.30** The period of Interim Government was followed by the Robertson Commission which recommended a period of "marking time" as Guyana advanced towards self-government. The Rennison Constitution was then introduced in 1956, and this was followed by the 1958 Constitutional Committee which produced the major recommendation that Guyana should become an independent state within the Commonwealth. Following the 1960 Constitution Conference, the British Guiana Order-in-Council provided for an elected Legislative Assembly of thirty-five and a nominated Senate.
- 1.31** General elections of 1961 were closely followed by disturbances, which became more serious in 1962, when they coincided with the budget proposals termed the "Kaidor budget". This led to the Constitutional impasse of 1962-1963. Persistent social unrest and the issue of whether Independence should occur prior to fresh elections were the main

characteristics of this period, in which our political leaders failed to reach agreement on a date for Independence. The situation was aggravated by strikes, racial riots and disturbances over the Labour Relations Bill of 1963, which grew worse in 1964 around a sugar industry strike.

1.32 When the 1962 Constitutional Conference resumed in November, 1963, leaders of the political parties continued to differ on the issues of Independence and elections. Secretary of State for the Colonies, Mr. Duncan Sandys, then imposed a new system of proportional representation and on July 23, 1964, there was an amendment to the 1961 British Guiana Constitution, opening the way for the new system of elections.

1.33 Under proportional representation (P.R.), a coalition of the People's National Congress and the United Force (UF) emerged to form the government and in November, 1965, the principles of Guyana's Independence Constitution were agreed upon, as was the date of Independence, 26th May, 1966. Subsequently, the British Guiana Act, 1928 was repealed by the Guyana Independence Act 1966.

1.34 Further developments took place when the Republic Act, No. 9 of 1970 was passed on February 20, creating the basis for Guyana to become a Co-operative Republic on February 23, 1970. The next major Constitutional change took place nearly a decade later, when the Constitution Amendment Act, 1978 was approved by a referendum held on July 10, 1978 and the

National Assembly resolved itself into a Constituent Assembly for the primary purpose of preparing a new socialist Constitution. This Constitution came into effect on October 6, 1980 (See Para 1.36).

1.35 Between 1968 and 1992, the People's National Congress ruled Guyana on its own, retaining power via a succession of elections and forms of governance that were widely criticised by Opposition parties and other observers as undemocratic. In 1992, facing intense internal and external pressure, it conceded significant electoral reforms for the December 15, 1992 general elections which resulted in the emergence of the PPP/Civic in government. But it can be argued that Guyana had never been allowed to begin to develop a tradition of democracy. Writing in "Law and the Political Environment in Guyana" (1984), Professors Rudolph James and Harold Lutchman (who became two of the local legal experts to the present Constitutional Reform process), made the following analysis:

Whatever might have been the intention, it is clear that the attempt at the transplantation of British values and institutions has been unsuccessful. A number of factors are responsible for this state of affairs. It is evident that the ecological settings of the British state and colonies diverged in many significant respects. Consequently, similar institutions could of necessity yield different results. Secondly, in most cases, British institutions, forms of government and practices were in reality new, with a legal and constitutional basis effectively dating only to the Independence constitutions. Take, for example, the classical British model of a two party system, one forming the Government and the other, a potential government, functioning as the opposition. This form of political style and organisation was prior to 1953 not within the experience of a colony such as Guyana where it was not the practice in the earlier colonial period to be tolerant of opposition in any form. Therefore, when constitutions were introduced with provisions premised on the existence of a loyal opposition, in terms of historic experience,

such proposals represented something of a break with past practice, and...never took root in Guyana.

FROM THE 1980 CONSTITUTION TO THE SPECIAL SELECT COMMITTEE OF THE 6th PARLIAMENT

- 1.36** The Constitution to emerge from the present reform process will be the first to be written by Guyanese for Guyanese. The Constitution now in force, euphemistically called the "People's Constitution," was imposed after a controversial referendum process in 1978. This followed a Constituent Assembly which, most observers say, ignored the representations made to it. The odium generated by the Constitution has dogged it since it was promulgated and there have been repeated calls for it to be repealed or, at a minimum, extensively amended, particularly with respect to the provisions on the powers of the Presidency. These calls have been sometimes reinforced by extra-parliamentary agitation.
- 1.37** Legislatively, the first substantive move to have the 1980 Constitution reviewed was taken by Mr. Kenneth Bancroft, a backbencher of the then governing party, the People's National Congress. This took place in 1991 during the Fifth Parliament when he moved a resolution for a Select Committee to be established for this purpose. However, during debate Mr. Bancroft withdrew the resolution when he failed to get the support of the People's Progressive Party (PPP), then in Opposition.

1.38 Constitutional review remained on the front burner, and at the 1992 elections, all of the major political parties included the issue in their election manifestos. However, it was not until December 1, 1994 that a resolution was passed in the National Assembly approving the appointment of a Special Select Committee to review the 1980 Constitution and to make proposals for its reform. (See Appendix Vi). The resolution called for the Special Select Committee to complete its work in time for the establishment of a new Constitution before the next national elections were due in March 1998, but the Committee did not complete its work before the dissolution of Parliament on October 29, 1997.

1.39 Between May 7, 1997 when it began the consultation process and October 18, 1997 when that process came to a premature end, the Special Select Committee of the 6th Parliament held "fifty meetings, twenty-six of which were devoted to public hearings in Georgetown and around the country. The Committee received sixty-eight memoranda and one hundred and twelve individuals and organisations gave oral evidence before it" (Report of the Special Select Committee Appointed to Determine the Terms of Reference of the Constitution Reform Committee Part 1, Introduction, Paragraph 2, page 1). Additionally, "a panel of three experts appointed by the Committee submitted a preliminary report on the memoranda and verbatim oral presentations" (ibid.) That body of evidence has been handed down to the present Commission under the provisions of the legislation which established it.

CHAPTER 2

BACKGROUND TO THE 1999 CONSTITUTION REFORM COMMISSION AND ITS TASK

THE HERDMANSTON ACCORD AND THE SITUATION THAT GAVE RISE TO IT

- 2.1** The fact that the Special Select Committee of the 6th Parliament was not allowed to complete its task meant that the elections of December 15, 1997 were held under the 1980 Constitution.
- 2.2** After the election, there were four weeks of street protests led by the PNC, generated by claims relating to the delay in the counting of votes for Region 4, and the allegedly premature declaration of one winning candidate for the Presidency. Ethnic tension and ethnic violence escalated. This was the context which gave rise to the Herdmanston Accord, which was brokered by a CARICOM Mission comprising former Barbados Attorney General and Foreign Minister, Sir Henry Forde QC; then Vice Chancellor of the University of the West Indies, Sir Alister McIntyre; and former Commonwealth Secretary General, Sir Shridath Ramphal SC, assisted by United Nations crisis management expert, Hugh Cholmondeley. The Accord was signed on January 18, 1998 by representatives of the PPP/Civic and the PNC.

2.3 The Herdmanston Accord provided for a Menu of Measures which the CARICOM Mission felt could "contribute significantly to the resolution of existing problems" (Herdmanston Accord, Paragraph 1). One of the measures, implemented within a few days of the signing of the Accord, provided for a three-month moratorium on public demonstrations and the simultaneous lifting of the ban which the Minister of Home Affairs had imposed on such demonstrations earlier in January. The other main measures in the Accord were a "sustained dialogue" between the PPP/Civic and the PNC "with a view to fostering greater harmony and confidence" (Herdmanston Accord, Paragraph 3); an Audit or independent enquiry into the elections; and Constitutional reform.

2.4 The dialogue teams representing the two parties had their first meeting on January 30, 1998 at the offices of the Resident Representative of the United Nations Development Programme (UNDP). Among the issues settled in the first sessions of the dialogue process were the draft provisions for the legislation authorising the conduct of the Audit of the December 15 elections. Agreement between the two parties was reached on February 16, 1998.

2.5 Under the Accord, the Audit was to be conducted in two phases. The first phase was to be "an urgent review of the due process of the count on and after 15 December 1997 (including the role of the Elections Commission) to be completed within three months of January 17, 1998 with a view to

ascertainment of the votes cast for the respective political parties” (Herdmanston Accord, Paragraph 1 (i) (a)). The second was to be “an audit of the systemic aspects of the electoral process, including the post balloting phase” (Herdmanston Accord, Paragraph 1 (i) (b)). The Audit was to be carried out under the auspices of CARICOM by a team proposed by the Chair of CARICOM after consultations with the leaders of the parties which participated in the December 15 elections, and agreed to by the leaders of the PPP/Civic and the PNC. The Accord also required the PPP/Civic and the PNC to cooperate in the enactment of any enabling legislation required for the effective conduct of the Audit. The results of its first phase were to be binding on both the PPP/Civic and the PNC “without prejudice to any judicial process arising from the 15 December 1997 elections” (Herdmanston Accord, Paragraph 1 (i)). The Accord further provided that the Audit Report would “be admissible for the purposes of an Election Petition in respect of matters of fact to which they relate” (Herdmanston Accord, Paragraph 1 (iv)).

2.6 Enactment of the enabling legislation was delayed by disagreement on whether the PNC, which had not taken up its seats in Parliament, had to be there to cooperate in its passage. The legislation was finally approved by the National Assembly on March 16, 1998 without the PNC being in Parliament. The Audit team, led by former Trinidad and Tobago Appeal Court judge, Mr. Ulric Cross, started its work two months after the Accord was signed and it combined the two phases envisaged by the Accord on the basis that there were areas of overlap between them: this was the view expressed by Mr.

Cross to reporters at a press conference held before the team commenced its work.

2.7 On June 3, 1998, the results of the Audit were presented to the leaders of the parties which contested the elections. In view of the PNC and some other parties, the presentation of the Audit Report did not lead to a resolution of the specific concerns that had given rise to it. For the PPP/Civic and many observers, on the other hand, the Audit Report confirmed the announced results of the elections.

2.8 On July 4, 1998, an addendum to the Herdmanston Accord was signed in Castries, St. Lucia following talks between the CARICOM Heads and President Janet Jagan, in her capacity as the representative of the PPP/Civic, and Mr. Desmond Hoyle as the representative of the PNC. Under the St. Lucia Statement, President Jagan undertook that by July 15, 1998, the necessary legislation would be enacted to allow the PNC to take up the seats in the National Assembly which they had lost by virtue of their continued absence. The Statement also committed the parties to completing the process of Constitutional reform in accordance with the Accord timetable. The St. Lucia Statement followed renewed demonstrations and marches organised by the PNC to protest what it called an attempt by the PPP/Civic to delay implementation of the Herdmanston Accord. For its part, the PPP/Civic expressed concerns at two levels: specifically, about the PNC's refusal to take up its seats in the National Assembly, to accept the

appointment of the PNC Leader as Minority Leader, and to accept the results of the December 15 elections; and generally, about its commitment to the implementation of the Herdmanston Accord.

2.9 On August 6, 1998, three weeks after the PNC Parliamentarians took up their seats, the National Assembly approved a resolution establishing the Special Select Committee of the 7th Parliament. The resolution read as follows:

WHEREAS the Herdmanston Accord dated 17th January, 1998, provides that a Constitution Reform Commission shall be established by law and that its terms of reference and membership will be determined by the National Assembly after a process of consultations with the political parties:


RESOLVED, that this National Assembly approves of the appointment of a Special Select Committee to determine the terms of reference and the composition of the Constitution Reform Commission after a process of consultations with the political parties.

PART II

**METHODOLOGY
AND
PROCESS**

CHAPTER 3

ESTABLISHMENT OF THE COMMISSION

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- 3.1** Paragraph 4 (i) of the Herdmanston Accord called for the establishment by law of a Constitution Reform Commission "with a wide mandate and a broad based membership drawn from representatives of the Labour movement, religious organisations, the private sector, youth and other social partners". It added that "The Terms of Reference of the Commission and its membership will be determined by the National Assembly after a process of consultations with the political parties. It will be mandated to consult with civil society at large" . Paragraph 4 (ii) of the Accord also imposed an obligation on the National Assembly to implement the changes recommended by the Commission and which it had approved "in sufficient time to allow for post-reform general elections which will be held within eighteen months after the presentation of the report of the Commission to the National Assembly".
- 3.2** The Select Committee of the 7th Parliament adopted the Terms of Reference for the Commission at its sixth meeting convened on October 9, 1998. These Terms were based on a draft prepared by the PPP/Civic and the PNC and refined after inputs by The United Force (TUF), the Alliance

For Guyana (AFG), and six other political parties which had contested the December 15, 1997 elections: A Good and Green Guyana, God Bless Guyana, Guyana Democratic Party, Justice For All Party, National Democratic Front, and National Independent Party. The Terms of Reference provided for the Commission, in its review of the Constitution, to address the following:

- (1) The full protection of the fundamental rights and freedoms of all Guyanese under the CARICOM Charter of Civil Society.
- (2) The rights of the Indigenous Peoples of Guyana.
- (3) The rights of children.
- (4) Eliminating discrimination in all its forms.
- (5) Improving race relations and promoting ethnic security and equal opportunity.
- (6) Measures to ensure that the views of minorities in the decision-making process and in the conduct of Government are given due consideration.
- (7) Implementing reforms relating to elections and the Elections Commission, taking into consideration its composition, the method of electing its chairman and members and its jurisdiction over national registration and the electoral process.
- (8) Measures to secure and protect economic, social and cultural rights of all Guyanese.
- (9) Measures to maintain and strengthen the independence of the judiciary.
- (10) Measures aimed at safeguarding public funds and at maintaining and

enhancing integrity in public life under the law and by other proper means.

(11) The functioning of the National Assembly and any measure which can enhance its capacity and effectiveness as a deliberative body.

(12) The functioning of the local government system and measures to improve its capacity and effectiveness.

3.3 The approach to these issues was to take into account the representations made to the Special Select Committee of the 6th Parliament established in accordance with a Resolution of the National Assembly passed on December 1, 1994.

3.4 The composition of the Commission was approved by the Select Committee at its eighteenth Meeting on November 25, 1998, which agreed on a twenty-member Commission, including a Chair and Deputy Chair, and equal representation of the Parliamentary political parties and civil society.

3.5. The ten seats on the Commission allocated to the Parliamentary parties were distributed as follows: PPP/Civic - 5 seats; the PNC - 3; TUF - 1; and AFG - 1. The groups from civil society identified to be represented on the Commission were the Christian, Hindu and Muslim Religious Organisations, the Labour Movement, the Private Sector, the Indigenous Peoples, Women's organisations, Youth organisations, the Guyana Bar Association, and Farmers.

3.6

With agreement reached on the representatives of the political parties and civic groups and the Commissioners sworn in by President Janet Jagan on January 22, 1999, the first plenary session of the Commission was held on January 25, with the following members present:

Representatives from the PPP/Civil:

Hon. Reepu Daman Persaud, O.R., J.P., M.P.; Hon. Mr. Ralph Ramkarran, S.C., M.P.; Hon. Gail Texeira, M.P.; Hon. Moses V. Nagamootoo, J.P., M.P.; and Mr. Bernard C. De Santos, S.C., M.P.

On February 19, 1999, Dr. Frank Anthony replaced the Hon. Minister Ms. Gail Texeira, who resigned on the same date and on June 16, 1999 Mrs. Philomena Sahoye-Shury, M.P., replaced the Hon. Moses V. Nagamootoo, M.P., who resigned on June 11, 1999.

Representatives from the PNC:

Mr. William Haslyn Parris, C.C.H.; Mr. Vincent Luther Alexander, and Mr. Deryck Milton Alexander Bernard.

Representative from The United Force:

Mr. Aubrey Collins.

Representative from the Alliance for Guyana:

Dr. Rupert Roopnaraine, M.P.

Representative from the Labour Movement:

Mr. Randolph Kirton.

Representative from the Christian Religion:

Rev. Keith Oswald Moris Haley.

Representative from the Hindu Religion:

Mr. Vidyanand Persaud.

Representative from the Muslim Religion:

Mr. Shahabudin Mohamed McDoom.

Representative from the Women's Organisations:

Ms. Avril Anande Trotman.

Representative from the Private Sector:

Mr. Ramdial Bhookmohan.

Representative from the Youth Organisations:

Mr. Faizal Jaffarally.

Representative from the Amerindians:

Ms. Jean Benedicta Imelda La Rose.

Representative from the Guyana Bar Association:

Mr. Miles Greeves Fitzpatrick, S.C.

Representative from the Farmers:

Mr. Harrichand Sookraj Mahadeo.

Officers:

Mr. Maurice B. Henry, Clerk of the Special Select Committee

and Mr. Oscar E. Moore, Administrative Assistant.

3.7 As a result of consultations between the PPP/Civic and the PNC on the chairing of the Commission, and with the agreement of other members of the Commission, the post of Deputy Secretary was added; the legislation had only provided for a Secretary to the Commission. With the

consultations completed, on January 29, 1999, Ralph Ramkarran S.C. and Jean LaRose were elected unopposed as Commission Chair and Vice Chair respectively, and Haslyn Parris C.C.H. was named Secretary to the Commission. On February 15th 1999, Mitradevi Ally was named Deputy Secretary.

ADMINISTRATIVE FRAMEWORK

3.8 Following the establishment of the Constitution Reform Commission, the setting up of its Secretariat was not immediately possible. Hence, for the first few weeks of the Commission's life, administrative functions were executed by the Chairman, Vice-Chairman and Secretary of the Commission, and the Clerk of the Special Select Committee of the 6th Parliament. The three key statutory officers of the Constitution Reform Commission scheduled meetings, met with officials and, in general, provided the administrative effort necessary to move work along until the budget was finalised. The staff of the Special Select Committee of the 6th Parliament, who were *au fait* with exercises of this nature, provided support in terms of expertise and equipment.

3.9 While the Constitution Reform Commission Act, 1999 mandated the establishment of a Commission Secretariat, the parameters of the Secretariat's tasks and its financing and composition were priority issues for decision of the Constitution Reform Commission itself.

3.10 Section 13 (1) of the Constitution Reform Commission Act, 1999 set specific periods within which the Commission was to publicise its methodology and the time-frame for accomplishment of assigned tasks, and to prepare and present a budget to allow it to execute its functions. February 24, 1999 was identified as the latest date for these tasks to be accomplished. This deadline was met.

3.11 Prior to this, the interim Secretariat guided the Commission in carrying out the following tasks:

- (1) Contracting the services of a public relations consortium to advance the views of the Commission and solicit public participation. This was achieved after consideration of work programmes and bids from five public relations firms and individuals. See Appendix VII for the invitation to bid.
- (2) Preparing all advertisements for positions within the Secretariat as agreed by the Constitution Reform Commission. Job descriptions were agreed upon to inform these advertisements.
- (3) Compiling a list of experts to provide expert advice in a variety of areas including Bill of Rights, Gender Issues, Systems of Government, Indigenous Issues, Consociational Democracy, and Children's Rights. The List of Experts and Terms of Reference agreed upon by the Constitution Reform Commission are provided in Appendix VIII.
- (4) Compiling a list of local individuals whose views on Constitutional

reform ought to be specifically solicited. This list is in Appendix IX.

- (5) Finalising a list of areas to be visited for the conduct of public hearings in pursuance of the advertisements inviting public contributions. Efforts were made by the Commissioners to identify areas as far and wide as reasonable.

3.12 Many of the actions outlined in (1) to (4) above were simultaneously executed in sub-committees of the Constitution Reform Commission, followed by discussion and ratification by the plenary. However, mainly due to the lack of staff at this stage of the Commission's life, matters were not dealt with in as timely a manner as necessary.

3.13 The first draft of the budget was completed and the revised version was approved on the 25th March, 1999. These budgets are attached as Appendix X.

3.14 The formal establishment of the upper tiers of the Constitution Reform Commission Secretariat occurred on April 1, 1999. The Secretariat, which was the administrative arm of the Constitution Reform Commission, was headed by the Secretary who, in accordance with Section 3(2) of the Constitution Reform Commission Act, 1999, was responsible for the Secretariat and reported to the Commission. There was provision for an Assistant to the Chairman (reporting directly to the Chairman), but this post was not filled. The Deputy Secretary was appointed on February 15, 1999.

3.15 The hierarchy of the Secretariat was supported by the following appointments:

- (1) Head, Documentation and Research (with Supervisors for Research, Analysis and Document Preparation).
- (2) Head, Public Education and Information (with Supervisors for Media and Outreach).
- (3) Head, Logistics (assisted by Administration staff for recording proceedings and making physical arrangements).
- (4) Head, Financial Administration (assisted by Supervisors for Financial Administration and Project Monitoring).
- (5) Head, Document Replication and Distribution (with Supervisors for Document Replication and Document Distribution).

The organisational chart is appended as Appendix XI.

3.16 Ancillary staff members for typing, collating, and other office duties were hired as the need arose. Other resources contracted to aid the Commission's work were Prime Time Advertising, Tagman Inc., and Theatre Company (public relations, advertisement and education); Modern Audio Systems, and later Kurt Noel (public address); Institute of Distance and Continuing Education; Messrs Chand and Dixon (transportation); and Guyana Pharmaceutical Corporation (furniture) (See Appendix XII).

3.17 The organisational structure of the Secretariat was the result of considerable discussion by the Commission, and the five Heads of

Department were determined necessary to carry out the Commission's internal and external tasks. In relation to public education and information, it was recognised that the newspaper, radio and television media, and non-media communication channels such as seminars and symposia, needed to be employed. It was also recognised that competent persons in these areas needed to be solicited, and advertisements inviting applications were detailed in the criteria they had to satisfy.

TIMETABLE AND TASKS OF THE COMMISSION

3.18 With the guidance of its Secretary, the Commission adopted a methodology by which the Report to be submitted to the National Assembly by July 17, 1999 could be completed. The Secretary's proposal was made on February 1, 1999 and received the Commission's approval on February 19, 1999. The proposal was for the Commission to approach its work as a project with the output being the final Report, and with various tasks identified for action to achieve this end; and it was agreed that time-lines were necessary, given the deadline for submission.

3.19 In broad terms, the tasks identified were as follows:

- (1) Publication of the establishment of the Constitution Reform Commission and information to the public on requirements for their participation.
- (2) Scheduling of Public Hearings and acceptance of written evidence.

- (3) Establishment of sub-committees to deal with defined subject areas, so that all categories crucial for inclusion in, or alteration of, the Constitution would be adequately discussed.
- (4) Engagement of experts (as provided for under Section 14 of the Constitution Reform Commission Act, 1999).
- (5) Discussion by the plenary of recommendations of the above sub-committees. This later proved to be extremely time-consuming.
- (6) Preparation of the Report to the National Assembly, based on documentation and additional research.

3.20 The report of the three legal experts to the Special Select Committee of the 6th Parliament was viewed as instructive for the preparation of the recommendations, especially in relation to their advice that the approach to the exercise of Constitutional reform should be to frame provisions in simple language, and that the Constitution should be seen as subject to review on a periodic basis.

3.21 The Commissioners also recognised the need for latitude with regard to their Terms of Reference, agreeing that not all areas may have been covered in the mandatory issues outlined in them and that other areas might be vitally worthy of consideration and debate.

3.22 Given the fact that there were only five and one-half months for completion of the Report, time-tabling by the Secretary was one of the crucial aids in

the process. The time frame was considered to be from January 11, 1999, when the Constitution Reform Commission Bill was passed, to July 16, 1999, the date prior to that scheduled for the Report's submission. At this stage, two points must be borne in mind: that the work of the Commission in the field only commenced in March, 1999; and that the time allotted for the assignment was challenging and the methods adopted may not have been the most effective.

3.23

The actual timetable was as follows:

- (1) January 11-29: Legislation was passed and the Constitution Reform Commission duly appointed and sworn, and key statutory officers chosen.
- (2) February 2-15: The Report was structured and tasks were identified, methodology agreed on, and time-frames calculated.
- (3) February 18-26: Submissions (oral and written) were invited. Dimensions for general written submissions were publicised.
- (4) February 17- May 28: Written submissions were accepted.
- (5) March 9 -April 18: Oral submissions were received. Some exceptions were created to facilitate certain key groups such as the political parties, Guyana Bar Association and people with disabilities.
- (6) Thereafter, a review of the above submissions was conducted and collated up to the end of May, 1999.
- (7) The writing of the Report was originally scheduled to begin from May 8 but did not begin until approximately two weeks later.

CHAPTER 4

HOW INPUTS WERE GATHERED AND DECIDED ON

SOURCES OF INFORMATION

4.1 The main method chosen by the Commission to comply with the requirement for wide consultation was Scheduled Public Hearings in the various geographical areas. However, the Commission also took other measures to ensure the widest consultation possible. These were:

- (1) Extracting written and oral submissions from the previous Select Committee.
- (2) Inviting the public to send in written submissions.
- (3) Extracting submissions from articles published in newspapers.
- (4) Establishing Special Public Hearings as a result of special requests from persons and organizations.
- (5) Taking individual Commissioners' views and submissions.
- (6) Providing Internet information to stimulate responses from Guyanese residing overseas.

PUBLIC HEARINGS

Locations for Public Hearings

- 4.2** At a Commission meeting on February 10, 1999 Commissioner Jean La Rose presented a list of locations in hinterland areas where public hearings could be held. The Commission then agreed that locations of public hearings should be dealt with in their entirety. Subsequently, a sub-committee comprising Commissioners Collins (Convenor), Rev Haley, Bhookmohan and Mahadeo was appointed to prepare and submit to the Commission a list of locations for Public Hearings.
- 4.3** The sub-committee eventually submitted a list of eighty locations. It was the Commission's view that a number of key locations were omitted and at the same time, it was conscious that the logistics involved in holding hearings in so many locations would have posed a problem given the limited time at its disposal to complete the Public Hearings. The Commission then sought the assistance of Commissioners Bernard and La Rose who submitted what were termed "location proposals".
- 4.4** After several meetings and intense examination of these proposals, it was decided that Public Hearings were to be held at sixty-eight locations and these were distributed as follows:

Table 1.5: Original Distribution of Public Hearings by Region

REGION	LOCATIONS
Region 1	3
Region 2	6
Region 3	10
Region 4	13
Region 5	5
Region 6	10
Region 7	2
Region 8	2
Region 9	4
Region 10	5
Georgetown	8

4.5 Generally, locations were chosen because of their high population and high level of centrality, to ensure geographic representativeness, and to gain geographical coverage.

Public Hearing Schedules

4.6 Public Hearings were held between March 8 and April 25, 1999. In devising the schedule for these hearings, the working hours, culture and attitudes of the local population, together with the physical peculiarities of the location, were as far as possible taken into account. On the basis of these factors, hearings on the coastland were scheduled to begin at 5 p.m and 6 p.m from Monday to Friday, and between 3 p.m and 6 p.m on weekends. Hearings in the hinterland areas were generally held between 8.30 am and 1.30 pm, although in Mabaruma (6 pm), Phillipai (5 pm) and Kaikan (4 pm) they continued later.

Public Hearing Sub-Committees

- 4.7** Because of the time-span for the Public Hearings, the Commission divided itself into eighteen overlapping groups of three or four Commissioners each so that several hearings could be conducted simultaneously across the country. Towards the end of the exercise, with the increased pressure of time, sittings were reduced to groups of two Commissioners to facilitate all remaining locations.

Public Mobilisation and Education

- 4.8** In February 1999, Public Relations firms and consultants were invited to propose a public awareness and education campaign to facilitate the Commission in its consultation process. After much delay, Prime Time Advertising Limited, in association with Tagman Inc. and the Theatre Company, was contracted to conduct the campaign. This they did through the use of radio and television spots, panel discussions, interviews, press releases to all the major media, banners, posters and flyers.

- 4.9** The Commission also established a Public Information and Education Unit (PIEU) which arranged a daily radio link with the Voice of Guyana in order to provide information on Public Hearings. The Unit produced an advertisement which focused public attention on the closing date for the submission of proposals.

- 4.10** Prime Time Advertising and the PIEU also collaborated in organizing seven panel discussions which were held between April 7-9 and 12-15. These panels comprised Commissioners, non-Commission representatives from civil society and a youth representative. Themes including "Fundamental Rights", "Freedom of Information" and the "Presidency" were discussed by these panels and aired on GTV and GBC.
- 4.11** In an effort to intensify public education and information efforts, interviews were arranged with Commissioners and aired between April 12-16 on two television channels and on radio.
- 4.12** The two major newspapers, in a public service gesture, arranged a "countdown banner" in collaboration with the PIEU. This was published on page one of both papers between April 1-19.
- 4.13** Public information and education through the electronic media proved to be unworkable for most of the hinterland areas. To overcome this disadvantage, one Commissioner and the Secretariat coordinated a strategy in which flyers and other forms of information-sharing were taken by air to designated persons in thirty-three hinterland villages (See Appendix XIII). This information was distributed to the members of the community. As a follow-up exercise, the Commission provided financial assistance for residents from far-flung communities to travel to centres where Public Hearings were being held to make their submissions.

4.14 A combined effort was made by the Logistics Department (which prior to March 19, 1999, was run by staff of the Select Committee) and the Public Education and Information Unit to collaborate with the Public Relations Firm, Prime Time Advertising Agency to intensify its advertisement by way of daily contacts through telephone and faxes. Other innovative methods included the use of resource personnel or contact persons within specific regions to organize additional announcements to supplement the exercise of the Public Relations firm; script ads on local television stations where applicable; the use of Bell Criers or loud hailers; and information to parents via pupils through the initiative of school Heads.

Hearings Held and Cancelled

4.15 The first Public Hearing was held in Georgetown on March 8, 1999. In the first two weeks of the programme, twenty-three of the twenty-eight scheduled Public Hearings were held. In week three, the Secretariat found it fit to increase the number of hearings in the Regions by eleven. Such increases were made in Regions 1,3,4,5, and 7. In total, eighty-five Public Hearings were held, distributed as follows:

Table 1.6: Final Distribution Of Public Hearings by Region

REGION	LOCATIONS
Region 1	4
Region 2	6
Region 3	11
Region 4	25
Region 5	7
Region 6	13
Region 7	6
Region 8	3
Region 9	4
Region 10	6

4.16 Eleven of the scheduled public hearings could not be held for a variety of reasons including lack of quorum, insufficient publicity, inadequate power and inaccessible locations. In many cases, a combination of problems forced the cancellation of the hearings. However, the main problems were: inadequate or no power supply (ten hearings cancelled), inaccessible locations (nine hearings), inadequate publicity (four hearings) and lack of quorum (three hearings).

4.17 Eight of these cancelled hearings were rescheduled, but one was again called off due to the absence of presenters.

Special Hearings Sessions and Discussions with Commissioners

4.18 Soon after the Public Hearings commenced, several persons and organizations indicated that they wished to make extended oral submissions, or oral presentations of their written submissions. The Commission therefore scheduled eight Special Public Hearings. These hearings were held at City Hall, Georgetown, between March 25 and April 18, 1999. Ten organizations, including political parties, professional associations and social groups, and three individuals, made submissions during these special sessions. A special session was also held at Park Hotel where the Private Sector and two NGOs, Guyana Indian Foundation Trust (GIFT) and Guyana Association of Local Authorities (GALA), made submissions.

4.19 The Commission also scheduled special hearings at which Commissioners were asked to submit proposals from their respective parties and civil organizations. The People's Progressive Party/Civic and the National Congress for Women made their oral submissions at City Hall, while the Private Sector Commission, the People's National Congress and the Guyana Bar Association made their presentations before the full Commission at Park Hotel.

ANALYSIS AND EVALUATION

4.20 A total of four thousand, six hundred and one recommendations were received by the Commission during the period under review. Of these, three thousand, seven hundred and seventy-two recommendations were submitted by individuals, six hundred and nineteen by various interest groups and organisations, and two hundred and ten by political parties. The interest groups included ethnic, business, religious, social, professional and cultural organisations as well as groups of citizens. Among the eight parties that made submissions were the four represented in the National Assembly, the People's Progressive Party/Civic, the People's National Congress, the United Force and the Alliance for Guyana.

Limitations of the Statistics

4.21 The figures cited above are aggregates of the recommendations made in the respective categories. There are instances where the same submission made in oral evidence, in writing and also through newspapers, counts as three recommendations instead of one.

4.22 There were three types of difficulty associated with the analysis and aggregation of the recommendations received:

- First, members of the general public were free to present their submissions without being constrained to place their comments in any set of pre-determined categories of issues. Accordingly,

submissions included issues of a personal nature which the contributor felt that a Constitutional remedy was required to resolve.

- Second, where contributors felt that the matter they were raising was very important, they organised repetition for emphasis of their recommendations by a number of devices, including: attendance at more than one public hearing to repeat the recommendation; recruiting speakers to support the recommendation; or making a group presentation in circumstances where the size of the group was unstated and unknown.
- Third, by its very nature, a Constitution deals with a large variety of issues, and these issues themselves admit of categorisation in a variety of ways. Which categorisation is preferred depends on the purpose of the categorisation. In the end, the Commission used mainly three related categorisations: a split into thirty categories of recommendations to facilitate the computer-assisted listing of recommendations from submissions; a split into categories for the convenience of discussions among sub-committees of the Commission; and a categorisation of issues for the Commission in plenary to use as a basis for its recommendations for the Report to the National Assembly.

4.23

In all these circumstances, a major item of information remains unavailable, and would have been available only from the device of a carefully-constructed and conducted public opinion survey. Here we refer to the

information which could indicate what proportion of the electorate supported which recommendation. The statistics provided in this section must be interpreted against the background of these methodological complexities and deficiencies.

Recommendations from Individuals

4.24 From among individuals, the largest number of recommendations, three hundred and seventy-three, referred to the Presidency and Prime Ministership, while three hundred and one recommendations were made with respect to the Constitution as a document, and two hundred and seventy-five recommendations were made on the Electoral System. Other high-weighted recommendations from individuals include two hundred and thirty-five on the Administration of Justice, two-hundred and thirty-three on Fundamental Rights, two hundred and nine on Land and Resources, one hundred and seventy-six on Parliament, one hundred and seventy-two on Public Administration, one hundred and forty-nine on Rights for Minorities, one hundred and forty-two on Government-Regional, one hundred and thirty-eight on Socio-Cultural Rights, and one hundred and seven on Government-National.

4.25 On the other hand, low-weighted recommendations from individuals include ninety-five on Commissions, eighty-six on Governance, seventy on Cabinet and Ministers, sixty-five on Constitution Reform Process, forty-nine on the Economy, forty-three on Rights of Women and forty-one on Rights of Children. The smallest number of recommendations from this group, nineteen in number, are related to the Environment. In addition, there

were also one hundred and seventy-six recommendations which were regarded as “other”. In the main, these had to do with problems facing individuals and were clearly outside the mandate of the Commission.

Recommendations from Interest Groups

4.26 The largest number of recommendations from interest groups, sixty-one, related to the Constitution as a document. This was followed by forty-seven recommendations on the President and Prime Minister, forty-six on Fundamental Rights, thirty-eight on Parliament, thirty-two on Commissions and thirty each on Electoral Systems and Land and Resources. Among the low-weighted recommendations in this group were six each on the Economy and on Government-National, eight on the Environment, nine on Cabinet and Ministers and eleven on Political Rights.

Recommendations from Political Parties

4.27 From among the political parties, the largest number of recommendations, thirty, related to the President and Prime Minister, while nineteen were made on Parliament, seventeen each on Fundamental Rights and the Constitution as a document, thirteen on the Electoral System, and eleven each on Governance and Local Government. On the other hand, in this group only one recommendation dealt with the Environment, two each on the Constitution Reform Process, the Economy and Economic Rights, and three each on Cabinet and Ministers and Government-National.

4.28 After having received the various submissions, the Constitution Reform Commission sought to categorise the recommendations. To this end,

several documents emerged, including memoranda by Commissioners Roopnaraine, Parris, and Ramkarran and McDoom, the Commission list and the Secretariat's computer-assisted category list. There were also proposals by Commissioner Fitzpatrick related to final consideration by a grand sub-committee on core issues. The latter was debated and rejected by the Commission. (See Appendix XIV for memoranda and lists). These documents were thoroughly discussed in relation to categorisation, and complex issues were itemised and discussed at plenary sessions prior to their consideration by the sub-committees. These complex issues included Fundamental Rights, Local Government, Parliament, the President and Executive, the Judicature, and the Electoral System.

4.29 The Sub-committees and the issues assigned to them were as follows:

Table 1.7: Sub-Committees and issues Assigned

SUB-COMMITTEES	ISSUES ASSIGNED
Group 1 Mr. Ramdial Bhookmohan – Convenor Dr. Frank Anthony Mr. Aubrey Collins Mr. Faizal Jaffarally	Citizenship Finance Economy Fundamental Rights & Freedoms Culture
Group 2 Mr. Deryck Bernard – Convenor Mr. Randolph Kirton Mr. Shahabudin McDoom Mr. Ralph Ramkarran	Electoral System National Security Mechanics of Constitutional Process General Principles to inform Constitutional Reform Education

SUB-COMMITTEES	ISSUES ASSIGNED
Group 3 Mr. Harrichand Mahadeo – Convenor Mr. Vincent Alexander Rev. Oswald Keith Haley Hon. Reepu Daman Persaud	Race Religion Local Government Parliament Public Administration
Group 4 Dr. Rupert Roopnaraine – Convenor Mr. Miles Fitzpatrick Ms. Jean La Rose Hon. Moses Nagamootoo	Indigenous Rights Judicature Minority Rights Democracy Executive Land & Environment
Group 5 Mr. Haslyn Parris – Convenor Mr. Bernard DeSantos Mr. Vidyanand Persaud Ms. Anande Trotman	Women’s Rights Children’s Rights Commissions President Constitutional Offices Constitution as a Document

4.30 In the end, twenty-nine categories of recommendations were derived from the various submissions. Of these, one group contains submissions on topics which are considered irrelevant to the work of the Commission. Of the twenty-eight relevant categories of recommendations, eight categories focus on Rights, including the Rights of Children, Women and Minorities, and Fundamental, Labour and Political Rights. Issues of Government – National and Regional, the President and Prime Minister, Cabinet and Ministers, and Parliament comprise six categories. These are the largest groups of recommendations. Other recommendations address issues such

as the Constitution, the Electoral System, Administration of Justice, Land and Resources, Race Relations and Security.

Local and Foreign Experts

4.31 The Commission also sought the assistance of both local and foreign experts on aspects of Constitution reform. Their input was intended to inform the deliberations of the Commission as distinct from unduly influencing its conclusions.

4.32 In terms of local experts, the Commission utilised the services of Professors Harold Lutchman, Rudolph James and Keith Massiah.

- Professor Lutchman is currently the Vice Chancellor of the University of Guyana (U.G.). He has an impressive teaching career in Political Science and Law. He was formerly Dean of the Faculty of Social Sciences at U.G., Chairman of the Division of Social Sciences at the University of the U.S. Virgin Islands, and Fulbright Professor and Scholar in Residence at Indiana University, Pennsylvania. He is a Barrister-at-Law of Gray's Inn, London and an Attorney-at-Law of the Guyana Bar. He has written and published widely on issues relating to Guyana; early books include "Interest Representation in the Public Service: A History of the Guyana Public Service Union" (1973); and "From Colonialism to Cooperative Republic" (1976). He is co-author with Dr. Rudolph James of "Law and the Political Environment in Guyana" (1974).

- Professor Rudolph James is Professor of Law at the University of Guyana and a former Dean of the Faculty of Social Sciences at U.G. He has also served as Head of the Department of Political Science and Law at the University of Papua, New Guinea. A graduate of the University of London, Dr. James holds Ph.D., LL.M. and LL.B. degrees. In addition, he is a Barrister of the Middle Temple and an Attorney-at-Law in Guyana. Apart from articles in learned journals, his published work includes "Land Tenure and Policy in Tanzania" and "Nigerian Land Law".
- Professor Keith Massiah O.R., S.C., is a Professor of Law at the University of Guyana. He is regarded as one of the leading judges of his time in the Caribbean and is a former Minister of Legal Affairs and Attorney General, as well as Chancellor of the Judiciary in Guyana.

4.33 These local experts were required to assist the Commission in drafting its Report in a manner that ensures that it does not contain recommendations which are contradictory, or which are incapable of being easily translated into law. In this regard, the local experts have an ongoing role in giving advice on crucial and sensitive issues until the completion of the exercise, including the preparation of the Report.

4.34 In addition, the Commission was assisted by experts on Local Government, namely:-

- (1) Mr. Francis Cumberbatch, former District Commissioner and retired Permanent Secretary.

- (2) Mr. Howard London, M.S, Member of the Guyana Association of Local Authorities.
- (3) Mr. Dennis Patterson, Chief Valuation Officer.
- (4) Mr. Maurice Henry, Former Permanent Secretary, Regional Development.

These officers provided valuable insights into various aspects of Village Development and Village Administration, and Local Government and Regional Development in general.

4.35 A number of foreign experts made themselves available to the Commission and to the public at large during the period June 5-16, 1999, and dealt with crucial issues relating to the Constitution. All held briefing sessions with the various sub-committees and conducted one-to-one sessions with individual Commissioners.

- Mr. Rodney Brooke, a British Local Government Manager and a specialist in Central/Local relations, is a leading figure in British Local Government and an acknowledged expert in Constitutional issues surrounding Central/Local Government relations. He has a number of publications including "Local Government and Business" (1987), "The Environmental Role of Local Government" (1990), and "Strengthening Local Government in the Nineteen-Nineties" (1993). Mr Brooke worked with the Commission from June 6-9, on possible changes to the current system of Local Government laid down in the present Constitution.

- Mr. Karl Dundas is a legal adviser at the Commonwealth Secretariat. He has vast experience in Constitutional and electoral matters and was one time Director of Elections in Jamaica. He was also adviser to Kenya, Malawi, Lesotho, Namibia, Nigeria, Sierra Leone, South Africa, Mozambique, Botswana and Zambia on Constitutional matters. From 1993 to 1998, he published six articles on election-related issues. Between June 5-22, Mr. Dundas assisted the Commission in its deliberations on suggested changes to the current electoral system.
- Dr. Theodor Hanf, a German, is the Director of the Arnold-Bergstrasser Institute of Social Research in Freighburg, Research Professor at the German Institute for International Educational Research, and Honorary Professor of Political Science at the University of Freighburg. He specialises in Education and Development, Ethnic Conflicts and Problems associated with the Transition to Democracy, and is a leading international expert on different political structures. From June 7- 11, 1999, he worked with the Commission on possible changes to the structure of the system of government laid down in the present Constitution.
- Mr. Augusto Willemsen-Diaz, Guatemalan, is a former Human Rights Officer at the Secretariat of the United Nations. He has done considerable work in the areas of Minorities, Indigenous Peoples, and Prevention of Discrimination. At present, he is technical adviser and member of several Commissions on Indigenous Peoples. He is also an outstanding jurist. Mr.

Diaz assisted the Commission in its work on possible changes to the existing Constitution on the Rights of Indigenous Peoples.

- Professor Kathleen Mahoney is a Professor of Comparative Human Rights Law, University of Calgary, Canada. Her research interests are on Gender Equality, Freedom of Expression, Judicial Neutrality, Constitutional Law and International Human Rights. From June 11-12, 1999, Professor Mahoney assisted the Commission as it worked on possible changes to the current Constitution in relation to gender issues.
- Professor Anund Hylland is a Professor at the University of Oslo, Norway, with teaching responsibilities in the fields of Micro-Economics, Game Theory and Welfare Theory. He is also an expert on Comparative Electoral Systems and his research interests include the study of Decision Procedures, Concept of Nationality and the Trade-off between Justice and Efficiency. Among his publications are "Constitutional Inertia", "Representative Democracy", and "Proportional Representation without Party Lists". Between June 18-22, 1999, Professor Hylland assisted the Commission in its deliberations on suggested changes to the electoral system of the current Constitution.
- The Hon. Justice Albert Louie Sachs is a Justice of the Constitutional Court of South Africa. He served as Professor at the Eduardo Mondlane University in Mozambique and was Director of Research in the Ministry of Justice. In 1989, he was Professor at the Law School and in the Department of

International Affairs at Columbia University. He subsequently became founding Director of the South African Constitution Studies Centre at the Institute of Commonwealth Studies, London, and then Honorary Professor of Law at the University of Capetown. In 1994, he was appointed to South Africa's first Constitutional Court. He is the author of several books on Human Rights, Culture, Gender Rights and the Environment. Justice Sachs was at the service of the Commission between July 7-12, 1999 and made other working visits to Guyana.

Other Constitutions

4.36 In addition, Commission members acquainted themselves with relevant aspects of other countries' Constitutions. Commissioners received packages of resource material through the NDI, including the Constitutions of nineteen countries, seven documents on Understanding a Constitution, ten on Drafting a Constitution, and articles on Constitutional Reform and issue areas such as Gender, Bill of Rights and Voting Systems. The Constitutions of South Africa, Fiji, Northern Ireland, and Canada were especially useful, the last particularly so in the areas of Gender and Indigenous Rights. The 1966 Guyana Independence Constitution was also periodically used for reference. All of these documents helped in significant ways in providing the Commission with a wider perspective on the issues.

Internal Memoranda

4.37 Several internal memoranda were also made available to the Commission and its various sub-committees. These came from individual Commission members and

focused on issues such as Minority Rights/Political Rights and Power-Sharing. (See Appendix XV for selected Commissioners memoranda).

DECISION-MAKING

- 4.38** Given that the Constitution Reform Commission was mandated to submit its Report not later than July 17, 1999, the Commission took steps to organise its work to conclude its deliberations in enough time to allow preparation of the Report. In spite of the pressure of time, some Commissioners were not willing to be deprived of the time needed for a full ventilation of the issues.
- 4.39** Section 12 of the Constitution Reform Commission Act, 1999, outlines the procedure by which the Constitution Reform Commission was to conduct its meetings and arrive at decisions. For meetings of the Commission, thirteen members constituted a quorum with all members having a right to one vote on any issue/matter, should a vote become necessary. Wherever possible, decisions were arrived at by consensus; however, in the absence of consensus a member could request that there be a vote by show of hands or secret ballot. For the decision to be valid, twelve of the twenty members present must have voted in favour. Where, however, fewer than twenty Commissioners were present, a simple majority plus two was needed to validate a decision.
- 4.40** The Constitution Reform Commission was mandated to regulate its procedures and to make rules for their implementation.

The Commission devised the following procedures and rules:

- (1) The Report should record consensus, majority, or minority recommendations, with the accompanying arguments.
- (2) Recommendations might take a variety of forms: full fledged implementable proposals, a set of generic principles, a set of criteria, a set of procedures or institutional arrangements, or a proposal for research on the issue under consideration.
- (3) Matters flowing from the mandatory issues identified by the Herdmanston Accord and reaffirmed in the St. Lucia Statement would be bracketed (i.e., set aside for later consideration) to permit the various interests on the Commission time to narrow their differences.
- (4) The proposer of a recommendation, that is, the representative of a sub-committee charged with the responsibility for a particular topic, would give supporting arguments for ten minutes, followed by discussion by the Commissioners, five minutes being allotted per Commissioner to make her/his contribution. Extensions of time in discussions were to be granted at the discretion of the Chairman.
- (5) A timeframe was agreed prior to each debate. It was also a requirement that all recommendations be presented after having been submitted in writing together with the main arguments which informed them. All comments on a recommendation to be proposed

were also required to be submitted in writing prior to the debate. However, although the Commission attempted to be guided by the above procedure, as the debates proceeded there was less and less adherence to any rigorous format.

- (6) Sub-committee reports on individual topics were to be ordered in accordance with the Terms of Reference as set out in Section 6(2) of the Constitution Reform Commission Act, 1999. The debates would also be similarly ordered.
- (7) Topics external to those listed previously in the Terms of Reference would be ordered according to the listings of the topics as agreed to previously by the Commission.
- (8) Subject to the approval of the majority, any Commissioner would have the right, at the end of the process, to recommit any decision in the light of new information or changed circumstances.
- (9) In order to allow for informal exchanges among Commissioners before a question was put, there would be a suspension between the conclusion of debate on an issue and the putting of the question on that issue.

4.41 Meetings and deliberations of the Commission were open to the public.

CHAPTER 5

CRITIQUE OF THE REFORM PROCESS

- 5.1** The architects of the Herdmanston Accord specifically recommended that the Constitution Reform Commission address, among other matters, "measures and arrangements for the improvement of race relations in Guyana, including the contribution which equal opportunities legislation and concepts drawn from the CARICOM Charter of Civil Society can contribute to the cause of justice, equity and progress in Guyana" (Paragraph 4 (iii)). It was their sole stipulation.
- 5.2** The CARICOM Heads of Government returned to this recommendation six months later when, in response to the continuing tension, they secured agreement between the PPP/Civic and the PNC to the St. Lucia Statement, re-committing the parties to the time-frame of the Constitutional reform process outlined in Section 4 (ii) of the Herdmanston Accord. In the only direct quotation from the Accord, the St. Lucia Statement reproduced the words of the "improvement of race relations" paragraph and went further. In Paragraph 3 (d), the Heads of Government recommended that the parties "take steps for the early implementation of specific measures to achieve these objectives in advance of constitutional reform itself." It is difficult to escape the conclusion that the developments in the months following the

Accord had reinforced their perception that the ethnic dimension was at the heart of Guyana's predicament.

5.3 The insistences of the St Lucia Statement clearly reflected a concern that the "integrated package" of measures of the Herdmanston Accord had so far failed to bring about the hoped-for improvement in the political environment and to return Guyana to "a state of normalcy." As Chapter 2 has explained, the Audit did not put to rest the suspicions and doubts surrounding the election results, and the process of the dialogue did not provide an effective substitute for protest and other expressions of hostility. For the CARICOM leaders, nevertheless, the achievement of the St Lucia Statement was itself a "demonstration that through dialogue [lay] the path of the resolution of Guyana's problems" (Paragraph 3 (i)). Their conversations with the Guyanese leaders encouraged them to hope that there would be "an end to illegal protest on the streets of Guyana as dialogue and parliamentary processes [took] their rightful and more prominent place in Guyana's governance" (Paragraph 4).

5.4 Approximately one year after the signing of the St. Lucia Statement, in spite of its special and elaborate arrangements to facilitate and invigorate the dialogue, the process has remained stubbornly inert.

5.5 It was never intended by the framers of the Herdmanston Accord and the St. Lucia Statement that the Constitution reform process on its own would resolve the fundamental conflicts bedevilling Guyanese society. On the contrary, the process had been designed to unfold in an environment

enabled by the settling of the doubts surrounding the election results and the ensuing dialogue where grievances would have been addressed across the negotiating table. In the architecture of the Accord, the Audit and the Dialogue were designed to be the pillars on which the Constitutional reform process would repose. Arguably, the perceived ineffectiveness of the other measures has had the effect of heightening the population's expectations that the reform of the Constitution would provide the much yearned-after panacea to all of Guyana's long-standing and increasingly grave crises. In some quarters, a less-positive expectation found expression: speculation was rife that certain repercussions, all of them dire, would flow if the Commission failed to submit its Report by the July 17 deadline.

5.6

The fact is that from the inception, the Constitution reform process had been constrained and influenced by the urgencies, imperatives and vagaries of the adjustment process as a whole. No one reading the texts of the Herdmanston Accord and the St. Lucia Statement could fail to be impressed by the importance they attached to the time-frame for establishing the mechanisms for reconciliation: eighteen months after January 17, 1998 for the Commission to present its Report to the National Assembly; eighteen months after July 17, 1999 for the implementation of the reforms by the Assembly and the holding of post-reform elections. In spite of the fact that by July 1998, the process had not yet been set in train, the St. Lucia Statement re-affirmed the original time-table laid out six months earlier in the Herdmanston Accord. Paragraph 3 (e) asserted that it was "feasible to complete the work of the Constitution Reform Commission and to have its

Report submitted to the National Assembly by 16 July 1999 as originally contemplated, thereby maintaining the timetable in paragraph 4 of the Accord." Another six months were to pass before the necessary steps were taken to appoint the Constitution Reform Commission, thereby reducing the time at its disposal to six months. Even at this eleventh hour, the original time-table was once more re-affirmed, this time in Section 9 of the Constitution Reform Commission Act of 1999: "Pursuant to paragraph 4(ii) of the CARICOM Agreement the process for implementing the alteration of the Constitution as recommended by the Commission and approved by the National Assembly shall be concluded in sufficient time to allow for post-reform general elections to be held within eighteen months after the presentation of the Report of the Commission to the National Assembly."

5.7 The loss of twelve of the eighteen months can in the main be directly attributed to the deteriorated state of relations between the PPP/Civic and the PNC. When we add to this the reversals to the economy over this period, in part caused by the negative impact of external factors over which we had no control, it is clear that the reform process has so far unfolded in an inhospitable and periodically disabling environment.

5.8 After the Constitution Reform Commission has submitted its Report to the National Assembly, thereby fulfilling its mandate under the Act, it will go out of existence except otherwise decided by the National Assembly. It will then be the task of the Special Select Committee to transmit the Report to the Assembly for debate, review, approval and such action as it deems fit in the

context of the Hermandston Accord's requirements.

5.9 Some have suggested that there inheres in this step of the reform process an incipient weakness - the diminution of the influence of civil society in the final fashioning of the reforms to be implemented. In the final analysis, it was conceded that it was fit and proper for the final decisions to be made by the National Assembly as the elected body of the people's representatives. The Select Committee procedure does invite the concern that the process will be qualitatively altered when it moves from the Commission with its particular composition and its special rules for decision-making to guard against party domination, to the Committee, with its built-in ruling party majority.

5.10 In providing that the Commission take into account the representations made to the Special Select Committee on Constitutional Reform, the Constitution Reform Commission Act, Section 6 (2)(m), established and gave a legal basis to the continuity between the earlier reform efforts and the Herdmanston process. On the face of it, this had the advantage of compensating to some extent for the severely-curtailed amount of time available to the Commission to complete its Report; it had inherited the not-inconsiderable documentation and evidence compiled by the Select Committee. In their Preliminary Report, the legal experts engaged by the Select Committee had noted in relation to the Herdmanston process: "In the light of the length of time it took to complete similar exercises elsewhere (South Africa, Uganda, and Papua New Guinea, three years respectively)

it could be argued that the length of time prescribed for the completion of the mandate by the Commission is too short. The work done by the Committee should, however, prove invaluable to the Commission and help accelerate the process." (Constitution Reform: Preliminary Report by Legal Experts, Paragraph 9).

5.11 The continuity had another not insignificant advantage: the Commission was able to inherit not only the work of the Select Committee, but that of its Secretariat, which had increased its expertise in the organising of public hearings, the processing of documents, the establishment of systems and the general servicing of the Committee's needs. This was to prove an invaluable asset in the early stages of the Commission's work before it had established its own Secretariat.

5.12 The linkage established by Section 6 (2) (m) invites some consideration of the essential similarities and differences between the two processes. Firstly, the time constraints: with respect to the earlier process leading to the Select Committee on Constitution Reform established by the 6th Parliament, it is of interest that one year elapsed before the Government submitted the Motion on Constitutional Reform to the National Assembly; that another year was to pass before the PPP/CIVIC, WPA and TUF members were appointed to the Select Committee; and yet another year before the PNC agreed to nominate its members, having finally given up on arguing against the insufficiency of public education, consultation and involvement in the then reform process. The December 1994 resolution had been modified on the

recommendation of an opposition party (WPA) to have the Select Committee complete its task in time for the establishment of a new Constitution before the date when national elections were due.

5.13 The preparatory work of the Committee lasted until the end of April 1997. The Executive Summary of its Memoranda notes that "this preparatory work was interrupted by the 1996 recess of the Assembly, the consideration of the 1997 National Budget and finally the unexpected death of the late President Dr. Cheddi B. Jagan. These interruptions forced the Committee to make several adjustments to its work programme." (Memoranda Received by the Special Select Committee on the Review of the Constitution, Paragraph 6).

5.14 The dissolution of Parliament on October 29, 1997 curtailed the work of the Select Committee. It even prevented the Committee from preparing and submitting a Report to the Assembly, the normal procedure when a Parliamentary committee runs out of time to complete its work. A Report was eventually submitted by the Chairman of the Committee to the Speaker of the Assembly after its dissolution.

5.15 Secondly, the political constraints: much of this delay can be accounted for by the failure of the two major parties to find agreement on the modalities for Constitutional reform, among other things. This is a further similarity between the two processes.

5.16 Perhaps the most fundamental dissimilarity between the processes lies in the fact that the 1994-1997 efforts stemmed from a natural political

evolution, whereas the Herdmanston process was spawned by a political crisis. In the consultations with the framers of the Herdmanston Accord, the WPA argued that major constitutional engineering was imperative if Guyana was to avert a post-election trauma. The parties that signed the Accord accepted this view, and in allocating a share of the burden of reconciliation to the reform process, the Herdmanston Accord acknowledged the nexus, in the Guyanese situation, between conflict resolution and Constitutional reform.

5.17 Since the issue of inclusiveness was at the centre of the political argument, the Accord laid much emphasis on the participation of a broad spectrum of stakeholders. Hence the composition of the Commission. The Special Select Committee charged with the task of crafting the enabling legislation established guidelines to attempt to ensure that the civil society representatives were democratically chosen. But inclusiveness and accountability, while undoubted virtues in themselves, are not necessarily a guarantee of technical competence and can be at odds with it. The result was that the Constitution reform process was put in the hands of twenty part-time Commissioners, who were not necessarily chosen for their familiarity with the Constitution under review, or for the technical complexities of matters fundamental to Constitutional reform.

5.18 We therefore feel that an imperative of this Report is that it recommend a return of the reform process to the path of an evolutionary process structured for continual review and reform, unbounded by time in the sense

of being on-going, and cybernetic in the sense of being responsive to the deviations between where we wish to go and where we appear to be arriving as a society.

5.19

In conclusion, we should bear in mind how weaknesses in the reform process acted on each other. Thus, although the attempts made at inclusiveness cannot be denied, there is little question that the process was insufficiently inclusive both in building popular participation and permitting full discussion of the issues in the Commission itself. Weaknesses in building popular participation were in large measure caused by the short time frame for the Commission's work, further constricted by periodic eruptions of the very tensions that had given rise to the Herdmanston Accord and its call for Constitutional reform. There was not enough space for those charged with public education to develop or execute the most creatively participatory process for the situation. Groups or individuals with far-reaching proposals such as power-sharing and federalism did not have enough time to lobby and campaign for their views. In terms of the proceedings of the Commission, its very size and mix increased the time needed to reach consensus on controversial issues. Not all public submissions received a sufficient level of attention. Finally, there was one other problem of inclusiveness which is unfortunately still typical in Guyana: the Commission did not initially make arrangements that would assist the participation of people with disabilities or other groups who might need special facilities, such as elderly people with infirmities, and persons with life-threatening illnesses.

PART III

**PUBLIC SUBMISSIONS MADE
FOR THE PROPOSED
CONSTITUTION
AND
DIMENSIONS CONSIDERED BY
THE COMMISSION**

CHAPTER 6

SUBMISSIONS AND DISCUSSIONS ON MANDATORY ISSUES SPECIFIED IN THE TERMS OF REFERENCE

6.1 Section 6(1) of the Constitution Reform Commission Act 1999, (which lays down the mandate for the review of the 1980 Constitution to provide for the current and future rights, duties, liabilities and obligations of the Guyanese people), requires the Commission "for that purpose (to) ...receive, consider and evaluate submissions for the alteration of the Constitution...". Because of the premium placed by the Commission on hearing at first hand the views of the Guyanese people, it faced the difficult task of sifting the many submissions made, written and oral, to determine which of them could be recommended for inclusion in the Constitution. Many of the submissions were related to the personal experiences of people who appeared before the Commission and which they felt, sometimes incorrectly, should be addressed by a Constitutional provision. The Select Committee of the 6TH Parliament had also encountered this problem. However, not a few of the submissions did raise questions which, the Commission agreed, warranted inclusion in the Constitution.

6.2 In deciding how to address the issues raised in the submissions, the Commission divided itself into sub-committees to discuss them according to the categories identified. However, not all the submissions were accorded the same level of attention by the sub-committees. They extracted issues

that they saw as requiring specific attention but which are sub-issues or matters pertaining to the twelve mandatory issues.

6.3 As pointed out earlier, the fact that the twelve mandatory issues are not to be treated in isolation is brought home by the preamble of Section 6 (2) of the Constitution Reform Commission Act which requires the Commission, in reviewing the 1980 Constitution, to take account of those issues “in consonance with paragraphs 4 (iii) of the CARICOM Agreement (or Herdmanston Accord) and 3 (d) of the St. Lucia Statement”. These are the two paragraphs which speak to the need for “measures and arrangements for the improvement of race relations in Guyana.”

6.4 This present Chapter seeks to capture the essence of the submissions made by members of the Guyanese society and the considerations and dimensions of the problems that needed to attract the attention of the Commission, bearing in mind the twelve mandatory issues and Paragraphs 4 (iii) and 3 (d) of the Herdmanston Accord and the St. Lucia Statement respectively. For each mandatory issue, relevant provisions of the 1980 Constitution and the CARICOM Charter of Civil Society are cited. The source materials used are the Commission Secretariat’s summaries of public hearings and submissions and the transcripts of the discussions of the Commission.

6.5 Mandatory Issues #1: The full protection of the fundamental rights and freedoms of all Guyanese under the law and the CARICOM Charter of Civil Society.

6.5.1 1980 Constitutional provisions: Article 40 states that every person in Guyana is entitled to Fundamental Rights and Freedoms, while Articles 138-154 set out in detail what those Fundamental Rights and Freedoms are. Examples include protection of the right to life, liberty, and security; freedom of conscience and expression; and protection from inhuman treatment.

6.5.2 Provisions of the CARICOM Charter of Civil Society: Provision is made for fundamental rights and freedoms in Articles II, III, IV, V, VI, VII, VIII, IX, XI, XII, XIII, XIV, XV, XVI, XIX and XXIII of the Charter. These articles provide for respect for fundamental human rights and freedoms; human dignity; the right to life, liberty and security of the person; equality before the law; political rights; meetings, demonstrations and petitions; freedom of expression and access to information; religious diversity; rights of Indigenous Peoples; women's rights; children's rights; rights of the disabled; access to education and training; workers' rights; and environmental rights respectively.

6.5.3 Submissions by members of the public

6.5.3.1 Submissions recognised the need for inclusion of a Bill of Rights as the foundation of the Constitution. The Bill should enshrine the inherent and inalienable rights of all citizens and affirm the values of human dignity,

equality and freedom. The Court must promote these principles when interpreting any legislation, and when developing the common law, must promote the spirit, purpose and object of the Bill of Rights.

6.5.3.2 There were concerns that some of the rights enshrined be non-derogable, i.e., no circumstance, not even a state of emergency, should lead to their removal or reduction: an example would be the provisions in relation to discrimination. Members of the public were concerned that these rights be protected and upheld by the judiciary, executive, legislature, and all organs and agencies of the government and where applicable to them, by all natural and non-natural legal persons. They connected this proposal to a call for the establishment of a Constitutional Court.

6.5.3.3 There was a call for express provision allowing for a widening of the *locus standi* principle, (the primary or direct right to bring a claim) to include any individual or group of individuals with a legitimate basis for claiming enforcement.

6.5.3.4 A National Commission on Fundamental Rights and Freedoms or Human Rights Commission was proposed to monitor adherence to rights and freedoms that are enshrined.

6.5.3.5 Some members of the public argued that all rights, whether social, economic or political, should be justiciable, while others held the opposite view. Many suggested that Chapter II of the 1980 Constitution, "Principles and Bases of the Political, Economic and Social Systems", should be retained with

modifications. Where there are provisions that are not justiciable, government should develop the necessary non-judicial processes and mechanisms to implement and protect these rights.

6.5.3.6 While many submissions addressed matters that touch and concern the content and form of the fundamental rights provisions, it is apparent that many members of the public see the Constitution as a mechanism for addressing their smallest grievances and concerns. Some of the submissions speak to rights that are already in the present Constitution. This might mean that the public did not know about them, or they have been ineffective in terms of implementation, or they need strengthening to address the concerns expressed.

6.5.3.7 Several additional rights were also submitted for inclusion in the fundamental rights chapter or Bill of Rights, including provisions for non-discrimination on the basis of gender, sex and pregnancy; non-discrimination against Amerindians and the disabled; and the rights to privacy and freedom of the press. There were also a number of suggestions for establishing mechanisms and procedures for ensuring the enforceability of these rights.

6.5.4 Dimensions considered by the Commission

6.5.4.1 The task of the Commissioners in addressing this issue was to consider not only basic human rights, but the fact that many rights which citizens claim to be fundamental may not necessarily be issues which one would address

in a Bill of Rights. The Commission considered the merits of the submissions and whether they contained issues for inclusion in the fundamental rights chapter or Bill of Rights, or any other chapter in the Constitution. Given that all rights are justiciable, two major considerations were: which rights should be enforceable in Court, and which principles give rise to the reasonable expectation of a right. The Commission also noted that it was mandated to consider the provisions of the CARICOM Charter of Civil Society to which Guyana is a signatory, and there was a suggestion that precedents for the formulations of rights should be taken from this document, with modifications to suit the Guyanese context.

6.5.4.2. Protective rights: There was in-depth discussion about the fundamental rights provisions of the Constitution. The Commission itemised the rights and protections guaranteed by the present Constitution and recognised the need for consideration of provisions for preventing discrimination on the basis of gender, disability, Amerindian origin, and age; it was noted that age applies to children as well as the elderly. As regards persons with disabilities the blind came in for special mention. The present Constitution makes no provisions in the fundamental rights chapter for protection on these bases. Discussion focused on the following rights and protections:

- While the right to practise one's religion was covered under the right to freedom of conscience in the present Constitution, there was no provision for the right not to practise a religion. It was submitted that consideration should be given to including this right. Much attention

was given to whether vilification of another's religion or attacks on other people's beliefs, faith or religion should continue to be protected by the right to freedom of expression.

- The right to life was discussed. It was considered that there should be a corresponding right to die, e.g., in the case of terminal illness. A corollary to the issue of a right to life is the vexed question of the abolition of the death penalty.
- On the issue of the detention of persons, the question of what is a reasonable period of detention was discussed and it was suggested that the period should be defined in the Constitution. The South African Constitution was cited as an example of the inclusion of a specific period, but some felt that this should not find a place in the Guyana Constitution. As a related issue, suggestions were made for provisions regulating police action and procedures in their interaction with the public.
- The present Constitution provides for the right to privacy but a proposal was made to widen the parameters of the right beyond privacy of one's home and property.
- The issue of the right to sexual orientation was also mentioned.
- While the present Constitution provides for freedom of expression it does not provide for freedom of the press. The inclusion of this right

has been advocated as is the case in the Constitutions of some countries, specifically so that there is no room for doubt or variations in interpretation. However, there was some argument that freedom of the press is in fact covered by the freedom of expression provision and that this was decided in a local case.

- The Commission addressed the issue of the right of workers to strike and the right of unions to call strikes. Views were also expressed that workers should have the right to join unions of their choice.

6.5.4.3 **Categorisation of rights:** Besides the rights outlined above, which exercised the minds of the Commission, there are other matters that would impact on the inclusion and enforceability of these and other rights in the Constitution. (i) The removal of some of the provisions in Chapter II of the 1980 Constitution to the fundamental rights chapter or Bill of Rights was the subject of a number of submissions. (ii) The right to quality education as distinct from a right to free education, which in our circumstances is illusory, was discussed in this context. (iii) Whether and to what extent international laws and treaties are to be incorporated into the Constitution, and/or should be allowed to fall to the consideration of the Courts in deciding human rights cases, has to be addressed in the light of the prevailing international norms and Guyana's ratification of many such laws and treaties. As stated before, the Commission had to grapple with these issues because they bring very pertinent questions to the fore: What are rights? What issues are to be considered fundamental rights? Depending on the categorisation of rights,

where are they to be placed in the Constitution? Elevating some of the principles and bases to fundamental rights was seen as another means of making participatory democracy more entrenched in the Constitution. It was also suggested that there should be an all-embracing preamble to the fundamental rights chapter explaining the aspirations of the State. Issues relating to the global picture as regards rights were addressed, i.e., are the fundamental rights provisions to be localised in the sense of being unique to Guyana, or are they globalised in the sense that there are fundamental rights that are universal? Since Guyana is part of the global village, can the fundamental rights it formulates be different from those in other territories such as Barbados or Trinidad and Tobago or South Africa? It should be noted that there is a body of Constitutional Law to which we will have to pay attention. Other questions that may need to be answered here are: What are the rights good for? What are we trying to achieve by the establishment of these fundamental rights in Guyana? In addressing the latter question, we must consider the vision of the society we want to foster and inhabit, and Guyana's multi-cultural, multi-religious, plural character should be borne in mind. While precedents are good, we should strive to enshrine what is suitable in our context for the overall good of the country.

6.5.4.4 *Locus standi*: The issue of a person's *locus standi* to seek redress to enforce his/her rights as contained in Article 153 of the 1980 Constitution needs to be reviewed; this Article may be too restrictive in requiring that a person have *locus standi* or be the aggrieved or affected party before

he/she can initiate an action. A change would make the Constitution more accessible to anyone who feels that he/she has a good claim of right or cause of action. The Barbados Administration of Justice Act was cited as an example of a provision which allows the Court to determine the rightfulness of an action or claim. It should be pointed out, however, that one reason for the restrictive formulation of Article 153 is to prevent a multiplicity of actions engaging the attention of an already-overburdened judicial system.

6.5.4.5 Constitutional redress: In relation to the enforcement of the fundamental rights provisions, it was also suggested that there should be a review of the provision in Article 153 (2)(b), which states that the High Court shall not exercise its powers in adjudication upon a claim of a breach of the fundamental rights "if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law". This Article allows for the possibility of timidity on the part of a judge who wishes to avoid adjudicating on a Constitutional matter before him or her. In an effort to avoid being controversial or antagonising the political directorate, a judge may prefer to adhere to strict legal principles and exercise judicial restraint rather than seek to be innovative and forward-looking. In this regard also, the development of Constitutional jurisprudence is stymied and this impacts on another area of concern to the Commission, i.e., the issue of providing for future rights. Another aspect of this issue which was examined was provision for guaranteeing affirmative action. In Canada, for

instance, there are four equality guarantees: equality before the law; equality under the law; equal benefit of the law; and equal protection of the law. These provisions are the foundation for all rights which may be claimed and are supported by an affirmative action provision which allows the Government to constitutionally pass legislation for the benefit of a disadvantaged group in order to implement the equality provisions. In the Guyana context, education of the public about their Constitutional rights was also seen as important in facilitating their ability to seek Constitutional redress. A Media and Information Commission was suggested for this purpose.

6.5.4.6 Legal persons: The issue of *locus standi* has a bearing on whether the Constitution should apply to non-natural persons and whether the present application to human beings is too restrictive. Should non-natural persons have the right to sue and be sued under the Constitution for patent or latent breaches of its provisions? Shouldn't a company be liable under the Constitution for discrimination on the basis of gender or race just as the State and its entities would be liable? Shouldn't a private company be liable for breaches of environmental rights that may be enshrined in the Constitution? It has been advocated that political parties should be legal persons, especially as they are some of the most important agents of change; at present, they are outside the law in terms of their accountability as parties and the enforceability of the law against them as parties. What should be the extent of their liability, bearing in mind their composition and

purpose? Should qualifications to the enforcement of rights be established for non-natural persons? As part of finding a solution to this issue, one may consider retaining the concept that the fundamental rights provisions should apply to protection vis-a-vis breaches by the State or government, while allowing for breach of these provisions by the private sector to be dealt with by a Human Rights or Equality Commission. This approach has been adopted in Canada.

6.5.4.7 Courts: The establishment of a Constitutional Court was considered or, as an alternative, provision in the present judicial system for the Court to have separate and specific Constitutional jurisdiction. Another mechanism suggested was the establishment of a Human Rights Commission which would be in keeping with calls for encouraging alternative dispute resolution mechanisms.

6.5.4.8 Qualification of rights: The 1980 Constitution restricts litigation because the fundamental rights provisions outline a number of qualifications or reservations which may nullify the very provisions that are apparently guaranteed. On the other hand, a reservation may be necessary to ensure the protection of other rights, e.g., protection against hate speeches. Should the Courts be left to define the parameters of rights and to determine the qualifications, or should detailed reservations remain? If qualifications or reservations are outlined, then a litigant may be in a better position to access his/her chances, while without them he/she may embark on a possibly futile exercise at some cost. In any event, where qualifications are

considered necessary, these should satisfy the criterion of being reasonably justifiable in a democratic society. Again, the question of the accessibility of the Constitution to the ordinary person must be considered in addressing this matter. In looking at the related issue of non-derogable rights, the Commission addressed the question of provisions relating to state of emergency regulations and noted that the emergency provisions in the Constitution were inadequate. The South African provisions were alluded to since these provide for a Tribunal that deals with emergency regulations.

6.5.4.9 Future rights: The issue of future rights and obligations attracted the attention of the Commission because it recognised that the Constitution should be a dynamically stable document. While it should not require constant change and should be so crafted that it is adaptable to the changing mores and times based on the interpretation of its provisions, there should be a mechanism for review of its terms. The Constitution should contain provisions that envisage a contemplation of the existence of new and unfolding rights and obligations. Care should be taken that fundamental rights provisions do not run counter to the requirements of the information age in which we live. Consideration should also be given to the formulation of open-ended, non-exclusive equality and discrimination provisions to allow for future rights and contingencies for groups that we may not know of now and which may become disadvantaged later on. The Constitution should also include a mechanism for change through the

inclusion of new rights, or the amendment of existing rights that become inappropriate.

6.6 Mandatory Issue #2: The rights of the Indigenous Peoples of Guyana

6.6.1 1980 Constitutional provisions: There are few relevant Articles in the Constitution. However, Article 149 (6) (c) provides for an exception to the provisions for protection from discrimination on the grounds of race, place of origin, etc., as long as it is for the protection, well-being or advancement of Amerindians. Article 142 (b) (i) provides for the acquisition of property of Amerindians, for the purpose of its care, protection and management and the acquisition of land held by any person for the purpose of benefitting an Amerindian community.

6.6.2 Provisions of the CARICOM Charter of Civil Society: Article XI speaks specifically to the rights of Indigenous Peoples.

6.6.3 Submissions by members of the public: The submissions pertinent to the issue are categorised under Rights - Minorities. The majority of the submissions referred to the Indigenous Peoples as "Amerindians" and in at least one record, requested that they must be referred to as such. It was strongly advocated that Amerindian rights be recognised and guaranteed in the Constitution, and that they should accord with international human rights

standards. Articles 14, 19 and 20 of the United Nations Declaration on the Rights of Indigenous Peoples are commended for inclusion. The main problem for consideration as regards the rights of Indigenous Peoples is not only prescribing their rights, but the placement of these rights in the Constitution. This is so because there are matters which can be included in other areas of the Constitution, e.g., Local Government. Submissions were made that these rights should not only be referred to in the fundamental rights provisions but that there should be a separate chapter dealing with the rights of Indigenous Peoples and corresponding issues. The major basis for this two-pronged approach is that "the rights defined as Indigenous Peoples' rights are contextualised to account for and protect the unique characteristics of Indigenous Peoples and therefore it would be inappropriate to apply them beyond the context of the particular situation of Indigenous Peoples". (Report of Sub-Committee No. 2). In relation to rights to land, it was noted that "for Indigenous Peoples throughout the world their relationship with their ancestral lands, their traditional economic activities, which are mostly land-based, and their religious and spiritual traditions, which are inextricably related to their lands, are fundamental to their culture." (Report of Sub-Committee No. 2). Other submissions around which many of the other issues revolve are the rights to self-government, participation in decision-making, and non-discrimination. Calls were also made for the right to bi-lingual and bi-cultural education.

6.6.4 Dimensions considered by the Commission

6.6.4.1 Special protection: The Commission considered whether it would be better to provide strong Constitutional protection in the fundamental rights provisions which would cover Amerindian rights, or whether they were so disadvantaged as to require special attention in the Constitution. By “special attention” is meant provision in an entirely separate section and not a special section in the human rights provisions. In this regard, the question could also be asked whether one would not be creating a Constitution within a Constitution. There are, however, precedents in other Constitutions where Indigenous rights have merited specific treatment. For example, the relationship of Amerindians with their ancestral lands and their unique characteristics make the inclusion of separate and specific provisions beyond the general fundamental rights provisions necessary. The issue of other claims to ancestral rights was raised in the context of providing for a separate section for Amerindian rights, as others such as the descendants of slaves and indentured labourers may also wish similar provisions. The principles of organic law may be applicable in that general statements of rights could be entrenched, with special statutes being enacted subsequently as an adjunct to the Constitution to address the minutiae of the rights to be protected. In the Canadian Constitution, which was an example brought to the attention of the Commission, the Charter of Rights and Freedoms guarantees the rights of the Indigenous Peoples. In addition, there are other provisions in that Constitution, outside of the Charter, that enshrine treaty rights agreed to in relation to the rights of Indigenous

Peoples. These treaty rights are not considered human rights or fundamental rights but can be categorised as governance rights which are in keeping with the desire of Indigenous Peoples for self-governance. International conventions dealing with the rights of Indigenous Peoples may also have to be considered.

6.6.4.2 Land rights: The issue of provisions for Amerindian land rights was strongly advocated as being fair and just and as such necessitating consideration. The rights of Amerindians in this regard in a multi-cultural, multi-racial society require attention, as one would not wish to engender feelings that one group has more rights than others. In this respect, one view is that the pluralist policy that allows for all cultures to be granted the same importance and respect appears to be the best in attempting to address land and other rights, when one considers that many non-Amerindians occupy what are considered to be Amerindian lands. The other view is that, given the originary relationship of Amerindians to the land and how fundamental it is to their culture and spiritual practice, they have rights that are different from others. Some may deem these recommendations as giving them more rights, but they constitute a recognition of an entitlement that has already accrued. In this context, the purpose and relevance of the provision in Article 142 (b)(i), which provides for the State's right to acquire Amerindian lands has to be taken into account. Although their land rights are collective rights, there would still have to be recognition of the fact that Amerindians also have individual rights as citizens.

6.6.4.3 Self governance: The right to self-government should be addressed. Consideration should be given to provision for an Assembly of Amerindian Leaders/Captains which would have the right to legislate for its constituent communities and to veto legislation emanating from the National Assembly as it affects Amerindian rights. This Assembly would have the power to address the demarcation of lands, to consent to implementation of matters affecting Amerindians, to control finances, subject only to the Auditor General, and to directly elect a Minister of Amerindian Affairs. In this regard also, the question of customary laws and their recognition and application in a system of national laws for the entire country needs to be addressed. The national laws may have to override the customary law in some instances, and the qualifications to the customary laws may have to be outlined. On the other hand, one may apply the principle of mutually-exclusive territorial or customary laws and national laws, with the former being irrevocable by the latter.

67 **Magellan Issue 83: The rights of children**

6.7.1 1980 Constitutional provisions: Articles in the Constitution which deal with this matter can be found in Chapter II, "Principles and Bases of the Political, Economic and Social System". Article 28 provides that every young person has the right to ideological, social and cultural development. Equality of children whether born in or out of wedlock is provided for in Article 30. The

provisions of Chapter II are not enforceable unless legislation is enacted for that purpose.

6.7.2 Provisions of the CARICOM Charter of Civil Society: Article XIII provides for children's rights.

6.7.3 Submissions by members of the public: Many of the submissions strongly advocated the necessity for recognition and inclusion of the rights of children and youth in the Constitution. The Convention on the Rights of the Child should inform the inclusion of these rights. The public felt that recognition should be given to the fact that social responsibility for children should be shared by mothers, fathers and the State. A non-justiciable provision should be included providing for the right to maternity and paternity leave and a provision that men and women have equal responsibility in relation to children and the home. In addition, the State has a particular responsibility for the welfare of underprivileged children especially in the absence of parents and guardians. The view was expressed that provision should be made for rights to be accorded to the unborn child. Of concern was the age of consent in sexual offences cases. It was submitted that the age be raised to 14, 16 or 18 years. There should be provision for a representative National Youth Council and a statutory Commission on Children.

6.7.4 Dimensions considered by the Commission: The rights of children were discussed when the Commission dealt with the fundamental rights

provisions. It was noted that children's rights come under the fundamental rights provisions in the South African Constitution.

6.8 Mandatory Issue # 4: Eliminating discrimination in all its forms

6.8.1 1980 Constitutional provisions: The Constitution deals with this matter in Article 149, which provides for protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed, and Article 40 which sets out the basic fundamental rights and freedoms of individuals. Equality of women and men in all spheres of political, economic and social life, and women's rights, are provided for in Article 29 which is non-justiciable.

6.8.2 Provisions of the CARICOM Charter of Civil Society: This issue is dealt with in Article XII in relation to women's rights and Article XIV in relation to disabled persons' rights. Article II, with respect to fundamental human rights and freedoms, includes a reference to freedom of the individual without distinction as to age, and this can apply to the elderly.

6.8.3 Submissions by members of the public

6.8.3.1 The submissions made under this issue were categorised as Rights - Minorities and related mainly to women, people with disabilities, and to a lesser extent Indigenous Peoples, who are dealt with specifically under Mandatory Issue #2. There was mention of the elderly in some submissions. It should be noted that the Terms of Reference omitted to

specifically provide for the rights of women or people with disabilities as substantive issues in their own right.

6.8.3.2 Women's Rights: The need to include women's rights as human rights both in the fundamental rights provisions and in a separate section was seen as a recognition that an interpretation of general rights must take account of, and protect, the particular interests of women, including but not restricted to those deriving from their biologically- and socially-prescribed work; this is required so that issues that specifically affect them can inform the provisions and interpretation of Constitutional provisions. Calls were made for the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) to be included in the Constitution. The language of the Constitution should also be gender-neutral and/or inclusive in keeping with modern drafting techniques and the move to positively demonstrate the inclusion of women. It was proposed that there be specific provisions that women's rights are human rights and that women and men are to be treated equally; that the anti-discrimination provisions be strengthened, particularly by the inclusion of references to gender, sex and pregnancy; that there be protection from violence in all forms and from all sources whether private or public; that there be provision that the ratio of women to men or men to women in decision-making be 60:40, in keeping with modern international standards and thinking; that there should be protection of reproductive rights; and that there be a specific provision for equal pay for work of equal value. There were proposals for the establishment of a Gender Equality

Commission. Finally, there were submissions calling for Amerindian women's loss of rights on marriage to non-Amerindian men to be addressed.

6.8.3.3 Rights of People with Disabilities: The submissions on behalf of people with disabilities are captured in the statement "Human beings first and then disabled." This sums up the necessity for Constitutional protection of the rights of persons with disabilities. Disabled persons must have equal opportunities, must be given full scope to develop their potential and must be allowed full participation in all aspects of Guyanese society. For example, there must be provisions for allowing disabled persons to exercise their franchise. The non-discrimination provisions must include the disabled. There should be guaranteed affirmative action to assist the disabled and provisions that allow for the development of strategies and plans that will foster a better life for persons with disabilities. The international covenants to which Guyana is a signatory must be honoured by inclusion of their terms in the Constitution. A National Commission for People with Disabilities should be established either under the Constitution or pursuant to relevant provisions in it. Security and protection from all forms of violence from whatever sources, whether private or public, must be included.

6.8.3.4 Rights of the Elderly: The Constitution should provide for protection for the elderly. Varying ages were suggested for a Constitutional provision for retirement, but there was consensus that the right to pensions should be a fundamental right which should accrue at a stipulated age.

6.8.4 Dimensions considered by the Commission

6.8.4.1 Women's rights: The Commission had to consider what specific rights of women should be included in the Constitution, the mechanisms that could be built into it to enforce these rights, and whether they should be included in both the fundamental rights provisions and a separate chapter as advocated by some. Other main concerns were the categorisation and formulation of the rights. There were submissions, for instance, that reproductive rights should be included in the fundamental rights provisions. However, one may consider it best to have these and other like rights, such as a women's right to control over her body, come under the equality provisions. In this case, legislative protection to support the equality provision would take care of the minutiae of additional rights. Another way of dealing with additional rights without having to consider whether and how they should be included, is to incorporate the CEDAW, which has a list of women's rights that may be read with the entrenched guarantee of equality, into the Constitution. The inter-relation of the concepts of discrimination and equality in the context of women's rights was addressed, and it was recognised that women's rights, including rights against discrimination, can be enshrined and protected under strong equality provisions; a denial of a fundamental right to equality can amount to discrimination and the non-implementation of equality provisions is discrimination. One can let the Courts define discrimination in the context of the equality provisions or define it specifically. In either case, one would have to contemplate whether provision or interpretation should allow for the wider definition of

unintentional and intentional discrimination, as is the case in Canada. Consideration would also have to be given to whether, in the context of Guyana, there should be a mandatory or directory provision ensuring the participation of women in all spheres of life; the Bangladesh Constitution has a directory provision which provides for participation of women in all spheres of life. The issue of affirmative action provisions in conjunction with the anti-discrimination provisions is also a matter for consideration.

6.8.4.2 Rights of people with disabilities: The rights of people with disabilities were discussed when the Commission was addressing the fundamental rights provisions. In particular, the rights of the blind were mentioned as needing special attention. It was pointed out that there should be affirmative action provisions including budgetary allocations to provide assistance to these persons. People with disabilities should also have the right to information that would assist them in accessing and enforcing their rights against discrimination.

6.8.4.3 Rights of the Elderly: The rights of the elderly need to be addressed in a comprehensive way and there should be a special right enshrined which would inure to their all-round benefit.



- 6.9.1** **1980 Constitutional provisions:** Articles 40 and 149 provide for the enjoyment of a productive life whatever one's race and for protection from discrimination on the grounds of race. Article 227 provides for disqualification for office of persons exciting racial hostilities.
- 6.9.2** **Provisions of the CARICOM Charter of Civil Society:** Article II provides for freedom of the individual without distinction as to ethnicity or race.
- 6.9.3** **Submissions by Members of the Public:** Race relations has been identified by many and endorsed by the provisions of the Herdmanston Accord and the Constitution Commission Act as the source of many of the problems affecting Guyana. The main concerns of members of the public appear to be that there should be equality of the races, equality of treatment and equality of opportunity as regards all aspects of life in Guyana. Perceptions abound that there is inequality of treatment, discrimination, and consequent imbalances in the distribution of wealth and services, and in employment practices. A broad-based, representative, Race Relations Commission established under, or pursuant to, provisions of the Constitution is seen as a key mechanism for addressing the issues pertinent to race relations. Legislation to deal with racism was also submitted as a necessary adjunct to Constitutional provisions on race. The eradication of the ethnic problem must be a principle that informs government policy and operations.

Views were expressed that, for instance, there should be a removal of any classifications by reference to race and that all persons should simply be referred to as Guyanese.

6.9.4 Dimensions considered by the Commission

6.9.4.1 Identification of the problem: The issue of race relations was also identified by Commission members as central to many of the problems affecting Guyana. The terms of the Herdmanston Accord and The St. Lucia Statement attest to this fact. Matters that impact on this issue include the following: Should the word "ethnicity" replace the word "race" in the Constitution? In what sections of the Constitution should there be reference to race (or ethnic) relations, separate and apart from the non-discrimination provisions in the fundamental rights section? Should there be representation of each race (or ethnic group) in any Commission established under the Constitution? What specific rights should be catered for in terms of provisions for any one race (or ethnic group), e.g., ancestral rights and affirmative action, to address any imbalances?

6.9.4.2 Constraining measures: The Commission considered whether and how to include provisions in the Constitution that would prohibit all individuals and institutions, especially political parties, from indulging in actions and promoting ideas, programmes, or employment practices that could lead to racial or ethnic divisiveness. These prohibitions should not be capable of being overturned on the grounds that they violate the rights to freedom of speech, thought or association. Another question examined was the

possibility of formulating types of breaches and associated penalties, whether or not pursuant to the Constitution, by statute or under the prohibiting provisions in the Constitution.

6.9.4.3 Corrective measures: The inclusion of mechanisms that would allow for corrective measures to be taken pursuant to the Constitution was considered. A specific proposal was that the Constitution make provision for a broad-based Race/Ethnic Relations Commission which would have the responsibility, authority and powers to deal with all aspects of matters pertaining to fostering better race relations, e.g., by coordinating education programmes, establishing criteria for breaches, specifying penalties, commissioning studies, monitoring the progress of improvements in race/ethnic relations and making recommendations to the National Assembly as it deems fit. However, the mechanism should allow for appeals to be made without causing undue delay. Alternatively or additionally, there should be legislation criminalising racism. The devolution of authority to local government institutions was also considered as a necessary component in the approach to promoting race relations and ethnic security. The Commission also addressed its mind to the establishment of an Employment Opportunity Commission.

6.10 Mandatory Issue #6: Measures to ensure that the views of minorities in the decision-making process and in the conduct of Government are given due consideration.

- 6.10.1** **1980 Constitutional provisions:** Article 111 provides that the President, in the exercise of his functions under the Constitution, act “in accordance with his own deliberate judgement” except where required to consult with any person or authority. Such consultation is usually required in appointments to certain Constitutional bodies such as the Service Commissions, Constitutional and other offices and other statutory bodies or authorities. The President is also required to consult with the Minority Leader/Leader of the Opposition and the Service Commissions in relation to some appointments.
- 6.10.2** **Provisions of the CARICOM Charter of Civil Society:** Provisions related to this issue are subsumed under Article II which deals with fundamental human rights and freedoms, Article XVII on good governance and Article XXII on social partners.
- 6.10.3** **Submissions by the Members of the Public:** The submissions by members of the public as they relate to this issue are inextricably bound up with their submissions on fundamental rights, protection of social, economic and political rights, public administration and governance, and how they see the administration of justice as a mechanism for ensuring that their rights are respected. However, the main question addressed was that of participatory democracy, in which all members of the society feel that they have a role and say in the development of the country. Hence, there were a number of suggestions endorsing a more flexible form of democratic government involving some form or other of power-sharing. Participation by

political minorities, racial and ethnic minorities, and sociological minorities such as women, among others, in decision-making was seen as crucial not only to the development of each group but more importantly, to the contribution of each to the development of the whole. Racial insecurity of minorities, which is captured in the overriding mandate of the Commission, was considered to be the most crucial and pervasive minorities problem. The distribution of land was seen as an area in which there is discrimination in all forms. Many submissions sought ways of eliminating or reducing racial imbalances in all facets and spheres, whether in the public or private sector. Inclusionary forms of government at the national, regional and local government levels were advocated. The ordinary man and woman felt that he/she should have a greater say in consultative processes that related to matters affecting their welfare.

6.10.3.4 Dimensions considered by the Commission: The dimensions considered by the Commission in relation to this issue, like the submissions of the public, were inextricably bound up with those considered for fundamental rights, protection of social, economic, cultural and political rights, public administration and accountability, governance, and race relations. In relation to governance, the considerations of the Commission in relation to local government as outlined in Mandatory Issue #12 are of relevance. The issue of devolution of authority to local government was one of the areas considered necessary to reduce ethnic tensions and insecurities and to

foster participatory democracy at all levels, so that minorities do not feel left out of the decision-making process.

6.11 Mandatory Issue #7: Implementing reforms relating to elections and the Elections Commission taking into consideration its composition, the method of electing its chairman and members and its jurisdiction over national registration and the electoral process.

6.11.1 1980 Constitutional provisions: Provisions relating to this issue are contained in Articles 59-63, and Articles 159-163 which provide for the electoral system, voting, the appointment and functions of the Elections Commission and the determination of questions as to membership of the National Assembly and elections.

6.11.2 Provisions of the CARICOM Charter of Civil Society: Article XXIV, which provides for awareness and responsibilities of the people, includes provisions in relation to this issue.

6.11.3 Submissions by members of the public: The submissions centred around whether the proportional representation system or the first-past-the-post system, or a combination of both, would be best in the context of Guyana. These matters are also important because they go to the root of the issue of inclusionary or participatory democracy. It was submitted that Guyana needs an electoral system that enhances governance at the national, regional and community levels, with a view to increasing community participation and reducing the incidence of ethnic voting. There should be

electoral reform, the framework of which would secure equitable representation of all groups in Parliament, government and even within political party mechanisms. There was a general call for a system that allows the public to be able to identify a representative who was immediately accountable to them and to whom they could air their grievances. There was a suggestion that parties should be constitutionally required to provide lists that broadly represent the racial and gender distribution of the country. Many submissions suggested that the Presidential elections should be separate from those of the national and regional elections. Term limits for the Presidency as well as stipulated elections dates and fixed terms of office were also advocated. The Elections Commission, as a vehicle for ensuring democratic elections, must be permanent, independent, free from manipulation and control of political parties, the government or any other narrow, vested interests and should be decentralised. Submissions were made for a review of the provision allowing voting rights to Commonwealth citizens who are domiciled in Guyana and have been resident for one year.

6.11.4 Dimensions considered by the Commission

6.11.4.1 The ethnic problem: Bearing in mind that the ethnic problem is at the core of the national problems, the main focus of the Commission was a search for an electoral system which would provide incentives for the reduction of ethnic voting, with the condition that it did not harm the proportionality between the percentage of votes gained and the percentage of seats gained. However, expert views were expressed that there is no voting

system that can reduce ethnic voting. Consideration can also be given to a system that allows decentralisation of power as a means of reducing the impact of ethnicity. Any system chosen should also have the advantage of efficiency and simplicity, and should be cost-manageable in the light of Guyana's economic situation. In order to achieve the goal of a fair electoral system and to deal with the ethnic problem, it may be necessary to formulate some guiding principles which would point to the need for action, though not legal action.

6.11.4.2 Voting systems: It was argued that a review of the present system of elections is needed. The Commission considered whether to return to the first-past-the-post system, continue with the present system, or have each region nominate three persons by first-past-the-post. It was submitted that the first-past-the-post system should not be considered ideal for Guyana and in any case, a number of countries have either abolished or modified it in some way. However, while the proportional representation (PR) system was favoured, it was noted that there were systems of both first-past-the-post and PR that allowed greater flexibility. A combination of the systems would have the advantage of the fairness of PR as well as geographical or localised representation which allowed people to choose their own Member of Parliament. People apparently want an attachment between themselves as constituents and the Executive, and accountability on the part of representatives. An assessment of the strengths and weaknesses of the PR system as presently applied in Guyana must be made in order to arrive at

reasons for maintaining it in whole or in part. In any event, any system that is chosen should have some element of the PR system. We should consider whether to have the PR system at the national and regional levels and first-past-the-post at the local government level. There are strong views that the Supreme Congress of the People and the National Council of Local Democratic Organs should be abolished. The alternative vote system is another by which it is hoped that ethnic problems could be addressed. This model has been adopted in Fiji which also has ethnic problems. It allows single member constituencies to be retained but voters vote for more than one person in order of preference. The votes are then distributed among the candidates, using the order of preference by voters, until a candidate has more than fifty percent of the vote. This prevents a candidate from being elected when more than half of the votes are against him/her. Another system that has been tried that is designed to deal with ethnic problems is the party block vote system: this allows for a multi-member constituency system to cater for minorities by having candidates representing minority votes. However, this is a winner-take-all system and does not adequately reflect the proportion of the vote won. There is also the single transferable vote system which gives the elector a direct vote to choose his/her candidate, where parties nominate candidates in multi-member constituencies. Again, voters can indicate their choice of candidates in order of preference.

6.11.4.3 Representation by candidates: Candidates selected for party lists should be listed in order of priority. The system chosen should allow for civic-minded citizens who want to make a contribution to participate in the electoral process without being tied to a political party. More powers should be given to people at the local level and the electoral system should accommodate this.

6.11.4.4 Criteria for choosing a system: The Commission considered the problem of identifying the criteria to be applied in choosing a system. These criteria must be relevant to Guyana and should be in order of priority. Examples of such criteria are outlined in the Fijian Constitution Report, and include: the encouragement of multi-ethnic government, incentives for moderation and cooperation across ethnic lines, recognition of the role of political parties, effective representation of constituents, effective voter participation, effective representation of minority and special interest groups, and legitimacy, among others. A provisional list of criteria was discussed, including reduction of ethnic voting, maintenance of proportionality, responsiveness to economic and social situations, a system for encouraging the development of new parties with new ideas and methods for solving problems, a system for avoiding entrenchment of winner-take-all government, since in a plural society this would cause disruptions, a mechanism for conflict management inherent in the system to eliminate dependence on outside help, and a system which does not discriminate

against any group (be it political or ethnic), since a plural society needs to eliminate marginalisation of any group.

6.11.4.5 Forms of elections: At present, there is one national election to choose Members of Parliament and regional representatives. The Presidential Candidate of the party that secures the most votes is thereby elected President. There are also municipal elections and local government elections which are held separately from the national elections. A proposal was made that elections for a President and Vice-President be held separately from national and regional elections. The local government elections should still be held separately from these. However, this would obviously necessitate three elections with concomitant administrative and financial requirements.

6.11.4.6 The Elections Commission: The Constitution Reform Commission had to address the issue of the composition of the Elections Commission. This matter was examined in the light of the historical mistrust which has surrounded the conduct and management of elections and the necessity of ensuring acceptance of the results by all. Should the Chairman and Commission members be appointed by Parliament and elected by a weighted majority, or should the present system, called "the Carter formula", (i.e., proposed by former US President Jimmy Carter) or a variation of it be retained? Should the Chairman and the Commission be full-time? As regards the composition of the Commission, a decision would have to be made about whether there should be a proportion of permanent members

with provision for representatives of political parties, or equal representation between civil society and the political parties. In this regard, the Constitution Reform Commission examined suggestions that the provisions in the present Constitution be redrafted to ensure that the role of political parties and their nominees through the Elections Commission be limited to policy-making and monitoring. A related proposal was that there should be no active management or intervention in the process by political parties, nor should parties be participants and adjudicators in the same process. Further attention would have to be paid to the question of fixed dates and periodicity for regional and national elections. Consideration was also given to the issue of the Elections Commission having control of the demarcation of boundaries of electoral districts if such demarcation is necessary in the future. The question of whether the Commission should take over responsibility for national registration where related to the conduct of elections, was also examined.

6.11.4.7 Administration and management of the elections system: The administration of any elections depends on the system of election. The tiers of representation or government - national, regional, municipal and local - were considered. In relation to local government, provisions for the re-introduction of village councils were addressed, as well as the use of the first-past-the-post system, the issue of independent candidates, and the exclusion of political parties, especially at the village council level. Another issue pertinent to the administration and management of elections was

whether the Elections Commission Secretariat should comprise appropriate professional persons with experience and qualifications to promote efficiency, continuity and the development of institutional memory in a permanent Secretariat.

- 6.12** **Mandatory Issue # 8: Measures to secure and protect economic, social and cultural rights of all Guyanese**
- 6.12.1** **1980 Constitutional provisions:** Provisions which deal with this issue are non-justiciable. Article 35 states that the State will honour and respect the diverse cultural strains and will promote national appreciation of them at all levels. Social issues are referred to in Articles 19, 20, 23, 24, 25, 26, and 27. Articles 14, 15, 16, 17, 18, 21, 22 and 38 contain provisions in relation to economic issues.
- 6.12.2** **Provisions of the CARICOM Charter of Civil Society:** Articles X, XV, XVI, XVII, XX, XXI, XXII and XXIV, which provide for cultural diversity; access to education and training; rights of the family; participation in the economy; health; basic necessities; social partners; and awareness and responsibilities of the people pertain to this issue.
- 6.12.3** **Submissions by members of the public:** The submissions by members of the public as they relate to this issue are also inextricably bound up with their submissions on fundamental rights and ensuring that these rights are respected. As one submission posited, it must be recognised and stated that

Guyana is a multi-cultural, multi-ethnic State guided by the principle of unity within diversity and diversity within unity. The submissions focused on the betterment of families and community. Protection of religious beliefs, cultural traditions and practices, environmental rights, provision of health care, food, water and housing, education, sports facilities and programmes, transportation services and care for minors, the elderly and people with disabilities were matters addressed. Unemployment benefits, investment codes which include provisions for the development of industrial and mining operations, ownership of land, pension rights and equal access to economic resources were some of the other concerns raised.

6.12.4 Dimensions considered by the Commission: The major consideration addressed by the Commission is the extent to which these rights can be included in the Constitution. The public sees many of them as being fundamental rights; however, in strict terms, they may not be. Some of them can be placed in a chapter dealing with principles and declaratory ideals to which the government and the nation as a whole must strive. Of interest also is the extent to which the Constitution can cater for the duties and obligations of individuals in seeking to encourage the development of the society. The impact and influence of the race issue and race relations as they apply to these rights also have to be taken into consideration. The recommendation for organic laws to support the implementation of some of these rights may therefore have to be considered.

- 6.13** **Mandatory Issue # 9: Measures to maintain and strengthen the independence of the judiciary.**
- 6.13.1** **1980 Constitutional provisions:** The Constitution deals with this matter in Articles 123 133; these basically establish the Supreme Court of Judicature which comprises the Court of Appeal and the High Court. Article 127 deals with appointment of the Chancellor and Chief Justice. Articles 128 and 129 outline the qualifications for and appointment of judges, while Articles 131 and 197 deal with tenure of office of judges. Appeals on Constitutional issues and fundamental rights are provided for in Article 133. Articles 134, 198 and 199 deal with the appointment and composition of the Judicial Service Commission and appointment of judicial and legal officers.
- 6.13.2** **Provisions of the CARICOM Charter of Civil Society:** Article V, which deals with equality before the law, is applicable to this issue.
- 6.13.3** **Submissions by members of the Public:** The judiciary must be the core support of democracy, upholding political and civil liberties and maintaining the rule of law. Therefore, the main concern expressed in the submissions was the independence of judges as the guardians of the rights of citizens. Lack of corruption and independence from political interference were considered key to confidence in the judicial system. Various suggestions for permitting transparency and integrity in appointments of the judiciary were made. The Judicial Service Commission (JSC) established under the Constitution should also be independent, with powers to appoint and remove

Constitution should also be independent, with powers to appoint and remove judicial officers. The JSC should be more broad-based in its composition. The Constitution should also make provision for emoluments for these officers while in active service and on retirement. There was a call for the establishment of a Constitutional Court and for provision to be made for a Caribbean Court of Appeal.

6.13.4 Dimensions considered by the Commission

6.13.4.1 Appointments: Recognising that the judiciary is crucial not only for maintaining overall law and order, but for ensuring that the Constitution itself is going to be properly interpreted and defined by people in whom the nation has confidence, a number of important issues attracted the attention of the Commission. The method and criteria for appointment of the judiciary, based on the principle of meritocracy, must be considered seriously. Such criteria should meet the test of transparency. In this regard, attention also has to be paid to the appointment of the Judicial Service Commission. A mechanism should be found for making this body broad-based and independent and therefore consideration should be given to its composition. Some reservation has been expressed about allowing a practising member of the Bar to be a member of the Commission, since he/she would in effect be appointing people before whom he/she would most likely have to appear. Procedures for the removal of judges for corruption, incompetence or lack of diligence or tardiness need to be settled. Consideration should be given to allowing persons who are affected by a malfunction of the system to

initiate removal proceedings. However, a method of screening such action would have to be devised. Further, mechanisms should be found to apply the principle of reward and preferment based on performance.

6.13.4.2 Tenure: The age of retirement or tenure of judges also needs to be addressed, because the issues of extensions and political patronage have been raised as matters of concern. In this regard, there were recommendations that the suggested retirement age of seventy years be applied in respect of appointments made after the Constitution has changed, and that the judges who are currently on the Bench should retire at the present stipulated age because of the weakness in the system of appointment and in the political culture. Tenure should be fixed and should not be left to discretion, i.e., consideration should be given to a prohibition against extension of tenure being enshrined in the Constitution.

6.13.4.3 Emoluments: Independence of the judiciary could be considerably strengthened or further guaranteed if the judiciary is self-financing and self-governing, i.e., if it has autonomy in relation to the administration and expenditure of funds appropriated to it by Parliament. Models of this system can be found in India and Australia, among others. The dependence on the Executive for a determination of emoluments and conditions of service can result in the judiciary being compromised. This is a matter requiring specific attention. Enhanced retirement benefits for judges also need to be examined. In this regard, there ought to be a Constitutional provision

debarring judges from practising at the Bar as appears in other Constitutions.

6.13.4.4 Courts: A Constitutional Court or provisions for Constitutional jurisdiction within the present system should engage attention. Since Guyana is part of CARICOM and part of a move to establish a Caribbean Court of Appeal, we should consider making procedural provisions for this Court without the necessity of seeking an amendment when the time comes.

6.14	Mandatory issue #10: Measures aimed at safeguarding public funds and at maintaining and enhancing integrity in public life under the law and by other proper means.
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6.14.1 1980 Constitutional provisions: Articles 216 to 222, which provide for a Consolidated Fund, withdrawals from the Consolidated Fund, Public Debt and the Contingencies Fund, relate to this issue. Articles 204 and 223 provide for the appointment, office and functions of the Auditor General. Articles 122 and 191-196 provide for the appointment, office and functions of the Ombudsman. The Constitution is silent on the subject of integrity in public life but an Integrity Commission has been established by the Integrity Commission Act, 1997.

6.14.2 Provisions of the CARICOM Charter of Civil Society: Article XVII, which provides for good governance, Article XVIII, which provides for participation

in the economy, and Article XXIV, which deals with awareness and responsibilities of the people, speak to this issue.

6.14.3 Submissions by members of the public

6.14.3.1 Submissions emphasised that the Constitution should set the guiding principles in relation to the type of economy for which the country is striving. The Constitution should therefore state that the economy is multi-sectoral with an allowance for the growth of private enterprise, co-operative ownership and State ownership. However, there were differences of opinion on whether the State should own enterprises. It was felt by many that the Government's main role should be that of facilitator in creating an environment that would foster economic growth and social harmony.

6.14.3.2 There were also many concerns and proposals about accountability of the Government and politicians, especially in relation to financial probity.

- One of the measures suggested to ensure accountability was the provision of an Integrity Commission in the Constitution.
- Another one spoke to the Office of the Auditor General as the watchdog of public accountability. The Auditor General should be an independent, self-financing or budgeting agency free from political manipulation or control. There should be Constitutional safeguards protecting the establishment, role, function, powers and authority of the office, and there should be specific provision for mechanisms

that would disallow any government from undermining the office. This office should audit all entities in which Government has a controlling interest and report to the National Assembly or Parliament and not the Minister of Finance. It should also audit all foreign-funded projects. There should be detailed Constitutional provisions for the appointment, role and functions of the Auditor General. Provision should be made for a Parliamentary Audit Commission on which the Minister of Finance would not sit. This Audit Commission would perform oversight functions in relation to the Office of the Auditor General. Constitutional provisions for the matters outlined above are necessary so that no government could by statute easily negate the powers and authority of the office.

- A Standing Committee of the National Assembly should be privy to loans, whether international or local, tenders, contracts and divestments. In relation to tenders and contracts, an alternative suggestion was for the appointment of a Contractor-General who would report directly to the National Assembly.
- The Central Bank should be truly independent.
- In order to secure integrity and to engender public confidence and trust, certain public offices such as the Judiciary, the Director of Public Prosecutions, the Auditor General, the Director of the Revenue Authority, the Comptroller of Customs, the Commissioner

of Inland Revenue, and Heads of Disciplined Services should be appointed after approval by a Select Committee of Parliament. Where appointments are made through Service Commissions, these bodies must be truly independent and free from political interference. Constitutional provision should be made for the Public Service Appellate Tribunal, the jurisdiction of which should apply to all the Service Commissions.

- The Office of the Ombudsman and the Police Complaints Authority should be restructured and should have more investigative clout.

6.14.3.3 Agrarian reform was proposed. The distribution of land must not only be fair but must be seen to be fair. The composition of the Land Selection Committees should be addressed. Where there is acquisition of property by the State there should be reasonable compensation. There needs to be decentralisation of certain government departments to rural and hinterland areas. Imbalances in the economic development of the various Regions must be addressed.

6.14.4 Dimensions considered by the Commission

6.14.4.1 The considerations of the Commission pertinent to this issue related mainly to the role and function of the Auditor General. In this regard the draft National Audit Act, 1994 was examined.

6.14.4.2 **Role and functions of the Auditor General:** The role of the Auditor General as the “watchdog” of public accountability was discussed. The

Commission considered whether the Auditor General should remain as an advisor to the Finance Sub-Committee of Cabinet, since this may involve some conflict with his/her overall role as guardian of public accountability. It also considered the agencies or authorities that should be subject to audits of the Auditor General and how the term "authorities" should be defined. In the present Constitution the definition is unclear. Since it was submitted that there should be a clear definition, the Commission discussed whether the Auditor General should be stated to have audit responsibilities wherever controlling interests vest in the State, and whether this should include the audit of all foreign-funded projects. The Auditor should be accountable directly to Parliament and not to the Minister of Finance. This obtains in Barbados and developed countries. Once an Auditor General's report is presented, it immediately becomes a public document.

6.14.4.3 Appointment and tenure: The matter of appointment of the Auditor General was addressed from the perspective of who should be the appointing authority, i.e., whether the appointment should be by Parliament via a Select Committee or by the President acting on the advice of the Public Service Commission. Provision for tenure of service to be accorded to the post with provisions for removal on the grounds of misconduct, incompetence or lack of diligence were also addressed. These matters were considered important in the light of the fact that the Auditor General should be independent and free from political control or interference.

6.14.4.4 Constitutional safeguards: The detailing of Constitutional provisions for the Office of the Auditor General also attracted the attention of the Commission, which discussed whether it should be covered by mere statutory provision that does not have the force of an organic law, or by safeguards in the Constitution itself. The argument for adopting the latter course is that bearing in mind past problems, Parliament could easily withdraw the powers, authority and independence of the office. Specific Constitutional provisions should also safeguard the provision of resources to the office, so that its work as an independent Constitutional department would not be easily stymied by the government of the day. The Commission considered whether safeguards should be detailed in the Constitution or if there should be legislative enactment in pursuance of enshrined Constitutional protections, which, if not enacted, would amount to a breach of the Constitution.

6.14.4.5 Emoluments: Independence of the Office of the Auditor General could be strengthened or further guaranteed if the office is self-financing and self-governing. It should have autonomy in relation to administration and expenditure of funds appropriated to it directly by Parliament. This would also mean that the office would have autonomy in the hiring of competent staff. The dependence on the Executive for a determination of emoluments and conditions of service can result in the office being compromised. Provisions for pension rights and benefits for the Auditor General and staff also need to be examined.

6.15 Mandatory Issue # 11: The functioning of the National Assembly and any measure which can enhance its capacity and effectiveness as a deliberative body

6.15.1 1980 Constitutional provisions:

(1) Articles 51 - 58, 65 - 70, 155 –158 and 164 -172 provide for the composition and workings of Parliament including the quorum, mode of legislating, and privileges of members of the National Assembly, among other matters.

(2) Because of the relationship between the powers of the President in relation to those of the National Assembly, matters pertaining to the President are included under this issue. Articles 51,67,70, 89 – 99, 111 and 177 – 182 provide for the election, duties, and the functions, removal and immunities of the President. In addition to these Articles, there are a number of others providing for Presidential action in terms of appointments and decision-making. These Articles are 120, 184, 188, 189, 191, 197, 198, 200, 203-206, 210, 211, 225, 226, 231 and 232.

6.15.2 Provisions of the CARICOM Charter of Civil Society: Article XVII, which is on good governance, is applicable to this issue.

6.15.3 Submissions by members of the Public

6.15.3.1 The majority of submissions seemed to favour a bi-cameral Parliamentary system. They suggested that the Senate should consist in part of members drawn mainly from civil society who would not necessarily be affiliated to any one political party. This is to ensure representation by a broader spectrum of the society. Any technocrat Ministers or non-elected members should be part of the Senate. They considered that the Supreme Congress of the People and the National Council of Local Democratic Organs should be abolished. In their place, some suggested that the ten regional representatives should be part of the Senate. The Senate should be responsible for impeachment proceedings.

6.15.3.2 Many wanted to see greater participation of the Opposition in decision-making so that one section of the populace does not feel entirely left out. There were suggestions that a mechanism be found for power-sharing, e.g., allocation of Ministerial portfolios to the Opposition. Constitutional provisions should be made for Opposition Shadow Ministers. Opposition members must be given proper facilities to carry out their mandate effectively. The Minority Leader should be renamed the Opposition Leader. Special Parliamentary Select Committees headed by Opposition members, but without the subject Ministers as members, should be established as oversight bodies of the various Ministries and for pertinent issues that may arise. One such Committee should be responsible for appointments to

certain key posts such as the Auditor General, the Director of Public Prosecutions, and judges.

6.15.3.3 On the other hand, there were submissions favouring a retention of the present form of National Assembly but with all members elected. There were also submissions suggesting a federal form of government.

6.15.3.4 As regards the Presidency, some suggested that an Executive Presidency be retained while others stated that there should be a return to a ceremonial Head of State. In the latter case, the head of government would be the Prime Minister. Many submissions urged a reduction in the powers and immunities of the President if the Executive Presidency is retained.

6.15.4 Dimensions considered by the Commission

6.15.4.1 The Commission was of the view that in keeping with their mandate and the milieu which caused the establishment of the Commission, there was need for a change in the political culture of the country and this change had to be facilitated by institutions that would impose certain patterns of behaviour in order to engender a cohesive nation. In this regard, it was suggested that the Commission try to come up with a system of government in which power would be used in such a way that all the people would be satisfied, and persons would not be left out or feel that others had all the power and were able to do as they pleased. This factor had to be taken into consideration against the back-drop of the racial insecurities and tensions that exist and which the Commission was mandated to address. It appears

that the pure Westminster style of government would not be suitable for Guyana at this juncture. In order to decide whether a new system should be adopted, it is necessary to identify the main characteristics of the system of government being aimed at; e.g., should one of those characteristics be that an ordinary person be permitted to initiate legislation? Should the private sector, as the engine of growth, be taken more seriously in their inputs in the budget? In effect, should the system of government seek to empower people more? The functional aspects of the system of government need to be considered also, i.e., whether the concept of the separation of powers would remain. If this concept is retained then the issue becomes one of detailing provisions regarding the specific functions of these arms of government.

6.15.4.2 The President: The questions in this regard relate mainly to the relationship between the President, the Executive and the National Assembly. Should there be a separate election of the President who would then have powers to create the Executive? In the event that this is accepted, should there be clear definition of the powers of the President in relation to the National Assembly? A broader look would have to be taken of the role of the Prime Minister operating within a Presidential system. The powers of the President as presently prescribed need to be addressed. A further question is whether we should have a President who, in some regard, symbolises the spirit and relationships which Guyanese people should develop. In the context of Guyana, we should consider whether we should employ a

combination of characteristics of a Presidency, so that it is neither typically executive nor titular. This submission would have to be compared to another, i.e., that the President should not be the head of government; instead, there should be a head of government who would come to Parliament and be accountable while the President is titular.

6.15.4.3 Bi-cameral legislature: A bi-cameral legislative system has been proposed with a composition of the upper house that recognises civil society in its membership. This, it has been posited, would assist in fostering national involvement in the parliamentary process by the inclusion of various constituencies outside of the structure of the political parties. This would increase participation in decision-making and offer a mechanism to deal with ethnic politics. There would also be provision for the ten regional representatives. This system of government envisages a titular head of state. The upper house would have oversight powers over the lower house. However, in considering the reintroduction of this system of government, the question of the relevance of the system to Guyana at this point in its history would have to be examined.

6.15.4.4 Making Parliament more effective: The Commission also discussed the powers of Parliament vis-à-vis the Cabinet vis-à-vis the Executive, and mechanisms that would permit Parliament to do more than it presently does in relation to Executive and Cabinet decisions. It was suggested that the concept of a power-sharing Executive should be examined. The Consociation system of government, whereby all parties are represented in

Ministries, was considered. However, it was noted that this in effect means that there is no Opposition. It was also pointed out that while Consociation was not the best model, it is one that could be used in a situation in which there is serious conflict. The question is whether there is that perception of serious conflict in Guyana. The attention of the Commission was drawn to the Swiss model. The Fijian model was also examined because Fiji has somewhat similar ethnic problems to Guyana. In relation to defining the work of Parliament, the possibility of treaties, important legislation and agreements with international and financial institutions coming under its purview should be addressed. However, two questions that should inform the deliberations are: What is ineffective about Parliament as presently constituted? Secondly, how, in Constitutional terms, as opposed to administrative terms, can this be adequately addressed? As a corollary to these questions, it can be asked what dimensions should be focused on, and in particular, what fundamental things should be changed that would require Constitutional provisions to increase the effectiveness of Parliament. The problem cited in addressing these questions is that of finding a way to force accountability from the parliamentary system. A return to the constituency system with modifications has been suggested as a means of making Parliamentarians more accountable, especially to an electorate which wants identifiable representatives. A bi-cameral legislative system could also address this issue.

6.15.4.5 Select Committees: It was noted that Parliament could be reformed without the Constitution being changed, because this could be done through the Standing Orders. However, the major opposition party in Parliament had stated that it would prefer provision for this to be enshrined in the Constitution because to exclude it was to leave the matter to the government or ruling party. The challenge therefore is to provide for such reform in a holistic manner. The Commission's responsibility was to address issues such as the establishment and functioning of a system of Select Committees. Legislative and budget committees are seen as two of the more important. It was suggested that all committees be chaired by an Opposition Parliamentarian and that Ministers should not be members.

6.15.4.6 Privileges of Parliamentarians: Another important area for examination was that of privileges of Parliamentarians. This would necessarily involve building up the capacity and infrastructure of the present Parliament

6.16 Mandatory Issue # 12: The functioning of the Local Government System and measures to improve its capacity and effectiveness

6.16.1 1980 Constitutional provisions: Articles 12 and 71 - 78 deal with this issue. These provisions relate to local democracy, local government, and local government areas, Regional Councils and election of members thereto, and powers to raise revenue and to take decisions. Articles 79 - 88 and 173 - 176 also deal with functions of organs that are established under the local government system.

6.16.2 **Provisions of the CARICOM Charter of Civil Society: Article XVII, which deals with good governance, would apply to this issue.**

6.16.3 **Submissions by members of the Public**

6.16.3.1 The main concern addressed in the submissions was that a system of local government should seek to unite people and mobilise their co-operation for community development, and thus engender the spread of the democratic process. The Constitution should provide for the modernisation of the laws and structure of local authorities, so as to ensure that they are simultaneously civic and economic entities with responsibilities for promoting development. The system should be more representational and manageable with a first-past-the-post voting system for elections. It should allow for a reduction of partisan politics and ethnic considerations. It should also encourage the initiative, capacity and scope necessary for local government bodies to prepare and submit plans and budgets for community development for integration into State planning. Local government bodies must be allowed to work independently of the central government with less control by a subject Minister. Revenue should be derived from both local taxation and central government. Municipal and Regional bodies should be given more responsibility in relation to policing, fire services and prisons among others.

6.16.3.2 Local government elections should not be held simultaneously with national and regional elections. There should be a return to the ward systems in the municipalities and to village councils in other areas. Recognition must be given to Amerindian claims to self-governance. Independents should be

allowed to run for election and there was a call for debarring political parties from contesting these elections.

6.16.3.3 There was overwhelming support for the abolition of the Supreme Congress of the People and the National Council of Local Democratic Organs. However there must be representation of the regions and municipalities in Parliament.

6.16.4 Dimensions considered by the Commission

6.16.4.1 In addressing the relevant issues, the Commission asked itself the question: what can the Constitution do to enhance the usefulness and appropriateness of the local government system? Further, since it appeared that there should be a strengthening of the forces of empowerment, the Constitution should possibly allow for peoples' involvement as a right and not as a concession. In addition, it was felt that widening representation in Parliament should be a consideration in the choice of a system of government. The concept of participatory democracy by decentralisation was therefore an issue.

6.16.4.2 The Constitution and autonomy: The first issue for consideration was whether local government bodies are political or administrative in nature, or a combination of both. Further, in suggesting systems of local government, the Commission had to consider whether local government, as an administrative body, should be an extension of central government. Alternatively, consideration could be given to local government as a devolved body which is autonomous. Attention should be paid to whether

the establishment of a local government system would be by virtue of provisions in the Constitution, by Acts of Parliament, or through the mechanism of a Minister or Ministry. It was noted in this context that the Constitution did not at present deal definitively with the local government system but rather empowered Parliament to do so within a broad framework. It was pointed out that Parliament had failed to treat adequately with local government matters and therefore specific and detailed Constitutional provisions might be the answer. The question arose whether the establishment of local government units should be left to a Minister or stipulated in the Constitution. A concern of the Commission was what should be the smallest unit of local government, i.e., whether there should be a restoration of village councils and wards and whether Neighbourhood Democratic Councils should be retained. In relation to autonomy, consideration should be given to what areas of decision-making would be affected by decentralisation. Decentralisation was also mooted as a means of addressing ethnic rivalry.

6.16.4.3 Voting systems and candidacy: The voting system for local governments was also considered. Attention was paid to whether local government elections should be separate, and relatedly, to the forms of electoral system to be recommended; different voting systems may be chosen for different levels of local authority. The first-past-the-post system was suggested for local government elections, given the call in public submissions for more localised and accountable representation. Whether or not political parties

should be allowed to contest these elections was another problem to receive attention; the presence of political parties may foster partisan politics and the ethnic insecurities associated with them. However, this would not necessarily obviate the political or ethnic labelling of community-based candidates. In any event, consideration should be given to allowing independent candidates to contest these elections. Linkages between the various tiers of local government should also be addressed. The issue of municipal areas being allowed to elect regional representatives and vice versa was discussed.

6.16.4.4 Financing: The questions of financing and which levels of local government should be responsible for revenue collection and distribution of finances were other areas discussed. These factors are linked to the matter of autonomy. A supervisory mechanism to ensure accountability may need to be considered, whether this is a Ministry, or a Local Government Commission as exists in Malawi.

CHAPTER 7

PUBLIC SUBMISSIONS AND COMMISSION DISCUSSIONS ON ISSUES OTHER THAN MANDATORY ISSUES

- 7.1** While the Commission was only directed by the Constitution Reform Commission Act to take account of those matters listed at Section 6(2) in its review of the 1980 Constitution, members felt that provisions of the legislation did not prevent them from looking at other matters which the people felt needed to be amended in, or added to, the Constitution. As a consequence, the Commission selected other issues from among those raised with its members at the Public Hearings and in memoranda received from the public, including those which it had inherited from the Select Committee of the 6th Parliament. These other issues which the Commission considered were: the State and the Constitution, Systems of Government, Mechanics of Constitutional Reform, the Constitution as a document, Other Constitutional Offices and Offices created in the Constitution (i.e., other than those covered under mandatory issues). Other Commissions (other than those under mandatory issues), National Security, Citizenship, Education, the Environment and Religion. Under these heads, this chapter outlines the relevant Articles of the 1980 Constitution, submissions made by the public, and the dimensions of the issues

considered by the Commission. It should be noted that in certain areas, especially in the public submissions, there is some overlap between the matters raised under mandatory issues and those raised under other issues. Finally, when issues in this chapter were addressed not at plenary but in sub-committee, subsections of the chapter entitled "Dimensions considered by the Commission" outline the discussions at that level.

7.2 Issue # 1: State and the Constitution

7.2.1 1980 Constitutional provisions: Articles 1 – 8 provide for the State and the Constitution and outline provisions for the State in Transition to Socialism, the Territory, the Capital, the Flag, the Coat of Arms and the Anthem, along with the Duty to Respect National Symbols, and Supremacy of the Constitution.

7.2.2 Submissions by members of the public

7.2.2.1 The majority of the submissions proposed that the word "Cooperative" be deleted from the description of the State. However, the Trade Union Congress strongly advocated the retention of the cooperative concept in the Constitution. Others urged the retention of "Cooperative" in the name of the country in order to capture a sense of the spirit of consensus, consultation and participation required for nation-building.

7.2.2.2 The submissions suggest, too, that the references to socialism be expunged. The rationale for this proposal is that there is a national commitment to a market economy, private sector-led growth and a merely

regulatory role for government. It was also argued that the Constitution should be ideologically neutral.

7.2.2.3 The public also expressed the view that the Constitution should provide for the national symbols – the National Anthem, National Flag, Coat of Arms, Motto, and the Pledge – and include a drawing of the map of Guyana. It was suggested that the Presidential Standard should remain the same, even if there is a change of President, in order to provide a constant symbol to the nation. Some members of the public advocated varying changes to the name of the country, e.g. the Republic of Guyana, Democratic Republic of Guyana and United Republic of Guyana. There were suggestions that the words of the Anthem - “land of six peoples” - should be changed to “land of our heroes”.

7.2.2.4 It was proposed that the Constitution prescribe English as the official language, but should also recognise Amerindian languages.

7.2.3 Dimensions considered by the Commission

7.2.3.1 The Commission considered the retention of the symbols of nationhood, i.e., the Flag and Coat of Arms, as well as the National Anthem and considered the inclusion of an appendix that would contain descriptions of the Flag and Coat of Arms. Consideration was also given to the addition of an Article providing for the inclusion of the National Pledge among the body of national symbols which it is the duty of every Guyanese to respect.

7.2.3.2 The Commission discussed whether the word “Cooperative” should be retained, and if so, whether it should be in the name of the country or referred to elsewhere, such as in the Preamble. The Commission also discussed the description of the geographical area to be called Guyana and the retention of Georgetown as the capital city.

7.2.3.3 The Articles on the Duty to Respect the National Symbols and the Supremacy of the Constitution were also addressed.

7.3 Issue # 2: Systems of Government

7.3.1 1980 Constitutional provisions

7.3.1.1 The Constitution provides for an Executive Presidency and a 65-seat National Assembly elected on the basis of a system of proportional representation. Article 51 states that there shall be a Parliament “which shall consist of the President and the National Assembly”. Articles 67, 70, 89 – 99, 111 and 177 – 182 provide for the election process, duties, functions, and removal and immunities of the President. In addition to these Articles, there are a number of others providing for Presidential action in terms of appointments to various offices and Commissions and other decision-making. The latter Articles are 120, 184, 188, 189, 191, 197, 198, 200, 203 - 206, 210, 211, 225, 226, 231 and 232.

7.3.1.2 Articles 100 - 104, 107 - 109, 112 - 114, 183, 185 and 186 provide for the appointment and functions of the Prime Minister, Vice-Presidents, Ministers, Attorney-General and Parliamentary Secretaries. Articles 117 - 119 provide

for the Secretary to the Cabinet, sub-committees of Cabinet and Standing Committees.

The Cabinet comprises the President, Prime Minister and such other Ministers as may be appointed by the President (Articles 106 and 118).

The function of the Cabinet, as provided for by Article 106(2), is to aid and advise the President in the general direction and control of the Government, and in relation to this duty, its members are collectively responsible to the Parliament. The President is authorised under Article 105 to appoint Ministers from outside the Parliament who, on their appointment, become non-voting members of the Parliament. The Members of Parliament are determined by the leadership of the parties which have gained seats in the Parliament, since party lists are in alphabetical, not priority order. The Select Committees of the Parliament reflect its composition, with only one of them being chaired, by convention, by a member of the major Opposition party.

7.3.2 Submissions by members of the public

7.3.2.1 The President: Some of the submissions received by the Commission proposed an Executive Presidency while others called for a Ceremonial Presidency. However, in the case of the submissions endorsing an Executive President, a number of matters were raised. There were suggestions that the President must be born a Guyanese, while others allowed for naturalised Guyanese. Most persons who addressed the issue said that dual citizenship should not be allowed. In either instance, it was

proposed by some that there be a residency requirement. Proposals were made for an age limitation or qualification to be stated.

7.3.2.2 The powers and immunities of the President as stated in the Constitution should be reviewed and reduced, especially if the Executive Presidency is retained. In particular, the President should not have the power to dissolve a Parliament that has begun the process of investigating his or her conduct. There should be provisions for the impeachment of the President. However, there should be protection from frivolous suits. Parliament should have the power to override the veto power of the President by a qualified or weighted majority. The President should be directly answerable to Parliament.

7.3.2.3 The President should be elected in separate elections and should gain at least 51 percent of the vote. One submission suggested that he or she should only be elected on gaining two-thirds of the votes cast. Other submissions proposed that Parliament should elect the President. Many submissions proposed that a President should be limited to two terms in office. Some added that a person should not be allowed to run for two consecutive terms.

7.3.2.4 **The Prime Minister and Ministers:** There were submissions that the post of Prime Minister (P.M.) be abolished and replaced by a Vice-President (V.P.). One submission was that there should be three V.P.s for the three counties while another was that a V.P. must be female and be responsible for women's affairs. For many, where a P. M. is retained, he/she, like the President, must be born a Guyanese, but some submitted that they would

accept a naturalised Guyanese. In either case, there were submissions that there be a residency requirement. The latter requirement should also apply to Ministers. The candidate for the Prime Ministership should be named before the election. The P.M. should succeed the President on death or upon other reason for demitting office. There was one submission that the executive of the ruling party should name a successor in the event that circumstances so warrant. The concept of a P.M. in a Presidential system was submitted for consideration and it was suggested that the model of France be considered for possible guidance on this matter.

7.3.2.5 There were varying submissions regarding the appointment of the P.M. and Ministers. Some suggested that appointments for these positions should be made by the President, while others said it should be by Parliament or a combination of the two. In the latter event both sets of appointees should be members of the Cabinet.

7.3.2.6 A number of submissions stated that the Constitution should stipulate the numbers of Ministries and Cabinet Ministers. Any additional Ministerial appointments should be approved by the National Assembly. Each Minister must report annually to a Parliamentary Committee at a public hearing. It was submitted that the President should nominate Cabinet Ministers but that the nominations should be subject to Parliamentary confirmation. Academic qualifications for Ministerial appointment should be stipulated. There should be provision for a Parliamentary Committee to investigate any misuse of funds by Ministries.

7.3.2.7 Power Sharing: Not a few submissions proposed that there be some form of power-sharing, with all parties with a prescribed percentage of seats participating in government in proportion to the number of seats they have won. Many submitted that the President should be appointed from the party with the most votes and the P.M. or V. P. from the party with the second-highest votes.

7.3.2.8 Proposals included that Ministries should be divided between the ruling party and the Opposition, and that Ministers from both sides must be members of the Cabinet. However, there was a submission that Cabinet positions should be filled only by the majority party. Others proposed that there should be provisions for decision-making at the level of Cabinet. Further, there should not be two Ministers from the same party assigned to one Ministry. There were a number of submissions that one party should not control the Ministries of Home Affairs, Defence, Foreign Affairs, Finance, Housing, Works, Agriculture and Natural Resources. Ministries can be divided by pre-determined allocations to a party based on elections performance, on negotiations after elections, or failing this, through a selection process. The Attorney-General should be chosen by all parties. There should be provisions for technocrat Ministers.

7.3.2.9 Federalism: There were also submissions that Guyana should have a federal structure of government. It was suggested that there should be a federal executive, a bi-cameral legislature and a President with reduced powers who is elected in separate elections from that of the members for

the federal legislature. This submission proposed that Guyana be divided into four states - Demerara, Berbice, Essequibo and the Rupununi - which would be prohibited from seceding. The states would have their own police, administrative structure and judicial structure. They would be distinctive, interdependent and inter-related, and work towards the elimination of discrimination, the promotion of cooperation and national unity and the provision of effective government. However, other submissions advised against federalism on the grounds that it would compound the problems of ethnic division. These submissions contended that what was needed was a political culture of inclusion which would encourage popular participation by the people in the decision-making process in their communities.

7.3.3

Dimensions considered by the Commission

7.3.3.1

The President: The Commission debated the advantages and disadvantages of an Executive Presidency and a Ceremonial one. There was also consideration of a combination of the two forms of Presidency. It debated the best system of electing the President, whether Executive or Ceremonial. Its considerations extended to the powers of the Presidency and whether or not these should in any way be curtailed and the holder of the office made more accountable.

7.3.3.2

The Prime Minister: The Commission also considered the role of the Prime Minister in the context of a presidential system.

7.3.3.3

Parliament: The Commission discussed mechanisms to make the Parliament more effective and to involve its members more intensely in the

legislative process. The view was expressed that the system of Executive Presidency had brought Parliament to a subordinate level. Oversight Committees for each Ministry or agreed areas of public concern, chaired by Opposition members and without Ministerial representation, should be provided for, and they should have the right to intervene and investigate issues earlier in the process rather than at their completion. While Standing Orders or laws should provide the mechanisms for the operation of Parliament and the Committees, it was felt by some Commissioners that these were not adhered to and should therefore be enshrined in the Constitution to ensure their enforceability. The Government should be forced to be more accountable to the Parliament.

7.3.3.4 Systems of government: The Commission considered a number of systems of government. It was conscious that the issue of ethnic and racial insecurities needed to be kept in mind in examining the various systems. Further, the system of government chosen would then impact on the type of electoral system to be chosen. Issues such as a bi-cameral or uni-cameral legislature, Executive or non-Executive Presidency, Parliamentary or Presidential democracy, the relationship of the President to the National Assembly, representation of diverse constituencies, facilitation of legislative processes, the provision or enhancement of oversight committees as a control mechanism of power, and the characteristics of the system of government desired, were considered. It was suggested that the system should allow for regional representation so that the possibility of all or most members coming from a particular geographical area would be reduced.

Fixed terms of office and the power to dissolve Parliament before the expiry of the term, whether at the instance of the President or Parliament, were considered.

7.3.3.5 A return to the Westminster system and its relevance to Guyana at this point in time was examined.

7.3.3.6 The Commission considered a system of two or three tiers of government, i.e., regions, states and municipalities, which are political entities in their own right, with their own budgets and policies. This system raises the issues of levels of autonomy and decision-making, and of devolution and decentralisation of power. It was noted that it allows for less conflict at the central level because many issues are decided by the people at the local level.

7.3.3.7 Consociationism or power-sharing was also examined. A consociation government allows for all parties to be represented in Ministries and the Cabinet. In this system, all important matters are decided through compromise and consensus among all parties in Parliament. Belgium and Lebanon were identified as examples where this system has been enshrined in the Constitution. In Switzerland, the system operates by agreement. The disadvantages of the system are that decision-making can be slow, there is a tendency to conservatism and there is the absence of a real Opposition. In relation to the latter, it should be noted that each of the main groups is represented in Parliament and because each Parliamentarian is accountable for particular issues that have to be proposed and defended, then the

system is issue-centred. This system also ensures participation and consultation with minorities, and minimises conflict.

7.3.3.8 In any system chosen, the aim is to have accountability and power distributed at different levels of government. It should be an inclusive political system that tries to build checks and balances that create confidence in people who see themselves as minorities or majorities (since in some places minorities are rulers). It creates safeguards against unilateral rule.

7.4 Issue # 3: Measures of Constitutional Reform

7.4.1 1980 Constitutional provisions: Article 66 provides that "subject to the special procedure set out in Article 164, Parliament may alter the Constitution". Article 164 details the procedure for altering the Constitution by a Bill approved by a simple majority, a two-thirds majority, or by a simple majority and a referendum. The Bill to alter the Constitution shall not be submitted to the President for assent, unless, not less than two months or more than six months after its passage in the National Assembly, it has been submitted as Parliament prescribes to a referendum, where a referendum is required. A referendum is necessary, after passage through the National Assembly, in relation to the alteration of Article 164 itself, and Articles 1 (the State in Transition to Socialism), 2 (the Territory), 8 (the Supremacy of the Constitution), 9 (Sovereignty Belongs to the People), 18

(Land Belongs to the Tiller), 51 (Establishment of the Parliament), 66 (Alteration of the Constitution), 89 (Establishment of the Office of the President), 99 (Executive Authority of Guyana) and 111 (Exercise of the President's Power). However, a two-thirds majority without a referendum would be necessary for alterations where the Bill proposes to alter the provisions of Articles 3, 4, 5, 6, and 7, 10-17 (inclusive), 19-49 (inclusive), 52-57 (inclusive), 59, 60, 62-65, 67-70, 72 (in so far as it relates to the number of regions), 90-96 (inclusive) 98, 108, 110, 116, 120-163 (inclusive but excepting 132), 168 to 215 (inclusive but excepting articles 173, 185, 186, 192(2) and (3) and 193, 222, 223, 225, 226, 231 and 232 (excepting the definition of "financial year").

7.4.2

Submissions by members of the public: One submission was that there should be a statutory period of frequency for Constitution reviews. Reform should be addressed in order to cater for imbalances in the society and to ensure justice and fairness. Reform should be catered for in the context of a bi-cameral legislature. There were suggestions as to the mechanisms for alteration, i.e., whether by weighted majority and or by referendum. Many expressed concern that the time allotted for the work of the Commission was inadequate, noting that the time taken for similar exercises in Fiji was two and a half years, and in South Africa, three and a half years. In this regard, the sense was conveyed that reforms should be given serious and adequate consideration. It was stressed that the public should have knowledge about the provisions of the Constitution and that any proposed amendments should be widely circulated for their information.

7.4.3 Dimensions considered by the Commission

7.4.3.1 The sub-committee of the Commission that looked at this issue noted the view that Constitutions need to be amended from time to time as conditions change. Accordingly, it took the position that consideration ought to be given to having a mechanism to conduct periodic reviews to determine what amendments should be made to address new conditions.

7.4.3.2 It noted the opposing view that since the Constitution is the basic law which contains the guiding principles of a society, there is no need for such a mechanism, as changes, where necessary, would become obvious to the public and the Parliament would respond accordingly.

7.4.3.3 In considering the sub-committee's report, the Commission looked at the desirability of including, in its recommendations to the Parliament, a mechanism which would keep the Constitution under permanent review. One of the mechanisms it considered was the inclusion of the review of the Constitution among the functions of the permanent Law Reform Commission the Government proposes to establish. Another was the establishment of a Constitutional Commission by law, or in the Constitution itself, with the responsibility of keeping the Constitution under review. Still another was the establishment by the Parliament of either a Select Committee or a Standing Committee on Constitutional Reform that would be required to meet at specified intervals. Another consideration was a provision for Parliament to consider amendments within six months of the commencement of a term of office.

- 7.4.3.4** On the question of how a review mechanism could be triggered, suggestions included its being triggered by a resolution of the National Assembly, by a decision of the Court, and by representations from political parties, organisations or the public.

7.5

Issue # 4: The Constitution as a Document

- 7.5.1** **1980 Constitutional provisions:** The Preamble includes references to the will and spirit of our forebears and leaders, Independence, conditions for encouraging the development of Guyanese, Republicanism, defending our sovereignty, respecting human dignity, enjoyment of a good quality of life and Socialism. There is no reference to God in this Constitution. Its language is in some places very convoluted and daunting and there is a significant amount of cross-referencing. Articles pertaining to various issues are not grouped together. Some organic laws have been enacted to enforce some of the provisions of the Constitution, e.g., to enforce Principles and Bases of the Political, Economic and Social System such as the Equal Rights Act, 1990.
- 7.5.2** **Submissions by members the public**
- 7.5.2.1** **The Preamble:** The Preamble to the Constitution should provide for an historical background of the country, recognition of our Indigenous Peoples, a vision statement for the way forward and a recognition of the partnership

of the State, public and private sectors and NGOs in the pursuit of an equitable and acceptable standard of socio-economic welfare for all Guyana. It should be stated that we are a land of one people and not six races, in keeping with our motto. There should be reference to the multi-racial, multi-cultural and multi-religious characteristics of Guyanese society. The Preamble should reflect the present realities of Guyana's democratic culture. There should be recognition of the family as an important unit in society. There should be some focus on provisions for dealing with disadvantaged groups. It should outline goals and aspirations of the nation.

7.5.2.2 Language: The Constitution should be in simple, gender-neutral and/or inclusive language. Key words and phrases should be properly and clearly defined. The Constitution should be formatted so as to prevent unnecessary referral to various Articles in different parts of the document. Articles and sections dealing with specific issues should be grouped together for easy understanding and reference. This would prevent unnecessary confusion and complication and allow citizens to know their rights and obligations. Views were expressed that the entire Constitution should be rewritten and not merely amended. All references to Socialism or ideology should be deleted.

7.5.2.3 Organic Laws: It was suggested that consideration be given to the enactment of legislation termed "organic laws" to supplement the Constitution and take care of the minutiae, especially in relation to issues such as fundamental rights and decision-making. Such laws should also

provide for conformity with the provisions of the Constitution and for procedures and mechanisms leading to compliance with, and enforcement of, the Constitution.

7.5.3 Dimensions considered by the Commission

7.5.3.1 The Preamble: In its review of the Constitution, the Commission considered that provision should be made for the kind of society which would accord with the aspirations of the people and which would survive and prosper in the evolving international environment. One of the significant developments in recent times has been increasing conflict in plural societies, generated by religious, ethnic or other forms of intolerance. The challenge facing Guyanese is to successfully manage the conflict generated by the very nature of the society, and to develop the spirit of cooperation necessary for the society to thrive. As a consequence, the Commission needs to include in its Report, recommendations that would encourage cooperation and promote understanding between the various groups in the society. In this regard, it was considered that it may be better to remove the word "Cooperative" from the name of the country, and to include any reference to cooperativism in the Preamble as an expression of a concern for fostering cooperation and working harmoniously together, as distinct from endorsing any form of economic organisation. The Preamble should contain factual statements about our historical background, the course of our development, the environment, Indigenous rights, the development of racial harmony, and social and economic justice.

- 7.5.3.2** To develop, the society requires a significant infusion of investment, both local and foreign. To attract this means creating a climate in which the rules and regulations governing investment are clearly spelt out, and making Constitutional provisions which generate confidence in investors that their investment will be safeguarded.
- 7.5.3.3** The most serious challenge to be confronted by Guyanese in the future is the threat that might be posed by globalisation. The immediate challenge is that of achieving consensus on a development strategy which would be followed by whichever political party was in government. The political arrangements needed to facilitate national consensus on a development strategy constitute an urgent imperative for the society. Recognition should be given to the need to foster attitudes which would ensure Guyana's survival and prosperity in the new millennium. The Preamble should address these issues and also have a clear statement about good governance.
- 7.5.3.4** As an adjunct to the issues pertaining to the content of the Preamble, the content of the section outlining guiding principles was also discussed.
- 7.5.3.5** The Commission considered that the language of the Constitution should be easily understandable. Clarity of content should be a priority. It was submitted that, as far as possible, Articles that address a particular issue should be grouped together.
- 7.5.3.6** The Commission felt that organic laws may be necessary to provide for many of the tangential issues which cannot or should not be in a

Constitution and which would make the document bulky and cumbersome. These laws should provide for the mechanisms and procedures for ensuring compliance with, and enforceability of, the Constitution.

Issue # 5: Other Constitutional Offices and Offices Created in the Constitution

Note: The appointments to offices dealt with in this section are for positions other than those of the Auditor General, the Judiciary, and the Service Commissions.

7.6.1 1980 Constitutional provisions: The Constitution recognises several Constitutional and other offices:

- Members of the National Assembly (Article 52 (1)), Members of the Regional Democratic Councils (R.D.C.) (Article 73), Members of the National Council of Local Democratic Organs and the Supreme Congress of the People (Article 80), and the President (Article 89) are elected by the voters.
- The Speaker and his Deputy (Article 56) are appointed by Members of the National Assembly.
- Members of the Review Tribunal (Article 151 (1)) are appointed by the Chancellor.

- The following officers are appointed with the direct input of the President: the Clerk and Deputy Clerk of the National Assembly (Article 57(1)) appointed with the advice of the Speaker; the Prime Minister, Vice-Presidents, and elected and non-elected Ministers (Articles 100-104); the Minority Leader (Articles 110 and 184); the Attorney General (Article 112); Parliamentary Secretaries (Article 113); the Director of Public Prosecutions (Articles 116 & 203), appointed with the advice of the Public Service Commission (PSC); the Secretary to the Cabinet (Article 117); Cabinet Sub-Committees (Article 118) and Standing Committees (Article 118); the Ombudsman (Articles 122 & 191 - 196), appointed in consultation with the Minority Leader; members of the Advisory Council on the Prerogative of Mercy (Article 189); the Solicitor General and Ambassadors, High Commissioners, and persons accredited to International Organisations (Article 205) after consultation with the appropriate commission.
- Article 120 provides for the President to constitute offices, make appointments and terminate any such appointments.
- Article 206 provides for appointments on transfer to certain offices and Article 225 provides for the removal from office of certain persons.

7.6.2 Submissions by members of the public

7.6.2.1 The general tenor of the submissions received by the Commission called for the appointments to these offices by the President to be approved by the Parliament on the recommendation of a Standing Committee. It was also suggested that the approval of Parliament should be by a weighted majority, so as to ensure that they are made with the approval of both the ruling and Opposition parties. The call for this mechanism of appointment was stated as being necessary to ensuring the independence and integrity of the offices.

7.6.2.2 There were a number of submissions that positions such as the Chancellor, Chief Justice, Ombudsman, Ambassadors, Head of Security Forces, Secretary to the Treasury, Governor of the Central Bank, Commissioner of Inland Revenue and Comptroller of Customs should be subject to Parliamentary approval. It was submitted that Permanent Secretaries should be appointed by the Public Service Commission, and the Director of Public Prosecutions, Solicitor General and other law officers by a Legal Services Commission or a Judicial Service Commission, the powers of which should be extended to these other appointments.

7.6.3 **Dimensions considered by the Commission:** The sub-committee was of the view that the Commission needed to assess how well the present arrangements for appointed offices operate, their weaknesses, if any, and which of the arrangements proposed best addressed these weaknesses. A further consideration was whether or not the weaknesses identified were best addressed by a Constitutional or legislative provision.

7.7**Issue # 6: Other Service Commissions**

Note: The Service Commissions dealt with in this section exclude the Elections Commission which is dealt with under Mandatory Issue # 7 and the Judicial Service Commission which is dealt with under Mandatory Issue # 9, both in Chapter 7.

7.7.1

1980 Constitutional provisions: The Commissions provided for in the present Constitution are the Public Service Commission (Article 135), the Teaching Service Commission (Article 136) and the Police Service Commission (Article 137). The majority of the appointments are made by the President, some in consultation with the Minority Leader. Article 226 provides for the powers and procedure of the Commissions. An Integrity Commission was also established by the Integrity Commission Act, 1997. There is provision for the establishment of a Race Relations Commission, but it has not yet begun to function. There are also National Commissions on Women, Children, the Elderly, and People with Disabilities. In addition, there is the Public Service Appellate Tribunal established by Article 215A, the members of which are appointed by the President, though one member must be a representative of the Public Service Union.

7.7.2

Submissions by members of the public

- 7.7.2.1** Submissions proposed the creation of thirty-six Commissions to be provided for in the Constitution including an Amerindian Rights Commission, a Gender Equality Commission, a National Women's Commission, a Public Enquiry Commission, an Equal Employment and Opportunity Commission, a Commission on Public Sector Wages, an Audit Office Commission, a Commission on Past Presidents and Prime Ministers, an Interior Development Commission, a Commission to Prevent Discrimination, a Land Distribution Commission, a Livelihood Commission, a Legislation Commission, a Public Debt Commission, a Human Rights Commission, and an Amerindian Lands Commission.
- 7.7.2.2** There was a proposal to insulate the Public Service Commission against the involvement of the political bureaucracy in its various levels of administration.
- 7.7.2.3** Submissions were made on the establishment of a local government Service Commission to deal with all matters pertaining to Local Government.
- 7.7.2.4** Submissions on the functioning of the National Assembly all suggested that the Parliament should play a more definitive role in the appointment of Commissions if the Executive Presidency is retained; however, if the Presidency becomes merely ceremonial, Parliament should retain its present level of participation in the making of appointments. Submissions were also made about the composition of the Commissions. The reasons given for these submissions were that the independence and integrity of the Commissions should be ensured. It was advocated that the Commissions

should be broad-based and more representative of the ethnic and gender composition of the society. There were calls for Parliamentary oversight committees in relation to the various Commissions. There should be judicial review of the appointments of the Commissions by the President and judicial review of breaches and irregularities in the exercise of their functions.

7.7.2.5 It was submitted that the Integrity Commission should be provided for in the Constitution.

7.7.3 Dimensions considered by the Commission

7.7.3.1 The Commission noted the concern that Commissions be independent, autonomous and free from political interference. It also addressed its mind to whether there was need to create new Constitutional Commissions in addition to the existing ones and whether to provide for some of the existing ones in the Constitution. The Commission felt that there would have to be criteria for assessing the need for a particular Commission and whether it should be created under the Constitution, by legislation, or a combination of both.

7.7.3.2 The Commission looked at the possibility of the establishment of a Human Rights Commission as another means of addressing human rights grievances.

7.7.3.3 It considered the creation of an Amerindian Land Commission, to create and confer titles to Amerindian lands and to protect the fundamental rights of the Indigenous Peoples.

7.7.3.4 Commissioners considered the inclusion of the Integrity Commission in the Constitution.

7.7.3.5 Another proposal considered was a Legal Services Commission, which would appoint other law officers of the State such as the Director of Public Prosecutions, the Solicitor-General, the Registrar of the Supreme Court, and their deputies. These others would be responsible to the Commission and the Judiciary. Alternatively, the Commission could be merged with the Judicial Service Commission as in Trinidad and Tobago.

7.8. Issue # 7: National Security

7.8.1 **1980 Constitutional provisions:** National Security is not addressed in the Constitution but in the Defence Act, Chapter 15:01 which makes provision for the President to appoint military officers. The President appoints the Commissioner of Police and the Deputy Commissioners of Police after consultation with the Police Service Commission (Article 211).

7.8.2 Submissions by members of the Public

7.8.2.1 It was submitted that the Constitution should provide that the basic duty of the security forces is to protect the citizens of Guyana and to respect their fundamental rights. The right of the police to detain persons for long periods needs to be addressed.

7.8.2.2 There is concern that the composition of the Security Forces does not reflect the ethnic composition of the society. Submissions on this issue cited the

racial imbalance in the Disciplined Forces as the cause of a lack of confidence in them. Proposals were made that the Forces should be ethnically and regionally balanced, although recognising the factors which had led to their being dominated by one ethnic group. In order to facilitate the achievement of ethnic balance in the Disciplined Forces many submissions advocated that there should be conscription. Other submissions asserted that appointments to the Defence Force and the officers' ranks should be guided by the principle of equal opportunity for all applicants and ranks, rather than by the application of any fixed quota in disregard of the principle of free choice.

7.8.2.3 Other submissions stated that the Police and the Guyana Defence Force (GDF) should be subject to Parliamentary oversight, called for the removal of the Heads of the Disciplined Services for mismanagement or incompetence, and required Parliamentary approval for the participation of elements of the GDF in any regional or multinational exercise within or outside of Guyana. The tri-partite role of the G.D.F. should be clearly stated in the Constitution, i.e., it is a national institution entrusted with ensuring national security, internal security and promoting national development. It should be stated that the G.D.F. comprises land, sea and reserve forces. The Defence Act should be retained. However, provision should be made in the Constitution for a Board with responsibility for the G.D.F. and military affairs.

7.8.2.4 Others proposed that Parliament should approve the appointment of the Heads of the Disciplined Services, with the requirement that this approval should be by a qualified majority. One proposal was that the secrecy of the ballots of the Security Forces should be safeguarded while another stated that a declaration of a state of emergency should only be made when the integrity of the State is threatened by war or invasion, and should be subject to Parliamentary control by way of a weighted majority. Deployment of the Forces overseas should be done by the President but with the approval of Parliament.

7.8.2.5 There should be a right to bear arms, especially for self-protection. The Police Complaints Authority must be strengthened and given greater investigative powers.

7.8.3 Dimensions considered by the Commission

7.8.3.1 The Commission noted that in most of the Constitutions available to them, there was only a broad reference to the role of the Security Forces. Consideration was given to adopting a similar approach in discussion of the functions of the Security Forces in Guyana. It was noted that the Constitutions of South Africa and Malawi have broad provisions in relation to the Army and Police.

7.8.3.2 The question of ethnic balance in the Security Forces was raised with a foreign expert, Professor Theodore Hanf, who advised that the balance should be sought at the leadership level rather than at the lower levels.

- 7.9.1 1980 Constitutional provisions:** The Constitution provides for citizenship of Guyana in Articles 41 – 49. More particularly, citizenship can be acquired by birth (Article 43); marriage (Article 45); or registration (Article 42). Article 44 also provides for a person born outside of Guyana to become a citizen of Guyana at the date of his/her birth, if at that date his/her father or mother is a citizen of Guyana other than by virtue of this Article. Article 46 provides for the deprivation of citizenship on the acquisition, or exercise of the rights of, citizenship of another country.
- 7.9.2 Submissions by members of the public:** Members of the public proposed that authority for conferring or depriving Guyanese of their citizenship should be vested in the Parliament.
- 7.9.3 Dimensions considered by the Commission**
- 7.9.3.1** In considering the issue against the background of the report of the relevant sub-committee, the Commission discussed whether any citizen ought to be deprived of his/her citizenship in the manner provided for in the Constitution. It considered, too, whether the authority entrusted to the President in Article 46 of the Constitution should be transferred to the Parliament, and whether that authority should be exercised by Parliament only after the passage of an affirmative resolution. It was suggested that a mechanism be put in place that determines whether a person is deprived of citizenship and that the recommendation should go to the President to be acted upon. It was

submitted that if authority remains with the President in relation to deprivation of citizenship, then any decision should be subject to appeal in Court.

- 7.9.3.2** The list of Commonwealth countries in Article 47(3), and whether it should be deleted, was considered.

7.10 **Issue # 9: Education**

- 7.10.1** **1980 Constitutional provisions:** There are two key non-justiciable Articles on education. Article 27 provides that "every citizen has the right to free education from nursery to university as well as non-formal places where opportunities are provided for education and training". Secondly, Article 28 states that "every young person has the right to ideological, social, cultural and vocational development and to the opportunity for responsible participation in the development of the socialist order of the society". There are no provisions in the Constitution which set out the purpose of education nor any which permit education to be provided by any agency other than the State. Despite the fact that Guyana is a multi-religious society, there are no provisions related to the role religious instruction should play in the education system.

7.10.2 Submissions by members of the public

7.10.2.1 Submissions called, among other things, for the Constitution to provide for the right to education and the right of religious bodies to establish and run schools at their own expense. However, it was submitted that there should be a general statement outlining the State's obligation to provide education. Persons felt that education should be compulsory to the age of 14 or 16 years old. There were also calls for the re-introduction of religious instruction in schools, for a Chair of Religion at the University of Guyana, and for religious teachings to be made compulsory in schools from nursery to university. Some called for the re-introduction of prayers from the primary school level. There were a number of submissions that called for Moral Education to be taught in schools, training colleges and every institution of learning. It was explained that Moral Education does not have to be religious; it can be humanistic.

7.10.2.2 Other submissions called for training in subject areas needed in the society and for a system to be put in place to accommodate youths who would like to be qualified in industrial fields or disciplines.

7.10.2.3 A number of submissions endorsed the Constitutional provision of free education from nursery to university. One submission proposed that the Constitution should provide for free education for all those who would like to go to University of Guyana. This submission added that in the event that the Government is unable to provide free university education but can provide student loans, students must be required to pay back fifty per cent of their loans and serve the Government for at least three years. Another

submission took cognisance of the inability of the State to fully meet its obligations under Article 27 of the Constitution, and proposed that the State's obligation should be to provide free education up to the Secondary level. Another submission called for Article 27 to be amended to read "Every citizen has the right to free education from Nursery to University which the State through reasonable measures must make progressively available and accessible".

7.10.2.4 On the issue of access to educational opportunities, some of the submissions called for persons with disabilities to be integrated into the education system. Others called for Amerindians to have the right to bi-lingual and bi-cultural education and for the native language of communities, along with environmental studies, to be taught in schools.

7.10.3 Dimensions considered by the Commission

7.10.3.1 The Commission considered the purpose of education, i.e., the contribution it could make to the survival of the society in an era of technological advancement and a world milieu which is intensely knowledge-based and competitive.

7.10.3.2 Because cooperation among the various ethnic groupings in the society is an undeniable imperative, the Commission also looked at the possibility of having cooperation and comparative religion included in the curriculum of the education system at the appropriate levels.

- 7.10.3.3** The Commission considered whether Article 27 should be retained, and if so, where it should be placed in the Constitution. It also considered whether Article 28 should be deleted.
- 7.10.3.4** The issue of provision for religious education, observance or participation, and the impact of this on the fundamental right to freedom of conscience, was examined. In this context, the Commission discussed whether the Constitution should specify or permit a national prayer to be used in educational institutions and on national occasions.
- 7.10.3.5** Access to education by vulnerable groups such people with disabilities and by minorities such as the Indigenous Peoples was considered.

7.11

Issue # 10: Environment

- 7.11.1** **1980 Constitutional provisions:** Article 25 of the present Constitution imposes a duty on every citizen "to participate in activities designed to improve the environment and protect the health of the nation". In addition, Article 36 imposes on the State the obligation, in the interests of present and future generations, to "protect and make rational use of its land, mineral and water resources, as well as its fauna and flora", and to "take all appropriate measures to conserve and improve the environment." These provisions are non-justiciable without legislative enactment.

7.11.2 Submissions by the public: One submission called for a Constitutional assertion that every one has the right to an environment that is not harmful to his/her health or well-being. There was also a call for a prohibition of all economic and other activities that involve "pollution of the environment or cause irreparable damage." Another submission called for "the punishment of people who contribute to the destruction of the environment", while yet another said that "the use of the environment should be sustained for the future." This submission also called for "a body to be set up to safeguard and to protect the environment against miners, both local and foreign." There were also suggestions that there should be a provision stating the necessity for the preservation and proper management of the forests, land, mineral and water resources for sustainable development. Thus, it was proposed that Article 36 be reformulated but remain a non-justiciable provision. In this regard the correlations between the Indigenous Peoples and the environment, and women and the environment, should be addressed. Principle 20 of the Rio Declaration on the Environment, to which Guyana is a signatory, should be considered in the formulation of any Constitutional provision. Laws should be enacted to support the Constitutional provisions.

7.11.3 Dimensions considered by the Commission

7.11.3.1 The Commission noted that while the provisions at Articles 25 and 36 of the 1980 Constitution were visionary, the subsequent development of the concepts of environmental protection and environmental rights had rendered those provisions inadequate. The Commission also addressed a deficiency

in the present provisions, viz., that they only addressed the problems of the physical environment, omitting other dimensions which would foster conditions allowing human beings both to be part of, and to enjoy, the natural environment.

7.11.3.2 Another aspect of the environment which the Commission considered was the preservation of the cultural plurality of the society. It took note of the danger of extinction of the various Amerindian languages, since they are now spoken mainly by the adult members of the Amerindian communities. The finding of a 1859 study by Charles Darwin that once a language becomes extinct it cannot be revived was referred to in expressing concern about the absence of bi-lingual education for Amerindian children.

7.11.3.3 Consideration was given to the placement of environmental provisions within the Constitution, i.e., in the fundamental rights section and also in the Preamble and guiding principles. The Constitutional provisions of other countries and international law were examined, as well as the necessity for enactment of legislation to support any provisions. Responsibility for environmental protection, rights to information and access to the Courts for redress were addressed.

7.12

Issue # 11: Religion

7.12.1 **1980 Constitutional provisions:** Article 145 (1) provides for the protection of freedom of conscience, which includes freedom of thought and religion,

freedom of the individual to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance. Article 145(2) provides that no religious community shall be prevented from providing religious instruction for persons of that community. There is no provision which allows a religious body to establish schools as had been provided for in the 1966 Constitution. Unlike the 1966 Constitution, the 1980 Constitution does not contain a specific reference to God.

7.12.2 Submissions by the public: Submissions proposed, among other things, a proclamation that the Guyanese people "in the main are God-fearing people", that God be acknowledged, and that religious teaching be re-introduced in schools. However, there were a number of submissions that stated a preference for Guyana being referred to as a secular State.

7.12.3 Dimensions considered by the Commission: The Commission noted that the secular nature of a State demands that, while the fundamental right to practise one's religion should be reaffirmed, nothing should be done that would make those who do not subscribe to any religion feel excluded. Consideration was also given to provisions outlawing vilification of the religion or beliefs of another. The Commission also recognised that while most Guyanese love and fear some Deity, this relationship was not reflected in the Constitution apart from the fundamental rights provision which guarantees the freedom to practise one's religion. It felt that the demand to restore religious education in schools collided with the reality that Guyana

is a multi-ethnic multi-religious society, and that no one should be subjected to any practice of a religion other than his/her own. This is the argument against the recitation of prayers in schools except where the pupils of that school attend because of their adherence to a particular religion. Therefore, provision for references to God in the Preamble was considered, though there were advocates for the reference to made in the description of the State.

CHAPTER 8

IMMEDIATE PURPOSES AND UNDERLYING PRINCIPLES OF THE RECOMMENDATIONS FOR A REVISED GUYANA CONSTITUTION

THE ROLE AND LIMITS OF CONSTITUTIONS

8.1 In their April 1998 Preliminary Report, the legal advisers to the Special Select Committee of the National Assembly to review the 1980 Constitution of Guyana define a Constitution in terms of its role in regulating the distribution of power: it is, they say, "in a sense a system of laws, customs and practices *regulating the distribution of power* (our emphasis) between organs of the body corporate" (Paragraph 8). They raise key questions about the parametres of Constitutions in terms of both content and time. Discussing "the limits to what the draft constitution can do and what could be left to political behaviour", they suggest that this issue "raises questions of the inclusiveness of a constitution on the one hand and the limits to judicial review on the other" (Paragraph 7). In their view, "the degree to which reliance is placed, consciously or unconsciously, on political behaviour or conventions" is a key consideration in how inclusive a Constitution is: "the effectiveness of conventions depends on long acceptance following numerous political and civil struggles." (Paragraph 10).

In the Anglo-American tradition, the experts argue, Constitutions consist largely of justiciable principles and rules, while many modern Constitutions have provisions that are intended to be non-justiciable and which are "administrative, advisory, hortatory, programmatic, educative or declaratory, rhetorical and ethical precepts." (Paragraph 12). The presence of these non-justiciable provisions in a Constitution gives them a sense of importance by entrenching them; as against this, it may give them a sense of finality in a changing environment and could become out of date. The experts point out that "a constitution is not a holy writ and provisions for periodic review should be provided." (Paragraph 13). "In short, the limit to any constitution is determined by the political environment and the process of constitution making." (Paragraph 14).

IMMEDIATE PURPOSES OF THE PROPOSED CONSTITUTION

- 8.2** The proposed Constitution is intended to contribute to deriving an immediate solution to the political crisis which gave rise to the Herdmanston Accord. Essential components of this will be its content and timing: following consideration by the National Assembly, comprehensive recommendations by the Constitution Reform Commission on mandatory issues provided in the Terms of Reference, as well as other issues raised by the public, will provide the framework for legal drafters to generate a revised Constitution in time for elections to be held by January 15, 2001.

- 8.3 Relatedly, the Constitutional reform process must lay the foundation for the Constitution to serve the general long-term purpose of shaping a functioning plural society (See Paragraph 8.7 below), and the commitment to do so must receive urgent and overt expression in the Constitution itself.
- 8.4 Other aspects of the immediate purpose relate to elements of the actual process of Constitutional reform. First, as we have seen, the Constitution is expected to be informed by an inclusive process - a popular involvement and participation in its making designed to counter the divisions and alienations in the society. In this sense, both immediate and long-term purposes are intended to be served by Section 6 (3) of the Constitution Reform Act, which summons the Commission to wide consultation. Secondly, Section 6 (5) of the Act seeks to contribute to inclusiveness by requiring that the Commission's report to the National Assembly be "inclusive of the proposals of any minority." To the extent that the Commission has been guided by this requirement (See Chapter 9), the way is open for the National Assembly, and potentially, the legal drafters, to be informed of, and to act upon, views which have not attracted consensus or a majority vote.

UNDERLYING PROPOSITIONS OF THE CONSTITUTION

- 8.6 The Commission has sought to ensure that its recommendations for revision of the Constitution are shaped by a number of propositions. The first of these is that *the Constitution is the overarching framework within which the society is to evolve, and should therefore embody the fundamental principles and constraints that are to be applicable; it should as far as*

possible be internally consistent. All the propositions which have guided the reform process were implied by the Terms of Reference which established the Constitution Reform Commission and are reflected in the written submissions to, and Public Hearings of, the Commission, as well as in the representations previously made to the Special Select Committee of the 6th Parliament. Based on an analysis and evaluation of the information gathered from these sources, several headings were developed to categorise the informing propositions of the Constitution.

8.7 **The Constitution and the Plural Society:** *The society that comprises the sovereign nation State of Guyana is a plural society, with ethnicity, race, and religion being the main tags of its pluralism.* The new Constitution must be imbued with characteristics which are both relevant and appropriate for the harmonious development and growth of a plural, multi-ethnic society in the modern world: "...it is dangerous for the practice of democracy to be dissociated from the debate on multiculturalism and the struggle against social exclusion and inequality. If social and economic divides increase, attempts to build a plural, democratic and multicultural society will remain an illusion." (Cholmondeley, 1999).

8.8 **The Constitution, the Sovereign Nation-State, Globalisation and the Impact of Information Technology:** *The concept of the sovereign Nation-State is fundamental to the Constitution Reform Commission's*

deliberations. However, this is subject to the caveat that it must be interpreted and applied in accordance with the realities and implications of globalisation and the burgeoning of information technology. As the Preface states, the modern world is characterised by the globalisation of capital, production, markets, labour and culture at a pace fueled by and fueling phenomenal technological change, particularly in the area of information. The call in Paragraph 2 of the Commission's Terms of Reference for the new, reformed Constitution to provide for the current and future rights, duties, liabilities and obligations of the Guyanese people is, in the first place, a call to bring the Constitution in line with the emerging trends and new economic and political realities. In this sense, the new Constitution is to be a preparation for, and a response to, the new world system.

8.9

The Constitution and the Collective: *Given the weight that democracy and capitalism place on the interests of the individual, the new Constitution must be conscious of the need for collective interests to be served. A main characteristic of the new world system is the collapse of world Socialism and the rise of the United States as the world's sole superpower. Globalisation means by definition that economies are shaped largely by global market forces. Nationally, the private sector is defined as the engine of growth with a reliance on individual initiative, entrepreneurship and strategic alliances; and State dominance of the economy is no longer a favoured option although the State is still held responsible for the overall direction of the nation. Globalisation is leading to the creation of regional*

trading blocs, the increased power of the transnational corporation, and the erosion of national sovereignty, particularly for smaller and poorer countries. In many of those countries, too, an upsurge in the migratoriness of labour in personal pursuit of material survival or well-being is heightening brain drain and the fragmentation of families and communities.

8.10 **The Constitution and Empowerment:** *The conduct of the affairs of the nation should be based on a principle of inclusiveness of individuals and interest groups in decision-making about matters pertaining to their welfare. As key elements of empowerment, the principles of transparency, accountability, justice, equality and the rule of law should pervade all aspects of the nation's affairs.* While at the time of the drafting of the 1980 Constitution the State and political parties enjoyed hegemony, the modern world relies on an active civil society. This shift has seen a general movement of power away from the centre, as witnessed by the growth of the Non-Governmental Organisation sector and the environmental movement, for example. Indigenous Peoples, women, people with disabilities, youth, children and their advocates have demanded and won rights enshrined in various international agreements. The Terms of Reference of the Constitution Reform Commission explicitly recognise the rise of civil society when in Paragraph 3 (1), they call for the Commission to address the issue of fundamental rights and freedoms "with specific but not exclusive reference to the CARICOM Charter of Civil Society".

8.11

The Constitution and Reconciliation: *The motto "One people, one nation, one destiny" is acceptable as an achievable goal of the plural society, does not require the obliteration of pluralism for its achievement, but does require the establishment of institutions and mechanisms to ensure the evolution of cooperation.* A dominant feature of the modern world is the released assertiveness of religious and ethnic difference. In apparent paradox, the world is moving simultaneously towards a global culture and a highlighting of religious and ethnic difference as the defining means of self-identity. In Guyana, as the Report has argued, ethnic sensitivities and insecurities are at the core of the conflicts which led to the Herdmanston Accord. The central role of the proposed Constitution in addressing this question is emphasised by the fact that in the Herdmanston Accord, race is the only issue specifically mentioned under the heading, "Constitutional Reform". Paragraphs 3. (5) and 3. (6) of the Terms of Reference also speak directly to race relations. The proposed Constitution must therefore include principles and mechanisms for the avoidance and resolution of conflict that is, it must be an adequate basis for designing measures to avoid a repetition of the circumstances which led to the Herdmanston Accord. The need for this is underscored by the opinion of the legal experts that the degree to which a society can rely on "political behaviour or conventions" depends of the effectiveness of those conventions, and that "the effectiveness of conventions depends on long acceptance following numerous political and civil struggles." (Preliminary Report, Paragraph 10). The conflicts that necessitated the Herdmanston Accord confirm the need

for Guyana to rely on an appropriately-designed Constitution, given the demonstrated ineffectiveness of its political conventions.

8.12 **The Constitution as a Process:** *The Constitution as a framework is not considered as immutable and must be so constructed as to be capable of evolving in step with the wishes and direction of the society, and in response to changes in the national and international environment.* For the new Constitution to address the “current and future rights, duties, liabilities and obligations of the Guyanese people”, it must be subject to periodic changes and amendments when circumstances demand. It must be so sensitive that it is responsive to change. It must contain mechanisms for self-renewal. In other words, inherent in it must be characteristics that establish it as part of a continuing process that is dynamically stable and evolutionary.

8.13. **The Constitution and Accessibility:** *A Constitution which addresses the needs of the people must clearly be accessible to the people.* A major deterrent to wider popular participation in the phase of Constitutional reform leading up to the present Report was the unfamiliarity of wide sections of the public with the provisions of the 1980 Constitution, which was clearly not concerned with ease of access. The language and structure of the new Constitution must therefore be simple, unambiguous and understandable by all, that is, the form of the new Constitution should facilitate ease of

interpretation and application. Specifically, language must be clear and specific in highlighting the scope and limitations of the rights, duties, obligations, and liabilities of the various players in the society, e.g., political parties, corporate entities, interest groups in civil society, trade unions, individuals, the State and State organs. In terms of its structure, the Constitution must be comprehensive in addressing the needs of the present and future but must do so without clutter.

8.14 The mandate given to the Commission in relation to recommendations was as follows:

Upon the conclusion of its deliberations the Commission shall prepare a Report, *inclusive of the proposals of any minority*, giving details of its recommendations and the reasons therefor in a clear and comprehensive manner to enable the Constitution to be drafted therefrom (Constitution Reform Act 6(5), our emphasis).

Minority proposals are included at the end of Chapter 9.

8.15 In the time at its disposal, the Commission chose to direct its attention to those provisions of the 1980 Constitution which govern the relations between the central organs of the State, such as the President and the National Assembly; between the central organs and local government bodies; and between the State and the citizens. While many submissions called for the repeal of the present Constitution in its entirety, the Commission saw its

task as principally one of review and reform. But considered in their totality, the recommendations for reform hold out the promise of a significant transformation of the system and methods of governance in the direction of inclusiveness, transparency and accountability, and give a new and proper prominence to the rights of the people.

8.16 As stated in the Secretary's Preface to this Report, " the Commission's proposals for a redrafting of the Constitution had to conform to a hierarchy of recommendations, perhaps best described as follows:

- (i) Proposals that are complete in the sense of being stated in implementable detail, with implementation being dependent only on final approval of the National Assembly.
- (ii) Proposals that were not ready for implementation in the sense mentioned in (i) above, but for which the principles that should be adhered to were clearly specified as those to which an implementable system had to be made to conform.
- (iii) Proposals that were less complete than those mentioned in (ii) above, but for which the most fundamental criteria to be satisfied had been identified, even though further determinations would be required on both principles and other criteria prior to implementation.
- (iv) Proposals that emanated from the incapacity of the Commission to unravel intractable issues, and that therefore comprised

recommendations about areas for further research to be conducted by appropriate experts.”

8.17 The order in which the recommendations are presented is a departure from the various working categorisations employed by the Commission in the course of its deliberations. Instead, the sequence is predicated on a logic that asserts the primacy of the rights of citizens, from which all other systemic considerations flow.

8.18 In keeping with its statutory obligation to provide reasons for its proposals, each recommendation is preceded by a brief rationale. A more elaborate and detailed record of the argumentation surrounding the recommendations will be provided at a later date in a companion volume to the Report.

8.19 Finally, in the interests of comprehensiveness and accuracy, certain recommendations recur under more than one head in Chapter 9. For example, the recommendation that the protection of indigenous Peoples' rights be enshrined as a fundamental right recurs under the heads "Indigenous Rights" and "Fundamental Rights", although in the latter it is treated in greater detail.

PART IV

**RECOMMENDATIONS
AND
RATIONALE**

CHAPTER 9

RECOMMENDATIONS, ARGUMENTS AND VOTING

9.1

PREAMBLE TO THE CONSTITUTION

9.1.1 **Relevant articles:** Not applicable

9.1.2 **Rationale for recommendations made**

9.1.2.1 The Preamble to the existing Constitution is marked by language that will be entirely out of keeping with the simple and easily-accessible language in which the reformed Constitution is required to be written. Reflecting and constrained by the spirit of the time in which it was crafted, it has not worn well, especially when we consider the speed and scope of the changes that have so profoundly transformed the global environment over the past two decades.

9.1.2.2 The reform of the Constitution provides the opportunity not only to recast the Preamble in more appropriate language, but also to lay emphasis on Guyana's special concerns and aspirations as a multi-cultural society in a rapidly changing world on the eve of the new millennium. Responding to the concerns of citizens of all faiths and of the religious organisations, the Commission decided to restore the Deity to the Constitution and to ask protection for our people in the Preamble, at the very threshold of the Constitution.

9.1.3 Specific recommendations

9.1.3.1 The writer of the Preamble shall:

- (1) Extract the ideas contained in the Working People's Alliance's draft Preamble submitted to the Special Select Committee on Constitutional Review on May 7, 1997. (See Appendix XVI).**
- (2) Take into account the fact that Guyana is a plural society, surviving and progressing in a world of globalisation dominated by information technology.**
- (3) Provide for the inclusion of the idea of cooperation.**
- (4) Include reference to the Indigenous Peoples.**
- (5) Include the protection of the environment.**
- (6) Include the rule of law.**
- (7) Include the words "May God Protect our People".**
- (8) Include unchanged the following words, endorsed by more than 7500 youth in a signed petition entitled "Youth Campaign for Constitutional Reform: Statement by Young People for inclusion in the Preamble to Constitution," which was formally presented to the Commission on June 16, 1999:**

The future of Guyana belongs to its young people who aspire to live in a safe society which respects their dignity, protects their rights, recognises their potential, listens to their voices, provides opportunities, ensures a healthy environment, and encourages people of all races to live together in harmony and peace.

9.1.3.2 The inflated language of the Preamble shall be replaced by simple, unpretentious language that is in harmony with the tone and style of the above words of the young people.

9.1.4 **Voting: Consensus**

9.2 FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL.

9.2.1 **Relevant Articles: [40], 138-149, [153].**

9.2.2. Rationale for the recommendations made

9.2.2.1 Since the framing of the fundamental rights section of the Constitution in 1980, the labours of human rights advocates in Guyana and across the world have led to the widening and deepening of the rights agenda to include new rights, such as the rights of people with disabilities, children and of Indigenous Peoples, and the strengthening of the protection for rights which have gained somewhat more currency, such as the rights of women. It is recommended that certain of these "new" rights, in so far as they are relevant to our situation, be enshrined in the reformed Constitution.

9.2.2.2 The *proviso* to Article 153 which permits the High Court to decline jurisdiction "if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law" should be removed, so that no judge might have Constitutional justification for not attending to the complaints of citizens that their rights have been violated. Access to the Court is also restricted by the *locus standi* provision which denies access to any but the aggrieved party. The recommendations thus seek to enlarge the

areas of rights which are to be protected in this section and to make the Court more accessible.

9.2.2.3 There was a view among some members of the Commission that the rights guaranteed in the present Constitution are subject to too many exceptions and qualifications, which have the effect of nullifying their resonance and failing to empower the citizens. Instead, these Commissioners argued, the provisions guaranteeing the fundamental rights under a revised Constitution should be declared in absolute terms without specified exceptions and qualifications, leaving it to the Courts to decide on the extent of limitations on the enjoyment of those rights. Others urged caution, pointing to the absence of a Court dedicated to Constitutional issues, the familiarity of our citizens and Judiciary with the exceptions and qualifications, and the undesirability of leaving too wide a latitude of interpretation to the Court. A third view advanced was that the limitations should remain but an overarching proportionality clause should be included to guide those responsible for interpreting the constitutional reasonableness of the limitations.

9.2.3 Specific recommendations

- 9.2.3.1** (1) All Courts in Guyana are enjoined to pay due regard to international law and to international Conventions and Charters to which Guyana has acceded when dealing with matters involving alleged violations of the Fundamental Rights enshrined in the Constitution.
- (2) Any State action intended to ameliorate the condition and status of disadvantaged or historically disadvantaged groups in a society shall

not be considered in derogation of the non-discrimination provisions of the Constitution.

9.2.3.2 The following shall be provided for in the Fundamental Rights section:

- (1) The right to protection against discrimination on the grounds of sexual orientation, race, sex, religion, gender, ethnicity, marital status, physical and/or mental disability, political opinion, colour and age.
- (2) The right to protection for arrested and detained persons.
- (3) The right to just administrative action.
- (4) The right to protection of Indigenous culture and way of life, which should include language.
- (5) The right of citizens to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
 - prevent pollution and ecological degradation;
 - promote conservation;
 - secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
- (6) The right of citizens to participate through their co-operatives, trade unions and socio-economic organisations in the State's management and decision-making processes.
- (7) The right to inheritance.
- (8) The right to work.

- (9) Equality of rights and status of children born out of wedlock.
- (10) The inalienable rights of children, such as the right to life, equal treatment before the law, freedom of expression and protection from all forms of discrimination, as proposed in the Convention on the Rights of the Child these be included in the Equality provisions.
- (11) The entitlement of all children to parental financial maintenance, and shelter. In the event that this cannot be provided by parents or guardians, this support should be provided by the State.
- (12) The entitlement of all children to compulsory free primary education and thereafter, to free education up to and including the secondary level.
- (13) The entitlement of all children to free primary health care.
- (14) The right of all children to be protected from exploitative labour practices, punishment and abusive practices (including sexually abusive practices, which would be hazardous to or interfere with their physical, mental, moral or emotional health).

In addition:

- (15) The provisions for women's equality contained in Article 29 should be retained, but be made justiciable fundamental rights. Article 29 states:
 - 1. *Women and men have equal rights and the same legal status in all spheres of political, economic and social life. All forms of discrimination against women on the basis of their sex are illegal.*
 - 2. *The exercise of women's rights is ensured by according women equal access with men to academic, vocational and professional training, equal opportunities in employment, remuneration and promotion, and in social, political and cultural activity, by special labour and health protection measures for women, by providing conditions enabling mothers to work and by legal protection and material and moral support for mothers and children, including paid leave and other benefits for mothers and expectant mothers.*

These principles should be reformulated to ensure that the provisions enshrine women's rights to full and equal protection of, benefit from and treatment before, the law.

- (16) Article 142 which provides protection from deprivation of property should be amended to include the words "prompt and adequate compensation" in the appropriate clause.
- (17) Article 145 which provides for protection of the freedom of conscience should be amended to include protection against vilification of one's religion.
- (18) Article 146 which provides for protection of the freedom of expression should be amended to exclude hate speech from such protection.
- (19) Article 147 which provides for protection of the right to assembly and association should be amended to include the right to demonstrate lawfully.
- (20) Trade Unions and employers shall have the right to conclude the collective labour agreements that shall be legally binding.
- (21) The right to strike shall be enshrined, subject to reasonable limitations of the law.

9.2.3.3 Article 153 (1) of the 1980 Constitution reads as follows:

Subject to the provisions of paragraph (6), if any person alleges that any of the provisions of articles 138 to 151(inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

Provision should be made for the removal of the impediments to access to the Court on Constitutional matters by -

- (1) adding the following after the words "in relation to the detained person" :

anyone acting on behalf of another person who cannot act in his/her own name; anyone acting as a member of, or in the interest of, a group or class of persons; an association acting in the interest of its members.

- (2) amending 153 (2) by deleting the proviso:

Providing that the High Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the persons concerned under any other law.

9.2.3.4 It shall require a vote of two-thirds of the members of the National Assembly to add a fundamental right, and a majority vote in a referendum to remove a fundamental right.

9.2.3.5 It is recommended that:

- (1) The limitations to Fundamental Rights enshrined in the 1980 Constitution should be retained.
- (2) Limitations which may be imposed on the Fundamental Rights recommended by the Commission should take account of the relative and progressive nature of such rights, including their affordability and their relevance to the socio-cultural and economic level of development of the society.
- (3) The section on Fundamental Rights in the Constitution should be set out in language which is easily comprehensible to all citizens as far as this is possible.

9.2.4 Voting:

The vote on the five recommendations was as follows:

- Recommendation 9.2.3.1(1), by majority vote.
- All other recommendations, by consensus.

9.3

INDIGENOUS RIGHTS

9.3.1 Relevant Articles: 142(b)(i), 149(6)(c)

9.3.2. Rationale for the recommendations made

9.3.2.1 The Commission was of the view that the Indigenous People, the original inhabitants of Guyana, had special rights which should be elevated and enshrined in the Constitution. Convinced of the need to preserve and foster our cultural diversity, Commissioners sought to ensure that the culture and way of life of the Indigenous People be given Constitutional protection.

9.3.2.2 The complex issue of land rights was carefully considered in its several dimensions, including the extent to which the acknowledgment of the land rights of one group might affect the status of the demands of any other group. The issue of ancestral rights of African-Guyanese was brought forward as one such instance. It was finally decided to include the land rights question among the matters to engage an Indigenous Peoples Commission (IPC).

9.3.2.3 The question of the reform of the Amerindian Act was debated by the Commission and it was decided that this matter should engage the attention

of the IPC. The Commission accepted the argument that the customary institutions of the Indigenous Peoples should be granted greater autonomy and serve as the vehicles of empowerment, consistent with the principles of self-determination and the devolution of power away from the centre. The village councils and the Council of Tousehaus were identified as such institutions. It was felt that the scope and authority of these bodies and their relation to the other organs of State should be considered and pronounced on by the Indigenous Peoples Commission.

9.3.3 Specific recommendations

- (1) That there should be reference to the Indigenous Peoples in the Preamble of the Constitution.
- (2) That the rights of the Indigenous Peoples should be placed under Fundamental Rights and provision made in the Fundamental Rights section for the protection of Indigenous culture and way of life, which should include language.
- (3) That self-determination should be recommended on the basis of the concept of devolution of power to institutions within the local government system.
- (4) That an Indigenous Peoples' Commission be established to look into and make recommendations for specific issues including: land rights; improvements in legislation affecting Amerindians; the Amerindian Act; the scope and authority of the Council of Tousehaus; empowerment with regards to local government and the Amerindian village council system; economic and education policy; and cultural protection and preservation.

9.3.4. Voting: Consensus.

9.4.1 Relevant Articles: 27, 28, 30

9.4.2 Rationale for the recommendations made: The Commission has accepted the main principles contained in the Convention on the Rights of the Child as the guiding framework for the development of the child.

9.4.3. Specific recommendations

- (1) Enforceable provisions for rights of children should be included in the reformed Constitution.
- (2) The inalienable rights of children, such as the right to life, equal treatment before the law, freedom of expression and protection from all forms of discrimination, as proposed by the Convention on the Rights of the Child, shall in principle be included in the Equality provisions to be contained in the Fundamental Rights section.
- (3) All children born in Guyana to Guyanese parents are entitled to a name, and shall be entitled to citizenship of the Republic of Guyana.
- (4) All children shall be entitled to parental financial maintenance, and shelter. In the event that this cannot be provided for by parents or guardians, this support should be provided by the State.
- (5) All children are entitled to compulsory free primary education and thereafter to free education up to and including the secondary level.
- (6) All children are entitled to free primary health care.
- (7) All children shall be protected from exploitative labour practices, punishment and abusive practices (including sexually abusive practices), which would

be hazardous to or interfere with their physical, mental, moral or emotional health.

- (8) There shall be a Constitutional Commission for the Promotion and Protection of the Rights of the Child.
- (9) Measures should be taken to protect children from the illicit use of narcotic drugs and psychotropic substances.
- (10) For the purposes of the above mentioned provisions, a child shall be defined as any person below the age specified by national legislation dealing with the matter, but in no case shall a person be above the age of 18 years be defined as a child.

9.4.4. Voting: Consensus

9.5. GENDER RIGHTS

9.5.1. Relevant Article: 29

9.5.2. Rationale for the recommendations: There needs to be strengthening of the provisions relating to gender equality in the Constitution to help enforce a number of the aspects of the existing legislation, and to focus attention on further developments required for the society to achieve its social and economic goals. The following quotation from Kathleen Mahoney summarises the concerns with which the Commission's recommendations deal: *"No country in the world treats its women as well as its men. Systemic and widespread inequality and discrimination, often embedded in the national laws of countries, creates double*

jeopardy and double standards for women from all social classes, cultures, and races, in all societies."

9.5.3. Specific recommendations

- (1) The provisions for women's equality contained in Article 29 should be retained, but be made justiciable, fundamental rights (See 9.2.3.2(15) for Article 29). The principles should be reformulated to ensure that the provisions enshrine women's rights to full and equal protection, benefit and treatment before the law. Further, there should be principles to ensure that women are not discriminated against on the grounds of their sex, and that legislation address societal practices which are discriminatory to women, including: sexual abuse, harassment, violence, and the non-payment equal pay for work of equal value to women and men.
- (2) The language of the Constitution must be gender-neutral.
- (3) There should be an enshrined general principle which encourages women's participation in public decision-making so that national decisions which affect women significantly can be informed by them. Parliament should be required to take measures designed to increase women's participation in the various processes and fora of decision-making in society, including the National Assembly itself, to a level that takes into account the proportion that women form of the society.
- (4) The Constitutional provisions on the electoral systems, including electoral lists, should be informed by the inclusion of requirements for gender, as well as geographical, representativeness.

- (5) There should be a Constitutional Commission for Women and Gender Equality.

9.5.4 Voting: Consensus.

9.6

THE PRESIDENCY

9.6.1 Relevant Articles: Chapter IX (Articles 70, 90); Chapter X (Articles 106, 107, 120); Chapter XI (Article 128); Title 2 (Article 170); Title 4 (Article 179, 180); Title 6 (Article 197); Title 9 (Article 225, 227); Title 10 (Article 231, 232).

9.6.2 Rationale for the recommendations:

9.6.2.1 The recommendations were generally informed by the need for attenuation of the wide range of powers given to the President by the Constitution.

9.6.3 Specific recommendations:

9.6.3.1 Article 90 - Qualifications for election

- (1) A person shall hold the office of President for a maximum of two (2) terms and those two terms shall be consecutive.
- (2) The President should be a Guyanese by birth (soil or blood) and should be continuously residing in Guyana for a specified period before elections.

9.6.3.2 Article 106 - The Cabinet

The following should be included in Article 106: "the Cabinet shall be collectively responsible to Parliament for the control of the Government of Guyana. It shall be provided that the Cabinet, including the President, who is part and parcel of the Cabinet as provided for in article 106, must resign if the government is defeated by a majority of all the members of the National Assembly on a vote of confidence."

9.6.3.3 Article 107 - Allocation of portfolios

This article should be amended to read as follows: "The President, who shall have Ministerial responsibility for subjects and departments not assigned to Ministries shall be accountable to the National Assembly for the subjects and departments so retained. The President shall assign or appoint a Minister or Parliamentary Secretary to be answerable to the National Assembly for such matters not so assigned."

9.6.3.4 Article 120 - Constitution of Offices

Provision should be made to add the following words to article 120 immediately after the word "appointment": "Save that where such offices involve expenditure chargeable to the Consolidated Fund such expenditure shall be subject to the approval of the National Assembly."

9.6.3.5 Article 128 -Appointment of Justices of Appeal and Pilsne Judges
The appointment of all Judges by the President shall be on the basis of the advice of the Judicial Service Commission.

9.6.3.6 Article 170 - Mode of Legislation
With reference to paragraph (5) of article 170, the power of the President to dissolve Parliament under this article should be removed. Further, where the President refuses to give his/her assent to a Bill in accordance with paragraph (5), the Bill shall stand assented after a specified period of time.

9.6.3.7 Article 179, 180 - Removal of President for violation of Constitution or gross misconduct and Removal of the President on the grounds of Incapacity.

These Articles establish a mechanism designed to put the President out of reach of removal. They are over-protective. It is recommended that although the procedures should ensure that a substantial majority of the National Assembly should be required to impeach the President on the findings of an independent Tribunal, they should not require such extremely weighted majorities as to make the prospect of impeachment unattainable.

9.6.3.8 Article 197 - Tenure of Office of Judges
The extension of the tenure of a judge shall be done only on the basis of the advice tendered by the Judicial Service Commission.

9.6.3.9 Article 225 - Removal from office of certain persons

The appointment of a Tribunal under Article 225 dealing with removal from office of certain persons shall be done on the basis of the advice tendered by the Judicial Service Commission.

9.6.3.10 Article 231 - Certain questions not to be enquired into in any court

Article 231 provides that where the President or any other person or authority is required to perform any function in accordance with the advice or recommendation of, or after consultation with or concurrence with another person or authority, the fact of whether such advice or recommendation was received, whether such consultation or concurrence has taken place, shall not be enquired into in any court of law.

Delete Article 231 from the Constitution.

9.6.3.11 Article 232 (7) - Interpretation

This provision confers on the President the power to abolish any public office, and the power to remove any public officer in the public interest.

Delete Article 232 (7) from the Constitution.

9.6.3.12 All Articles

Wherever the word "consultation" is used in relation to the decision making by the President, that word should be replaced by the phrase "meaningful consultation."

9.6.4 Voting

The votes for the recommendations above were as follows:

Recommendation 9.6.3(1) 1, by majority.

In Favour 12; Against 4; Abstained 0.

In Favour:	Mr Alexander; Mr Kirton; Mr Parris; Mrs Shury; Dr Anthony; Hon. Reepu Daman Persaud; Mr Ramkarran; Mr Fitzpatrick; Ms Trotman; Ms La Rose; Rev. Haley; Dr Roopnaraine.
Against:	Mr Collins; Mr McDoom; Mr Mahadeo; Mr V. Persaud.

Recommendation 9.6.3 (1) (2), by majority.

In Favour 12; Against 0; Abstained 3

In Favour:	Mr Collins; Mr Bernard; Mr Alexander; Dr Roopnaraine; Mr Parris; Ms Trotman; Mr Bhookman; Ms La Rose; Rev Haley; Mr V. Persaud; Mr Mahadeo; Mr Jaffarally.
Abstained:	Mrs Shury; Hon. Reepu Daman Persaud; Dr Anthony

Recommendation 9.6.3 (11), by majority.

In Favour 11; Against 0; Abstained 5

In Favour:	Mr Collins; Mr Alexander; Mr Kirton; Mr Parris; Dr Roopnaraine; Mr Fitzpatrick; Mr McDoom; Ms Trotman; Ms La Rose; Rev. Haley; Mr V. Persaud.
Abstained:	Mr Ramkarran; Hon. Reepu Daman Persaud; Mrs Shury; Dr Anthony; Mr Mahadeo.

Recommendations 9.6.3.2 - 9.6.3.10, and 9.6.3.12 by Consensus

- 9.7.1** **Relevant Articles:** 51-58, [65-70, 155-158, 164-172]
- 9.7.2** **Rationale for the recommendations made**
- 9.7.2.1** The Constitution Reform Commission Act directed the attention of the Commission to the functioning of the National Assembly and to “ any measure which can enhance its capacity and effectiveness as a deliberative body.”
- 9.7.2.2** One such measure which could enlarge the responsibilities of the Assembly and the scope of Parliamentarians would be the activation of the Standing Committee system. A strong Standing Committee system would enable Parliament to exert a measure of influence and control over the Executive, thereby also familiarising the Parliamentarians more intimately with the functions of Government. It was felt that a second chamber, in the particular circumstances of Guyana would provide the opportunity for the consideration of national issues away from the hothouse of an adversarial political lower chamber. The Senate or Upper House could serve another useful purpose to provide a vetting mechanism for appointments to constitutional offices in a more purely deliberative environment.
- 9.7.2.3** Reservations were expressed on the Commission to the effect that it would be undesirable to have non-elected members of an Upper House being placed in a position where they might obstruct the decisions of the elected representatives of the lower house.

9.7.3 Specific recommendations

9.7.3.1 (1) There shall be established Sector Standing Committees of the National Assembly which will have responsibility for the scrutiny of all areas of Government policy and administration. These responsibilities can be allocated among the following Standing Committees:

- (i) Natural Resources
- (ii) Economic Services
- (iii) Foreign Relations
- (iv) Social Services

(2) The Chairperson and Deputy Chairperson shall come from opposite sides of the House.

9.7.3.2 It is recommended that Parliament should consider the option of establishing an Upper House consisting of representatives of each Region and civil society. Such a second chamber should have its power carefully defined so that it would not be able to frustrate the will of the elected Lower House, and would be prevented from initiating money Bills or Bills aimed at altering the Constitution.

9.7.4 Voting:

Recommendation 9.7.3 (1), Consensus

Recommendation 9.7.3 (2), by majority.

In Favour: 14; Against: 2; Abstained: 2

In Favour: Mr Kirton; Dr Roopnaraine; Mr DeSantos;
Mrs Shury; Mr Fitzpatrick; Ms Trotman;
Ms La Rose; Mr Bhookmohan; Rev. Haley;
Mr Mahadeo; Mr V. Persaud; Dr Anthony;
Hon. Reepu Daman Persaud; Mr Alexander.

Against: Mr Parris; Mr Collins

Abstained: Mr Bernard; Mr Ramkarran.

9.8

LOCAL GOVERNMENT

9.8.1 **Relevant Articles: 71-78**

9.8.2 **Rationale for the recommendations made**

9.8.2.1 The NCLDO and the Supreme Congress of the People are incompatible with the local government structure, the electoral system, and system of government being recommended for the revised Constitution, and the Supreme Congress of the People has never worked well.

9.8.2.2 The general objective of the recommendations is to devolve authority to communities for their local affairs, thereby fostering inclusionary democracy and collaboration across ethnic barriers.

9.8.3 **Specific Recommendations**

(1) Rewrite Articles 82-88 to remove the references to Socialism.

- (2) **Revise the text to fit in with the content of the recommended new Chapter II as it relates to the principles of local government, and with the local government structure being recommended.**
- (3) **Abolish the NCLDO and the Supreme Congress of the People.**
- (4) **The Constitution should enunciate on the autonomy of local government bodies.**
- (5) **The Constitution shall specify that RDCs, NDCs, and municipalities are mandatory local government organs, and shall provide for their creation. It should also specify that Parliament should provide for the establishment of village/community councils, which would be activated as quasi local government bodies if the people of those communities so request.**
- (6) **The Constitution should provide for Parliament to establish a Local Government Commission which should be empowered with staffing, regulatory and dispute resolution functions.**
- (7) **The Constitution should provide for legislation which would allow for the lower tier of local government to be represented at the tier immediately above.**
- (8) **The Constitution should provide for the electoral system at the levels of local government below the regions to be built upon the pillars of representativeness, proportionality and accountability to the electorate. (There might be need for this provision to be dated, in terms of its implementation, because of the preparatory work which is required).**

- (9) The Constitution should provide for the electoral system, at the levels of local government below the regions, to provide for the involvement of individuals and voluntary groups in addition to political parties.
- (10) The Constitution should provide for legislation for the formulation and implementation of objective criteria for the purposes of the allocation of resources to, and the garnering of resources by local authorities.
- (11) The Constitution should provide for the functions of the Auditor General to include the auditing of the accounts of local government bodies.

9.8.4 **Voting** All by consensus.

9.9	THE JUDICATURE
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9.9.1 **Relevant articles:** 123-133, 134, 198, 199.

9.9.2. Rationale for the recommendations made

9.9.2.1 The Judiciary is the citizens' chief protector against oppression or mistreatment by the State. It must therefore be, and be seen to be, as free as humanly possible from Executive pressure and influence. While it is true that independence of spirit is an individual quality, the administrative structures of the judicial system should reflect and sustain its independence.

Thus, for example, the Judiciary should not be in a position where it has to negotiate or make representation continually to the Executive concerning the emoluments of judges and their staff or other administrative matters.

9.9.2.2

The Registrar of the High Court, who is its Chief Administrative Officer, currently relates on staffing matters not to the Chief Justice, but to the Public Service Minister. This reliance of the judicial administration on the Public Service Ministry does not enhance the prospects of achieving maximum judicial independence. The appointment and promotion of judges should be seen to be free of party political influence. Our present party political system is, as a matter of democratic desirability, inevitably inter-related to both an Executive and a Parliamentary system. It is the political party that devises a programme of governance and seeks electoral support for it. It is also the political party that, once in office, ensures both in and out of Parliament that the Executive in power respect and implement that programme. In that sense the party has a direct interest in affairs of State. But the appointment of a judge should not be placed on an equal footing with the appointment of say, a Minister of Finance or of Home Affairs. The appointment of a judge should be a matter not for political party consideration but for consideration of an independent Commission.

9.9.3 Specific recommendations

9.9.3.1 Principles

- (1) The Judicial system should be independent and free from official influence and control.

(2) The appointment and promotion of Judges should be removed, as far as possible, from all party control.

9.9.3.2 Autonomy of the Judicial System: The Judicial system should be administratively autonomous and should be funded by a block vote out of the Consolidated Fund. The system should be operated in accordance with the practices of sound financial and administrative management by such rules and regulations as approved by Parliament.

9.9.3.3 Appointment of Registrar, Assistant Registrar and Officers of the High Court: Provision must be made for the Judicial Service Commission, in addition to its present responsibilities, and not the Public Service Commission, to be responsible for the appointment of the Registrar and any professional officers of the Supreme Court Staff.

9.9.3.4 Appointment of Judges: Appointment of all judges shall be in accordance with the advice of the Judicial Service Commission (JSC) and Article 128 should be strengthened to ensure that the President appoint the person or persons recommended by the JSC. The same rule shall apply in the appointment of a Tribunal under Article 225 and the Article should be amended accordingly.

9.9.3.5 Appointment of the Chancellor and Chief Justice: The Chancellor and Chief Justice should be appointed through a consensual mechanism.

9.9.3.6 Extension of Tenure: The extension of tenure of a judge shall also be done in accordance with the advice tendered by the JSC.

9.9.3.7 Decisions by Judges: Parliament should give consideration to providing for a time within which judges should give their decisions. Persistent failure to do so should constitute misbehaviour for the purpose of Article 197(3).

9.9.3.8 Caribbean Court of Appeal: Provision should be made for Guyana to accede to the Caribbean Court of Appeal.

9.9.3.9 Part-time Judges: Provision should be made for part-time judges.

9.9.3.10 Retirement Age: The Constitution should be amended to provide for the retirement of a Puisne Judge at the age of 65 years and a Justice of Appeal at the age of 68 years, without an extension of service in both cases. This should apply only to judges appointed after the Constitution is amended.

9.9.3.11 Misbehaviour: Article 197 (3) should be amended to include a more detailed description of "misbehaviour" but not before the Commission has conferred with the Legal Experts.

9.9.3.12 Retired Judges Practising at the Bar: It is undesirable for retired judges to practise at the Bar, and consequently due consideration must be given to raising the level of their emoluments and pensions.

9.9.4. Voting

Except for Recommendation 3, which was decided by majority (17 to 1), all other recommendations were by consensus.

Those present voted as follows for Recommendation 3:

In Favour: Mr. Ramkarran, Mr. Parris, Mr. Alexander, Rev. Haley, Dr. Roopnaraine, Mr. Collins, Mr. Bhookmohan, Ms. La Rose, Ms. Trotman, Mrs. Shury, Hon. Reepu Daman Persaud, Mr. DeSantos, Dr. Anthony, Mr. Jaffarally, Mr. Mahadeo, Mr. Fitzpatrick, Mr. V. Persaud. (17 votes)

Against: Nil

Decided to vote: Mr. McDoom (1 vote)

Attendance: 18 members

9.10.1 Relevant Articles: 161, 162

9.10.2 Rationale for the recommendations made: In the light of the historical mistrust which has surrounded the conduct and management of elections, the Commission recognised that the legitimacy of a government and the effectiveness of our system of governance depend upon the acceptance by winners and losers of the work of the Elections Commission.

9.10.3 Specific recommendations

- (1) The Commission recommends that necessary reforms be made to the system to ensure the acceptance of elections results by all concerned.
- (2) To effect such reforms, the Commission recommends that Articles 161 and 162 be re-drafted to ensure that the role of political parties and their nominees in the conduct of elections through the Elections Commission should be limited to policy-making and monitoring, and should exclude active management of the process, (including the appointment of elections officials).

Or

- (3) To effect such reforms, this Commission recommends that Articles 161 and 162 be re-drafted to ensure that the role of political parties and their nominees in the conduct of elections through the Elections Commission should be limited to policy-making and monitoring, and

should exclude active management of the process. (See Note at the end of this section).

- (4) The Chairman of the Commission should be full-time and should be selected by a consensual process as provided for in the Constitution Amendment Act 1995 (No. 15/1995).
- (5) The Commission should assume responsibility for elections and national registration; and also boundary demarcation where this matter is related to the conduct of elections.
- (6) The head and other senior staff of the Secretariat of the Commission should be of specified appropriate professional experience or qualification.
- (7) The Secretariat of the Commission should be permanent to ensure efficiency, continuity and the development of institutional memory and capacity.

9.10.4 Voting

Voting for the above recommendations was as follows:

- 9.10.3 (1), Consensus
- 9.10.3 (2), Rejected: **In Favour 8; Against 7; Abstentions 3.**
- 9.10.3 (3), Rejected: **In Favour 11; Against 1; Abstentions 8**

In Favour: Mr Alexander; Dr Anthony; Mr Bernard; Mr De Santos; Mr Jaffarally; Mr Mahadeo, Mr Parris, Mr. Ramkarran, Hon Reepu Daman Persaud; Mr V Persaud; Mrs Shury;

Against: Mr Mc Doom.

Abstained: Mr Bhookmohan; Mr Fitzpatrick; Rev Haley; Ms La Rose, Dr Roopnaraine; Ms Trotman.

9.10.3(4), Carried, **In Favour: 16; Against 2** (18 Members)

In Favour: Mr Alexander; Dr Anthony; Mr Bernard; Mr Bhookmohan;
Mr De Santos; Rev Haley; Mr Jaffarally; Ms La Rose;
Mr Mahadeo; Mr McDoom; Hon Reepu Daman Persaud;
Mr V. Persaud; Mr Ramkarran; Dr Roopnaraine; Mrs Shury;
Ms Trotman.

Against: Mr Fitzpatrick; Mr Parris

[On the basis of the selection having to be in accord with the
Constitution (Amendment) Act 1995 (No. 15/1995)]

- Recommendations 9.10.3(5), 9.10.3(6), and 9.10.6(7) consensus

Note: It was decided that the failure of the Commission to arrive at a definitive decision in terms of either Recommendation 9.10.3 (2) or Recommendation 9.10.3 (3) should be highlighted for the attention of Parliament. The difference between Recommendations (2) and Recommendations (3) is the inclusion in Recommendation (2) of the phrase: "including the appointment of Elections Officials"

9.11

ELECTORAL SYSTEM

9.11.1 **Relevant Articles:** 59, 60, [61-63], [159-160], 184.

9.11.2 **Rationale for the recommendations made:** The recommendations are designed to help the electoral system conform to the principles of an inclusionary democracy.

9.11.3

Specific recommendations

- (1) The electoral system for general elections should be a system of proportional representation which ensures that the proportion of seats in Parliament achieved by each party is as close as possible to the proportion of votes it received from the electorate.
- (2) The electoral system should include an element of geographical representation.
- (3) Limits should be placed on the numbers of non-elected Ministers and Parliamentary Secretaries eligible to sit in Parliament.
- (4) Proportional representation lists should be presented to the electorate in a manner that allows voters to be sure which individuals they are electing to the National Assembly. It is the Commission's view that this principle would be breached if lists are presented simply in alphabetical order or if crossing the floor is permitted.
- (5) Only Guyanese citizens resident in Guyana should be permitted to vote in elections.
- (6) The words "Leader of the Opposition" should be substituted for the words "Minority Leader" wherever they appear.
- (7) Provision should be made for the appointment of the Minority Leader (to be re-designated Leader of the Opposition) to be made in the following manner:

the Leader of the Opposition shall be elected by and from Members of the National Assembly who do not support the Government at a meeting held under the Chairmanship of the Speaker, who shall not vote.

9.11.4 Voting

- Recommendation 9.11.3 (1) and 9.11.3.(6): Consensus
- Recommendation 9.11.3 (2): **In Favour 19; Against 1, Abstained 0**

In Favour: Mr Ramkarran; Mr Parris; Mrs Shury; Dr Roopnaraine;
Mr Fitzpatrick; Rev. Haley; Hon. Reepu Daman Persaud;
Mr Collins; Dr Anthony; Ms Trotman; Ms La Rose;
Mr Bhookmohan; Mr Jaffarally; Mr Mahadeo; Mr Kirton;
Mr DeSantos; Mr Alexander; Mr Bernard; Mr V. Persaud.

Against: Mr McDoom.

- Recommendation 9.11.3 (3): **In Favour 19; Against 1, Abstentions: 0**

In Favour: Mr Ramkarran; Mr Parris; Mrs Shury; Dr Roopnaraine;
Mr Fitzpatrick; Rev. Haley; Hon. Reepu Daman Persaud;
Mr McDoom; Dr Anthony; Ms Trotman; Ms La Rose;
Mr Bhookmohan; Mr Jaffarally; Mr Mahadeo; Mr Kirton;
Mr DeSantos; Mr Alexander; Mr Bernard; Mr V. Persaud.

Against: Mr Collins.

- Recommendation 9.11.3 (4):

In Favour 12; Against 0, Abstained: 8

In Favour: Mr Collins; Mr Bernard; Mr Alexander; Mr Kirton; Mr Parris;
Dr Roopnaraine; Mr Fitzpatrick; Ms Trotman; Mr Bhookmohan;
Ms La Rose; Rev. Haley; Mr V. Persaud.

Abstained: Hon. Reepu Daman Persaud; Mr DeSantos; Dr Anthony;
Mrs Shury; Mr Ramkarran; Mr Mahadeo; Mr McDoom;
Mr Jaffarally.

- Recommendation 9.11.3 (5): **In Favour 18; Against 1; Abstained: 1**

In Favour: Mr Ramkarran; Mr Parris; Mrs Shury; Dr Roopnaraine;
Mr Fitzpatrick; Rev. Haley; Hon. Reepu Daman Persaud;
Mr McDoom; Dr Anthony; Ms Trotman; Ms La Rose;
Mr Bhookmohan; Mr Jaffarally; Mr Mahadeo; Mr Kirton;
Mr DeSantos; Mr Alexander; Mr Bernard.

Against: Mr Collins.

Abstained: Mr V. Persaud.

- Recommendation 9.11.3 (7): **In Favour 14; Against 0; Abstained: 5**

In Favour: Mr Parris; Mr Alexander; Mr Bernard; Mr Collins;
Dr Roopnaraine; Mr Kirton; Mr V. Persaud; Mr McDoom;
Ms Trotman; Mr Bhookmohan; Mr Jaffarally; Ms La Rose;
Mr Fitzpatrick; Mr Mahadeo.

Abstained: Mr Ramkarran; Mr Reepu Daman Persaud; Mrs Shury;
Mr DeSantos; Dr Anthony.

9.12

THE CONSTITUTION AS A DOCUMENT

9.12.1 Relevant Articles: 164

9.12.2 Rationale for the recommendations made

- #### 9.12.2.1
- Notwithstanding the Interpretation Act which defines "he" and "him" as including "she" and "her", the Constitution must respect the aspirations and insistences of the women of the world, including Guyana, that laws should not continue to be written in a manner that perpetuates male dominance of the ages and relegates the feminine to a subset of the masculine.

9.12.2.2 It is not surprising that so few of our citizens show any familiarity with their Constitution since the language of the 1980 Constitution is excessively complex and at times virtually opaque. This must be corrected so that citizens can easily understand what the Constitution says, in particular what it says about their rights and obligations.

9.12.2.3 It is important that, in enshrining the rights of citizens, the Constitution permit the easy addition of new rights and make the removal of rights a matter to be decided directly by citizens through a referendum.

9.12.4 Specific recommendations

- (1) The language of the Constitution document shall be rendered gender-neutral.
- (2) The language of the Constitution shall be simple and readily accessible to enable citizens to know their rights and obligations.
- (3) The provisions treating with the disadvantaged and people with disabilities shall be highlighted.
- (4)
 - (i) For any addition to the fundamental rights section, a two-thirds majority of the National Assembly shall be required;
 - (ii) For the removal of any fundamental right, a referendum shall be required.

9.12.4 Voting: Consensus

9.13.1 Relevant articles: 25, 36

9.13.2 Rationale for the recommendations made

9.13.2.1 Commissioners acknowledged that Chapter Two, Article 36 of the 1980 Constitution was ahead of its time in exhorting the State "in the interests of the present and future generations" to "protect and make rational use of its land, mineral and water resources, as well as its fauna and flora" and to "take all appropriate measures to conserve and improve the environment." The two decades that have elapsed since Article 36 was written have seen an alarming increase in the rate and extent of environmental degradation across the planet. This has been accompanied, particularly after the UNCTAD Rio Conference, by a dramatic rise in the level of environmental consciousness and a greater awareness of the need for urgent and forceful national and international measures to arrest the escalating destruction of the planet brought about in the main by the irresponsible environmental attitudes of the developed countries.

9.13.2.2 Taking into account the special responsibility imposed by Guyana's immensely rich bio-diversity, the Commission elevated the protection of the environment to Constitutional status. In addition to being inscribed in the Preamble, the right of Guyanese citizens to a pollution-free, healthy environment will be elevated to a fundamental right.

9.13.2.3 Guyana also has a sovereign right to develop its natural resources in accordance with its own needs and the Constitution should insist that such development be ecologically sustainable.

9.13.2.4 Some Commissioners held the view that the concept of the environment would be incomplete if it were not extended to include the social environment. In the same way that we have a duty to protect and promote bio-diversity in the natural environment, we have an equal duty in a plural society to protect and promote our people's cultural diversity. The dying of languages and consequently, whole cultures, is at least as grave as the destruction of a species.

9.13.2.5 In the discussions on land, Ancestral and Indigenous Rights emerged as an issue. It was argued that the historical circumstances that have led to concerns about Indigenous Rights in relation to land have a historical counterpart in the aftermath of Slavery and Indentureship. There, the relevant concept and concern is one of Ancestral Right.

9.13.2.6 Finally, on the question of land use, Commissioners were of the view that the cryptic Article 18 - "Land is for social use and must go to the tiller" - must be re-formulated in order to enunciate clearly that the productive and beneficial use of land must underpin the society's approach to land distribution and utilisation.

9.13.3 Specific recommendations

(1) The following text is recommended to be included in the reformed Constitution.: "Recognising that the well-being of the nation depends upon preserving clean air, pure waters, fertile soils and a rich diversity of plants, animals and eco-systems".

(2) The following words should be included in the fundamental rights section: "Every one has the right (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment

that is not protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."

(3) Parliament should recognise the need to examine the issue of Ancestral Rights and Indentureship Rights in relation to land, with a view to putting appropriate mechanisms in place.

(4) Article 18 should be re-worded along the following lines:

Land use shall as far as possible be encouraged as the basis for productive and beneficial use.

9.13.4 Voting

Recommendation 9.13.3 (1), 9.13.3 (2), and 9.13.3 (4) by consensus.

Recommendation 9.13.3 (3), by majority.

In Favour: 14, Against: Nil, Abstained: 2.

In Favour: Mr Collins, Mr Bernard, Mr Alexander, Mr Kirton,
Dr Roopnaraine, Ms Shury, Hon. Reepu Daman Persaud,
Mr Parris, Mr Fitzpatrick, Ms Trotman, Ms LaRose, Rev Haley,
Mr Jaffarally, Mr Mahadeo

Abstained: Mr Ramkarran, Mr Bhookmohan

Total Attendance: 16 members

9.14.1 Relevant Articles, 27, 28**9.14.2 Rationale for recommendations made**

9.14.2.1. The present curriculum suffers from two main defects: (i) the lack of responsiveness to the awesome speed of change in the era of the information revolution; and (ii) insufficient attentiveness to the special imperatives of our multi-cultural society.

9.14.2.2. While it is the duty of the State to ensure the highest possible standards in all the schools of the nation, no restriction should be placed on the establishment and operation of private schools, including but not limited to religious schools.

9.14.3 Specific recommendations

- (1) The State must have an obligation in respect of education, and included in that obligation must be the recognition of the cultural diversities of the communities and the need of an appropriate curriculum.
- (2) The following must be enshrined in the Constitution as a fundamental right:
 - any person has a right to establish a private school which must be subject to any regulation by the State.
 - every private school must provide for minorities, including children with disabilities.
 - every person shall have a right to access to nursery, primary and secondary education irrespective of their economic status.

9.14.4 Voting: (1) and (2), by consensus.

9.15.1 **Relevant Articles:** Chapter II - 13 - 17

9.15.2 **Rationale for the recommendations made**

Chapter II of the existing Constitution focuses on the “Principles and Bases of the Political, Economic and Social System.” Modernisation requires the chapter to be crafted in a manner that highlights inclusion of the following dimensions at the level of the Constitution:

- (1) The principles and mechanisms which the State will apply to the distribution of the material benefits deriving from entrepreneurial activity by the Private Sector will accord with the objective of making certain that rewards to the generators of wealth, both capital and labour, are sufficient to ensure the continuing generation of wealth.
- (2) The principles informing the regulatory practices that pertain to economic competition generally, and to the financial effects of that competition on individual business entities, will ensure the enshrining of mechanisms designed to give economic entities the greatest chance to respond effectively to the jeopardies of competition, such as bankruptcy and other survival-threatening circumstances, when they occur.
- (3) In the context of an emerging global milieu in which “knowledge” is assuming more importance than “capital” and “labour” in the generation of wealth, the principles applied to the regulatory framework of national policy and the law should include provisions with respect to “copyright” and “patents”, designed to reward the

suppliers of knowledge, especially when the knowledge is converted to commercial value. These principles should be applicable to both individuals and communities, particularly communities involved in projects such as Iwokrama.

9.15.3 Specific recommendations

9.15.3.1 The following recommendations are stated in the form of first re-drafts of Articles 13 through 17 of Chapter II and were approved by consensus by the Commission.

(1) Article 13

The principal objective of the political system of the State is to establish an inclusionary democracy by providing increasing opportunities for the participation of citizens, and their organisations, in the management and decision-making processes of the State, with particular emphasis on those areas of decision-making that directly affect their well-being.

(2) Article 14

The goal of economic development includes the objective of creating an economy capable of achieving and maintaining the status of sustainable competitive advantage in the context of a global competitive environment, by fostering entrepreneurship, individual and group initiative and creativity, and strategic alliances with domestic and global business partners in the private sector.

(3) Article 15

The goal of economic development includes also the objective of laying the material basis for the largest possible satisfaction of the people's growing material, cultural, and intellectual requirements, as well as the dynamically

stable development of their personality, creativity, entrepreneurial skills, and cooperative relations in a plural society; and the State has the responsibility to intervene to mitigate any deleterious effects of competition on individuals or groups of individuals.

(4) Article 16

The State will foster the development of such relevant forms of cooperation and of business entities as are seen to be supportive of the goals of economic development as stated in Articles 14 and 15.

(5) Article 17

Privately-owned economic enterprises are recognised, and will be facilitated in accord with their conformity with the aims and objectives stated or implied in Articles 13, 14, 15, and 16.

9.15.4 Voting: Consensus

9.16

THE RIGHT AND THE DUTY TO WORK

9.16.1 Relevant Article: 22

9.16.2 Rationale for the recommendations made

The right and the duty to work provided for in the unenforceable Chapter II of the Constitution flow from, and are consistent with, the description of Guyana in Article 1 as "a sovereign state in the course of transition from capitalism to socialism." Since it has been agreed by the Commission that the reformed Constitution ought not to proclaim a preference for any economic system, the articles making reference to or underpinned by the principles of Socialism must be removed. Articles 13-17, which address the

objective of the political system, the goal of economic development, economic revolution, the economic role of cooperativism, the recognition of private enterprise and its duties, must be revised in the light of the new articulation. The Constitution must, in a new way, protect workers' interests and rights.

9.16.3 Specific recommendations

- (1) Paragraph 3 of Article 22 (which sets out seven factors which guarantee the right to work) should be amended by taking into consideration the approval of the recommendations on the issue of the economy, with particular reference to Articles 13, 14, 15, 16 and 17.
- (2) The provisions of Chapter II should include a statement on such principles as could influence legislation to:
 - (a) protect the public service from political interference.
 - (b) bind the public service to loyalty to the lawful policies of the government of the day.
- (3) The right to strike shall be given Constitutional protection.
- (4) The right to demonstrate peacefully shall be given Constitutional protection.
- (5) Pension rights should be protected as a right under the Constitution and should not be gratuitous.

9.16.4 Voting

- 9.16.3 (1), by majority

In Favour: 17, Against: 1, Abstained: 1

In Favour: Mr Ramkarran, Mr Parris, Mr Collins, Dr. Roopnarine, Mr. De Santos, Mr. Bernard, Mrs Shury; Ms. Trotman, Mr. McDoom, Mr. Bhookmohan, Ms La Rose, Hon. Reepu Daman Persaud, Mr. Mahadeo, Dr. Anthony, Mr. V. Persaud, Rev. Haley, Mr. Jaffarally.

Against: Mr. Kirton

Abstained Mr. Alexander

- 9.16.3 (4), by majority. **In Favour: 11, Against: Nil, Abstained: 6**

In Favour: Mr Collins, Mr. Bernard, Mr. Alexander, Mr Kirton, Dr Roopnaraine, Mr Parris, Mr Fitzpatrick, Ms Trotman, Mr Bhookmohan, Ms LaRose, Rev Haley,

Abstained: Ms Shury, Hon Reepu Daman Persaud, Dr Anthony, Mr Ramkarran, Mr Jaffarally, Mr Mahadeo

- 9.16.3 (2), 9.16.3 (3), and 9.6.3 (5), by consensus.

9.17

FINANCE

9.17.1 Relevant Articles: (Title 8), 118; 204

9.17.2 Rationale for the recommendations made

9.17.2.1 The involvement of the Minister of Finance must be clearly indicated, especially with respect to authorisation of expenditure from the Consolidated Fund by appropriation. This explains the recommendation made with respect to the wording of Article 218. (See 9.17.3 (3) below).

9.17.2.2 It has been deemed necessary to include clauses in the Constitution to address concerns which have been expressed about ensuring accountability

for the use of public funds, and about the transparency of political non-interference with auditing functions.

9.17.3 Specific recommendations

- (1) Articles 216 and 217 should be retained as they are.
- (2) In Article 218, substitute the words "Minister of Finance or any other Minister" for "Prime Minister or any other Minister".
- (3) The Constitution should provide that there should be Parliamentary oversight of the functioning of the Office of the Auditor General, including the structure and emoluments of the staff.
- (4) To exempt the Auditor General from inclusion as an adviser to any Cabinet Sub-committee, amend Article 118 (2) by deleting the words "including the Auditor General."
- (5) To have the Auditor General submit his reports directly to Parliament, amend Article 223 (3) by substituting the words "Speaker of the National Assembly" for the words "Minister responsible for Finance."
- (6) To remove any qualification to the Constitutional independence of the Auditor General, amend Article 223 (4) by deleting the words "subject to article 118."
- (7) Provision shall be made for a Constitutional Public Tender Commission.

9.17.4 Voting

Votes on the seven recommendations were as follows:

- 9.17.3 (1), 9.17.3 (4), 9.17.3 (5), 9.17.3 (6) by consensus
- 9.17.3 (2), majority.

In Favour: 12; Against: 0; Abstained: 6

In Favour: Mr Ramkarran; Hon. Reepu Daman Persaud; Mrs Shury;
Dr Anthony; Mr DeSantos; Dr Roopnaraine; Mr Bernard;
Mr Mahadeo; Mr Parris; Mr Jaffarally; Ms La Rose;
Ms Trotman.

Abstained: Mr Fitzpatrick; Mr V. Persaud; Mr McDoom; Mr Alexander;
Mr Collins; Mr Bhookmohan.

- 9.17.3 (3) by majority **In Favour: 12; Against: 6**

In Favour: Mr. Collins; Mr Bernard; Mr Alexander; Dr. Roopnaraine;
Mr De Santos; Mr. Parris; Ms. Trotman; Mr Fitzpatrick;
Mr Bhookmohan; Rev. Haley; Mr Mahadeo; Mr Ramkarran.

Against: Mr. McDoom; Hon. Reepu Daman Persaud; Mrs Shury;
Dr Anthony; Mr V. Persaud; Mr Jaffarally.

- 9.17.3 (7), by majority **In Favour 12, Against 1, Abstained 5**

In Favour: Mr. Collins, Mr Bernard, Mr. Alexander, Mr, Kirton, Mr Parris,
Dr. Roopnaraine, Mr. Fitzpatrick, Ms. Trotman,
Mr Bhookmohan, Ms La Rose, Rev. Haley, Mr. V. Persaud.

Against: Mr. De Santos

Abstained: Mr. Jaffarally, Dr. Anthony, Mr. Ramkarran, Mr. Mahadeo,
Hon. Reepu Daman Persaud.

Number of Members Present: 18

9.18.1 **Relevant Articles:** Not Applicable

9.18.2 **Rationale for the recommendations made**

9.18.2.1 The Defence and Security Forces must be insulated from party political control or influence. Their allegiance must continue to be to the nation as a whole and they are expected to honour and respect the Constitution as the Supreme Law of the land. There is concern regarding the ethnic imbalance of the Security Forces which must be addressed.

9.18.3 **Specific recommendations**

(1) The following general-purpose clause shall be included in the Constitution:

The State's defence and security policy shall seek to defend national independence, preserve the country's sovereignty and integrity, and guarantee the normal functioning of institutions and the security of citizens against any armed aggression.

The Defence and Security Forces shall be subordinate to national defence and security policy and owe allegiance to the Constitution and to the Nation. The oath taken by members of the Defence and Security Forces shall establish their duty to respect the Constitution.

(2) A Commission shall be established with power to examine the structure, procedure and composition of the Disciplined Forces with a view to making recommendations to Parliament which will ensure that they continue to enjoy the confidence of all peoples of Guyana in exercising their Constitution responsibilities.

- (3) The Commission considered the recommendations of the Guyana Defence Force and decided that the Constitution should enshrine the existence of the Guyana Police Force and the Guyana Defence Force, their further impartial roles and basic functions, taking into account the views of both organisations.

9.18.4 **Voting:** All three recommendations by consensus.

9.19

COMMISSIONS

Note: The discussion of Commissions is differently organised from the discussion of other issues.

9.19.1 **Related Articles:** 135, 136, 137, 200-206, 207-209, 210-212.

9.19.2 **Rationale for the recommendations made**

9.19.2.1 Submissions from the public suggested the establishment or strengthening of thirty-six Commissions at the level of the Constitution, often without reference to the fact that some of these Commissions already exist. In these circumstances, the first recommendations that had to be considered were the criteria which the CRC might use to determine whether a matter merited consideration by a Commission at the level of the Constitution. These suggested criteria are given below within the recommendations.

9.19.2.2 Given the likelihood of a large increase in the number of Commissions at the level of the Constitution, the Commission was alerted to the human and financial resources problem that would result. The response was a general

recommendation, given below, about administrative options for dealing with this aspect.

9.19.2.3 There was also concern about the avoidance of inappropriate influence of the Executive on how Commissions were constituted and made to function. The declared preference of the CRC is given in another general principle recommendation stated below.

9.19.2.4 Finally, there was concern that in the interest of justice being seen to be done, mechanisms for appeal against the decisions of Commissions needed to be revisited, to ensure that aggrieved parties had ample opportunity to have their grievances addressed.

9.19.3 Specific recommendations

9.19.3.1 The criteria to be used to determine whether a particular Commission merits creation at the level of the constitution should include the following:

- (1) The matter to be dealt with must be of national interest.
- (2) The matter must affect a wide enough cross-section of the populace.
- (3) There must be concern about the danger of political interference.
- (4) There must be a judgement that if the matter is not monitored, there could be disastrous consequences to the society and country at large.

9.19.3.2 Given the problems of human and financial resources that must attend any increase in the number of Commissions at the level of the Constitution, the

following administrative principles should be carefully considered for application:

- (1) Commissions should be kept small and be staffed by persons of experience.
- (2) With particular reference to Commissions of a protective nature (as opposed to those of an “appointive” nature, e.g. the Judicial Service Commission), common Secretariats for like Commissions should be considered.

9.19.3.3 Where Commissions are to be established, operating procedures and mechanisms for choosing the Commissions’ membership should be carefully designed to minimise undue influence by the Executive and the consequent public perception of partisanship in their functioning.

9.19.3.4 The right of appeal on the basis of common law with respect to a Commission’s or Tribunal’s decision should be expressly stated in the Constitution, as should be the obligation for disclosure of the Tribunal’s information with respect to the matter under appeal.

9.19.3.5 The following Table lists the Commissions proposed in various submissions from the public, and gives this Commission’s recommendations with respect to establishment at the level of the Constitution in the “Status” column. The “Remarks” column, together with specific notes related to the various numbered proposals complete the recommendations. All recommendations are by consensus.

Table 1.8 Commissions (re establishment at Constitution level)

#	Proposed	Status	Remarks
1	Amérindian Land Commission	No	include concerns in indigenous Peoples Commission # 12.
2	Audit Office Commission	No	Use Parliamentary Mechanisms of Standing Committee Type
3	Bill of Rights Commission	No	
4	Commission to Prevent Discrimination	No	Matters to be handled in # 11, 33
5	Commission on Public Sector Wages	No	
6	Commission on Past Presidents and Prime Ministers	No	
7	Disciplined Services Commission	Yes	This will not be a commission at Constitution level. It will be of limited duration in accord with the recommendation stated as #7 mentioned after end of this table.
8*	Elections Commission	Yes	Exists. Reformulate as recommended
9	Equal Employment Commission	No	Put as "Equality" under Human Rights #11
10	Equal Opportunity Commission	No	Put as "Equality" under Human Rights #11
11	Human Rights Commission	Yes	Include #9, 10 under this umbrella.
12	indigenous Peoples Commission	Yes	Include # 1.
13**	Integrity Commission	No	Already exists. Do not elevate to Constitution Status.
14	interior Development Commission	No	
15	Investigative Commission	No	
16*	Judicial Service Commission	Yes	Exists. Reformulate as Recommended
17	Labour Commission	No	
16	Land Distribution & House Allocation Commission	No	Treat issue by recommendation #18 given at end of this Table.
19	Legislation Commission	No	
20	Livelihood Commission	No	
21	Local Government Service Commission	No	Already dealt with under Local Govt recommendations
22	Media Commission	No	Write strong recommendation to Parliament re need for institution to deal with the onset of the Information Age.
23	National Anti-Corruption Commission	No	
24**	Commission on Women & Gender Equality	Yes	Treat as separate from #27
25	National Commission for Protection of Fundamental Rights	No	
26*	Police Service Commission	Yes	Already exists. Re-look with Presidency re role in choosing Commissions
27**	Commission on the Rights of the Child	Yes	Treat as separate from # 24
28	Public Broadcasting Commission	No	See "Remarks" on #22
29	Public Enquiry Commission	No	
30*	Public Service Commission	Yes	Already exists. Re-look with Presidency re role in choosing commissions.
31	Public Debt Commission	No	
32	Public Tender Commission	Yes	
33	Ethnic Relations Commission	Yes	
34*	Teaching Service Commission	Yes	Already exists. Re-look with Presidency re role in choosing commissions
35	Technical Direction Commission	No	
36	Youth Commission	No	Establish as a Statutory Commission
37	Commission For the Elderly	No	Establish as a Statutory Commission

* Already exists at Constitution Level

** Already exists but not at Constitution Level

Specific recommendations on proposed Commissions

7, Disciplined Services Commission

A Commission should be established with power to examine the structure, procedures and composition of the Disciplined Forces with a view to making recommendations to Parliament which will help ensure that they continue to enjoy the confidence of all the people of Guyana in exercising their Constitutional responsibilities.

11, Human Rights Commission

Apart from its Constitutional powers, the Human Rights Commission should be vested with power and authority to constitute a subsidiary body for the purpose of monitoring compliance with all domestic laws and regulations relating to equality of opportunity and treatment, and non-discrimination on the grounds of age, colour, creed, disability, ethnicity, sex, gender, political opinion, race, religion or social class, in relation to employment by private persons, groups, companies and all other private entities. This subsidiary body shall also be empowered to educate employers and the general public on desirable employment practices intended to facilitate compliance with the abovementioned laws and regulations, and shall make periodic reports and / or recommendations to Parliament and other appropriate bodies. The Commission strongly favours the application of the strong enforcement capability against State action protected under the fundamental rights provisions of the Constitution. The Commission has however been advised by its legal experts that the fundamental rights provisions of the Constitution are essentially intended to be protection for the citizen against State action and most of them do not extend to acts or omissions of private persons or entities. The Commission recognises that the application of the recommendation may be relaxed in the case of a private employer with a small staff, or in the case of a family business or enterprise.

18, Land Distribution & House Lot Allocation

Instead of establishing a Commission at the level of the Constitution, the following steps should be taken:

- (1) That Government take to the National Assembly a policy paper with respect to land which sets out *inter alia* clear criteria for the distribution of land and the allocation of house lots.
- (2) That a body be set up to monitor the distribution process to ensure compliance with the criteria.
- (3) That a mechanism be put in place to investigate claims of discrimination in the distribution process and to provide redress in proven cases.

33, Ethnic Relations Commission

That in the Terms of Reference of this Commission, matters relating to an educational role with respect to religion and other aspects of culture be included, with a view to supporting the objective of the promotion of harmony in a plural society.

9.20

RELIGION

9.20.1 Relevant Articles: 145

9.20.2 Rationale for the recommendations

A regime of religious tolerance should be emphasized in the Constitution, given the reality of a plural society. Further, while there must be respect for the exercise of religious preferences, there should be equal respect for those who choose not to do so. As the guarantor of religious pluralism, the State itself must continue to be secular.

9.20.3 Specific recommendations

Provision must be made in the Constitution to have religious beliefs and practices protected against vilification by having this protection as a fundamental right.

9.20.4 Voting: by consensus

9.21	RACE RELATIONS
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9.21.1 Relevant Articles: 40, 149

9.21.2 Rationale for the recommendations made

Under all the existing circumstances, including the special emphasis accorded to race relations in the Herdmanston Accord, strong measures must be taken to address the issue of ethnic insecurity. In addition to the existing statute laws and the new Constitutional prohibition against discrimination, the Commission sees the need to leave no stone unturned in the effort to confront and lay the basis for the resolution of our most stubborn division.

9.21.3 Specific recommendations

9.21.3.1 The Commission agreed to recommend the following constraining measures for inclusion in the Constitution:

- (1) There shall be clauses in the Constitution prohibiting all individuals and institutions, and specifically political parties, from indulging in any actions or being proselytisers of any ideas, programs, or

employment practices in which there are elements of racial or ethnic divisiveness. The right to freedom of speech, thought or association shall not be used as justification or protection from penalties for so doing.

- (2) Any political party that breaches this prohibition shall be disbarred from contesting any election, as shall any individual or organisation purporting to so speak or act on behalf of a political party.
- (3) Where any individual or organisation claiming to speak or act on behalf of a political party is found to have breached the prohibition, the political party on whose behalf the action was taken shall be debarred as in (2) above, unless it publicly dissociates itself from the individual or organisation and expressly dissociates from the sentiments he, she, or it has expressed.

9.21.3.2 It also agreed to recommend the following corrective measures:

- (1) The Constitution shall establish an adequately-funded, suitably broad-based Ethnic Relations Commission comprising representatives of religious bodies, the labour movement, the private business sector, youth, and women with the following responsibilities; authorities and powers:
 - (i) To establish and publish criteria to be used for deciding whether any individual or institution is in breach of the prohibitions mentioned in 9.21.3.11(1) above.
 - (ii) To specify penalties, in addition to disbarment, which various categories of breach of the prohibitions should incur.

- (iii) To commission studies appropriate and adequate for monitoring whether race relations in Guyana are improving.
 - (iv) To recommend to the National Assembly such further measures as its experience, deliberations, and monitoring suggest be implemented to achieve the objective of continual improvement of race relations in Guyana.
- (2) The legal framework of the Commission should include adequate procedures for appeal, without incurring the penalty of delay in correction.

9.22

THE STATE and THE CONSTITUTION

9.22.1 **Related Articles:** Chapter I, Articles 1 to 8.

9.22.2 **Rationale for the recommendations**

The Constitution should make no reference to any particular economic system. Nor should the name of the country be tied to a particular form of social and economic organisation. In removing the word "Cooperative" from the name of the Republic, the Commission did not intend to downplay cooperatives as a valid form of economic organisation deeply rooted in our historical experience, nor to undervalue the idea of cooperation among citizens, which remains a crucial prerequisite for our harmonious development as a plural society.

9.22.3

Specific recommendations

- (1) Amend Article 1 to read as follows:
“Guyana is an indivisible, secular, democratic and sovereign state and shall be known as the Republic of Guyana.”
- (2) The legal experts should be requested to advise on the inclusion of an Appendix with the description of the Flag and the Coat of Arms.
- (3) Provision should be made for a new Article on the National Pledge.
- (4) Provision should be made to include the National Pledge in Article 7, “Duty to Respect National Symbols.”

9.22.4

Voting: Consensus

9.23

CONSTITUTION REFORM FOR THE FUTURE

9.23.1

Relevant Articles: All.

9.23.2

Rationale for the recommendations made

The rationale for the single recommendation has been repeated throughout the Report: Constitutional reform ought not to be a response to a political or any other form of crisis. The current reform process, as one of the elements in the Herdmanston Menu of Measures to address the post-election crisis, has been constrained by many factors, including the pressure of a particular time-table, the charged relations between the major political parties and the very nature of the Commission itself. Constitution reform should be an on-going process and should be returned to a path of normal political evolution. A mechanism should be identified by which the Constitution could be sensitive and responsive to the changing global and

national environment. Such a mechanism should provide for continuous review and a periodic report to the National Assembly, recommending such alterations deemed to be necessary.

9.23.3 Specific recommendations

Provision shall be made for a Parliamentary Standing Committee for Constitution Reform to be enshrined in the Constitution. While according to the rules of the National Assembly, membership of a Standing Committee is restricted to Members of Parliament, the Committee being recommended shall have the power to co-opt experts onto itself. This Committee will keep the operations of the Constitution under continuous review, and make periodic reports to the National Assembly, including proposals, where appropriate, for reform.

9.23.4 Voting: Consensus

9.24	MINORITY VIEWS
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Where opinion among Commissioners is roughly equally-balanced and the issue just fails to command a majority, or where a large degree of uncertainty about how to vote leads to significant abstentions, such opinion is to be regarded as a Minority View. The classification, "Minority View", also includes those proposals that failed to attract significant support.

Issue: Judicial Service Commission

Recommendation: That provision be made for the Judicial Service Commission to be comprised as follows:

- (1) the existing Members of the Commission including the Chair of the Public Service Commission;
- (2) the Chair of the Human Rights Commission;
- (3) a representative of the Law Department of the University of Guyana; and
- (4) a nominee of the Speaker of the National Assembly.

Voting: Rejected: Those in favour of the recommendation have a minority view.

In Favour:	Mr. Alexander, Dr. Roopnaraine, Mr. Collins, Mr. Parris, Ms. La Rose, Mr. Fitzpatrick. (6 votes)
Against:	Mr. Ramkarran, Mr. De Santos, Dr. Anthony, Ms. Shury, Hon. R. D. Persaud, Mr. McDoom, Mr. Mahadeo, Mr. V. Persaud (8 votes)
Abstained:	Mr. Bhookmohan, Mr. Jaffarally, Ms. Trotman, Mr. Bernard (4 votes)
Total Attendance:	18 Members

Issue: The Executive President

Recommendation 1: That the Executive President should be elected by direct election by 51% of the electorate.

Voting: Rejected

In Favour:	Mr. Bernard, Mr. Parris, Ms. Trotman, Mr. Bhookmohan, Rev. Haley. (5 votes)
Against:	Mr. Collins, Dr. Anthony, Ms. Shury, Hon. R.D. Persaud, Mr. McDoom, Mr. Mahadeo, Mr. V. Persaud, Mr. Jaffarally, Mr. Ramkarran. (9 votes)
Abstained:	Mr. Fitzpatrick, Mr. De Santos, Dr. Roopnaraine, Mr. Alexander.
Total Attendance:	18 Members

Recommendation 2. That the Executive President should be elected by 51% of the National Assembly, by secret ballot using the STV system.

Voting: Rejected

In Favour:	Mr. Alexander, Dr. Roopnaraine, Mr. Parris. (3 votes)
Against:	Mr. Collins, Dr. Anthony, Ms. Shury, Hon. R.D. Persaud, Mr. Ramkarran, Mr. McDoom, Ms. Trotman, Mr. Bhookmohan, Mr. Jaffarally, Mr. Mahadeo. (10 votes)
Abstained:	Rev. Haley, Mr. De Santos, Mr. V. Persaud (3 votes)
Total Attendance: 16 Members	

Recommendation 3: That there should be a separate ballot on the election ballot paper for the Presidential vote.

Voting: Rejected

In Favour:	Mr. Bernard, Dr. Roopnaraine, Mr. Parris, Mr. Fitzpatrick, Ms. Trotman.(5 votes)
Against:	Mr. Alexander, Dr. Anthony, Ms. Shury, Hon. R.D. Persaud, Mr. Bhookmohan, Mr. Jaffarally, Mr. Mahadeo, Mr. V. Persaud, Mr. Ramkarran. (9 votes)
Abstained:	Mr. Collins, Ms. La Rose, Rev. Haley (3 votes)
Total Attendance: 18 Members	

Recommendation 4: That Political parties should not be compelled under the law to name a Presidential candidate.

Voting: Rejected

In Favour:	Dr. Roopnaraine, Mr. Fitzpatrick. (2 votes)
Against:	Mr. Collins, Mr. Bernard, Dr. Anthony, Ms. Shury, Hon. R.D. Persaud, Mr. Jaffarally, Mr. Mahadeo, Mr. V. Persaud, Mr. Ramkarran. (9 votes)

Abstained: Rev. Haley, Ms. La Rose, Mr. Trotman, Mr. Parris, Mr. Alexander. (5 votes)

Total Attendance: 16 Members

Recommendation 5: That political parties should not be compelled under the law to submit a list of 53 names, but may submit not less than a fixed number that is less than 53.

Voting: Rejected

In Favour: Mr. Collins, Mr. Bernard, Mr. Alexander, Dr. Roopnaraine, Mr. Fitzpatrick, Ms. Trotman, Mr. Bhookmohan, Ms. La Rose, Rev. Haley (9 votes)

Against: Dr. Anthony, Ms. Shury, Hon. R.D. Persaud, Mr. Parris, Mr. Ramkarran, Mr. Mahadeo, Mr. Jaffarally, Mr. V. Persaud. (8 votes)

Members present: 17

Issue: Article 69 - Sessions Of Parliament; And Article 70- Prorogation And Dissolution Of Parliament.

Recommendation: There should be no discretion of the President to convene, prorogue or dissolve Parliament or a Regional Democratic Council or any other elected councils of government. Convening, proroguing or dissolving of any of these organs should take place according to times fixed by statute, or by the Constitution. Parliament by a weighted majority shall have the power to prorogue, or dissolve an elected body other than Parliament.

Voting: Rejected

In Favour: Mr Collins, Mr Bernard, Mr Alexander, Mr Kirton, Dr Roopnaraine,
Mr Parris, Mr Fitzpatrick, Ms Trotman, Mr Bhookmohan, Ms La Rose. (10
votes)

Against: Hon. Reepu Daman Persaud, Dr Anthony, Mrs Shury, Mr Mahadeo. (9
votes)

Abstained: Mr McDoom, Mr Jaffarally, Mr V. Persaud, Mr Ramkarran, Mr De Santos.
(5 members)

Total Attendance: 19 Members

PART V
APPENDICES

APPENDIX I

CONSTITUTION REFORM COMMISSION BILL 1999

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
3. Establishment of the Constitution Reform Commission.
4. Membership of the Commission.
5. Filling of vacancies.
6. Terms of reference and powers of the Commission.
7. Privileges and immunities of the Commission.
8. Appointment of Committees by the Commission.
9. Post-reform general election.
10. Due constitution of the Commission.
11. Chairman, Vice-Chairman.
12. Procedure.
13. Methodology, time frames and budget.
14. Experts.
15. Special Select Committee of the National Assembly.

FIRST SCHEDULE	-	CARICOM AGREEMENT
SECOND SCHEDULE	-	ST. LUCIA STATEMENT
THIRD SCHEDULE	-	SPECIAL SELECT COMMITTEE

(2) There shall be a Commission Secretariat, headed by the Secretary to the Commission, appointed by the Commission, responsible and reporting, to the Commission.

(3) There shall be a budget for the Commission to enable the Commission to adequately discharge its functions.

**Membership of the
Commission**

4. The Commission shall consist of the following members-

- (a) five members nominated by the People's Progressive Party/Civic;
- (b) three members nominated by the People's National Congress;
- (c) one member nominated by the United Force;
- (d) one member nominated by the Alliance for Guyana;
- (e) a farmers' representative;
- (f) a private sector's representative;
- (g) an indigenous people's representative;
- (h) a women's organisations' representative;
- (i) a youth organisations' representative;
- (j) a Guyana Bar Association's representative;
- (k) a Hindu religious organisations' representative;
- (l) a Muslim religious organisations' representative;
- (m) a Christian religious organisations' representative;
- (n) a Labour Movement's representative.

Filling of vacancies

5. (1) Where a member of the Commission refuses or is no longer willing or able to discharge his functions under this Act, or is removed in accordance with the provisions of subsection (2), another person may be appointed in his stead, after being nominated in like manner by the entity of which his predecessor was the representative.

(2) A member nominated by an entity as its representative on the Commission shall cease to be the member from the date that entity informs the Commission in writing that the member no longer represents the views of that entity.

Terms of reference

6 (1) The Commission shall review the Constitution of Guyana, to provide for the current and future rights, duties liabilities and obligations, of the Guyanese people; and for that purpose shall receive, consider and evaluate submissions for the alteration of the Constitution; and report its recommendations to the Special Select Committee for transmission to the National Assembly.

(2) In conducting the review of the Constitution, the Commission shall in consonance with paragraphs 4(iii) of the Caricom Agreement and 3(d) of the St. Lucia Statement take into account the following-

- (a) the full protection of the fundamental rights and freedom of all Guyanese under the law and the Caricom Charter of Civil Society;
- (b) the rights of the indigenous people of Guyana;
- (c) the rights of children;
- (d) eliminating discrimination in all its forms;

- (e) **improving race relations and promoting ethnic security and equal opportunity;**
- (f) **measures to ensure that the views of minorities in the decision-making process and in the conduct of Government are given due consideration;**
- (g) **implementing reforms relating to elections and the Elections Commission taking into consideration its composition, the method of electing its chairman and members and its jurisdiction over national registration and the electoral process;**
- (h) **measures to secure and protect economic, social and cultural rights of all Guyanese;**
- (i) **measures to maintain and strengthen the independence of the judiciary;**
- (j) **measures aimed at safeguarding public funds and at maintaining and enhancing integrity in public life under the law and by other proper means;**
- (k) **the functioning of the National Assembly and any measure which can enhance its capacity and effectiveness as a deliberative body;**
- (l) **the functioning of the local government system and measures to improve its capacity and effectiveness;**

(m) the representations which have been made to the Special Select Committee on Constitutional Reform established in accordance with the Resolution of the National Assembly passed on December 1, 1994.

(3) The Commission shall consult, within the widest possible geographical area, with as many persons, groups, communities, organisations and institutions as possible including, but not restricted to, religious and cultural organisations, political parties, youth organisations, high school and university students, women's organisations, private sector organisations, professional bodies and the media.

(4) The Commission shall have the power to conduct any inquiry or investigation within its terms of reference in such a manner and at such time and place as it thinks expedient with power to adjourn from time to time and place to place as it thinks fit.

(5) Upon the conclusion of its deliberations the Commission shall prepare a Report, inclusive of the proposals of any minority, giving details of its recommendations and the reasons therefor in a clear and comprehensive manner to enable the Constitution to be drafted therefrom.

(6) The Report shall be presented to the National Assembly not later than July 17, 1999.

Privileges and immunities of the Commission

7. The privileges and immunities of the Commission and the members of the Commission shall be the same as those of the National Assembly and the members of the National Assembly, respectively.

Appointment of
Committees by
the Commission

8. The Commission may appoint Committees of the Commission comprising members of the Commission or non-members as the Commission may think fit and may assign to such Committees such functions relating to the terms or reference of the Commission as the Commission may determine.

Post-reform
general election

9. Pursuant to paragraph 4(ii) of the Caricom Agreement the process for implementing the alteration of the Constitution as recommended by the Commission and approved by the National Assembly shall be concluded in sufficient time to allow for post-reform general election to be held within eighteen months after the presentation of the Report of the Commission to the National Assembly.

Due constitution
of the Commission.

10. (1) The Commission shall be fully constituted when all of its members of referred to in section 4 are appointed by the President and have complied with subsection(2).

(2) Each member of the Commission shall, before entering upon his duties under this Act, take and subscribe before the President the oath in the Form set out in the Schedule to the Constitution or make and subscribe an affirmation.

Chairman,
Vice-Chairman

11. (1) When the Commission first meets, and before it proceeds to despatch any other business, it shall elect one of its members to be the Chairman and another to be the Vice-Chairman.

(2) The Vice-Chairman shall preside over the Commission whenever the Chairman is absent.

(3) Every member of the Commission including the

Chairman and the vice-Chairman shall have one vote; and there shall be no second or casting vote.

Procedure.

12. (1) Thirteen members of the Commission shall constitute a quorum.

(2) Only members of the Commission shall have the right to vote.

(3) A decision of the Commission shall be by consensus, unless a member asks that a vote be taken by secret ballot or show of hands; and a valid decision requires the support of twelve members of the Commission where all twenty members are present, and that of a simple majority plus two, where there is a quorum but the members present are less than twenty.

(4) All meetings and deliberations of the Commission shall be open to the public.

(5) Subject to the provisions of the Act the Commission shall regulate its own procedure and may make rules therefor.

Methodology,
time frames
and budget

13. (1) The Commission shall within the first month from its meeting-

(a) publicise its methodology, and time-frames for accomplishing the stages of the task assigned to it; and

(b) prepare and present a budget to meet adequately its needs in the discharge of its functions.

Experts.

14. The Commission may engage the services of experts to assist in its work, and to advise it at any of its meetings or deliberations.

**Special Select
Committee of
the National
Assembly**

15. The Special Select Committee established by resolution of the National Assembly to determine the terms of reference and composition of the Commission shall remain constituted and shall, on behalf of the National Assembly, be responsible to facilitate the due and efficient functioning of the Commission and shall have authority to receive the Report of the Commission for transmission to the National Assembly.

APPENDIX II
FIRST SCHEDULE
CARIBBEAN COMMUNITY MISSION TO GUYANA

Measures for Resolving Current Problems

The deliberations and consultations undertaken by the Caribbean Community (CARICOM) Mission have confirmed an urgent need for the de-escalation of conflict emphasised in the Mission's initial Statement. The Mission concluded that resolution of current problems in Guyana must begin; and that this can only happen through a political process to which all contribute. The Mission has recommended to the Leaders of the two parties the Menu of Measures set out below. It considers that, if agreed by the two main political parties as an integrated package, these measures can contribute significantly to the resolution of existing problems.

The Menu of Measures has taken into account the contributions of all political parties and of civic groups. The Mission is of the view that these measures will commend themselves to the society as a whole and invites all members of the society to give their full support to them.

In this context the Leaders of the PPP/Civic and the PNC have agreed as follows:

1. An Audit

- (i) Without prejudice to any judicial process arising from the 15 December 1997 elections, an independent inquiry (the audit) will be carried out in two stages, namely:
 - (a) in the first stage, an urgent review of the due process of the count on and after 15 December 1997 (including the role of the Elections Commission) to be completed within three months of 17 January 1998 with a view to ascertainment of the votes cast for the respective political parties; and

- (b) in the second stage, an audit of systemic aspects of the electoral process, including the post-balloting phase.
- (ii) The audit will be carried out under CARICOM auspices by a team proposed by the Chairman of CARICOM, after consultation with the Leaders of the political parties which participated in the 15 December 1997 elections, and agreed to by the Leaders of the PPP/Civic and the PNC. The Terms of Reference for the conduct of the audit are annexed hereto.
- (iii) The PPP/Civic and the PNC will cooperate in the enactment of any enabling legislation that may be required for the effective conduct of the audit.
- (iv) The Parties to this Accord will accept the findings of the first stage of the audit as binding upon them; and the enabling legislation will provide for such findings to be admissible for the purposes of any Election Petition in respect of any matters of fact to which they relate.

2. **A Moratorium**

An immediate moratorium on public demonstrations and marches will be declared and implemented. The ban on these activities will be simultaneously lifted. These arrangements will subsist for a minimum period of three months from 17 January 1998.

3. **Dialogue**

The PPP/Civic and the PNC will activate arrangements for sustained dialogue between them with a view to fostering greater harmony and confidence and resolving issues on which agreement can be reached.

4. Constitutional Reform

- (i) A Constitution Reform Commission will be established by law, with a wide mandate and a broad-based membership drawn from representatives of political parties, the Labour Movement, religious organisations, the private sector, the youth and other social partners. The Terms of Reference of the Commission and its membership will be determined by the National Assembly after a process of consultations with the political parties. It will be mandated to consult with civil society at large.
- (ii) The Commission will also be mandated to conclude its deliberations and present its report to the National Assembly within eighteen months of 17 January 1998. The process for implementing the changes recommended by the Commission and approved by the National Assembly to be concluded in sufficient time to allow for post-reform general elections will which be held within eighteen months after the presentation of the report of the Commission to the National Assembly.
- (iii) Among the matters to be addressed by the Constitutional Reform Commission will be measures and arrangements for the improvement of race relations in Guyana, including the contribution which equal opportunities legislation and concepts drawn from the CARICOM Charter of Civil Society can contribute to the cause of justice, equity and progress in Guyana.

5. Creating a New Environment

The political Leaders of the PPP/Civic and the PNC will issue a joint statement confirming their commitment to the agreed process of dispute settlement and their resolve to avoid the use by or on behalf of their respective Parties of language which is accusatory and which might have an inflammatory effect in the current political context.

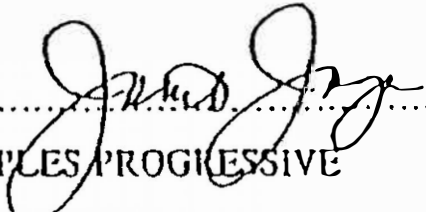
6. **Implementation**

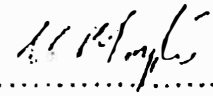
For the purposes of the implementation of these measures, the PPP/Civic and the PNC will each appoint a senior representative with plenipotentiary powers for ensuring the smooth and uninterrupted translation of these agreed undertakings and arrangements into practice in a manner which supports the return of Guyana to normalcy.

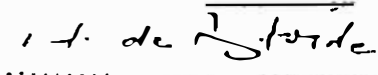
7. **CARICOM's Continuing Role**

The Parties also accept that the Chairman and Bureau of CARICOM will retain a continuing interest in the implementation of the measures, and remain at the disposal of both Parties in that regard.

The Menu of Measures set out in paragraphs 1 to 7 above is agreed this 17th day of January 1998
by


.....
PEOPLES PROGRESSIVE
PARTY/CIVIC


.....
PEOPLES NATIONAL
CONGRESS


.....
**On behalf of the Chairman of the
CARIBBEAN COMMUNITY**

APPENDIX III

REPORT PREPARATION

Research/Writing and Production Team

NAMES		TASKS
Andaiye	-	Editing and Writing
Mr. Allm Hosein	-	Writing, Assistant Editing, Layout, Proof reading
Mr. Tota Mangar	-	Writing
Ms. Roxanne George	-	Writing, Research
Ms. Vanda Radzik	-	Proof Reading/Assistant Editing
Ms. Rosemarie Benjamin-Noble	-	Writing
Mr. Patrick Denny	-	Writing
Ms. Karen Davis	-	Writing
Ms. Jean Skeete	-	Word Processing, Formatting, Layout

Plus Secretariat Staff (see list on the following page)

Rapporteurs

NAMES

1. Ms. Pamela Allen
2. Ms. Daphne Felix
3. Mr. Brian Fox
4. Ms. Leslyn Grant
5. Ms. Olive Harris
6. Ms. Doreen Holder
7. Ms. Winifred Jordon
8. Ms. Sita Kartick-Lewis
9. Ms. Dawn King
10. Ms. Cheryl Sampson
11. Ms. Jean Sankies
12. Mr. Elinois Thompson
13. Mr. John Williams
14. Ms. Bernice Williams-Bovell

Members of the Editorial Committee

Mr. Ralph Ramkarran	-	Chairman Constitution Reform Commission
Ms. Jean LaRose	-	Vice Chairperson Constitution Reform Commission
Mr. Haslyn Parris	-	Secretary Constitution Reform Commission Chairman, Sub-Committee 5
Mr. Ramdial Bhookmohan	-	Chairman, Sub-Committee 1
Mr. Deryck Bernard	-	Chairman, Sub-Committee 2
Mr. Harrichand Mahadeo	-	Chairman, Sub-Committee 3
Dr. Rupert Roopnaraine	-	Chairman, Sub-Committee 4

These core members were assisted by:

Mrs. Mitra Devi Ally	-	Deputy Secretary
Ms. Cavelle A. Lynch	-	Supervisor, Research and Analysis

CONSTITUTION REFORM COMMISSION SECRETARIAT

Staff employed as at May 4, 1999

	First Name	Surname	Appointment
1	Haslyn	Parris	Secretary
2	Mitradevi	Ali	Deputy Secretary
3	Hazel	Marshall	Head, Finance & Projects
4	Faye	Hunte	Administrator, Logistics
5	Karen	Davis	Head, Media
6	Wanda	Chesney	Supervisor, Outreach
7	Arlene	Munro	Head, Documentation
8	Cavelle	Lynch	Supervisor, Research
9	Kevin	Bryan	Supervisor, Documentation
10	Alverna	Inniss	Assistant Admin, Logistics
11	Olivia	Bissoon	File Attendant
12	Wanda	Phillips	Computer Operator
13	Allison	Major	Accounts Clerk
14	Franklin	Cumbermack	Office Manager
15	Allison	Victor	Senior Accounts Clerk
16	Drupati	Lall	Computer Operator
17	Dwight	John	Office Assistant
18	Vonda	Morgan	Maid
19	Bissoon dai	Budhu	Cleaner
20	Nills	Campbell	Supervisor, Media
21	Horace	Kirton	Supervisor, Project Monitoring
22	Romona	Rodney	Confidential Secretary for Finance Department
23	Rukhmin	Chand	Computer Operator
24	Alisha	Fairbairn	Asst. Replication & Distribution
25	Maurice	Henry	Head, Logistics
26	Fiona	Duesbury	Head, Doc. & Distribution
27	Alicia	Cox	Confidential Secretary, Secretary of Commission
28	Trevor	Balgobin	Office Assistant
29	Oscar	Moore	Admin. Recording Proceedings
30	Sabrina	Garraway	Confidential Secretary
31	Seepersaud	Sookram	Asst. Admin. Physical Arrangements
32	Padwanti	Sukhu	Accounts Clerk
33	Wazir	Mohamed	Assistant to Supervisor Media
34	Deslyn	West	Computer Operator

APPENDIX IV
SECOND SCHEDULE

CONFIDENTIAL

GUYANA

THE ST. LUCIA STATEMENT

1. In signing the 'Herdmanston Accord' on 17 January 1998, the Leaders of Guyana's two main political Parties stated that they were doing so 'specially mindful of the willingness of (their) CARICOM colleagues to remain engaged with Guyana in this endeavour' It is in this spirit that as colleagues we have taken the opportunity of our St. Lucia Summit, on the occasion of the 25th Anniversary of CARICOM, to initiate a dialogue with them on the current situation in Guyana - conscious of our own full participation as signatories to the 'Herdmanston Accord'.

2. We are also fully resolved that it is pre-eminently our task-to be in the front line of all efforts to assist Guyana as part of our own family.

3. Our conversations with President Jagan and Mr. Hoyte have convinced us all of the necessity to return Guyana to the agreed path of the 'Herdmanston Accord' - within the time-frame agreed in the Accord. Convinced that there is no time to lose in securing this, we have resolved together to place our collective commitment behind the undertakings, arrangements and measures in paragraphs (a) to (j) below to which President Jagan and Mr. Hoyte, representing the PPP/Civic and the PNC respectively, have agreed between themselves and with CARICOM, namely -

(a) All parties to the 'Herdmanston Accord' reaffirm their commitment to the Accord, and to the implementation of its provisions as initially contemplated.

(b) Both stages of the Electoral Audit as provided for in paragraph 1 of the 'Herdmanston Accord' have been presented to the political Parties in Guyana. All the parties to the Accord have agreed to accept the findings of the first stage of the Audit - as set out in paragraph 1 (i) (a) of the Accord - as binding upon them; but it is recognised that this does not preclude the pursuit of election petitions which have been filed in the courts by both parties.

(c) The next substantive step to which the parties are committed under the Accord is that of Constitutional Reform on the basis and within the framework provided for in paragraph 4 of the Accord. We recall that provision specifically and reaffirm our determination to pursue it in spirit and letter.

(d) Mindful that among the matters to be addressed by the Constitutional Reform Commission will be 'measures and arrangements for the improvement of race relations in Guyana, including the contribution which equal opportunities legislation and concepts drawn from the CARICOM Charter of Civil Society can contribute to the cause of justice, equity and progress in Guyana' -

it is accepted that the parties will take steps for the early implementation of specific measures to achieve these objectives in advance of constitutional reform itself.

(e) We are all agreed that it is feasible to complete the work of the Constitution Reform Commission and to have the Report submitted to the National Assembly by 16 July 1999 as originally contemplated, thereby maintaining the timetable in paragraph 4 (ii) of the Accord, and we commit ourselves to achieving it.

(f) To enable this timetable to be met, the parties have agreed that they will settle as soon as possible, by law in the manner required by the 'Herdmanston Accord', the terms of reference and the naming of the Constitution Reform Commission mindful that CARICOM is resolved to assist them in every way required, but more specifically by arranging for the provision of constitutional experts and facilitators.

(g) The parties have also agreed that the necessary enabling legislation should be enacted in time to allow the Opposition to take their seats in the National Assembly by the 15 July 1998. Mr. Hoyte has indicated his intention that, without prejudice to the outcome of the election petitions referred to above, the PNC will assume their seats in the National Assembly by that date, and President Jagan has indicated her agreement to secure the enactment of the necessary enabling legislation.

(h) Mrs. Jagan has also agreed to make all normal parliamentary arrangements to facilitate the due functioning of the Opposition in the National Assembly, including exploring in consultation with all Parties in the Assembly the establishment of a Parliamentary Management Committee for the better organisation and functioning of parliament as established in a number of parliamentary democracies.

(i) Building on this historic process of the meeting of Guyana's political leaders with CARICOM Leaders in St. Lucia and the demonstration that through dialogue lies the path to the resolution of Guyana's problems, the parties have agreed to redouble their efforts for dialogue as provided in paragraphs 3 and 6 of the 'Herdmanston Accord'. Further, the two leaders have given CARICOM Heads of Government their assurance that they will themselves meet on a periodic basis to facilitate the achievement of all the processes to which they committed their Parties by the 'Herdmanston Accord'.

(j) The two leaders have recognised the value of high level Facilitator acceptable to them whose functions will be developed in conjunction with them. Therefore, they accepted the offer of CARICOM to provide such a Facilitator who will be appointed as a matter of urgency to further assist in the due implementation of these several agreements.

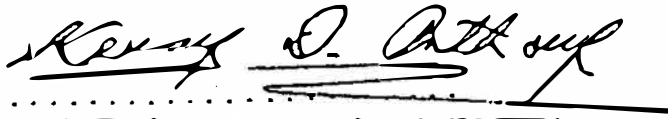
4. In the context of the conversations in St. Lucia CARICOM Leaders are satisfied that there will be an end to illegal protest on the streets of Guyana as dialogue and parliamentary processes take their rightful and more prominent place in Guyana's governance. We are strengthened in this by the assurance that the rule of law will be upheld and that as a consequence violence in the political life of country will cease. None of us wish to stifle dissent in any of our countries; but none

of us will accept disorder and threats to life and property as a way of political life.

5. CARICOM remains committed to the peaceful settlement of difference and disputes within our region and States. These goals are fully supported by both President Jagan and Mr. Hoyte. We are therefore heartened by their assurance that this is the path along which they will work to achieve national unity and cohesiveness for the betterment of Guyana and all its peoples. We are certain that all Guyanese will lend their tangible support to this.

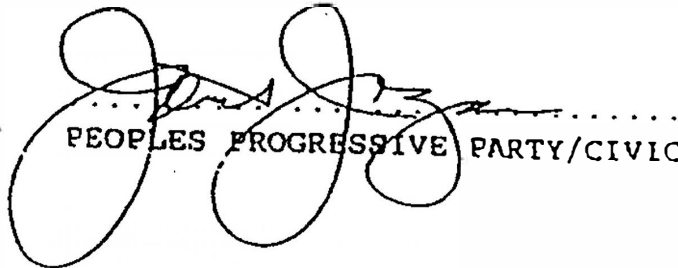
6. We express our genuine appreciation of the statesmanship shown by our colleagues in Guyana in making this historic Agreement possible and once again pledge the commitment of the Caribbean Community to remaining engaged with Guyana in the implementation of the 'Herdmanston Accord' and this Agreement and to be at the disposal of the Parties for this purpose.

MADE THIS 2nd DAY OF JULY 1998, and accepted by:



.....
THE CARIBBEAN COMMUNITY

CHAIRMAN



.....
PEOPLES PROGRESSIVE PARTY/CIVIC



.....
PEOPLES NATIONAL CONGRESS

APPENDIX V

THE COMING MILLENNIUM

Comments on future rights, duties, liabilities and obligations of the Guyanese people.

By Hugh Cholmondeley

15th June, 1999.

Sick people are made by a sick culture; healthy people are made possible by a healthy culture. But it is just as true that sick individuals make their culture more sick. And that healthy individuals make their culture more healthy.

Abraham Maslow: Psychologist

Families

Consider the aspirations of Guyanese families. Existing on the brink of division, its members look forward to the day when their expectations will be understood, their efforts valued and their sacrifices respected. They contemplate a future of personal safety, potential for educating themselves and their children and opportunities to improve their livelihoods that are only limited by personal sacrifice, hard work and thrift.

In contrast, families define quarrels about the practice of democracy as a sterile debate between political parties which draw support from either one of two racial groups. These families see political parties as bickering continuously, back and forth. Parties in government, they say, see democracy as an anointing for "the exclusive right to rule" Parties in opposition, families believe, see their role as a baptism for the "absolute right to oppose." No accommodations seem possible. Disagreement has become the currency of political relations. And in all of this, from the perspective of the family there is little prospect for arresting these trends and beginning substantive reform of the practice of democracy.

Consider also the historical bonds that earlier created and sustained a togetherness and community spirit which enabled different peoples to live peaceful and productive lives in their villages and towns. Today, the unending quarrel between forces of government and opposition has contributed to a decay in social relations. Civility between races has fractured; economic activity has stagnated; social services have disintegrated and intolerance, lawlessness and violence are metamorphosing into a new and virulent social order. It is impossible for the aspirations of Guyanese families to be met in such volatile circumstances.

For many families throughout the world, the clash between reality and aspirations is the defining characteristic of the new millennium. The trends in hatred, globalisation and information which have emerged in the closing stages of the twentieth century have combined to create a world of inconceivable threats and unimaginable opportunities. Countries that understand these trends will be able to exploit the many opportunities to secure a stable future for their peoples. Countries unwilling, or unable, to grapple with these tendencies, will succumb to the coming threats. Successful countries in the future will have overcome the threats of hatred and division and have created just and secure plural societies by exploiting the many opportunities that the new millennium will provide.

Hatred

Life in Guyana under the persistent threat of violence is very, very dangerous business. Dangerous for innocent citizens and dangerous for the society as a whole. Guyana is not unique. There are

many important lessons to be learnt from experiences in the many countries which imploded during the last decade of the twentieth century. The most important lesson: Once a country has degenerated into intolerance and brutality, an early return to sanity, law and order and justice is highly unlikely.

During this decade, more and more countries have played with the fires of intolerance. All have been burnt by deadly conflict and consumed in unspeakable brutality. Failure to address problems of social and economic insecurity created fertile conditions for promotion of ethnic, racial and religious differences. Domestic authorities and opposing groups engaged in painting each other as villains of the peace. Finally, a dialogue of the deaf ensued and created favourable conditions for agents of division and perpetrators of violence and the agents of division.

The result Five million persons - mainly children, women and the aged - have perished in sixty-nine brutal conflagrations in nearly thirty countries. Thirty million persons have been displaced within borders of their own countries. Twenty million others have sought refuge in other neighbouring countries. All these countries have been unwilling and unable to mobilise the grace, internal energy, knowledge and experience to begin a credible healing process and resolve the problem of different groups living together harmoniously in a plural society.

One eminent writer observed recently that blood has gushed so freely, and with such frequency during this century, that one might consider the urge to kill one's neighbour an inborn characteristic of our species. The power to wreak havoc on innocent civilians has now fallen into the hands of individuals and groups whose hate knows no bounds. In the new millennium's early years, it is predicted that these individuals and groups will possess nuclear weapons and other devices that will make previous destructive methods seem quaint by comparison.

All Guyanese must begin to understand that the human, economic, social and other costs of destruction are incalculable. Countries engaged in deadly conflict are consigned to the dustbin of history because of the inevitable waste of human resources, the destruction of social systems and the desolation of commercial and economic activity. Deadly conflict creates impossible conditions for affected countries alone to mobilise the necessary domestic resources to embark on the long process of reconciliation, reconstruction and recovery. However, the international community is now bored with societies that refuse to help themselves. Global business, the new important catalyst for growth and development now has absolutely no interest in volatile and unstable countries.

All is not yet lost. Industrialised and developing countries alike are engaged in an exciting search for imaginative ways to re-create and re-energise their plural societies. For Guyanese, all efforts must be directed to engagement in these activities. Urgent attention must be paid to create adequate social, political and economic space so that all families, taking account of the peculiarities of population and history coexist so that they learn to live together and face the future with confidence.

Generally, ongoing examination of these issues acknowledges that the process of affirmation of ethnic and cultural identity, on the one hand, and the process of exclusion of social and economic inequalities, on the other, are closely connected. Those disadvantaged at the social and economic level, are also those whose culture and identity are stigmatised and considered dangerous for social cohesion. Consequently, it is dangerous for the practice of democracy to be dissociated from the debate on multiculturalism and the struggle against social exclusion and inequality. If social and economic divides increase, attempts to building a plural, democratic and multicultural society will remain an illusion. The challenge is not isolation but full participation with others in order to share experiences and enrich the search for solutions to the problem of human beings living together harmoniously.

Globalisation

The effects of globalisation on the democratic processes in all countries can be demonstrated in two stories told by Thomas Friedman, the world-renowned economist. In the winter of 1998, Friedman had a discussion with Thailand's new Prime Minister, Chuan Leekpai. Half-jokingly, Friedman confessed to that he had helped to oust Mr. Leekpai's predecessor. He explained that one day during the Asian financial crisis, he watched a television newscast about mismanagement of Thailand's economy and its sinking currency, the baht. Friedman told the Prime Minister that he called his broker and instructed him to take his investments out of the East Asian markets. He tells another story about a discussion in 1997 between an American executive from the high technology firm Teledyne and a Russian entrepreneur. The Russian wished to establish an alliance with Teledyne. Before the talks got down to business, the American executive asked his counterpart whether he paid his taxes. The reply was 'not exactly'. The discussions were abandoned.

In the first story, the Thai Prime Minister knows that globalisation has effectively transformed his country into a public company. Its shareholders are no longer just Thai citizens, but also citizens of other countries. These shareholders 'vote' every hour of every day. They vote with their savings and their pension and mutual funds. In the second story, the American executive explained that Teledyne was a public company. If one of its international subsidiaries wasn't paying taxes, the exposure in the company's annual audit would result in possibly devastating consequences that would be immediately felt in a drop in the value of its share.

In the new millennium, the alternatives are clear for all countries, particularly developing ones. Accept, without question, international standards of disclosure, transparency and accountability. Alternatively, reject global demands, reaffirm that the particular country will live by its own rules and have less access to internal capital, less access to technology and, ultimately, a lower standard of living for its people.

Globalisation has released the most intimidating, coercive and intrusive of forces. Its processes leave people feeling that whatever the quality of democracy at home, whatever choices are being exercised in local or national elections, whoever is elected to manage their various societies - all these issues are just illusions. Illusions, because the larger, distant and faceless global markets increasingly determine potential developments in all countries. Globalisation represents the organisation of capital, production, management, markets, labour, information and technology across national boundaries. Globalisation is driven by economics and technology, never by demands for social cohesion. Developing countries, with fledgling business, little money and less technology, are all potential victims of the processes that flow in the wake of globalization. These countries have no option but to function as units of the global economy.

Globalisation, and the market system which underpins financial, economic and trading relations, has weakened national capacities to deal with threats to stability and cohesion. No longer are developing countries protected enclaves of economic activity where successes with reform, adjustment and stabilization are celebrated. Accomplishments in the provision of health, education and other social services now require even greater efforts to achieve more. Responses to the imperative of globalisation raises perplexing questions for policy-makers about accomplishing the elusive goal of effective management of domestic political, economic and social affairs.

The threats to survival in the global economy are awesome. They can, however, be overcome by establishing goals to which all groups in society subscribe. The strategies to accomplish these goals must aim to provide a predictable political environment. Good governance and respect for human rights and the rule of law. Stable economic conditions. Adherence to international financial reporting standards. Complete transparency, full public accountability and the absence of

corruption. And, of course a critical mass of increasing literate, educated and skilled human resources. These are the fundamental pre-conditions for mobilising the domestic and external investment that will fuel growth and development

Information

The new millennium will witness the death of mass communication as the term is known. Henceforth, communication will be largely personal. Technological innovations are providing awesome changes in the ways in people receive, process and use data and information and enable them to more easily take decisions about political, economic, social, cultural and other issues that affect their lives. In short, the manner in which people acquire knowledge has changed. At the same time, the very nature of business has changed forever because of the personalisation of new distribution methods and the elimination of distance as a constraining factor. These developments are the driving forces for the new global systems of financial, commercial and economic activity.

Consider the Caribbean which is served today by 17 daily newspapers, 64 weeklies, 100 periodicals, 93 radio stations, 43 television stations, 56 satellite and cable systems and just under 40 Internet service providers. Throughout some two hundred and sixty-nine years of developments, the words 'readers', 'listeners' and 'viewers' held special meaning and described the relationship between 'reporters' of events and 'receivers' of information. All at once, the words 'readers', 'listeners' and 'viewers' have been replaced by the word 'consumer'. The consumer is now an 'active' participant in the process of communication, rather than a passive 'deceptor' of information produced by traditional newspapers and television stations.

To put it very simply these developments are possible because of the 'fusion' of several commonplace household items such the telephone, the personal computer, the television set, the radio and the newspaper. In turn, this fusion provides for the words 'print', 'radio' and 'television' to be replaced by 'text', 'audio' and 'video'. The Internet, an important product of the new technologies, is now the medium by which by any text, sound, picture, data or still image can be recorded, compressed, transmitted and reconstituted with little loss in quality and at a fraction of previous cost. Important changes will continue to flow from the ongoing processes of technological innovation.

A few examples illustrate the speed of the coming changes: a) by the end of 1999, every television set manufactured anywhere in the world will provide for access to over 200 channels b) within a few years of delivery and distribution methods will enable every consumer in the world to access 200 channels or sources of text, audio and video material at minimal cost; c) the power of personal computers continues to double every 18 months with significant reductions in cost; d) twenty years ago, phone calls over copper-wire carried one page of text every second. Today, a single strand of fibre-optic cable carries 90,000 volumes of material every second and e) this year 100,000,000 people will use the Internet; so far, Internet traffic has doubled every 100 days. How people use these emerging new instruments of communicating is still unknown. What is known, however, is that people all over the world are entering history with a vengeance. They are demanding a better life for themselves and their children. Their cries for participation are becoming more strident. They are insisting on involvement in economic activity, partnership in planning an engagement in all decisions that affect their lives. They are insisting on secure neighbourhoods, free of crime and violence.

As avenues and channels for all forms of communications expand, a general rule is emerging. Friedman summarises: More democratic, accountable and open systems of governance are less

likely to be exposed to surprises. Further, when such systems are faced with shocks, they are more, likely to adjust to changed circumstances. For all countries, a secure future in the new millennium will only be guaranteed to the extent that urgent attention to the following fundamental questions:

to what extent will globalisation help or hinder national efforts to improve lives, build livelihood and strengthen the communities in which people live? How will public accountability and transparency be enhanced? How will hatred, racism, violence, corruption, and intolerance be arrested? What are the personal, organisational and institutional responsibilities contain the search for answers? And finally, what are the consequences of future?

APPENDIX VI

EXECUTIVE SUMMARY

Memoranda received by the Special Select Committee on the Review of the Constitution,

6th Parliament of Guyana

First Session

1992-1997

On 1st December, 1994, the National Assembly passed the following resolution:

WHEREAS Government recognises the need for and is committed to constitutional reform:

RESOLVED, That this National Assembly approve of the appointment of a Special Select Committee of the Assembly to review the present Constitution of Guyana and make proposals for its reform and that the Committee be hereby empowered, in the exercise of its functions, to invite and receive memoranda from the public - individuals as well as organisations - and to receive evidence and such expert advice as it considers appropriate;

AND FURTHER RESOLVED, That the Committee complete its work in time for the establishment of a new Constitution before the date when National Elections are next due.

2. At a meeting of the Committee of Selection held on 22nd May, 1995, the following members of the National Assembly were nominated to this Special Select Committee on a proposal by the Minister of Agriculture (Leader of the House) -

From the People's Progressive Party/Civic (8 Members)

**The Hon. Reepu Daman Persaud, J.P.; M.P.,
Senior Minister of Agriculture**

**The Hon. S. Feroze Mohamed, M.P.,
Senior Minister of Home Affairs (Government Chief Whip)**

**The Hon. Bernard C. DeSantos, S.C.; M.P.,
Attorney General and Minister of Legal Affairs**

**The Hon. Clement J. Rohee, M.P.,
Senior Minister of Foreign Affairs**

Mr. Moses V. Nagamootoo, M.P.

Mr. Komal Chand, M.P.

Mrs. Pauline Sukhai, M.P.

Mr. Winslow M. Zephyr, M.P.

From the Working People's Alliance (1 Member)

Dr. Rupert Roopnaraine, M.P.

From The United Force (1 Member)

Mr. Manzoor Nadir, M.P.

3. No Members from the People's National Congress were proposed for the nomination as that Party's representative at the meeting of the Committee of Selection indicated that the People's National Congress would not be participating in the work of the Committee to review the Constitution.

4. However at a subsequent meeting of the Select Committee held on 6th May, 1996 the following four Members of the People's National Congress were nominated to the Committee to review the Constitution:

Mr. Winston S. Murray, CCH, M.P.

Dr. Kenneth F.S. King, M.P.

Mrs. Clarissa Riehl, M.P.

Mr. Arthur A. Alexander, M.P.,
Deputy Speaker of the National Assembly

5. During the life of the Committee there was one change in its membership. Dr. Kenneth F.S. King's resignation from the National Assembly created a vacancy in the Committee in the representation of the People's National Congress. This vacancy was filled by Mr. Hukumchand a/k Parag.

6. At the first meeting of the Committee the Hon. Bernard C. DeSantos, S.C., M.P., Attorney General and Minister of Legal Affairs was unanimously elected its Chairman. From this meeting the preparatory work commenced and was concluded towards the end of April, 1997. This preparatory work was interrupted by the 1996 recess of the Assembly, the consideration of the 1997 National Budget and finally the unexpected death of the late President Dr. Cheddi B. Jagan. These interruptions forced the Committee to make several adjustments to its work programme.

7. Notwithstanding these interruptions 50 meetings were held up to and including 18th October, 1997. 26 of these meetings were devoted to public hearings of evidence. 18 of these were held in Georgetown, two in Region No. 1 - Barima/Waini and one each in Regions Nos. 2 - Pomeroon/Supenaam, 6 - East Berbice/Corentyne, 7 - Cuyuni/Mazaruni, 8 - Potaro/Siparuni, 9 - Upper Takatu/Upper Essequibo and 10 - Upper Demerara/Berbice.

8. By public notice carried by all Media Houses on 2nd June, 1996, the public was informed of the commencement of the Committee's work and that in due course they would be invited to submit their views for the reform of the Constitution and on any new proposals concerning the Constitution. In addition to this limited a public awareness campaign was mounted using the press, radio and television.

9. By the 1st November, 1996 the Committee established a Secretariat staffed as follows

Executive Secretary
Administrative Assistant
Accounts Clerk

- 2 Typists/Computer Operators
- 1 Office Assistant

10. The first invitation to the public to submit their views on the reform of the Constitution by way of memoranda, and to intimate their desire to appear before the Committee to give oral evidence only or in support of their memoranda, was carried by all Media Houses on 24th November, 1996. This was followed by other advertisements specifying the closing date for the receipt of memoranda and requests to give oral evidence.. This date was 31st May, 1997. In addition to the invitation to the public at large, targeted governmental and non-governmental organisations were invited to participate in the constitutional reform process.

11. Before the commencement of the public hearings the implications of the provisions of Standing Order No. 73 - private deliberations of a select Committee, and Standing Order No. 75 - Premature Publication of Evidence were considered. The Committee, convinced that its terms of reference did not empower it to hold public sessions and to expose any documents to the public gaze, approached the Assembly and received the necessary authority to hold public sessions for the purpose of receiving oral evidence.

12. With its preliminary work completed the Committee commenced its public hearings of oral evidence on 7th May, 1997. At that time it had received only 13 memoranda and five requests to give oral evidence only. By the closing date a total of 47 memoranda were received and 17 requests to give oral evidence only. On the Committee's instructions, and in an effort to achieve the widest possible consultations, the Secretariat continued to receive both memoranda and requests to give oral evidence after the closing date. This resulted in a total receipt of 68 memoranda and 32 requests to give oral evidence only. 17 organisations and 15 individuals who submitted memoranda intimated their desire to give oral evidence in support of their memoranda.

13. All four political parties in the Assembly made both written and oral submissions.

14. Only one organisation and two individuals who requested to appear before the Committee to give evidence did not appear when they were formally invited to do so.

15. Apart from the above a total of 83 presenters, six organisations and 77 individuals, appeared before the Committee at locations in the Regions where public hearings were held. More than one hundred persons appeared at Paramakatoi, Region No.8 and 75 at Santa Rosa, Region No.1 to witness the proceedings of the Committee and applaud whenever they agreed with the submissions made.

16. One 15th September, 1997 public hearings were concluded in Georgetown and on 18th October, 1997 the last out-of-town public hearing was held at Santa Rosa, North West District, which was one month behind schedule. At this date a total of 90 hours were expended receiving oral evidence.

17. Eight eminent Guyanese were invited to indicate their willingness and their availability to be members of a panel of Constitutional Experts to advise the Committee. The following persons although willing to serve on the panel were unavailable owing to previous international engagements: Sir Shridath Ramphal, K.C.M.G., S.C., Dr. Fenton Ramsahoye, S.C., Dr. Mohamed Shahabuddeen, O.R., Mr. Ashton Chase, S.C and Mr. Miles Fitzpatrick, S.C.

18. Mr. Keith Massiah, O.R., S.C., a former Chancellor of the Judiciary and Attorney General, Professor Harold Lutchman, Vice Chancellor of the University of Guyana, and Professor Rudolph James, Professor of Law, University of Guyana, accepted the Committee's invitation.

19. The Committee met the three gentlemen early in August at a time when public hearings were far

from complete. However after discussing their terms of reference it was agreed that the Secretariat would put at their disposal all documents then available which would enable them to commence their analysis of submissions. It was expected that the Committee would have done its own analysis and would have attempted to synchronise this with that of the Experts and, thereafter, refer to the Experts their proposals for the Experts' advice. In due course the Secretariat handed over to the Experts the following documents:

1. one copy of Consolidated Transcript of Memoranda (unedited),
2. one copy of collated proposals/recommendations contained in each memorandum,
3. one copy each of the record of proceedings in respect to public hearings held from 7th May to 27th August, 1997 along with a list of presenters of oral evidence.

20. The Committee received assistance from two international agencies, the National Democratic Institute for International Affairs, USA, and the United Nations Development Programme.

21. The National Democratic Institute for International Affairs (NDI), through a subgrant from the United States Agency for International Development, worked with the Clerk of the National Assembly and the Ministry of Legal Affairs to incorporate amendments made from 1980 to 1996 into a new printing of the Constitution. More than 1,300 copies of the updated Constitution were made available to the Select Committee for distribution to citizens wishing to submit reform proposals. In December 1996, NDI sponsored the visit by two African parliamentarians to share each of their country's experiences with constitutional reform. NDI also assisted with the printing and binding of this compilation of memoranda received by the Select Committee.

22. The United Nations Development Programme, which has been lending support to our national efforts aimed at fostering sound governance and popular participation in the political life of the country, has provided financial assistance totalling US \$82,000. Below are details of that assistance:

Travel expenses for out-of-town public hearings	US\$22,000
4 Legal Experts	\$31,200
3 Verbatim Reporting Officers	\$14,400
Public Education/Awareness Programme	\$ 5, 000
Reporting Cost	\$ 4, 000
Computer Accessories	\$ 5, 000
Total	US\$82,000

23. The Committee conducted its affairs magnanimously. There were those occasions when members were at variance on important issues but these were resolved without recourse to divisions. Whenever the constraint of time on the fulfilment of the Committee mandate was considered, members representing the four political parties on the Committee pledged their parties' support for any proposal that would ensure the continuation of the process of constitutional reform in a new Parliament.

24. Committee appointed by the National Assembly for the Parliament are terminated by a dissolution. When a Committee finds that it lacks sufficient time to complete its work, it reports the fact, together with any evidence it may have taken, to the Assembly. Unfortunately the dissolution of Parliament on 29th October, 1997, precluded the Special Select Committee on the Review of the Constitution from preparing and submitting such a report to the Assembly.

Maurice B. Henry
Executive Secretary

APPENDIX VII

ADVERTISEMENT February 7,1999

INVITATION TO PR FIRMS & CONSULTANTS TO PROPOSE TO THE CONSTITUTION REFORM COMMISSION A PROGRAMME FOR A PUBLIC AWARENESS & EDUCATION CAMPAIGN

The Constitution Reform Commission hereby invites PR Firms and Consultants to send to it written proposals to conduct a **Public Awareness & Education Campaign**, to facilitate its efforts to:

“Consult within the widest possible geographical area, with as many persons, groups communities, organisations and institutions as possible including, but not restricted to, religious and cultural organisations, political parties, youth organisations, high school and university students, women's organisations, private sector organisations, professional bodies and the media.”

The objectives of this Campaign are therefore:

- (1) **To apprise the public of the existence and work of the Commission;**
- (2) **To familiarise the public with the form and the content of the existing Constitution;**
- (3) **To apprise the public of the main areas of Constitutional matters on which the Terms of Reference requires the Commission to focus; and**
- (4) **To encourage the public to look at all aspects of the existing Constitution with a view to considering their appropriateness and to participate in the process of constitution reform.**

It is the view of the Commission that in addition to its own Secretariat's advertising and other efforts to achieve these objectives, it should contract an appropriately skilled PR Firm or Consultant to undertake this task. The Commission wishes this Campaign to begin no later than Tuesday February 23,1999, two (2) weeks prior to the beginning of its Public Hearings which it is scheduled to conduct during the period Tuesday, March 9, to Monday, April 19,1999; and to be well underway by the beginning of the Hearings.

Written proposals should comprise:

- (1) An outline, with appropriate levels of detail, of the content of the Campaign;
- (2) An itemisation of the human resources and skills that you would commit to engage in the execution of the Campaign;
- (3) A clear statement of the proposed start and finish dates of the Campaign; and
- (4) A clear statement of the cost of the Campaign, and the payment terms that you would require, were you to be contracted to execute the Campaign that you are proposing.

The proposals should be delivered to the Secretary of the Commission at the address stated below no later than noon on Monday, February 15,1999.

**Address: The Secretary, Constitution Reform Commission
Constitution Review Secretariat
Parliament Office
Public Buildings,
Georgetown**

W.H. Parris
Secretary
Constitution Reform Commission

APPENDIX VIII
CONSTITUTION REFORM COMMISSION
DDL BUILDING, 44B HIGH STREET KINGSTON
GEORGETOWN, GUYANA

LIST OF EXPERTS

	<u>Name of Experts</u>	<u>Period of Availability</u>
(i)	Dr. Theodor Hanf -Germany Director of the Arnold-Bergstrasser Institute for Social Research Systems of Government	7 th to 11 th June, 1999
(ii)	Ms. Kathleen Mahoney - Canada Professor of Comparative Human Rights Law, University of Calgary Canada Gender Issues	10 th to 14 th June, 1999
(iii)	Professor Aanund Hylland - Norway Professor of the University of Oslo, Norway Electoral Systems	17 th to 24 th June, 1999
(iv)	Justice Albert Louis Sachs - South Africa Member of the Constitutional Court of Fundamental Rights	7 th to 11 th July, 1999
(v)	Mr. Augusto Willemsen Diaz Expert on Indigenous Rights	11 th to 16 th June 1999
(vi)	Mr. Carl Dundas - London Voting Systems	4 th to 9 th June
(vii)	Mr. Rodney Brooke - London Local Government	5 th to 9 th June 1999
(viii)	Professor Harold Lutchman Professor of Law University of Guyana	

CONT'D LIST OF EXPERTS

- (ix) **Professor Keith Massiah**
Professor of Law
University of Guyana

- (x) **Professor Rudy James**
Professor of Law
University of Guyana

CONSTITUTION REFORM COMMISSION

EXPERT ON GENDER ISSUES

TERMS OF REFERENCE

This expert is required to assist Commissioners in their deliberations about the changes which may be made to the current constitution to deal adequately with gender issues. In providing this assistance, the expert would be required to:

1. List the gender issues that may deserve the attention of the Commission, given the experience of other countries in circumstances not dissimilar to those of Guyana, and taking into account the issues so far raised in written submissions and oral presentations to the Commission.
2. Guide the Secretariat and the Commission in the identification of those areas of the current constitution that appear to merit review with respect to the issues listed in 1 above.
3. Suggest the nature of the changes that might be considered, and identify the pros and cons of those changes on the basis of both theoretical considerations and actual experiences in countries with circumstances not dissimilar to those of Guyana.
4. Identify for use on the Guyana problem, reliable sources of information and analysis that it would be useful to consult in an on-going manner to derive insights into the solutions to the problem of gender issues in the constitution.
5. Make a presentation to at least one plenary session of Commissioners to discuss the matters described above.

It is anticipated that the expert would spend approximately three (3) working days in Guyana.

W.H. Parris
Secretary

March 9, 1999.

CONSTITUTION REFORM COMMISSION
EXPERT ON SYSTEMS OF GOVERNMENT

TERMS OF REFERENCE

This Expert is required to assist Commissioners in their deliberations about the changes which may be made to the structure of the system of government that is determined by the current constitution. In providing this assistance, the expert would be required to:

1. Familiarise himself with the current system of Local, Regional, and National Government.
2. Provide guidelines for the work of the Secretariat and the Commission in the appropriate identification of the main areas of dissatisfaction with the current system, especially as expressed in written submissions and oral evidence tendered to the Commission. This identification would be key to defining the problem of the system of government in a manner that admits of systematic approaches to its resolution.
3. Provide guidelines for criteria and a methodology, including especially computable criteria where relevant, that could be established: to monitor and test the efficacy of any alternative systems proposed; to ascertain whether the systems proposed can reasonably be expected to minimise the dissatisfactions; and to monitor over time whether the results being achieved accord with the expectations.
4. Bring to bear, with respect to 2 & 3 above, a knowledge of systems of government used elsewhere, including their theoretical strengths and weaknesses and the practical results of their utilisation, with particular reference to countries whose multi-ethnic, demographic, and other relevant characteristics are comparable to those of Guyana.
5. Identify for use on the Guyana problem, reliable sources of information and analysis that it would be useful to consult in an on-going manner to derive insights into the solutions to the problem as defined in 2 above.
6. Make a presentation to at least one plenary session of Commissioners to discuss the matters described above.
7. It is anticipated that the expert would spend approximately (3) working days in Guyana.

W.H. Parris
Secretary

March 9, 1999

CONSTITUTION REFORM COMMISSION
EXPERTS ON RIGHTS OF INDIGENOUS PEOPLES

TERMS OF REFERENCE

This Expert is required to assist Commissioners in their deliberations about the changes which may be made to current constitution to deal inadequately with the rights of indigenous peoples. In providing this assistance, the expert would be required to:

1. List the rights of indigenous peoples that may deserve the attention of the Commission, given the experience of other countries in circumstances not dissimilar to those of Guyana, and taking into account the issues so far raised in written submissions and oral presentations to the Commission.
2. Guide the Secretariat and the Commission in the identification of those areas of the current constitution that appear to merit review with respect to the issues listed in 1 above.
3. Suggest the nature of the changes that might be considered, and identify the pros and cons of those changes on the basis of both theoretical considerations and actual experiences in countries with circumstances not dissimilar to those of Guyana.
4. Identify for use on the Guyana problem, reliable sources of information and analysis that would be useful to consult in an on-going manner to derive insights into the solutions to the problem of the rights of indigenous peoples in the in the constitution.
5. Make a presentation to at least one plenary session of Commissioners to discuss the matters described above.

It is anticipated that the expert would spend approximately three (3) working days in Guyana.

W.H.Parris
Secretary

March 9, 1999

CONSTITUTION REFORM COMMISSION

EXPERTS ON DRAFTING OF CONSTITUTIONAL LAW

TERMS OF REFERENCE

Each of the two (2) experts is required to assist the Secretariat and Commissioners in drafting the Commission's Report in a manner that ensures that the Report does not contain recommendations that are contradictory, or are incapable of being easily translated into law.

1. Peruse the recommendations emanating from the deliberations of the Commissioners, to identify possible contradictions and clarify the meaning of possible ambiguities.
2. Suggest formulations that would correct such contradictions or ambiguities as might be found, while preserving the intent and content of the recommendations.
3. Suggest a structure for the Commission's Report that would facilitate easy reading and its consideration by Parliament, and by the general lay public, while preserving the intent and content of Commissioners' consensually determined recommendations, and while representing in an unbiased manner those views which are stated as minority opinions.
4. Liaise with Commissioners and with relevant members of the Secretariat in the conduct of 1, 2, and 3 above.

It is anticipated that the two experts will be persons eminently familiar with the Guyanese milieu, and with the nuances of the use of the English language by Guyanese. They would be expected to spend approximately fifteen (15) working days engaged in this exercise of guiding the writing of it.

APPENDIX IX

LIST OF INDIVIDUALS REQUESTED TO MAKE SUBMISSIONS

- | | |
|-----------------------------------|---------------------------------|
| 1. Mr. Tapeswar Singh | 22. Mr. Ramon Gaskin |
| 2. Mr. S.A. Goolsarran | 23. Mr. Narine Singh |
| 3. Mr. M.G. Sankies | 24. Mr. Rooplall Dudhnath |
| 4. Mr. Arnold Apple | 25. Mr. Sewsaran Singh |
| 5. Mr. Odinga Lumumba | 26. Mr. Roger C. John |
| 6. Mr. Isahak Basir, CCH | 27. Mr. Mohamed T. Mamood |
| 7. Mr. T. Chi-A-Kong | 28. Mr. Deo Persaud |
| 8. Mr. Rudolph Roberts | 29. Dr. Leslie Ramsammy |
| 9. Mr. Ramraj Jagnandan | 30. Mr. Edgar M. Leonard |
| 10. Mr. David Ramdayal | 31. Mr. Reuben A. Gilbert, M.P. |
| 11. Professor Dr. Clive Y. Thomas | 32. Mr. Oswald Paul |
| 12. Dr. J.K.M. Richmond, DDS | |
| 13. Mr. Errol R. Ramdhany | |
| 14. Mr. David DeCaires | |
| 15. Mr. Patrick Montouth | |
| 16. Mr. Bissoon Rajkumar | |
| 17. Mr. Harrichand Bhola | |
| 18. Mr. Christopher L. Ram | |
| 19. Mr. Philip Beccles | |
| 20. Mr. Laurie Greenidge | |
| 21. Mr. Roy Paul | |

APPENDIX X

CONSTITUTION REFORM COMMISSION

BUDGET

W.H. Parris
Constitution Reform Commission Secretariat

1st. March 1999

CONSTITUTION REFORM COMMISSION BUDGET

SUMMARY OF BUDGET EXPENDITURE (1 Mar - 31 July)

TOTAL PROJECT COST	\$79,521,345
<i>Equivalent US\$</i>	<i>\$441,785</i>

A.	HUMAN RESOURCES	\$36,266,845
	IN - HOUSE RESOURCES	G\$
A.1.1(a)	Emoluments for 17 Senior Staff	\$15,769,602
A.1.1(b)	Emoluments for 36 Support Staff	\$7,421,767
A.1.2	Honoraria & Reimbursements for 19 Commissioners	\$7,934,976
	Sub-Total	\$31,126,345
	CONTRACTED RESOURCES	
A.2.1 - A.2.8	Rapporteur & Scribes	\$1,520,000
A.2.9	Experts, including Amerindian Interpreters	\$3,620,500
	Sub-Total	\$5,140,500
B.	PHYSICAL RESOURCES	\$10,636,400
B.1	Rental of Office Space for Secretariat	\$2,880,000
B.2	Office Equipment [Purchase/Lease/Rental]	\$7,006,400
B.3	Maintenance of Office Equipment	\$200,000
B.4	Rental of Premises & Equipment - CRC Plenaries	\$300,000
B.5	Rental Telephone	\$250,000
C.	OTHER CONTRACTED SERVICES	\$30,818,100
C.1	Production of Verbatim Reports - CRC Plenaries	\$2,760,000
C.2	Public Participation Support Services (Ads., etc.)	\$750,000
C.3	Public Awareness & Education Campaign	\$17,652,000
C.4	Public Opinion Survey	\$2,160,000
C.5	Public Hearings Logistics	\$3,896,100
C.6	Catering for CRC Plenary Sessions	\$3,600,000
D	USEABLES for CRC Secretariat	\$1,800,000
D.1	Stationery	\$600,000
D.2	Office Equipment Useables	\$780,000
D.3	Coffee, Tea, etc. for CRCS Staff use	\$180,000
D.4	Janatorial Supplies	\$240,000

CONSTITUTION REFORM COMMISSION BUDGET

CRCS STAFF EMOLUMENTS (All except Secretary & Deputy Secretary from 1 Mar to 31 July, 1999)

Senior Staff A.1.1(a)

#	Grade	POST	Salary	Gratuity	Allowance	Total	5 Mths Project
			G\$/Mth	G\$/Mth	G\$/Mth	G\$/Mth	G\$/Mth
1		Secretary*	\$300,000	\$67,500	\$11,000	\$378,500	\$2,271,000
1		Deputy Secretary**	\$264,000	\$59,400	\$10,400	\$333,800	\$1,835,900
1	6	Head, Financial Administration & Project Monitoring[Min]	\$234,646	\$52,795	\$10,000	\$297,441	\$1,487,207
1	4	Supervisor, Financial Administration[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$687,329
1	4	Supervisor, Project Monitoring[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$687,329
1	5	Head, Logistics*[Mid]	\$219,441	\$49,374	\$9,600	\$278,415	\$1,670,491
1	3	Administrator, Physical Arrangements[Min]	\$57,576	\$12,955	\$8,600	\$79,131	\$395,653
1	3	Administrator, Recording Proceedings[Min]	\$57,576	\$12,955	\$8,600	\$79,131	\$395,653
1	5	Head, Public Education & Information[Mid]	\$219,441	\$49,374	\$9,600	\$278,415	\$1,392,076
1	4	Supervisor, Media (Newspapers, Radio, TV)[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$687,329
1	4	Supervisor, Outreach[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$687,329
1	5	Head, Documentation & Research[Min of Grade 6]	\$234,646	\$52,795	\$9,600	\$297,041	\$1,485,207
1	4	Supervisor, Research & Analysis[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$687,329
1	4	Supervisor, Document Preparation[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$687,329
1	3	Head, Document Replication & Distribution[Min]	\$57,576	\$12,955	\$8,600	\$79,131	\$395,653
1	2	Supervisor, Document Replication[Min]	\$31,679	\$0	\$0	\$31,679	\$158,395
1	2	Supervisor, Document Distribution[Min]	\$31,679	\$0	\$0	\$31,679	\$158,395
17		TOTALS	\$2,337,480	\$511,677	\$140,000	\$2,989,157	\$15,769,602
		Notes				Equip/US\$	\$87,809

* Employed from 1 Feb to 31 July

** Employed from 15 Feb to 31 July

CONSTITUTION REFORM COMMISSION BUDGET

Support Staff for CRCS A.1.1(b)

#	Grade	POST	Salary G\$/Mth	Gratuity G\$/Mth	Allowances G\$/Mth	Total G\$/Mth	5 Mths Project G\$/Mth
1	3	Assistant to the Chairman	\$57,576	\$0	\$8,600	\$66,176	\$330,880
1	3	Confid. Secretary for Secretary of Commission	\$57,576	\$0	\$8,600	\$66,176	\$330,880
2		SUB-TOTALS	\$115,152	\$0	\$17,200	\$132,352	\$661,760
		FINANCIAL ADMIN & PROJ MANAGEMENT					
1	3	Office Manager	\$57,576	\$12,955	\$8,600	\$79,131	\$395,653
1	3	Senior Accounts Clerk	\$57,576	\$12,955	\$8,600	\$79,131	\$395,653
2	2	Accounts Clerk	\$31,679	\$0	\$0	\$31,679	\$316,790
1	2	Personnel Clerk	\$31,679	\$0	\$0	\$31,679	\$158,395
1	2	File Attendant	\$31,679	\$0	\$0	\$31,679	\$158,395
2	2	Computer Operators	\$31,679	\$0	\$0	\$31,679	\$316,790
1	2	Procurement/ Stores Clerk	\$31,679	\$0	\$0	\$31,679	\$158,395
2	1	Office Assistant	\$17,430	\$0	\$540	\$17,970	\$179,700
2	1	Cleaners / Maid	\$17,430	\$0	\$0	\$17,430	\$174,300
13		SUB-TOTALS	\$308,407	\$25,909	\$17,740	\$352,056	\$2,254,071
		LOGISTICS					
1	2	Assistant Administrator Recording	\$31,679	\$0	\$0	\$31,679	\$158,395
4	2	Assistant Administrator, Physical Arrangements	\$31,679	\$0	\$0	\$31,679	\$633,580
4	1	Field Assistant	\$17,430	\$0	\$540	\$17,970	\$359,400
9		SUB-TOTALS	\$80,788	\$0	\$540	\$81,328	\$1,151,375
		PUBLIC EDUCATION & INFORMATION					
1	3	Assistant to Supervisor, Media	\$57,576	\$12,955	\$8,600	\$79,131	\$395,653
2	3	Assistant to Supervisor, Outreach	\$57,576	\$12,955	\$8,600	\$79,131	\$791,306
3		SUB-TOTALS	\$115,152	\$25,909	\$17,200	\$158,261	\$1,186,959
		DOCUMENTATION & RESEARCH					
2	3	Assistant to Supervisor, Research & Analysis	\$57,576	\$12,955	\$8,600	\$79,131	\$791,306
2	3	Assistant to Supervisor, Document Preparation	\$57,576	\$12,955	\$8,600	\$79,131	\$791,306
2	2	Computer Operators	\$31,679	\$0	\$0	\$31,679	\$316,790
6		SUB-TOTALS	\$146,831	\$25,909	\$17,200	\$189,940	\$1,899,402
		DOCUMENT REPLICATION & DISTRIBUTION					
1	1	Assistant to Supervisor, Document Replication	\$17,340	\$0	\$540	\$17,880	\$89,400
1	1	Assistant to Supervisor, Document Distribution	\$17,340	\$0	\$540	\$17,880	\$89,400
1	1	Office Assistant	\$17,340	\$0	\$540	\$17,880	\$89,400
3		SUB-TOTALS	\$52,020	\$0	\$1,620	\$53,640	\$268,200
36		TOTALS					\$7,421,767
						<i>Equiv US\$</i>	\$41,232

CONSTITUTION REFORM COMMISSION BUDGET

Emoluments, Reimbursibles & Insurance for COMMISSIONERS

A.1.2

#	TYPES	Duration(Days)	173	Plenaries	Rate	Honorarium Rate	TOT Cost
		Start Date	End Date	Number	G\$/Plenary	G\$/Month	G\$
19	Honoraria for Commissioners	25-Jan	17-Jul	100	\$1,000	\$32,204	\$4,105,136
	Out of Pocket Reimbursibles*						\$3,579,840
	Insurance for Travel to Hearings**						\$250,000
	TOTAL						\$7,934,976

*Note:

(1) Travel to Plenaries from out of GT & Bd&Ldgs

\$2,840,000

(2) Travel to Public Hearings

\$489,840

(3) Other Incidental Expenses

\$250,000

**insurance for travel by air or boat to 30 Hearings

	**Brd&Ldg/Mth	Travel / Plenary	
Bhookmohan (NA)	\$40,000	\$5,000	Equiv US\$
Jaffarally (NA)	\$40,000	\$6,000	\$44,083
Dr Anthony (Cove-on-John)		\$5,000	
Rev. Haley (BV)		\$2,000	
Mahadeo (Mahalca)		\$5,600	
Totals	\$80,000	\$23,600	

CONSTITUTION REFORM COMMISSION BUDGET

A. CONTRACTED RESOURCES

#	DESCRIPTION	DURATION PERSON-DAYS	RATE G\$ / Day	TOT COST G\$
112 A.2.1	Rapporteur for Public Hearings	112	\$3,500	\$392,000
10 A.2.2	Scribes for Compiling Written Submissions from Public	140	\$2,000	\$280,000
3 A.2.3	Scribes for Compiling Specific Written Submissions	42	\$2,000	\$84,000
3 A.2.4	Scribes for CRC Consensus Items [work with TF(B)]	42	\$2,000	\$84,000
10 A.2.5	Scribes for Review of Written Submissions from Public [2 scribes to work with each of 5 CRC Sub-Committees]	60	\$2,000	\$120,000
10 A.2.6	Scribes for Review of Reports from Public Hearings [2 scribes to work with each of 5 CRC Sub-Committees]	60	\$2,000	\$120,000
5 A.2.7	Scribes for Collating All Reviews	70	\$2,000	\$140,000
5 A.2.8	Scribes for Collating all Sections of CRC Report	150	\$2,000	\$300,000
TOTALS		676		\$1,520,000
			<i>Equiv US\$</i>	\$8,444

CONSTITUTION REFORM COMMISSION BUDGET

ENGAGEMENT OF EXPERTS A.2.9

#	TYPES	Approx Start Date	Approx End Date	Duration Days	Rate US\$/Day	GS:US\$1	\$180	TOT Cost G\$
						COST per US\$	EXPERT G\$	
1	Electoral Systems	01-Apr	07-Apr	6	\$350	\$2,100	\$378,000	\$378,000
2	Constitutional Law Drafting	15-Jun	30-Jun	15	\$250	\$3,750	\$675,000	\$1,350,000
1	Systems of Government	15-Apr	18-Apr	3	\$350	\$1,050	\$189,000	\$189,000
1	Gender Issues	06-Apr	09-Apr	3	\$350	\$1,050	\$189,000	\$189,000
1	Indigenous Peoples' Rights	06-Apr	09-Apr	3	\$350	\$1,050	\$189,000	\$189,000
8	Amerindian Interpreters*						\$2,000	\$16,000
14	SUB-TOTALS		Person-Days	45				\$2,311,000
			<i>(excl Interpreters)</i>				<i>Equiv US\$</i>	<i>\$12,839</i>

Other Expenditure

ACCOMODATION (Cara Lodge Executive Room US\$145/day) - [Excludes Constitutional Law Drafters who should be local]	\$391,500
OUT OF POCKET EXPENSES for 4 FOREIGN EXPERTS (Meals, Taxis, Entertainment) - US\$100 / Day	\$270,000
EXTERNAL TRAVEL (RETURN BUSINESS CLASS TICKETS, approx. US\$900 each) for 4 FOREIGN EXPERTS	\$648,000
SUB-TOTAL	\$1,309,500
	<i>Equiv US\$ \$7,275</i>

TOTAL **\$3,620,500**
Equiv US\$ \$20,114

* Note:

(a) Interpreters are being engaged to facilitate Public Hearings in hinterland areas.

(b) The schedule for hinterland Hearings, using Interpreters from nearby local areas, is:

		# of Interpreters
Region 7	1 April	2
Region 8	29 March	2
Region 9 (4 areas)	22 & 23 March	4

(c) Each Interpreter is utilised for one (1) day, i.e. the day of the Hearing

(d) The daily rate for interpreters is set at G\$2,000 per day

CONSTITUTION REFORM COMMISSION BUDGET

B. PHYSICAL RESOURCES (March 1 to July 31,1999)

	DESCRIPTION	COST G\$
B.1	Rental of Office Space for CRCS*	\$2,880,000
B.2	Office Equipment [Purchase/Lease/Rental]	\$7,006,400
B.3	Maintenance of Office Equipment***	\$200,000
B.4	Rental of Premises & Equipment -CRC Meetings****	\$300,000
B.5	Rental: Telephone*****	\$250,000

TOTAL **\$10,636,400**
Equiv US\$ \$59,091

NOTES

- B.1 *2463 sq ft; US\$3200 per month = G\$576,000 per month
- B.2 ***Desks & Chairs for 50 Staff; 4 Computer systems (Possibly halved if Rental possible)
- B.4 **** 15 meetings at Park @ \$15,000; PA Equip @ \$5,000 per mtg.
- B.5 ***** 10 Tel Numbers (5 DDD; 1 FAX); Avg Bill \$5,000 per mth

CONSTITUTION REFORM COMMISSION BUDGET

C. OTHER CONTRACTED SERVICES (March 1 to July 31, 1999)

	DESCRIPTION	COST G\$
C.1	Production of Verbatim Reports - CRC Plenaries	\$2,760,000
C.2	Public Participation Support Services (Ads. etc.)	\$750,000
C.3	Public Awareness & Education Campaign	\$17,652,000
C.4	Public Opinion Survey	\$2,160,000
C.5	Public Hearings Logistics	\$3,896,100
C.5.1	<i>Transportation re Public Hearings</i>	\$2,904,100
C.5.2	<i>Public Address Systems, etc. (G\$5,000 each for 56 Public Hearings)</i>	\$280,000
C.5.3	<i>Rental of Venues (Cleaning & Arranging 56 Venues @ G\$2,000)</i>	\$112,000
C.5.4	<i>Accommodation & Meals re out-of-town Hearings</i>	\$800,000
C.6	Catering for CRC Plenary Sessions	\$3,600,000

Newspaper Ads	#	G\$ COST
CRCS Job Ads	20	\$250,000
Submissions	28	\$350,000
Seminars	12	\$150,000
TOTALS		\$750,000

TOTAL **\$30,818,100**

Notes

- C.1 G\$120,000 per mtg for 16 + G\$10,000 for 84 (Taping only). \$171,212 Equiv US\$
- C.2 Other than In C.3, e.g. CRCS Job Ads.; Submission Requests.
- C.3 Prime Time Proposal for Hinterland- G\$2mn Cost still being reviewed, downwards; Coast \$904,100
- C.4 Estimate of US\$12,000 for Countrywide Opinion Survey
- C.6 G\$36,000 per CRC Plenary Session

CONSTITUTION REFORM COMMISSION BUDGET

D. USEABLES for CRCS (March 1 to July 31, 1999)

	DESCRIPTION	COST
		G\$
D.1	Stationery	\$600,000
D.2	Office Equipment Useables	\$780,000
D.3	Coffee, Tea, etc. for CRCS Staff use	\$180,000
D.4	Janatorial Supplies	\$240,000

TOTAL	\$1,800,000
<i>Equiv US\$</i>	<i>\$10,000</i>

CONSTITUTION REFORM COMMISSION

REVISED BUDGET

W.H. Parris
Constitution Reform Commission Secretariat

25th March 1999

SUMMARY OF BUDGET EXPENDITURE (to 31 July)

TOTAL PROJECT COST	\$68,034,769
<i>Equivalent US\$ (180:1)</i>	<i>\$377,971</i>

A. HUMAN RESOURCES \$31,139,029

IN - HOUSE RESOURCES G\$

A.1.1(a)	Emoluments for 16 Senior Staff	\$13,572,497
A.1.1(b)	Emoluments for 31 Support Staff	\$4,970,103
A.1.2	Honoraria & Reimbursements for 19 Commissioners	\$7,692,676
	Sub-Total	\$26,235,276

CONTRACTED RESOURCES

A.2.1 - A.2.8	Rapporteur & Scribes	\$1,283,253
A.2.9	Experts, including Amerindian Interpreters	\$3,620,500
	Sub-Total	\$4,903,753

B. PHYSICAL RESOURCES \$7,337,515

B.1	Rental of Office Space for Secretariat	\$2,880,000
B.2	Office Equipment [Purchase/Lease/Rental]	\$4,000,000
B.3	Maintenance of Office Equipment	\$200,000
B.4	Rental of Premises & Equipment - CRC Plenaries	\$7,515
B.5	Rental Telephone	\$250,000

C. OTHER CONTRACTED SERVICES \$27,936,225

C.1	Production of Verbatim Reports - CRC Plenaries	\$2,760,000
C.2	Public Participation Support Services (Ads., etc.)	\$750,000
C.3	Public Awareness & Education Campaign	\$16,262,125
C.4	Public Opinion Survey	\$0
C.5	Public Hearings Logistics	\$4,566,100
C.6	Catering for CRC Plenary Sessions	\$3,600,000

D USEABLES for CRC Secretariat \$1,620,000

D.1	Stationery	\$540,000
D.2	Office Equipment Useables	\$702,000
D.3	Coffee, Tea, etc. for CRCS Staff use	\$162,000
D.4	Janatorial Supplies	\$216,000

REVISION OF CONSTITUTION REFORM COMMISSION'S BUDGET
(As at 25 March, 1999)

1. The overall Project Expenditure has been revised downwards to **G\$68,034,769**, from the 1 March, 1999 estimate of G\$79,521,345.
2. This downward revision results primarily from the following changes:

A. HUMAN RESOURCES

- (a) Most of the Senior Staff of the Secretariat were not hired from 1 Mar as had been envisaged. The new starting dates are given in the leftmost column of the Table entitled "Senior Staff A.1.1(a)."
- (b) The post "Supervisor, Document Replication" has been eliminated, and those tasks will be performed as part of the job of the Head, Document Replication & Distribution.
- (c) As a result of (a) and (b) above, the total expenditure envisaged is now G\$13,572,497 as compared with the original estimate of G\$15,769,602 for Senior Staff.
- (d) In the case of Support Staff (see Table entitled "Support Staff for CRCS A.1.1(b)") again the staff were not hired from 1 Mar as had been envisaged. The new starting dates, mostly from 1 April, are provided in the leftmost column of the Table. Also, there have been reductions in the numbers employed (from 36 to 31), as indicated in the second column of the Table. As a result, the total expenditure envisaged is now G\$4,970,103 as compared with the original estimate of G\$7,421,767 for support staff.
- (e) For the category "Honoraria & Reimbursements for 19 Commissioners," the reduction from G\$7,934,976 to G\$7,692,676 results from the Insurance cost being now only approximately G\$7,700 as opposed to the previously estimated G\$250,000.
- (f) Under "Contracted Resources," the change is in the amount allocated to Rapporteur and Scribes. There now exists a contract with UG's Institute of Distance & Continuing Education for this service at a price of G\$1,283,253 as compared with the original estimate of G\$1,520,000 for the services of rapporteur and scribes at the Public hearings.

The overall result for this category is a reduction of estimated expenditure from G\$36,266,845 to G\$31,139,029, a reduction of approximately G\$5mn.

B. PHYSICAL RESOURCES

- (a) The main change is in the category of "Office Equipment" where primarily as a result of equipment being donated, borrowed, or rented as opposed to being purchased, the estimated expenditure is reduced from G\$7,006,400 to G\$4,000,000 - the main categories being computers and office furnishings.
- (b) The other major change is in the rental of premises and equipment for the Commission's meetings, where the City Council's Chambers are being made available at a considerably reduced cost.

The overall result is a reduction in planned expenditure from G\$10,636,400 to G\$7,337,515, a reduction of approximately G\$3 mn.

C. OTHER CONTRACTED SERVICES

There are two major changes in this category.

The first is the cost of the contract with the PR firm engaged in Public Awareness & Education Campaign. That cost is now set at G\$16,262,125 as compared with the previous estimate of G\$17,652,000, a reduction of approximately G\$1.3mn. This is a reduction of G\$2.6mn. from the original proposed price of G\$18,771,125.

The second is the elimination of the Public Opinion Survey, thereby reducing the expenditure in the category by a further G\$2.16mn.

The overall reduction in estimated expenditure is thus one of approximately G\$3mn, from G\$30,818,100 to G\$27,938,225.

D. USEABLES for CRC Secretariat

Since the Secretariat will not have been established in its own premises until about April, the expenditure rate for useables has been estimated as 90% of what it would have been had establishment taken place on 1 March. The reduction is thus from G\$1.8mn to G\$ 1.62mn.

These changes together account for the bulk of the overall reduction in the estimated expenditure to 31 July of approximately G\$11.5mn.

Hopefully, the reduced Secretariat will complete its task in the reduced time.

CONSTITUTION REFORM COMMISSION - REVISED BUDGET (25 Mar' 99)
CRCS STAFF EMOLUMENTS (All to 31 July,1999)

Senior Staff A.1.1(a)								
<i>Starting</i>				Salary	Gratuity	Allowance	Total	6 Mths Project
Date	#	Grade	POST	G\$/Mth	G\$/Mth	G\$/Mth	G\$/Mth	G\$
01-Feb	1		Secretary*	\$300,000	\$67,500	\$11,000	\$378,500	\$2,271,000
15-Feb	1		Deputy Secretary**	\$264,000	\$59,400	\$10,400	\$333,800	\$1,835,900
16-Mar	1	6	Head, Financial Administration & Project Monitoring[Min]	\$234,646	\$52,795	\$10,000	\$297,441	\$1,338,486
01-May	1	4	Supervisor, Financial Administration[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$412,397
01-Apr	1	4	Supervisor, Project Monitoring[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$549,863
01-Apr	1	5	Head, Logistics*[Mid]	\$219,441	\$49,374	\$9,600	\$278,415	\$1,113,661
19-Mar	1	3	Administrator, Physical Arrangements[Min]	\$57,576	\$12,955	\$8,600	\$79,131	\$356,088
01-Apr	1	3	Administrator, Recording Proceedings[Min]	\$57,576	\$12,955	\$8,600	\$79,131	\$316,522
16-Mar	1	5	Head, Public Education & Information[Mid]	\$219,441	\$49,374	\$9,600	\$278,415	\$1,252,869
01-Apr	1	4	Supervisor, Media (Newspapers, Radio, TV)[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$549,863
22-Mar	1	4	Supervisor, Outreach[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$594,207
16-Mar	1	5	Head, Documentation & Research[Min of Grade 6]	\$234,646	\$52,795	\$9,600	\$297,041	\$1,336,686
19-Mar	1	4	Supervisor, Research & Analysis[Min]	\$104,870	\$23,596	\$9,000	\$137,466	\$607,510
22-Mar	1	4	Supervisor, Document Preparation[Mln]	\$104,870	\$23,596	\$9,000	\$137,466	\$594,207
01-Apr	1	3	Head, Document Replication & Distribution[Min]	\$57,576	\$12,955	\$8,600	\$79,131	\$316,522
	0	2	Supervisor, Document Replication[Min]	\$31,679	\$0	\$0	\$31,679	
01-Apr	1	2	Supervisor, Document Distribution[Min]	\$31,679	\$0	\$0	\$31,679	\$126,716
	16		TOTALS	\$2,337,480	\$511,677	\$140,000	\$2,989,157	\$13,572,497
							<i>Equiv US\$ (180:1)</i>	\$73,403

CONSTITUTION REFORM COMMISSION - REVISED BUDGET (25 Mar' 99)

Support Staff for CRCS A.1.1(b) [Expenditures to 31 July]

Starting Date	#	Grade	POST	Salary G\$/Mth	Gratuity G\$/Mth	Allowances G\$/Mth	Total G\$/Mth	6 Mths Project G\$
01-Apr	1	3	Assistant to the Chairman	\$57,576	\$0	\$8,600	\$66,176	\$264,704
01-Apr	1	3	Confid. Secretary for Secretary of Commission	\$57,576	\$0	\$8,600	\$66,176	\$264,704
	2		SUB-TOTALS	\$115,152	\$0	\$17,200	\$132,352	\$529,408
FINANCIAL ADMIN & PROJ MANAGEMENT								
01-Apr	1	3	Office Manager & Personnel	\$57,576	\$12,955	\$8,600	\$79,131	\$316,522
01-Apr	1	3	Senior Accounts Clerk	\$57,576	\$12,955	\$8,600	\$79,131	\$316,522
01-Apr	2	2	Accounts Clerk	\$31,679	\$0	\$0	\$31,679	\$253,432
	0	2	Personnel Clerk	\$31,679	\$0	\$0	\$31,679	\$0
01-Apr	1	2	File Attendant	\$31,679	\$0	\$0	\$31,679	\$126,716
01-Apr	2	2	Computer Operators	\$31,679	\$0	\$0	\$31,679	\$253,432
01-Apr	1	2	Procurement/ Stores Clerk	\$31,679	\$0	\$0	\$31,679	\$126,716
01-Apr	1	1	Office Assistant	\$17,430	\$0	\$540	\$17,970	\$71,880
26-Mar	2	1	Cleaners / Maid	\$17,430	\$0	\$0	\$17,430	\$146,187
	11		SUB-TOTALS	\$308,407	\$25,909	\$17,740	\$352,056	\$1,611,408
LOGISTICS								
01-Apr	1	2	Assistant Administrator Recording	\$31,679	\$0	\$0	\$31,679	\$126,716
22&24Mar	2	2	Assistant Administrator, Physical Arrangements	\$31,679	\$0	\$0	\$31,679	\$271,826
1Apr for 1mth	4	1	Field Assistant	\$17,430	\$0	\$540	\$17,970	\$71,880
	7		SUB-TOTALS	\$80,788	\$0	\$540	\$81,328	\$470,422
PUBLIC EDUCATION & INFORMATION								
01-May	1	3	Assistant to Supervisor, Media	\$57,576	\$12,955	\$8,600	\$79,131	\$237,392
01-May	1	3	Assistant to Supervisor, Outreach	\$57,576	\$12,955	\$8,600	\$79,131	\$237,392
	2		SUB-TOTALS	\$115,152	\$25,909	\$17,200	\$158,261	\$474,784
DOCUMENTATION & RESEARCH								
01-Apr	2	3	Assistant to Supervisor, Research & Analysis	\$57,576	\$12,955	\$8,600	\$79,131	\$633,045
01-Apr	2	3	Assistant to Supervisor, Document Preparation	\$57,576	\$12,955	\$8,600	\$79,131	\$633,045
01-Apr	2	2	Computer Operators	\$31,679	\$0	\$0	\$31,679	\$253,432
			Analysis of 1200 submissions @ \$125 each					\$150,000
	6		SUB-TOTALS	\$146,831	\$25,909	\$17,200	\$189,940	\$1,669,522
DOCUMENT REPLICATION & DISTRIBUTION								
01-Apr	1	1	Assistant to Supervisor, Document Replication	\$17,340	\$0	\$540	\$17,880	\$71,520
01-Apr	1	1	Assistant to Supervisor, Document Distribution	\$17,340	\$0	\$540	\$17,880	\$71,520
01-Apr	1	1	Office Assistant	\$17,340	\$0	\$540	\$17,880	\$71,520
	3		SUB-TOTALS	\$52,020	\$0	\$1,620	\$53,640	\$214,560
	31		TOTALS					\$4,970,103

Equiv US\$ (180:1)

\$27,612

Emoluments, Reimbursibles & Insurance for COMMISSIONERS

A.1.2

#	TYPES	Duration(Days)	173	Plenaries	Rate	Honorarium Rate	TOT Cost
		Start Date	End Date	Number	G\$/Plenary	G\$/Month	G\$
14	Honoraria for Commissioners	25-Jan	17-Jul	100	\$1,000	\$32,204	\$4,105,136
	Out of Pocket Reimbursibles*						\$3,579,840
	Insurance for Travel to Hearings**						\$7,700
TOTAL							\$7,692,676

*Note:

(1) Travel to Plenaries from out of GT & Bd&Ldgs

\$2,840,000

(2) Travel to Public Hearings

\$489,840

(3) Other incidental Expenses

\$250,000

**Insurance for travel by air or boat for 20 individuals

	**Brd&Ldg/Mth	Travel / Plenary
Bhookmohan (NA)	\$40,000	\$5,000
Jaffarally (NA)	\$40,000	\$6,000
Dr Anthony (Cove-on-John)		\$5,000
Rev. Haley (BV)		\$2,000
Mahadeo (Mahaica)		\$5,600
Totals	\$80,000	\$23,600

Equiv US\$ (180:1)

\$42,737

B. PHYSICAL RESOURCES (to July 31,1999)

	DESCRIPTION	COST G\$
B.1	Rental of Office Space for CRCS*	\$2,880,000
B.2	Office Equipment [Purchase/Lease/Rental/Loan/Grant]	\$4,000,000
B.3	Maintenance of Office Equipment***	\$200,000
B.4	Rental of Premises & Equipment -CRC Meetings****	\$7,515
B.5	Rental: Telephone*****	\$250,000
	TOTAL [\$7,337,515]
	<i>Equiv US\$ (180:1)</i>	<i>\$40,764</i>

NOTES

B.1 *2463 sq ft; US\$3200 per month = G\$576,000 per month

B.2 ***Desks & Chairs for 50 Staff; 4 Computer systems (Loan); 1 Server with 3 workstations

B.4 **** 15 meetings at City Council Chambers with PA Equip @ \$167 per hr for each 3 hr mtg.

B.5 ***** 10 Tel Numbers (5 DDD; 1 FAX); Avg Bill \$5,000 per mth

CONSTITUTION REFORM COMMISSION - REVISED BUDGET (25 Mar' 99)

C. OTHER CONTRACTED SERVICES (to July 31, 1999)

			Newspaper Ads	#	G\$ COST
			CRCS Job Ads	20	\$250,000
		COST	Submissions	28	\$350,000
		G\$	Seminars	12	\$150,000
	DESCRIPTION		TOTALS		\$750,000
C.1	Production of Verbatim Reports - CRC Plenaries	\$2,760,000			
C.2	Public Participation Support Services (Ads. etc.)	\$750,000			
C.3	Public Awareness & Education Campaign	\$16,262,125			
C.4	Public Opinion Survey	\$0			
C.5	Public Hearings Logistics	\$4,566,100			
C.5.1	<i>Transportation re Public Hearings</i>	\$2,904,100			
C.5.2	<i>Public Address Systems, etc. (G\$10,000 each for 95 Public Hearings)</i>	\$950,000			
C.5.3	<i>Rental of Venues (Cleaning & Arranging 56 Venues @ G\$2,000)</i>	\$112,000			
C.5.4	<i>Accommodation & Meals re out-of-town Hearings</i>	\$600,000			
C.6	Catering for CRC Plenary Sessions	\$3,600,000			

Notes

TOTAL [**\$27,938,225**]

- C.1 G\$120,000 per mtg for 16 + G\$10,000 for 84 (Taping only). \$155,212 EquivUS\$(180:1)
- C.2 Other than in C.3, e.g. CRCS Job Ads.; Submission Requests.
- C.3 Prime Time Proposal for Hinterland- Costs as revised with Consultants on 25 Mar'99
- C.4 Countrywide Opinion Survey will not be done
- C.6 G\$36,000 per CRC Plenary Session

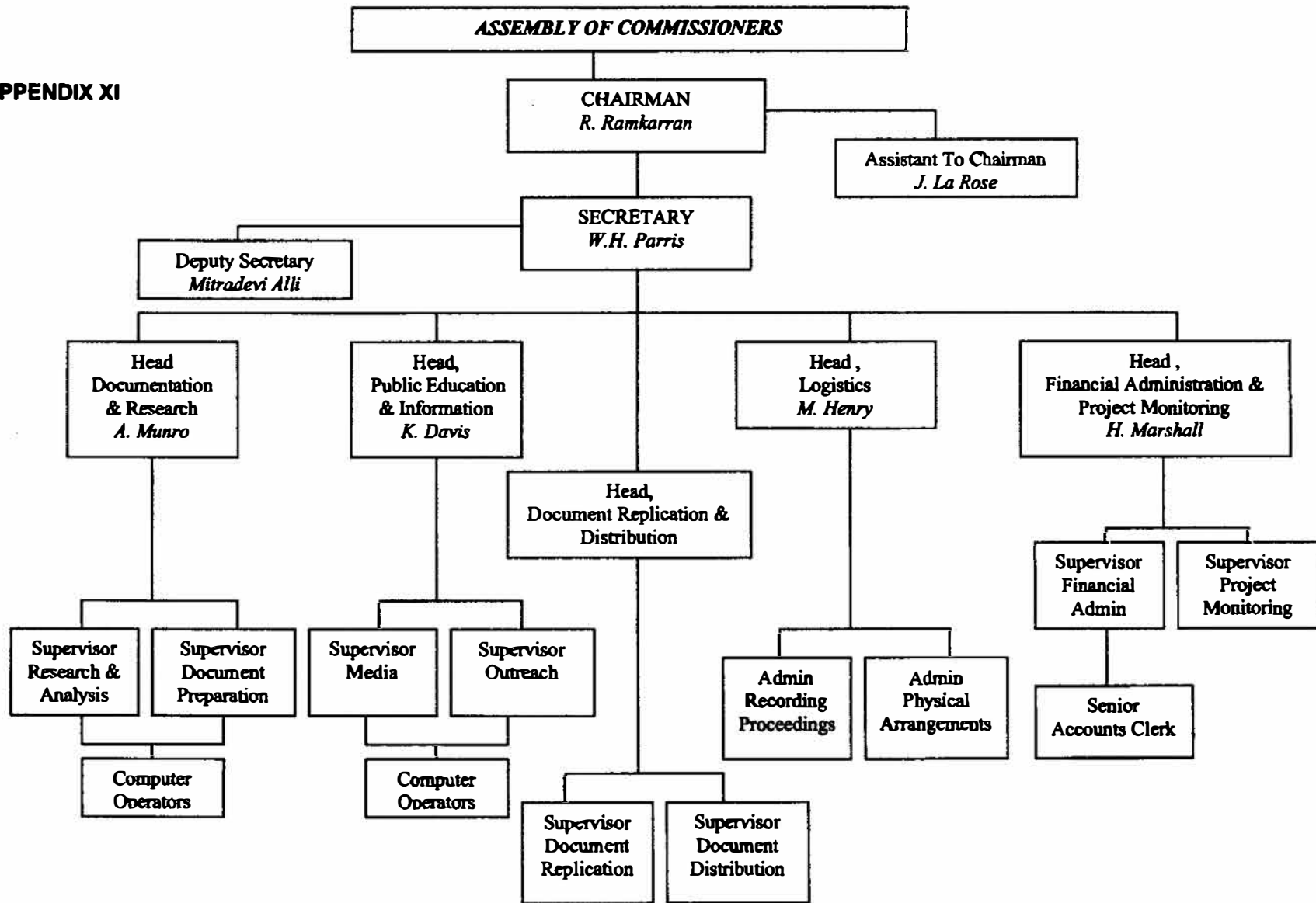
CONSTITUTION REFORM COMMISSION - REVISED BUDGET (25 Mar' 99)

D. USEABLES for CRCS (April 1 to July 31, 1999)

	DESCRIPTION	COST G\$
D.1	Stationery	\$540,000
D.2	Office Equipment Useables	\$702,000
D.3	Coffee, Tea, etc. for CRCS Staff use	\$162,000
D.4	Janatorial Supplies	\$216,000

TOTAL	\$1,620,000
<i>Equiv US\$ (180:1)</i>	<i>\$9,000</i>

APPENDIX XI



APPENDIX XII

CONSTITUTION REFORM COMMISSION SECRETARIAT

REGISTER OF CONTRACTORS

CONTRACT #	CONTRACTOR	EQUIPMENT/SERVICES LEASED
1	CCS (Guyana) Ltd	Risograph, photocopier
2	Tagman	Computers, printer, chairs, accessories
3	Ms. Faye Valerie Hunte	Computer, Printer, accessories
4	Mr. Kevin Bryan	Computer, Printer, accessories
5	Mr. Yerodin Parris	Computers, Printer, accessories
6	Mr. Haslyn Parris	Refridgerator
7	Institute of Distance & Continuing Education	Rapporteur services
8	Demerara Distilleries Ltd	Rental of Office Premises
9	Prime Time Advertising Agency	Public Awareness & Education Campaign
10	Mr. Indarpaul Chand	Wet Lease on Motor Car
11	Mr. Sean Dickson	Wet Lease on Motor Car
12	Associated Industries Ltd	Lease of Xerox Photocopier
13	Guyana Telephone & Telegraph Company	Lease of Telephone Switchboard & Telephone instruments

June 10, 1999

APPENDIX XIII
RORAIMA AIRWAYS
SCHEDULE FOR PR MATERIAL DISTRIBUTION
for
CONSTITUTION REFORM COMMISSION

SER FROM	TO	OFF	ON
1 Ogle	Kwakwani	06:15	07:15
2 Kwakwani	Apoteri	07:25	08:15
3 Apoteri	Gunns	08:25	09:25
4 Gunns	Aishalton	09:35	10:10
5 Aishalton	Dadanawa	10:20	10:35
6 Dadanawa	Lethem	10:45	11:05
7 Lethem	Karanambo	11:15	11:35
8 Karanambo	Annai	11:45	11:55
9 Annai	Karasabai	12:05	12:17
10 Karasabai	Monkey Mountain	12:27	12:42
11 Monkey Mountain	Tuseneng	12:52	12:57
12 Tuseneng	Taruka	13:07	13:17
13 Taruka	Paramakatoi	13:27	13:32
14 Paramakatoi	Kato	13:42	13:47
15 Kato	Kurukubaru	13:57	14:02
16 Kurukubaru	Kanapang	14:12	14:22
17 Kanapang	Itabach	14:32	14:42
18 Itabach	Orinduik	14:52	15:02
19 Orinduik	Kamana	15:12	15:22
20 Kamana	Maikwak	15:32	15:42
21 Maikwak	Kopinang	15:52	16:02
22 Kopinang	Kaieteur	16:12	16:27
23 Kaieteur	Mahdia	16:37	16:49
END OF DAY ONE			
24 Mahdia	Phillipai	06:15	07:00
25 Phillipai	Chi-Chi	07:25	07:30
26 Chi-Chi	Imbaimadai	07:45	07:55
20 Imbaimadai	Kurupung-Bottom	08:10	08:25
21 Kurupung-Bottom	Kamarang	08:40	09:00
22 Kamarang	Paruima	09:15	09:30
23 Paruima	Kaikan	09:45	10:10
24 Kaikan	Ekereku-Bottom	10:25	10:35
25 Ekereku-Bottom	Baramita	10:50	11:40
26 Baramita	Matthew's Ridge	11:55	12:05
27 Matthew's Ridge	Port Kaituma	12:20	12:35
28 Port Kaituma	Mabaruma	12:50	13:05
29 Mabaruma	Kwebanna	13:20	13:40
30 Kwebanna	Bemechi	13:55	14:05
31 Bemechi	Hampton Court	14:20	14:35
32 Hampton Court	Bartica	14:50	
33 Bartica	Ogle		15:10
		15:25	15:50

APPENDIX XIV

TO: Constitution Reform Commission

FROM: Dr. R. Roopnaraine

DATE: June 11, 1999

SUBJECT: On arriving at recommendations

1. (i) The sub-committee reports on individual topics should be ordered according to the Terms of Reference [Constitution Reform Commission Act, 6 (2)] and the debate organised in that sequence.
- (ii) Topics beyond those stated in the Terms of Reference should be ordered according to the listing of the topics agreed by the Commission. (McDoom/Roopnaraine/Ramkarran)
2. There should be, at the conclusion of the process, a right to recommit any decision in the light of new information and/or changed circumstances, such recommitment to be subject to consensus.
3. The Commission should ought to agree on Standing Orders to govern the debate.
4. The following orders are recommended:
 - i A spokesperson for the sub-committee should be given x minutes to introduce the recommendations/options;
 - ii Commissioners should be given x minutes to speak on the question. No Commissioner, other than the proposer of the question, should speak more than once, except on points of order, such as misrepresentation of his/her views in the course of the debate.
 - iii The proposer of the question should be given x minutes to rebut and close the debate, after which the question should be put.
5. Guided by Section 12 of the Constitution Reform Commission Act, the Commission ought to agree on rules to govern decision-making.

CONSTITUTION REFORM COMMISSION

Item (5)

Studying Submission: recommendations

The Commission should establish a number of sub-committees for the study in detail of submissions to the Commission.

Each subcommittee should be made up of persons willing to serve on it, or willing to serve on it because of its topic.

A sub-committee should be responsible for one major or heavily weighted topic and also for one or more low-weighted topic. A topic or theme is a department of the constitution. A topic or theme is a department of the Constitution. A heavily weighted topic is one attracting many submission. The topic **Citizenship** may turn out to be a low weighted topic. In this way, all issues of the Constitution should fall to a sub-committee.

The Secretariat shall examine each submission. The topics in each memorandum should then be isolated as far as possible. Each topic, theme or issue should be then assigned to the sub-committee charged with it study.

Each memorandum should receive a code number from the Secretariat. This Code number should be marked on the submission and on each part of it distributed to each sub committee. A later submission when isolated should bear the code numbers of the separate recommendations on the same topic, for ease of reference. Cross reference will assure the members of a sub-committee that all the recommendations have been received. Example: if **Judiciary** received 10 submissions, they may be coded **J1** to **J10**. On being isolated and dispatched a new submission to Judiciary will be the code **J11** and will be marked See also **J1** to **J10**.

Oral submission should be treated in a similar way and may be distributed to the sub-committees studying written submissions.

Despite these recommendations, each memorandum should remain intact, copied to each member of the Commission and be always available in its original text.

The work of each sub-committee will be to advise the Commission in writing, and be ready to answer questions in a plenary session.

Each report of a sub committee should inform the Commission of each distinct recommendation and the number of persons making it. Each variation of a recommendation should be treated as a distinct recommendation. When reasons are given for a recommendation these must be recorded in the sub committee's report.

The Commission will decide what range of comment and evaluation, if any, it requires from a

sub committee in the first place.

The Commission, in accordance with Section 8, should invite the organisations representing civil society to name 3 additional representatives to share in the work of the sub-committees, thereby permitting the establishment of several more committees while extending and deepening the participation of civil society.

The following draft of sub-committees broadly follows the categorisation agreed on by the Commission. Alternatively the Secretariat may be asked to present a scheme of sub-committees.

Fundamental Rights
Religion and Culture
Education
Social Issues: women; youth; disabled
Electoral system
Nature of the State
Nature of the Executive Authority
Composition of the Government
Structure and Management of the Legislature
Non-elected Executive Officials
Police and Police Leadership
Local Government
Elections - national and local - Election Commission
Other Public Commissions
Ombudsman
Judiciary and the Courts
Financial Administration
The Public Service
Tenure of Service and Tenure (of offices) generally
Alteration of the Constitution
Other

Alternatively, assuming fewer committees, the following topics may be consolidated as follows:

- A. State & Executive**
- B. Legislature**
- C. Judiciary**
- D. Administration & Regulation**

Submitted by Rupert Roopnaraine
Monday, 22 March, 1999

CONSTITUTION REFORM COMMISSION SECRETARIAT

MEMORANDUM

To: All Commissioners

Date: June 14, 1999

From: W. H. Parris

Subject: **Some Comments on the Procedure for Arriving at Recommendations**

1. Please refer to the memorandum dated June 11, 1999 from Commissioner Roopnaraine which we discussed on that same date.
2. My perception is that among the major concerns expressed by commissioners during that discussion are the following two:
 - (a) That decisions should not be forced out of the Commission by any procedure that could be deemed to have denied any commissioner adequate opportunity to have formed and expressed a considered opinion - hence the references to concepts such as "muzzle."
 - (b) That the existence of the target date of 17 July, 1999 should not be allowed to curtail the process of commissioners influencing each other's views through dialogue and negotiation.
3. It is my suggestion that these concerns could be adequately addressed by agreement on the following additions to Commissioner Roopnaraine's proposal already amended. These additions comprise two interpretations, one procedure, and one commitment
4. **INTERPRETATION #1**
 - (a) The Commission's mandate is to present a Report to the National Assembly not later than July 17, 1999.
 - (b) The Commission is required to organise its work in such a manner as to conclude its deliberations in time to prepare that Report.
5. **INTERPRETATION #2**
 - (a) The Report is to comprise "Recommendations" clearly indicated as one of "Consensual;" "Majority;" or "Minority."
 - (b) The Issues on which "Recommendations" are made shall include those listed in Sections 6 (2)(a) through 1 of the Act establishing the Commission.
 - (c) A "Recommendation" shall comprise statements about any of: (i) A set of Principles; (ii) A set of Criteria; (iii) A set of Institutional Arrangements; or (iv) A proposal for Research; on the Issues under consideration.

If this interpretation is accepted, then there will be no requirement to pronounce with implementable finality on any issue, but only the requirement to have substantially advanced progress towards such a final determination, which in any event is to be made by the process of Parliamentary Debate.

6. **The PROCEDURE**

A roster of Issues for discussion should be compiled, and for any Issue under consideration:

- (a) There should be a Proposer identified and so notified to all Commissioners.
- (b) Proposers should arrange the verbal presentation of their proposals to conform as best as possible to the four categories of statements listed in Section 5(c) above.
- (c) As far as possible, each Commissioner wishing to comment on a particular issue should impose on themselves the discipline of committing to writing, in at least note form, the main comments which they wish to make; and should do the Proposer and other Commissioners the courtesy of giving them a copy prior to the Proposer making their verbal presentation.

In this manner, the debate could usually begin with each Commissioner already knowing the main initial positions of all other Commissioners who wish to speak; with the Proposer being in a position to deal with these views during the verbal presentation; and with Commissioners being in a position to deal with the Proposer's comments in their own verbal contributions which could then avoid being a simple repetition of what they have already said in writing.

- (d) There should be an agreed time frame at the end of which debate will cease, and conclusions along the lines of Section 5 above will be determined. Those conclusions will comprise the "Recommendations" and will therefore not always represent final determinations on the matter under discussion.

7. **The COMMITMENT**

If the two Interpretations and the Procedure stated above are substantially agreed and committed to by Commissioners, then the task of compiling the Report will be possible in the required time frame. In this respect I refer Commissioners to the last page, i.e. Page 6, of the document "Constitution Reform Commission Report Timetable" which identifies the critical nature of the writing of Volume 2.

*W.H. Parris
June 14, 1999*

**CONSTITUTION REFORM COMMISSION
ISSUES IN THE CONSTITUTION - AREAS OF POSSIBLE FOCUS**

CONSISTENT with the need to resolve our current problems and create a new environment in which all sections of the Guyanese population may contribute to the governance and development of Guyana; and

APPLYING the terms of reference provided for the Constitution Reform Commission by the Legislature after consultation with the political parties;

AWARE of the requirement that the Constitution Reform Commission conclude its deliberations and present its report to the National Assembly by the 16th July, 1999 to permit post-reform general elections to be held within eighteen months thereafter;

MINDFUL of the need, to consult with as many persons, groups, communities and institution as possible within the time available;

The following subjects are among the matters within our mandate which fall for discussion and recommendation:-

- i) strengthening the fundamental rights and freedoms of all Guyanese under the law and the CARICOM Charter of Civil Society and proposing measures to improve the enforcement of those rights;
- ii) consideration of such constitutional provisions as will further protect and enforce the rights of the indigenous people of Guyana;
- iii) measures to strengthen and protect gender rights and the rights of children and eliminate discrimination in all its forms;
- iv) provisions concerning race relations and equal opportunity with a view to promoting ethnic security.
- v) ensuring that the views of minorities are given due consideration in the decision making process and in the conduct of Government;
- vi) reforms relating to elections and the Elections Commission;
- vii) measures to secure and protect the economic, social and cultural rights of all Guyanese and the independence of the judiciary;
- viii) measures to safeguard public funds and the integrity of public life.

On the issue of security, are national security, the composition of the security forces and their democratic control, appropriate issues to be included in the Constitution? Should the Constitution preclude the establishment of quasi-security forces? How should the heads of the disciplined forces be appointed - is the present system satisfactory? Should their composition be considered with a view to making it more representative of our total community? Who can declare and who can revoke a state of emergency? Should a special majority be required to invoke Emergency Regulations? As regards the administration of justice - how should our Judges be appointed? Is the present system satisfactory? Should there be capital punishment? Should the judiciary be made more independent? On the matter of public administration should the Constitution deal with the integrity of public officer? Should the role of the Ombudsman be reconsidered and expanded? Should the Auditor General be given more authority and should his independence be more protected? As regards Local Government - what functions are appropriate for local government? Should

planning, drainage and education be all locally managed? How should revenue be raised, and allocated? Should the ward system be re-introduced in local elections?

Should the rights of labour and capital be specified in the Constitution?

Should the Constitution itself have a guiding principle? Should it be religious? Should it specify our national symbols, if so -what should they be? And how should we adopt a changed Constitution and how should we change it in future?

RAMKARRAN/MCDOOM

Adopted by the Constitution Reform Commission on 15th February, 1999

**SUBJECTS FOR DISCUSSION
RECOMMENDATIONS FOR CONSTITUTIONAL REFORM**

1. The State and the Constitution.
2. Principles and Bases of the Political, Economic and Social System/Economic, Social and Cultural Rights.
3. Fundamental Rights and Freedoms/Caricom Charter.
4. Rights of Indigenous Peoples.
5. Rights of Children.
6. Gender Rights.
7. Citizenship.
8. Race Relations and Discrimination.
9. Rights of Minorities.
10. Parliament.
11. System of Elections.
12. Elections Commission.
13. Local Government.
14. The President.
15. System of Government.
16. The Judiciary/Administration of Justice.
17. Service Commissions/Other Commissions.
18. Public Administration.
19. Public Funds/Finance.
20. Integrity in Public Life.
21. Constitutional Offices.
22. National Security.
23. Land/Environment.
24. Democracy.
25. Education.
26. Religion
27. Capital and Labour.
28. The Constitution Document
29. Mechanics of Constitutional Reform.
30. Constitutional Reform for the Future..

SECRETARIAT LIST

CategoryOfComment
Administration of Justice
Cabinet & Ministers
Commissions
Economy
Education
Electoral System
Environment
Governance
Government - Local
Government - National
Government - Regional
Land & Resources
Not Applicable
Other
Parliament
President / Prime Minister
Public Administration
Race Relations
Rights - Children
Rights - Economic
Rights - Fundamental
Rights - Labour
Rights - Minorities
Rights - Political
Rights - Socio-Cultural
Rights - Women
Security - Internal
Security - National
The Constitution Document
The Constitution Reform Process

MEMORANDUM

TO: The Chairman and Secretary
Constitution Reform Commission

FROM: Miles Fitzpatrick

DATE: March 26, 1999

Please accept my recommendations below in respect of the manner in which the Commission should proceed to review public submissions and begin discussion on the Constitution:-

4. The staff of the Commission (with the help of an Commissioner or Commissioners the Chairman and the Secretary may consider they need) to catalogue the oral and written submission submitted by the public.
5. The report prepared by the staff to be presented to member of the Commission for individual perusal within a finite period.
6. A carefully select sub-committee (the members of which should be recommended by the Chairman and the Secretary and selected by the Commission) should then prepare a report for the consideration of the Commission which defines the core issues that impact on different items or heads which fall for consideration. This sub-committee should reflect the real "balance" of or "interest" on the Commission and may therefore be larger than the usual sub-committee -say eight (8) members, 4 parties and 4 civil.

The core issues should be set out with non-definitive options which are presented with each core issue.

For example (only) "winner should not take all" may be defined as a core issue. The opposite cor issue is, of course, "winner should take all" which implies a Westminster style majoritarian system.

If winner should not take all then certain options may be defined which are available to apply this principle. They may be singular or capable of being combined. For example:-

Option (i): Consensus selected non-executive president with certain power of appointment:

Items or heads that may be affected by this option - e.g.
The President
Commissions (and so on)

Option (ii): non-majoritarian -upper chamber- with certain powers. Different sub-options may exist relating to the methods of selecting its members:

Items or heads that may be affected by this option - e.g.
The Electoral System
The President
Commissions
The Judicature
Finance

Option (iii): appointment of a cabinet proportionate to election support of parties:

Items or heads that may be affected by this option -e.g.
The Executive
Parliament
The President

Four or five core issues may be identified in this manner.

N.B.: The core issues are not the item heads - they constitute the rational bases on which the item heads will be examined.

- 7. Th core issues recommended by the sub-committee would then be debated in plenary session by the Commission after members have had a chance to digest its report and inform themselves.**

This debate should be tentative and explanatory, searching for the real options rather than seek to make detailed definitive recommendations at this stage. Not “ the position of my organisation is” but rather “I suggest that we consider”. This is not the debate that will finally decide our recommendation. This a debate that will hopefully decided on the way ahead towards that goal.

So, for instance, where members remain undecided at this stage whether one or other approach to a core issue should be adopted (winner should not take all - vs - pure majoritarian system, e.g.) Then the two alternatives will pass on to be examined further in the light of their impact on the item heads.

The core issues I suggest for consideration are:-

- (i) should winner take all?**
- (ii) should ethnic voting be de-emphasized;**
- (iii) the will of the majority should be flouted;**
- (iv) should all power be concentrated at the centre? and,**
- (v) should certain important decisions be taken on a partisan basis?**

- 8. The exploratory debate should help the Commission define its real difference and**

decide the way forward. Whether, for example, smaller sub-committees should be formed, what they should consider and how they should be comprised.

APPENDIX XV

From: Deryck M. Bernard
To: Secretary, Constitution Reform Commission
Date: 17.2.99

Matter: Notes on a Methodology for generating proposed locations for CRC hearings.

The basic principle is that places should be classified according to their population and/or some index of their 'central place' function, i.e., the degree to which they serve as a focus for retailing and marketing activity and by the presence of local, regional or national governmental functions. For this exercise, we used the data and results of a similar exercise conducted for the Ministry of Education by the Universities of Liverpool and Guyana in terms of rationalising the location of schools. The primary data used was the population figures for Enumeration Districts from the last census (1991) which has been aggregated from Enumeration Districts to the level of district council or some other appropriate spatial entity. Places have been allocated in four categories:-

1. Group A includes places with a population aggregate in it's own right or in contiguous areas of over 15,000 and which exhibits high level of centrality. All such places are selected for inclusion.
2. Group B describes a place with an aggregate population of between 9000 and 15000 and some central functions. All such places are selected for inclusion.
3. Group C is defined as rural and/or hinterland settlements which are foci for economic activity or are supported by an aggregate population of between 5000 to 9000. A selection was made from places in this category in an attempt to gain maximum geographical coverage.
4. Group D denotes places which do not have a population base of 5000 or more but which are included to ensure geographical representativeness. This category also takes account of the logistics involved in sampling hinterland and riverain communities and thus takes on board the proposals of Commissioner LaRose.

Please find attached:-

1. A list of places suggested in the various categories
2. A summary of the number of the locations suggested
3. Copies of population maps of the regions of Guyana using the proportional circle method that the secretariat may find useful.

Deryck Bernard

**PROPOSED LOCATIONS FOR HEARINGS OF THE CONSTITUTION
REFORM COMMISSION**

Region 2:-	CATEGORY 'A' 1. Anna Regina	2. Better Hope/Dartmouth 3. Suddie 4. Charity
Region 6	1. New Amsterdam 2. Rose Hall 3. Corriverton	Region 3 1. Uitvlugt 2. Vreed-en-Hoop/Klien Pouderoyen 3. Paradise-Endeavour 4. Den Amstel/Hague 5. La Jalousie/Windsor Forest 6. Meet-en-Meer-Zorg/De Kinderen 7. Leguan 8. Wakenaam
Region 10	1. Mackenzie	
Georgetown	1. Central Georgetown (Main Hearings) 2. Kilty/Campbellville 3. Ruimveldt	
Region 3	CATEGORY 'B' 1. Good Intent/Parika 2. Parika	Region 4 1. Soesdyke 2. Cane Grove 3. Ann's Grove Clonbrook 4. Helena-Supply 5. Haslington-Grove 6. Mocha-Arcadia
Region 4	1. Golden Grove/Nabaclis 2. Industry/LBI 3. Mon Repos/La Reconnaissance 4. Beterverwagting/ Triumph 5. Buxton/Foulis 6. Enmore/Hope 7. Melanie/Paradise 8. Eccles/Peter's Hall 9. Golden Grove/Herstelling	Region 5 1. Nova-Adventure 2. Belladrum 3. Bush Lot 4. Rosignol
Region 7	1. Bartica	
Region 8	1. Mahdia	Region 6 1. Crabwood Creek 2. Benab 3. Bloomfield-Ulverton 4. Mibikuri
Region 10	1. Wismar 2. Christianburg	
Region 1	CATEGORY 'C' 1. Santa Rosa/Kumaka 2. Matthew's Ridge/Pakera 3. Mabaruma	Region 7 1. Kamarang Region 8 1. Paramakatoi Region 9 1. Annai 2. St. Ignatius 3. Aishalton
Region 2	1. Devonshire Castle/Windsor Castle	

- Region 10**
1. Ituni
 2. Kwakwani

- CATEGORY 'D'**
- Region 1**
1. Kwebana
 2. Arakaka

- Region 2**
1. Kabakaburi
 2. Wakapao

- Region 3**
1. Santa Mission

- Region 4**
1. St. Cuthbert's

- Region 5**
1. Moraikabai

- Region 6**
1. Orealla

- Region 7**
1. Jawalla-Kako
 2. Kaikan

- Region 8**
1. Chinapau
 2. Orinduik

- Region 9**
1. Karasabai
 2. Shiriri
 3. Achiwib

- Region 10**
1. Great Falls
 2. Hururu

**SUMMARY OF PROPOSED LOCATIONS - CRC
CATEGORY**

REGION	A	B	C	D	TOTAL
1			3	2	5
2	1		4	2	7
3		2	8	1	11
4		9	6	1	16
5			4	1	5
6	3	5	4	1	13
7		1	1	2	4
8		1	3	2	6
9			3	3	6
10	1	2	2	2	7
GT	3				3

REGION

TOTAL

A	B	C	D	TOTAL
8	20	38	17	83

SUMMARY OF PROPOSED LOCATIONS - CRC
CATEGORY

REGION	A	B	C	D	E
1			4	2	
2	1		4	2	
3		1	4	1	
4		9	5	1	
5			4	1	
6	3	5	4	1	
7		1	1	2	
8		1	3	2	
9			3	3	
10	1	1	2	2	
GT	3				
TOTAL	8	18	34	17	0

GRAND TOTAL 77

CONSTITUTION REFORM COMMISSION

TO: All Members of the Commission

FROM: Vidyanand Persaud

SUBJECT: ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS

The fundamental rights and freedoms of the individual are set out in Articles 138-151 of the 1980 Constitution.

I feel confident that after our deliberations the Commission will recommend not only the retention but also the strengthening of these Articles.

However, it is not enough merely to set out fundamental rights in the Constitution. Enforcement of the rights and freedoms is as (and perhaps more) important than the rights and freedoms themselves.

Our Constitution provides for the enforcement of the fundamental rights as follows:-

153. (1) Subject to the provisions of paragraph (6), if any person alleges that any of the provisions of articles 138 to 151 (inclusive) has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

- (a) to hear and determine any application made by any person in pursuance of the preceding paragraph;
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of the next following paragraph, and may¹ make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of articles 138 to 151(inclusive):

Provided that the High Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

Paragraph (1) above gave the citizen a new an independent right to apply to the High Court for determination of an allegation of breach of fundamental constitutional rights. This was recognised by Lord Diplock who observed that this paragraph "..... was a newly created right of access to the

¹ Crane J. A. held that the word "may" means "must" Amerally v. Attorney General 25 W.I.R. 272.

High Court to invoke a jurisdiction which was itself newly created.”² Lord Diplock had cause also to comment on a similar paragraph appearing in the Constitution of Trinidad and Tobago and noted that the remedy of “redress” co-exists with any other remedy which may have been available to the victim under the law previously existing.³

The proviso to Article 153 (2) - italicised above - seek to derogate from the right of access to the High Court which has been created under sub-section (1). The right is given to the citizen by one hand and taken away by the other hand!

Section 6 of the Constitution of Trinidad and Tobago is identical to our Article 153 (1) and (2) except that it does not include the proviso. In one case a citizen of Trinidad and Tobago who was charged with a criminal offence went to the High Court and sought a declaration against the State on a complaint that his constitutional rights had been infringed because he was denied the right of access to his lawyer. The State urged the judge not to make a declaration since the complaint could be raised by the citizen and decided on his trial before the jury. In effect, the State was attempting to get the judge to tack on something like the proviso in our Constitution to the Trinidadian provision. (If you can secure adequate redress by another legal method then you cannot maintain a constitutional motion). The judge emphatically rejected this attempt to cut back on the power of the Court to grant constitutional declarations. He said:

“The section is broad and judicial interpretation shall not seek to narrow it. In the language of an Indian case of the Court has been appointed the sentinel of the rights of the subject under the Constitution and should be ever vigilant to offer protection whenever there has been an infringement The Constitution vests a certain jurisdiction in the court for the protection of constitutional rights. If there has been an infringement of a right the court ought not to refuse a possible remedy because another perhaps more comprehensive remedy may be available in another jurisdiction of the court. Section 6 itself states that the right it confers is “without prejudice to any other action with respect to the same matter which is lawfully available.”⁴ (Underlining mine)

Section 25 of the Constitution of Jamaica contains a proviso similar to that contained in our Constitution. That proviso was considered by the Jamaican Supreme Court when a citizen complained that his constitutional rights were being violated because he was about to be put on trial for an offence although a jury had already found him not guilty of that offence. He could have raised this argument because at the upcoming trial as a defence (*autrefois acquit*). However, the Supreme Court and the Privy Council did not seek to use the proviso against him.⁵

In Guyana, Justice of Appeal Crane recognised that the citizen’s right to approach the High Court for redress whenever his fundamental rights are violated is a right that is separate, distinct and

² Jaundoo v. Attorney General of Guyana (1971 A.C. at 982: 16 W.I.R. 141 at 146.

³ Maharaj v. Attorney General of Trinidad and Tobago (1978) 2 All E. R. 670: 30 W.I.R. 310.

⁴ Per Georges J in Thornhill v. Attorney General 27 W.I. R. 281 at 288.

Nasralla v. DPP 9 W.I.R. 15: 10 W.I.R. 299

independent of any other procedure that is available.⁶

In several other cases the Courts have refused to apply proviso. During 1994 the Guyana High Court considered the case of a citizen who sought a declaration that his constitutional rights were being violated by the refusal of a magistrate to grant him bail on fraudulent conversion. Again, the State opposed the grant of the declaration by invoking the proviso. Their argument was that the citizen should have filed a petition for bail to the High Court and since this was an adequate means of redress available to him the Court should not exercise its power to grant constitutional relief. The judge disagreed and declared that the fundamental rights and freedoms in our constitution would be meaningless if the citizen does not have the means to seek redress before a Court whenever they have been infringed. After noting the non-application of the proviso in many reported cases in which alternative redress was available the judge deemed the proviso a dead letter and expressed the view that Article 153 should be read without reference to it.⁷

Later on another local judge dealt with a constitutional motion by two citizens who claimed that a magistrate committed them to stand trial for trafficking in narcotics although no evidence was disclosed against them. Not surprising, the state argued that the proceeding should not have been initiated by way of constitutional motion - the applicants should have moved to quash the committal by other proceedings (certiorari): the State invoked the proviso. The judge felt that the test for the application of the proviso was the adequacy of other means of redress available to the applicant. He found that other means were available to the applicant but on review of the authorities he granted the constitutional motion. Notwithstanding this he did not consider the proviso to be a dead letter.⁸

The judicial approach of paying no heed to the proviso is a fair and commonsensical one. It has already been demonstrated that a matter of linguistic construction the proviso makes no sense. Further, as was pointed out by a regional legal scholar:-

“The redress section, read with the proviso, contains an inherent difficulty. It appears to be contemplated that an infringement of a fundamental right can, as such, be redressed in proceedings under the i.e. ordinary law.”⁹

This complaint is well founded. If, as States authorities and some judges often argue, adequate redress can be obtained in ordinary proceedings for violation of fundamental rights conferred in the Constitution, then in such proceedings one would expect that two separate and distinct issues would be canvassed in those proceedings, to wit:-

- (a) The constitutional issue
- (b) the ordinary issue.

⁶ Amcerally v. The Attorney General (Supra).

⁷ Compton English v. Attorney General of Guyana - Action 1304 of 1994

⁸ Cecil Abrams et anor v. Attorney General of Guyana - Action 2509 of 1995

⁹ Margaret Demerieux “Access to Court” - International Human Rights Law in the Commonwealth Caribbean p. 119

However, this is not the case. An aggrieved citizen who seeks to raise a constitutional issue in ordinary proceedings will be told by a judge that he is wasting the Court's time and that he should embark on constitutional proceedings in relation to such issue. Then, when he institutes constitutional proceedings he is confronted with the proviso and advised by the judge that he should seek redress in ordinary proceedings. This Catch 22 situation arises because of the retention of the proviso which makes a mockery of the fundamental rights provisions in the Constitution and which facilitates the frustration of constitutional motion on technical grounds.

Technical objections should never stand in the way of enforcement of fundamental rights. The Supreme Court of India is well known for its vibrant role in protecting the fundamental rights of Indian citizens. On several occasions that Court has held that it had a duty to grant relief under the Indian Constitution where there was breach of a fundamental right even though the proper procedure was not followed by the citizen and even if the proper order was not asked for.¹⁰

The contrast between the Indian and Caribbean approach has been put this way by a former Solicitor General of India:-

*"...if there is a breach of a fundamental right this self-imposed limitation of exhaustion of alternative remedies is not attracted. In other words, in the case of a breach of a fundamental right, the High Court says there is no question of discretion - it has a duty to interfere. That is, I believe, a marked difference between the Indian Constitution and some Caribbean Constitutions"*¹¹.

The liberal approach is also adopted by the Nigerian Courts interpreting Section 42 of the Nigerian Constitution which, like Article 153 of the Guyana Constitution, empowered the High Court to enforce the Bill of Rights by granting redress. The Nigerian Courts have held that the provision in fact extended the supervisory jurisdiction of the courts which may be invoked at any stage of a trial. The judicial role is not only to redress but also to prevent the breach of a right contained in the Constitution.

It was put this way by the Chief Justice of Nigeria:-

*"I take the view, that, because it is so fundamental to life, liberty and well being of the individual, it should be possible for any person who complains about the alleged infringement of any of his fundamental rights as entrenched in our Constitution, to canvass the issue of such infringement at any stage of any court proceedings"*¹²

When I first indicated that I proposed to urge the removal of the proviso one Commissioner cautioned that we tread cautiously in this area since it may encourage citizens to rush to the Courts

¹⁰ See for example *Kochunni v. State of Madras* (1959) S.C.R. 725

¹¹ Access to Court: An Indian perspective by Soli Sorabjee (Int. Human Rights Law in the Commonwealth Caribbean).

¹² Fatayi-Williams C.J. in *Dr. Sofekun v. Chief Akinvemi et al* (1980) 5-7 S.C.I at pp 20-21

with frivolous Constitutional motions. This anxiety has been expressed in the past but I do not think it is well founded. The records will reveal that matters connected with the issue of fundamental rights or which may perhaps be sought to be elevated to that level form a very small percentage of actions filed in the Courts. A matter of greater concern is the abuse of the system by the filing of many frivolous applications for ex-parte injunctions. There is no talk of discouraging such excesses.

In any event, the judge will be able at an early stage to identify any matter that do not belong to the Constitutional jurisdiction and by suitable award of costs (possible against the lawyer personally) will defer frivolous litigation in this area.

In England, when there was talk of enacting a Bill of Rights, Lord Denning (of all People) argued against the proposal on the ground that "*disgruntled people will bring proceedings before the courts challenging the orderly system of our country.*"¹³ He feared that there would be a lot of litigation by "*people praying in aid of these fundamental rights, as they say, and giving much embarrassment and disturbance to society.*"¹⁴

This would be understandable in someone resistant to wider freedom and was therefore surprisingly advanced by Lord Denning who was noted throughout the common law world as a champion of the underdog.

Not surprisingly Lord Denning subsequently changed his mind and in fact favoured the incorporation of the European Convention on Human Rights into United Kingdom law.¹⁵

In any event, greater access to the Courts and increased litigation to secure the enforcement of fundamental rights are always good things for a democracy. It is well known that the common law has advanced through litigation initiated by persons who represent minority views that the majority of the day found unacceptable.

Discussing the concerns of possible abuse of the liberal approach adopted by the Supreme Court of India towards action for the enforcement of basic human rights for the economically and socially disadvantaged people, Soli Sorabjee remarked:-

*"It can, of course, be abused - any good thing can be abused; but it has brought great relief."*¹⁶

I strongly urge that this Commission recommend the removal of the proviso Article 153 (2) of the Constitution. Strong judges have been willing to disregard the proviso and grant constitutional relief. Other judges, in response to positions invariably taken by the state, point to the availability of other adequate means of redress (such as appeal, certiorari and habeas corpus) as a ground for

¹³ House of Lords, Hansard, Vol. 369 (March 25, 1976).

¹⁴ Ibid.

¹⁵ "Fundamental Rights: The United Kingdom isolated?" - Public Law 1984 p.63.

¹⁶ Access to Court: an Indian perspective (supra)

frustrating proceedings seeking to enforce fundamental rights. The things they point to, however, are means of *access* to the court and not means of redress.

The reality is that we have a duty under the Constitution Reform Commission Act 1999, inter alia, to review the Constitution of Guyana to provide for the current and future rights of the Guyanese people.¹⁷

We will be neglecting the statutory duty we have sworn to discharge if we turn a blind eye to the proviso which fetters the enforcement of the most fundamental rights and freedoms of the individual guaranteed in our Constitution.

Article 32 of the Constitution of India is couched in similar terms to our Article 153 (without the proviso). I commend to follow Commissioners the pronouncement of Dr. Ambedkar on the importance of that Article which provides for judicial enforcement of human rights. He said:-

*"..... if I was asked to name the particular article in the Constitution as the most important without which this Constitution would be a nullity, I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it....."*¹⁸

Do we give meaning and content to the enforcement provision or do we treat it as a mere paper declaration? The choice is ours.

Vidyanand Persaud (Commissioner)
April 27, 1999

¹⁷ Section 6 (1) of the Act.

¹⁸ Basu, *Commentary on the Constitution of India*, Vol.2. 4th Edn. 268.

SOME IDEAS ON FUNDAMENTAL RIGHTS
for
THE CONSTITUTION OF GUYANA
(An Initial Comment - Notes)

1. These notes look at the Constitution from the vantage point of a Society being a Complex, Adaptive, System (CAS). A CAS has its character and behaviour determined by the nature and behaviour of its members, for which I shall use the terminology "Agents." These Agents have the capacity to evolve over time, with the direction and pace of their evolution being determined by the imperatives of survival under a regime of non-benign competition. In this sense, both their structure and their behaviour "adapt" to the circumstances of the society and to the global milieu in which the society exists. The complexity of the society derives from the interactions among Agents, and between the society itself and the global milieu in which it exists - this gives the society the character of an organic whole that is greater than the simple sum total of its components.
2. It is possible to consider a Constitution as a document that a society prepares about itself, and in which, among other things, it adumbrates (often, but not entirely in a preamble) a vision and objectives for itself. Such a vision and objectives cannot be realised unless certain moral, philosophical, and systemic rules, principles, and behavioural norms are established and adhered to by the Agents. These are *necessary* conditions that Agents must satisfy if there is to be a realisation of the vision and objectives adumbrated.
3. I argue that a Constitution should enshrine in itself, and revisit from time to time, those necessary conditions that it deems require satisfaction if its vision and societal objectives are to be realised. (The requirement of revisitation derives from the fact that, even if the vision and objectives are held invariant, the global milieu changes outside the control of the society itself). I further argue that it is the "necessary" nature of the conditions that endow them with the character of being "*fundamental*."
4. These fundamental conditions have the character of both "*rights*" of Agents, and "*obligations*" of Agents. Accordingly, the Constitution should enshrine in itself both *Fundamental Rights* and *Fundamental Obligations*.
5. Also, given the nature of "necessity" associated with the concept of Fundamental, the conditions cannot serve their purpose if they are deemed to be simply exhortatory or declaratory. They must be testable, and enforceable; and proven breaches of them must be appropriately punishable. Accordingly, the Fundamental Rights and Obligations must all be justiciable.
6. As mentioned above in Paragraph 4, the rights and obligations are those of the Agents of the society. The requirement of justiciability therefore implies that the Agents under consideration must all be legal persons.

7. Also, the nature and purpose of the conditions are such as to make it inadequate for "Agents" to be defined to be synonymous with "individual persons." Such a definition would be too narrow to serve the purpose of the society taken as a whole, and as looked at from the vantage point of Paragraph 1. I argue that "Agents" be defined to comprise at least the following five (5) categories, each of which must be accorded the clear status of legal persons for the purposes of justiciability:

- (i) Individual persons, including children in utero;**
- (ii) Business entities;**
- (iii) Central and Local Government Bodies;**
- (iv) Political Parties;**
- (v) Other Associative Groups (including NGO's, Charitable Bodies, Churches, Private Clubs, etc.).**

8. If the logic of this argument is accepted, then the Constitution would have ten Sections of Fundamental Rights and Fundamental Obligations, two for each of the five categories of Agents on whose behaviour the behaviour of the society will depend.

9. In pursuing this approach, I recommend highly that the ideas embodied in the "Declaration of the Rights of Man and of the Citizen" which was adopted by the National Assembly during the French Revolution on August 26, 1789, and reaffirmed by the constitution of 1958, be considered for inclusion in Guyana's Fundamental Rights and Fundamental Obligations. A copy of that Declaration is appended.

W. H. Parris
April 20, 1999

**CONSTITUTION REFORM COMMISSION SECRETARIAT
MEMORANDUM**

To: All Commissioners

Date: June 14, 1999

From: W. H. Parris

Subject: **Some Comments on the Procedure for Arriving at Recommendations**

4. Please refer to the memorandum dated June 11, 1999 from Commissioner Roopnaraine which we discussed on that same date.
5. My perception is that among the major concerns expressed by commissioners during that discussion are the following two:
 - (a) That decisions should not be forced out of the Commission by any procedure that could be deemed to have denied any commissioner adequate opportunity to have formed and expressed a considered opinion - hence the references to concepts such as "muzzle."
 - (b) That the existence of the target date of 17 July, 1999 should not be allowed to curtail the process of commissioners influencing each other's views through dialogue and negotiation.
6. It is my suggestion that these concerns could be adequately addressed by agreement on the following additions to Commissioner Roopnaraine's proposal already amended. These additions comprise two interpretations, one procedure, and one commitment

4. INTERPRETATION #1

- (a) The Commission's mandate is to present a Report to the National Assembly not later than July 17, 1999.
- (b) The Commission is required to organise its work in such a manner as to conclude its deliberations in time to prepare that Report.

5. INTERPRETATION #2

- (a) The Report is to comprise "Recommendations" clearly indicated as one of "Consensual;" "Majority;" or "Minority."
- (b) The Issues on which "Recommendations" are made shall include those listed in Sections 6 (2)(a) through 1 of the Act establishing the Commission.
- (c) A "Recommendation" shall comprise statements about any of: (i) A set of Principles; (ii) A set of Criteria; (iii) A set of Institutional Arrangements; or (iv) A proposal for Research; on the Issues under consideration.

If this interpretation is accepted, then there will be no requirement to pronounce with implementable finality on any issue, but only the requirement to have substantially advanced progress towards such a final determination, which in any event is to be made by the process of Parliamentary Debate.

6. The **PROCEDURE**

A roster of Issues for discussion should be compiled, and for any Issue under consideration:

- (a) There should be a Proposer identified and so notified to all Commissioners.
- (b) Proposers should arrange the verbal presentation of their proposals to conform as best as possible to the four categories of statements listed in Section 5(c) above.
- (c) As far as possible, each Commissioner wishing to comment on a particular issue should impose on themselves the discipline of committing to writing, in at least note form, the main comments which they wish to make; and should do the Proposer and other Commissioners the courtesy of giving them a copy prior to the Proposer making their verbal presentation.

In this manner, the debate could usually begin with each Commissioner already knowing the main initial positions of all other Commissioners who wish to speak; with the Proposer being in a position to deal with these views during the verbal presentation; and with Commissioners being in a position to deal with the Proposer's comments in their own verbal contributions which could then avoid being a simple repetition of what they have already said in writing.

- (d) There should be an agreed time frame at the end of which debate will cease, and conclusions along the lines of Section 5 above will be determined. Those conclusions will comprise the "Recommendations" and will therefore not always represent final determinations on the matter under discussion.

7. The **COMMITMENT**

If the two Interpretations and the Procedure stated above are substantially agreed and committed to by Commissioners, then the task of compiling the Report will be possible in the required time frame. In this respect I refer Commissioners to the last page, i.e. Page 6, of the document "Constitution Reform Commission Report Timetable" which identifies the critical nature of the writing of Volume 2.

*W.H. Parris
June 14, 1999*

To: All Commissioners
From: R. Bhokmohan & W. H. Parris

July 1, 1999

RE: **RECOMMENDATIONS FOR INCLUSION IN CHAPTER II**
(with particular reference to Articles 13, 14, 15, 16, 17)

A. GENERAL COMMENT

Chapter II focuses on the "**Principles and Bases of the Political, Economic, and Social System.**" From the point of view of the Private Sector, this requires the Chapter to be crafted in a manner than highlights inclusion of the following dimensions at the level of the Constitution:

(i) The goal of economic development includes the objective of creating an economy capable of achieving and maintaining the status of "sustainable competitive advantage" in the context of a global competitive environment, through the fostering in the private sector of: entrepreneurship; individual and group initiative and creativity; and strategic alliances with domestic and global business partners.

(ii) The principles and mechanisms which the state will apply to the distribution of the material benefits deriving from entrepreneurial activity by the private sector will accord with the objective of making certain that rewards to the generators of wealth, both capital and labour, are sufficient to ensure the continuing generation of wealth.

(iii) The principles informing the regulatory practices that pertain to economic competition generally, and to the financial effects of that competition on individual business entities, will ensure the enshrining of mechanisms designed to give economic entities the greatest chance to respond effectively to the jeopardies of competition, such as bankruptcy and other survival threatening circumstances, when they occur.

(iv) In the context of an emerging global milieu in which "knowledge" is assuming more importance than "capital" and "labour" in the generation of wealth, the principles applied to the regulatory framework of national policy and the law should include provisions with respect to "copyright" and "patents" designed to reward the suppliers of knowledge especially when that knowledge is converted into commercial value. These principles should be applicable to both individuals and communities, particularly indigenous communities involved in projects such as Iwokrama.

B. SPECIFIC COMMENTS (Suggested Reformulations)

Article 13

The principal objective of the political system of the State is to establish an inclusionary democracy by providing increasing opportunities for the participation of citizens, and their organisations, in the management and decision-making processes of the State, with particular emphasis on those areas of decision-making that directly affect their well-being.

Article 14

The goal of economic development includes the objective of creating an economy capable of achieving and maintaining the status of "sustainable competitive advantage" in the context of a global competitive environment, through the fostering in the private sector of: entrepreneurship; individual and group initiative and creativity; and strategic alliances with domestic and global business partners.

Article 15

The goal of economic development includes also the objective of laying the material basis for the largest possible satisfaction of the people's growing material, cultural and intellectual requirements, as well as the dynamically stable development of their personality, creativity, entrepreneurial skills, and cooperative relations in a plural society; and the State has the responsibility to intervene to mitigate any deleterious effects of competition on individuals or groups of individuals.

Article 16

The State will foster the development of such relevant forms of cooperation and of business entities as are seen to be supportive of the goals of economic development as stated in Articles 14 and 15.

Article 17

Privately owned economic enterprises are recognised, and will be facilitated in accord with their conformity with the aims and objectives stated or implied in Articles 13, 14, 15, and 16.

END

.....
Ramdial Bhookmaohan

.....
W. H. Parris

**PROPOSAL FOR A CONSENSUS CONSTITUTION
MODIFICATION OF THE HERDMANSTON ACCORD
AND
A TRANSITIONAL NATIONAL GOVERNMENT**

The Herdmanston Accord required that elections under the new Constitution shall be held within 18 months of the date, 17 July 1999, when the Report of the Constitution Reform Commission will be handed over to the Special Select Committee for transmission to the National Assembly.

There is an assumption that, regardless of whether there is a consensus constitution or not, the country can confidently go forward to elections within the Herdmanston time frame. This assumption should not be encouraged. It is clear that the Accord anticipated a new constitution with which all, or the major players, are mainly satisfied. In some circumstances, the constitution itself and thus the elections to be held under it, may become a point of disagreement among parties.

Whatever the results of the constitutional reform process, the people of the country are entitled to a period of preparation for the likely effects of the changes. If the reforms keep a majority system on traditional lines, then the people are entitled to an atmosphere that gives it the best chance of working in their favour. If it is going to be a majority system with "inclusiveness" the people are also entitled to know how to use it. If the political system is to undergo change towards what has been described as power-sharing, then there must also be preparation for such an outcome. The same will be the case if mild or extreme devolution were to be recommended.

The much discussed lack of stability and prevalence of tension of the last eighteen months demand the attention of all concerned persons and organisations and all well-wishers of the Guyanese people. Since it appears that political tension or industrial tension sparks economic tension, then it is logical to assume that economic progress and human development will be jeopardised if the main and the minor political and economic forces fail to produce a means of management of our maladies.

The aim of this proposal is to achieve what the Herdmanston Accord has not so far achieved or rather, to facilitate the basic aims of the Accord effort in an attempt to help create a development friendly atmosphere in Guyana.

First Appeal: A Consensus Constitution

Our first appeal therefore is for a **consensus constitution** based on the decisions and recommendations of the Commission and for maximum give and take and readiness to change.

The Herdmanston Accord achieved a novel compromise, which shortened by about two years the life of a government whose election had given rise to controversy. Whatever the circumstances in which it was made, it is a concession which does credit to those who made it. At another level, those who in 1992 conceded governmental control of the Elections Commission, whatever the circumstances, made an important concession. In each case the impelling reason for the concession was the taking note of the discomfort of the other. These acts must go down in our history of nation formation as most significant contributions. It is unfortunate that in the daily exchanges, these important and decisive contributions are underplayed. The nation should recognise, apart from its weaknesses, its own strengths and should build on these strengths.

Second Appeal: Modification of the Herdmanston Timetable

Our second appeal is for the modification of the Herdmanston timetable. This will mean listing the things to be done to carry out the delivery and public discussion. There should be no need to rush as in 1997. It will be ill-advised in our circumstances to imagine that there is a routine fixed for elections. Elections in Guyana dare not be taken for granted.

Tasks and Processes

The Constitution Reform Commission shall hand over its report to the Select Committee of the National Assembly by July 17, 1999. Some of the most important tasks and processes follow:

7. Select Committee preparation and consideration of the CRC report.
8. Submission of the Report with recommendations for the process to the National Assembly.
9. The National Assembly debate of the Report and Recommendations.
10. The Assembly to direct the engagement of experts for the drafting of its decisions into constitutional form, thus creating the new constitution.
11. The draft Bill to return to the Assembly and be widely published. There should be room for public discussion of the proposed new constitution from this stage to the Referendum stage.
12. After a reasonable time the National Assembly will vote on the new Bill and send it to a referendum.
13. The framing of the Referendum Bill which must also be debated and authorised by the Parliament under the existing constitution.
14. Preparations for Referendum poll, including public education campaigns.
15. Preparations for the planned elections in January 2001. Satisfying the requirements of such polling will require the following:
 - a) Establishment of an Elections Commission acceptable to all sides.
 - b) Preparation of the list of electors.
 - c) Preparation and issue of voter i.d. cards.
 - d) Possible demarcation of boundaries if the Commission's recommendations on the electoral system make these necessary, e.g., if First-Past-the-Post is accepted for local government elections as proposed.

If we add to this the overdue local government elections, and if we assume -- as we must -- that the election campaign in 2001 will be at least as divisive as the zero-sum campaign of 1997, it is difficult not to conclude that the months ahead hold out the very real prospect of more stress and tension for the people of the country, many of whom are already voting with their feet in alarming numbers.

Third Appeal: Two Year Transitional National Government

This is the essence of the proposal, made in the Constitution Reform Commission in my name, that

the two-year period -- or longer period if necessary -- ensuing after the negotiated end of the current term of office be used creatively in the interest of national reconciliation. Simply, we propose that the two-year vacuum should be filled by a national government which is comprised according to the declared results at the 1997 general elections.

The prospect should all friends of Guyana, since reconciliation is the very essence of what is missing in our national life. As used here the term does not mean identity of thought and opinion and does not seek to remove critical examination and appraisal of public actions. It refers to the mood in which these things are done. The merit of the proposal is that neither party will be isolated.

Such a transitional government will be able to achieve many of the tasks necessary for laying the foundations of modern nationhood: national policy on environment and transfer of technology; physical planning and structure of industry, as well as basic human development, i.e., duties, rights and entitlements of children, of youth, of women and men, of the disabled and the elderly and of persons seriously ill and of prisoners of the state.

Above all the two-year period should be used for full local and national consultation about the future, an opportunity which we can snatch from the tensions of the present. These consultations should be national and local and held under neutral guidance by political parties fully associated and committed. Without this process, Guyana will not be ready for the new century with its combination of multi-faceted changes.

Without such a transition and reconciliatory period of preparation, there is every likelihood that the national interest will continue to be secondary to party preferences which are of course part of the national interest, but which in raw competition often consume the parties.

The worst omen will be the rejection of this proposal by any important section of the society, without recommending at the same time or soon after a superior approach to the period which lies ahead of us . The best formula then seems to be a neutral one, which can allay disappointment and curb the sense of triumph which normally follows victory.

Rupert Roopnaraine

**Rodney House
1 July 1999**

THE PRESIDENCY

Options:

1. No change (except possibly some amendments to Executive President's immunities and powers).
2. Executive President directly elected by 51% of the electorate (either by transferable vote or in a run-off election where necessary).
3. A non-Executive Presidency indirectly elected by a 2/3 majority of the House of Assembly.
4. A non-Executive President elected by a majority of the lower and upper chambers of a 2 chamber parliament by secret ballot (Trinidad).

SERVICE COMMISSIONS

The Guyana Constitution provides for four service Commission viz, the Judicial Service Commission, the Public Service Commission, the Teaching Service Commission and the Police Service Commission.

With certain exceptions the power to appoint, transfer, dismiss and exercise disciplinary control of specified categories of public employees is vested solely in these Commissions, which are answerable to no one in the discharge of their function.

The rationale for this autonomy in the Service Commissions is to insulate as far as possible the public officers from any form of political intervention or manipulation or upon political patronage, and once appointed to an office a public officer's continued employment or advancement must not be dependent upon winning the favour of ministers or any political affiliation.

Since the constitutional provisions relating to the Service Commissions can be amended simply by the enactment of the law by simple majority of all the elected members of the National Assembly, it is recommended that Parliament should amend the relevant Constitutional provisions relating to the Service Commissions so that only by the special procedure of a two-thirds majority of the members of the National Assembly or by the passage of a law in Parliament coupled with a referendum could any of the Service Commission be abolished or discharged.

It is morally wrong in this day and age that superannuation benefits which are intended as a financial cushion for an employee in his/her declining years, and after hi/her most productive years are behind him/her should be an act of grace to be paid or not to be paid at the will of the employer whether Government or non-Government.

The Pensions act chapter 27:02 states at S.4 (1) that "no Officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowances under this act."

S. 18 states that pension, etc, shall forthwith cease to any ex-officer (pensioner) in receipt thereof, if he has been adjudicated bankrupt or insolvent-provided that the pensioner's entitlement, for the maintenance of the pensioner and his family shall be paid in such proportions and manner as the President, as the case may be, think proper.

S. 19 states that pensions etc, to a pensioner shall cease on conviction and sentence to a term of imprisonment-however with a provision similar to S.18.

S. 25 states that the President shall have full power and authority to decide all questions that may arise in respect of or in connection with the administration of the Act.

It is apposite to note that this declaration of non enforce ability is attributed to a concept that once prevailed with regard to superannuation benefit payments to the United Kingdom's Public Servants.

However, the law has ben amended in the United Kingdom so as to make such superannuation benefits no longer gratuitous, but mandatory, provided of course that the officer had performed satisfactorily.

It is recommended that the Constitution Reform Commission should strongly urge the Government as a matter of utmost priority to amend sections 4(1), 18, 19 and 25 of the Pensions Act Chapter 27:02.

And that the existing legislation in articles 213 to 215 of the 1980 Guyana Constitution which contains provisions designed for the protection of pension rights of Public Officers should be preserved and re-enforced.

The following rights of workers are recommended for inclusion in the Constitution.

THE RIGHTS TO DEMONSTRATE PEACEFULLY

1. The right to demonstrate peacefully is recognised.
2. In the interest of public order, safety, health and normality the use of this right can be subject to rules and limitations determined by law.

RIGHTS OF TRADE UNIONS AND COLLECTIVE AGREEMENT

1. The Trade Unions shall have the power to defend the rights and interest of the employees they represent and for whom they assume responsibility.
2. Trade Unions shall be involved in:
 - (a) the preparation of labour legislation
 - (b) the creation of institutions of social security and other institutions aimed at serving the interest of employees.
3. Trade Unions shall have the right to conclude collective labour agreements with employers which shall be legally binding.

The rules concerning the powers to conclude collective labour agreements and the sphere of application of their rules shall be determined by law.

THE RIGHT TO STRIKE

1. Workers are free to establish Trade Unions to protect their rights and interests.
2. In the exercise of their Trade Union rights the following freedom shall be guaranteed without discrimination.
 - (a) freedom to join a Trade Union or not;
 - (b) the right to participate in Trade Union activities.
3. Trade Unions shall be governed by the principles of democratic organisation and management based on regular elections of their executive committee by means of a secret ballot.

Submitted by: Randolph Fitzherbert Kirton

Date: 13 July, 1999

APPENDIX XVI

PROPOSALS / RECOMMENDATIONS ON PREAMBLE

The Working People's Alliance, Rodney House, Croal Street, Georgetown
(NO. 1 Page 43-46 Date:07/05/97)

The Constitution of The Co-operative Republic of Guyana

We the People of the Co-operative Republic of Guyana

The proud heirs of the indomitable spirit and unconquerable will of our foreparents who by their sacrifices, their blood and their labour made rich and fertile and bequeathed to us as our inalienable patrimony for all time this green land of Guyana.

Saluting

The epic struggles waged by our foreparents for freedom, justice and human dignity and their relentless hostility to imperialist and colonial domination and all other forms and manifestations of oppression;

Acclaiming

The whole communities of those who in various ways resisted one form of bondage after another, their success despite hardships and setbacks in sustaining the human elements suitable for the establishment of a nation; acclaiming also their leaders known and celebrated, as well as those whose guidance is still to be documented; the pioneering spirit, the wide spread of various talents, heroic labour by hand and brain of all those who in myriad ways bequeathed to later generations a human society;

Affirming

The need for historical continuity following the liberating developments of 26th May, 1966, when our people regained independence in the available setting and 23rd February, 1970, when our country fulfilled its historic quest and became a Republic;

Pledged

To defend our national sovereignty, our right to self-determination, to respect human dignity among ourselves and everywhere, and while entering into commerce and exchange with a rapidly changing world, to seek strength in upholding the principles of equality, economic and social democracy, equal opportunity and recognition for men and women, recognition of the indigenous peoples and each and every ethnic group as having a right to their identity and inviolable dignity within the national framework and expanding social, economic and human rights

Acknowledging

The reorganising of the world over the past decade and anticipating the direction in which economic, social and technological changes are taking place; the growing recognition of the importance of the environment to life and survival; noting the new possibilities released by technology for the eradication of poverty and the results of its injudicious use and abuse;

noting the historic international recognition of women's unwaged labour as confirmed at Beijing in 1995;

Convinced

That in our common quest for economic growth and human development, it is fitting that we the Guyanese people commit ourselves to political, social and economic democracy; the non-exclusion of communities for reasons of political outlook, gender, race, class, creed, region or age from the exercise of due political authority; the support of due rewards to labour and enterprise; the encouragement of sustainable forms and modes of development; major investment in education and training; encouragement of beneficial innovation in the various departments of life; the freedom to establish humanist economic formations, especially those based on belief; freedom of thought and creativity in all disciplines, in the sciences, religion and the arts, commerce and industry, agriculture and the generation and application of energy;

Being Opposed

To all forms of domination and bondage, racial, economic or political;

Relying

On the belief that we share a common purpose and intent of developing a viable economy and a harmonious national community; based on the imperative to improve national cohesion without offending individual and group uniqueness;

Joining

In the making of this fundamental law resolve solemnly to approve, in the first instance, through our elected representatives, the following

CONSTITUTION OF THE COOPERATIVE REPUBLIC OF GUYANA

