

COOPERATIVE REPUBLIC OF GUYANA



FOURTH REPORT

ON THE

OVERSIGHT COMMITTEE

ON

CONSTITUTIONAL REFORM

(Resolution No. 33 of 1999)

April 8, 2000

FOURTH REPORT
on
THE OVERSIGHT COMMITTEE on CONSTITUTIONAL REFORM


1. This is the fourth monthly report to the National Assembly on the status of work of the Oversight Committee on Constitutional Reform, pursuant to the instructions and requirements of Resolution No.33, passed by the Assembly on December 6, 1999.
2. The Oversight Committee held five (5) Plenary meetings during the month of March, on Friday, March 3; Monday, March 13; Wednesday, March 15; Tuesday, March 28; and Friday March 31, 2000 respectively. Appendix A to this report comprises the Minutes of those meetings and related documentation.
3. During March, overseer members of the Oversight Committee conducted Task Force Meetings, with the assistance of their legal advisors, in pursuit of the preparation of drafting briefs with the frequencies detailed below:


Task Force A1	Mr Manzoor Nadir as overseer	5	Meetings
Task Force A2	Dr Rupert Roopnaraine as overseer	2	Meetings
Task Force B	Dr R. Luncheon & Mr V. Alexander as joint overseers	6	Meetings
Task Force C	Hon. M. V. Nagamootoo as overseer	8	Meetings
Task Force D	Dr Leslie Ramsammy as overseer	14	Meetings

4. The net result of these Task Force Meetings has been that all drafting briefs for Task Forces A1, A2, C, and D have been prepared by the target date of end March as required by the time-bound plan. A misunderstanding occurred, however, about the requirement to provide drafting briefs as they were completed, as opposed to simply doing all of them by end March and then presenting the whole lot in bulk for drafting to Task Force "E" (*see decision in minutes of the OSC plenary of February 18*). This misunderstanding was encouraged by the fact that though draftspersons were available to begin drafting, the full complement of draftspersons had not been formally engaged, and OSC members were aware of this delay. As a result, the draftspersons have begun their main tasks (i.e. excluding the Elections Commission) about 4 weeks later than envisaged in the time-bound plan; but arrangements are in train, as are alluded to in section 6 below, to compensate for the delay.

5. Task Force "B" is working towards a target date of April 13 for completion of its work. This Task Force has also engaged in the task of preparing the brief for the "*fast-tracked*" item, the Elections Commission. The drafting brief for the Elections Commission was completed in March with a view to meeting a target date of April 3 for presentation of the appropriate bill to the National Assembly. However completion of drafting of the Bill took longer than anticipated, and underwent several revisions to ensure compliance with the drafting brief. In the result the Bill was laid in Parliament on Friday, April 7. The Task Force is currently engaged in the deliberations on the Electoral Formula to be utilised that must accord with the recommendations of the Constitution Reform Commission, as endorsed by the Select Committee and approved by the National Assembly. In this matter, they are considering options proposed by the Electoral Systems Expert, Professor Andrew Reynolds, in his two written reports of March 13 & 24, 2000 respectively. They have posed a number of clarificatory questions to which Professor Reynolds has replied in two separate notes dated March 30, and April 4, 2000 respectively. Professor Reynolds visited Guyana during the period March 8 - 13 during which he had discussions with the Task Force members and made a presentation to the OSC plenary of Monday, March 13, 2000. His proposed return visit during the period April 6th to 11th, 2000 has been postponed by letter dated April 3, 2000, until the Task Force signals its readiness to have further face to face discussions with him, if necessary. These discussions might include his ideas on a revised local government system, which the Task Force has already raised with him. (*Appendix B contains Professor Reynolds' written proposals and two clarifications*).
6. The drafting brief for the other "*fast-tracked*" item, the Ethnic Relations Commission, has been completed, but has not yet been discussed in an OSC Plenary. The brief has nevertheless been given to Task Force "E" which is in a position to begin drafting, and the understanding is that should the OSC wish to make amendments to the brief, these will be communicated promptly to the draftspersons. Nevertheless, it is unlikely that the target date set as April 11 for laying the appropriate legislation in the National Assembly will be met. A revised target has not as yet been set.
7. The OSC in plenary has agreed (*see Pages 5, 6, & 7 of the appended minutes of meeting of Tuesday 28th March*) that six (6) draftspersons will be engaged. These arrangements have been implemented. The Coordinator, Planning and Monitoring will work closely with Task Force "E" to try to ensure that the organisation of their work, and the flow of drafting briefs, and drafted legislation, between the OSC in plenary and the draftspersons is pursued in a manner that will permit the final target date (i.e. end July, 2000) of the OSC's project to be met. The Oversight Committee recognises need for an increase in the frequency and duration of OSC plenaries.
8. The Financial Administrator, Mr Wayne E. Fordyce, was employed for the period 15 March, 2000 to 31 August, 2000.

9. This report of the OSC's work during March, 2000, together with its Appendices A and B, has been adopted and approved for transmittal to the National Assembly by the 12th plenary meeting of the OSC, which took place on Friday, 14th April, 2000.

Signed: 
Hon. Moses V. Nagamootoo, JP, MP
Chairman, OSC on Constitution Reform
& Head - Project Implementation

Signed: 
W. H. Parris, C.C.H.
Co-ordinator, Planning & Monitoring
OSC on Constitution Reform

Dated: 17 April, 2000

LIST of DOCUMENTS in APPENDIX A

1. Minutes of Fifth, Sixth, Seventh, Eight, and Ninth Plenary Meetings of the Oversight Committee.

LIST of DOCUMENTS in APPENDIX B

1. Copy of preliminary report by Professor Reynolds, dated 13th March, 2000.
2. Copy of revised report by Professor Reynolds, dated 24th March, 2000.
3. Explanatory note by Professor Reynolds, dated 30th March, 2000, clarifying method used to allocate seats to Regions in his Option 2.
4. Copy of letter from the OSC (including list of queries requiring comment) re request for Professor Reynolds to postpone his return visit.
5. Copy of written response by Professor Reynolds, dated 4th April, to Item 4 above.

END

APPENDIX A

OVERSIGHT COMMITTEE ON CONSTITUTIONAL REFORM

**MINUTES OF THE 5th MEETING
OF THE OVERSIGHT COMMITTEE
HELD IN THE PARLIAMENT CHAMBER,
PUBLIC BUILDINGS, GEORGETOWN,
ON FRIDAY, 3RD MARCH, 2000
at 4.55 P.M.**

ATTENDANCE

MEMBERS OF THE COMMITTEE (7)

CHAIRMAN (1) - People's Progressive Party/Civic

The Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information - Head, Project Implementation

Other Members -

From the People's Progressive Party/Civic (2)

Dr. Roger F. Luncheon,
Head of the Presidential Secretariat

Dr. Leslie S. Ramsammy, M.P.

From the People's National Congress (2)

Mr. W. Haslyn Parris, C.C.H.,
Coordinator, Planning and Monitoring

Mr. Vincent Alexander

From The United Force (1)

Mr. Manzoor Nadir, M.P.

From the Working People's Alliance (1)

Dr. Rupert Roopnaraine, M.P.

By Invitation

Mr E. Lance Carberry
Mr William Sampson
Ms Roxane George

Officers (3)

Mr. Maurice B. Henry,
Executive Secretary

Mr. Oscar E. Moore,
Administrative Assistant

Ms Debra H. Cadogan
Administrative Assistant

ITEM 1 CALL TO ORDER

1.1 The Chairman called the meeting to order at 4.55 p.m.

ITEM 2 AGENDA

2.1 Members adopted the Agenda.

ITEM 3 ANNOUNCEMENTS

3.1 **Welcome**

3.1.1 The Chairman extended a warm welcome to Members of the Committee and Officials. Special welcome was extended to the Delegates of the European Union, Ambassador Vincent De Visscher, Head of Delegation of the European Commission in Guyana and Suriname, Ms Maria Ralha, Economic Adviser, and Messrs Luc Zwanepoel and Andrew Ellis of the Needs Assessment Mission to Guyana.

3.1.2 The Chairman said that he sincerely wished their work would be productive in making their assessment.

3.2 **Circulation of Documents**

3.2.1 (i) The following documents were previously circulated with the Agenda:

- (a) Minutes of 4th Meeting of the Oversight Committee held on 18th February, 2000;
- (b) Proposed Addendum to Guidelines for Task Forces;
- (c) Fax on Experts on Electoral Systems from National Democratic Institute, Washington, D.C., to the Secretary;
- (d) Draft of the Third Report on The Oversight Committee on Constitutional Reform.

3.2.2 (ii) The following documents were circulated at the meeting:

- (a) Task Force “B” - Report;
- (b) Task Force “C” - Preliminary Progress Report;
- (c) Task Force “D” Worksheet No. 1 Revised.

3.3 **Appointment of Members of Legal Advisory Group**

3.3.1 The Chairman informed Members that on 22nd February, 2000, the Hon. Minister of Agriculture and Parliamentary Affairs, formally appointed Members of the Legal Advisory Group. Those appointed were:

- (a) Mr Cecil Dhurjon, S.C., Chief Parliamentary Counsel who was assigned to Task Forces “B” and “C”;
- (b) Ms Roxane George, Assistant Director of Public Prosecutions, who was assigned to Task Force “D”;
- (c) Mr Zehar Singh Negi, Legal Draftsman who was assigned to Task Force “A1”; and
- (d) Ms Cavelle Lynch, Attorney-at-Law who was assigned to Task Force “A2”.

3.3.2 He also informed Members that the Legal Advisory persons had commenced work with their individual Task Forces.

3.4 **Attendance of the other Members of Task Force “D” and Legal Advisory Person**

3.4.1 The Chairman explained that as Item 4 (iv) on the Agenda was related to issues raised by Task Force “D” for the Oversight Committee’s guidance, it was felt that the other members of that Task Force and the Legal Advisory

Person should be present at that meeting and to participate in the discussions on that item. Thus, an invitation was extended to them to attend that meeting.

- 3.4.2 He acknowledged the presence of Mr E. Lance Carberry, Mr William Sampson, two of the other members of the Task Force and Ms Roxane George, the Legal Advisory person. The third member Mr Randolph Kirton was out of the country.

ITEM 4 CONFIRMATION OF MINUTES

- 4.1 **Minutes of the Fourth Meeting of the Oversight Committee held on Friday, 18th February, 2000.**
- 4.2 **Corrections**
- 4.2.1 **Page 3**
- 4.2.2 Paragraph 3.4.3, line 1
- 4.2.3 **Deletion of “he” between “Coordinator” and “had requested”.**
- 4.2.4 Paragraph 3.4.4, line 5
- 4.2.5 **Insertion of “the” between “on” and “experts”**
- 4.2.6 **Page 5**
- 4.2.6.1 Paragraph 5.2.3., line 3
- 4.2.6.2 **Substitution of “each” for “his”.**
- 4.3 The Minutes were confirmed as corrected on a motion moved by Dr Ramsammy and seconded by Mr Nadir.
- 4.4 There were no matters arising out of the Minutes.

ITEM 5 BUSINESS

- 5.1 **Addendum to Guidelines for Task Forces**

5.1.1 The Coordinator, Planning and Monitoring, presented the Proposed Addendum to Guidelines for Task Forces and explained that the document was the product of two issues

- (a) Dr. Roopnaraine had raised the issue of those recommendations of both the Constitution Reform Commission and Special Select Committee which directed that Parliament should undertake certain tasks (**for example, Recommendation 9.9.3.7: Parliament should give consideration to providing for a time within which judges should give their decisions**) but which was not discussed to finality. The work of the Oversight Committee would be incomplete if it had focused only on drafting matters for inclusion in the Constitution without listing for the attention of the National Assembly those specific recommendations which the Constitution Reform Commission and the Special Select Committee had referred to it.
- (b) The second issue arose from the Report of Task Force D and concerned what should be included in the drafting briefs on the establishment of Commissions.

The drafting briefs should be informed by the General Purpose Overarching Clause on Page 66 of the Special Select Committee's Report. As no Constitution could include all requisite rules, regulations, etc. Task Forces should, however, indicate clearly in their briefs what were their intention to enable draftspersons to provide a framework within the Constitution which would facilitate drafting of enabling legislation to provide for greater details with respect to the composition, rules, procedures, powers and functions of Commissions.

5.1.2 In support of the Coordinator's explanation in respect of drafting briefs for the establishment of the Commissions, Dr. Roopnaraine pointed out that Section 9.19 of the Report of the Constitution Reform Commission (pages 227 to 229) set out clear guidelines on what ought to be borne in mind in preparing the drafting briefs.

5.1.3 Mr. Nadir while supporting the proposal with respect to paragraph 2 (A) of the proposed Addendum enquired of the relevance of the last sentence in paragraph 3 of the document.

5.1.4 After further explanation by the Coordinator followed by a general

discussion, Mr. Nadir expressed satisfaction that his concern was discussed and an amplification was made on the purport of the sentence, but requested that his observation be recorded in the Minutes.

5.1.5 With respect to drafting briefs on Commissions, Mr. Nadir reminded Members that it was not within the powers of Task Forces to deviate from the recommendations of the Constitution Reform Commission and the Special Select Committee, and , therefore, it was necessary for the Constitution to include the details as specified in the recommendation in relation to the establishment of Commissions.

5.1.6 The Coordinator explained that the intention of the Addendum was to ensure that the Task Forces adhere to the instructions in the recommendation. On the other hand the draftspersons would determine the details to be included in the Constitution and what would be the framework of the Constitutional provisions from which enabling legislation would derive.

5.1.7 Members discussed the document and adopted the **Addendum to Guidelines for Task Forces.**

5.2 **Report on Work Programmes of Task Forces**

5.2.1 **Task Force "A1"**

5.2.1.1 Mr Nadir reported that Task Force "A1" had submitted its Work Programme. It had completed 30 of the 54 recommendations for which, Mr Negi would prepare the drafting briefs.

5.2.1.2 He also reported that the other categories of recommendations were inter-related to that completed under Recommendation 9.2 - Fundamental Rights and Freedoms of the Individual. This would enable the Task Force to complete the other Recommendations on schedule as indicated in its Work Programme.

5.2.1.3 Mr Nadir said that the next meeting of Task Force "A1" was scheduled for Saturday, 4th March, 2000 at which Recommendation 9.3 - Indigenous Rights - would be examined.

5.2.1.4 Mr Nadir then sought clarification on the following recommendations:

(a) **Recommendation 9.2.3.2(18)**

This recommendation dealt with freedom of expression and members of the Task Force felt that the words “other forms of expression of hate” should be included to strengthen the term “hate speech”.

It was suggested that this recommendation be brought to the attention of the Legal Advisory Person.

(b) **Recommendation 9.2.3.2(19)**

This recommendation dealt with the right to demonstrate in accordance with the law and was cross-referenced with Recommendation 9.16.3 (4) which dealt with the right to demonstrate peacefully.

Following discussions on this matter, it was suggested that since the right to demonstrate peacefully was contained in the Constitution then it would supercede the right to demonstrate in accordance with the law which was part of the law outside of the Constitution.

(c) **Recommendation 9.2.3.2(10)**

With respect to the above recommendation which dealt with inalienable rights of children, Mr. Nadir explained that his Legal Advisory Person brought the following two problems to the Task Force’s attention:

- (1) the difficulty of including the forty-two (42) articles of the Conventions on the Rights of the Child in the drafting brief;
- (2) Such Conventions were subjected to change over time.

5.2.1.5 After discussing the issues it was decided that the Task Force should submit a request in writing for clarification and that issues which were of a technical nature such as this should be referred to the Legal Advisory Group for its assistance.

5.2.2 **Task Force “A2”**

5.2.2.1 **Dr** Roopnarine reported that Task Force “A2” had completed consideration

of all Categories of Recommendations it was assigned. The next meeting of the Task Force was scheduled for Monday, 6th March, 2000 at which the final report would be examined.

5.2.2.2 He noted, however, that the Preamble was outstanding and the Task Force would also revisit the Public Procurement Commission in light of comments made by Task Force “D”.

5.2.3 **Task Force “B”**

5.2.3.1 Mr Alexander reported that Task Force “B” had completed its consideration on Recommendation 9.10 - Elections Commission and copies of the Task Force’s report had been circulated earlier at that meeting. There were consequential aspects that were outside of the Elections Commission and were dealt with by the Task Force. They were issues affecting the office of the Minority Leader in articles 110 and 184 of the Constitution.

5.2.3.2 Mr Alexander reminded Members that Recommendation 9.10 - Elections Commission was one of the recommendations to be fast-tracked and sought their approval for it to be submitted immediately to Task Force E for drafting.

5.2.3.3 Following brief remarks, representation was made for consideration of the report to be deferred to an emergency meeting on the following Monday to give Members time to study it and submit comments on their concerns on any aspect of the drafting brief.

5.2.3.4 In the discussions that ensued it was explained that -

(1) It was still the responsibility of the OSC to approve all drafting briefs after all concerns expressed by Members were fully ventilated. The request to submit the Report of Task Force B on Recommendation 9.10 immediately was in keeping with earlier decisions to fast-track the recommendations on Elections Commission.

(2) The late submission of the Report at the meeting was due to a power outage which the University of Guyana had experienced for several days and which prevented Mr. Alexander from providing the Report for circulation at least three days before the meeting. That very morning he sought the assistance of the Secretariat which was able to make the Report available for the meeting.

5.2.3.5 Thereafter, it was decided that the Report would be submitted to the draftsperson subject to immediate recall if a significant issue of concern was

signified to the Chairman through the Secretariat.

5.2.4 Task Force “C”

5.2.4.1 The Chairman reported that Task Force “C” had examined all Categories of Recommendations it was assigned and drafting briefs were prepared for some.

5.2.4.2 He, however, requested and members agreed, that since the Preliminary Progress Report was circulated during the meeting, Members be given the opportunity to consider and flag any concerns on the Report which would be discussed at the next meeting of the Oversight Committee.

5.2.5 Task Force “D”

5.2.5.1 Dr Ramsammy reported that since Task Force “D” last reported they had the assistance of the Legal Advisory Person. The Task Force had since reviewed all its decisions on Recommendation 9.9 - The Judicature and had submitted a Revised Report to the Oversight Committee.

5.2.5.2 He also reported that his Task Force had already examined existing Commissions and had commenced consideration of new Commissions. The Task Force had benefitted from the submission of Task Force “A2” on the Public Tender Commission renamed the Public Procurement Commission.

5.2.5.3 Dr Ramsammy observed that the three recommendations from the Judiciary that were referred to the Oversight Committee for guidance were on the Agenda and members of Task Force “D” were in attendance.

5.2.5.4 He reported that the second Report would be submitted shortly.

5.3 Status of Arrangements for Functioning of Legal Advisory Group Members as Advisers to Individual Task Forces

5.3.1 The Chairman referred to his earlier announcement that members of the Legal Advisory Groups were assigned to individual Task Forces and had begun to work.

5.4 Status of Engagement of Electoral Systems Expert

- 5.4.1 The Coordinator, Planning and Monitoring, drew Members' attention to copies of the fax from the National Democratic Institute with names and biographical data of possible experts which had been circulated.
- 5.4.2 With respect to availability, Mr. Andrew Stephen Reynolds of the University of Notre Dame was the only one who could have adjusted his schedule to suit the Time-bound Plan of the OSC. This was discussed with the OSC's Responsible Members for Task Force "B" and NDI and they concurred in the selection of Mr. Reynolds.
- 5.4.3 The Coordinator said that he was advised by Mr John Heffernan, Director - NDI/Guyana, that Mr. Reynolds should be in Guyana by Thursday, 9th March, 2000. That he noted was three weeks behind the scheduled time.
- 5.4.4 In response to the question of how would the expertise of Mr. Reynolds be shared with Members of the Oversight Committee, the Coordinator replied that Mr. Reynolds would first meet with the OSC's Responsible Members for Task Force "B". He would then indicate how he would wish to proceed under the agreed Terms of Reference.
- 5.5 **Status of Engagement of Draftspersons - Task Force "E"**
- 5.5.1 The Coordinator, Planning and Monitoring, said that he was advised by the Minister of Agriculture and Parliamentary Affairs that the following four persons contacted by him were willing to accept the assignment as draftspersons:
- (a) Professor Keith Massiah, S.C., O.R.
 - (b) Mr Cecil Dhurjon, S.C.,
Chief Parliamentary Counsel
 - (c) Justice Oswald Legall,
 - (d) Mr Zehar Singh Negi,
Legal Draftsman, Attorney General's Chambers
- 5.5.2 He said that there was a difficulty with the identification of a fifth person. However, he would visit UNDP on Monday, 6th March, 2000 to finalise budgetary arrangements so that the draftspersons could be employed as early as possible.

5.6 **Items for Guidance of Task Force “D” by OSC**

5.6.1 Dr Ramsammy explained that his Task Force needed guidance on the following three (3) recommendations:

(a) **Recommendation 9.6.3.12**

This recommendation dealt with the term “meaningful consultation”. The Task Force wanted a definition of this term.

(b) **Recommendation 9.9.3.3**

This recommendation dealt with the appointment of the Registrar, Assistant Registrar and Officers of the High Court. The Task Force wanted clarification on who are the Officers of the High Court.

(c) **Recommendation 9.9.3.5**

This recommendation dealt with the appointment of the Chancellor and Chief Justice. In the absence of the definition of consensual mechanism the Task Force was unsure of how to proceed with the recommendation.

(c) **Recommendation 9.9.3.9**

This recommendation dealt with Part-time Judges. The Task Force needed guidance on whether it was Part-time or Temporary Judges that should be considered.

5.6.2 Following discussions on those recommendations, it was agreed that the Legal Advisory Group wanted to discuss the issues and report to the Oversight Committee. The Executive Secretary of the Oversight Secretariat was asked to attend the meeting when these matters were to be discussed.

ITEM 6 ANY OTHER BUSINESS

6.1 **Consideration of the Draft of the Third Report of the Oversight Committee on Constitutional Reform**

6.2 The Committee considered the Third Report of the Oversight Committee on Constitutional Reform along with its Appendices and agreed to submit it to the Minister of Agriculture and Parliamentary Affairs for presentation to the National Assembly.

ADJOURNMENT

The meeting was adjourned at 7.35 p.m. **sine die**.



Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information, CHAIRMAN -
Oversight Committee on Constitutional Reform.

OVERSIGHT COMMITTEE ON CONSTITUTIONAL REFORM

**MINUTES OF THE 6TH MEETING
OF THE OVERSIGHT COMMITTEE
HELD IN THE PARLIAMENT CHAMBER,
PUBLIC BUILDINGS, GEORGETOWN,
ON MONDAY, 13TH MARCH, 2000
at 4.50 P.M.**

ATTENDANCE

MEMBERS OF THE COMMITTEE (7)

CHAIRMAN (1) - People's Progressive Party/Civic

The Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information - Head, Project Implementation

Other Members

From the People's Progressive Party/Civic (2)

Dr. Roger F. Luncheon,
Head of the Presidential Secretariat

Dr. Leslie S. Ramsammy, M.P.

From the People's National Congress (2)

Mr. W. Haslyn Parris, C.C.H.,
Coordinator, Planning and Monitoring

Mr. Vincent Alexander

From The United Force (1)

Mr. Manzoor Nadir, M.P.

From the Working People's Alliance (1)

Dr. Rupert Roopnaraine, M.P.

Officers (3)

Mr. Maurice B. Henry,
Executive Secretary

Mr. Oscar E. Moore,
Administrative Assistant

Ms Debra H. Cadogan
Administrative Assistant

ITEM 1 CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 4.50 p.m.
- 1.2 He apologised for his unavoidable delay which was due to his attendance at the funeral of the late Courtney Harold Harewood, a veteran journalist and friend.

ITEM 2 AGENDA

- 2.1 Members adopted the Agenda.

ITEM 3 ANNOUNCEMENTS

- 3.1 **Welcome**
 - 3.1.1 The Chairman extended a warm welcome to Members of the Committee and Officials. Special welcome was extended to Messrs John Heffernan and Winston Cramer, Director and Assistant Director, respectively, of the National Democratic Institute of Guyana; Mr Mourad Wahba, Deputy Resident Representative and Ms Tania Schimmell, Programme Officer of UNDP.
 - 3.1.2 The Chairman also welcomed Mr Aubrey Collins, a member of Task Force "B".

ITEM 4

BUSINESS

- 4.1 **Electoral Systems - Presentation by Dr Andrew Stephen Reynolds**
- 4.1.1 **Introduction of Dr Andrew Stephen Reynolds**
- 4.1.2 In introducing Dr Andrew Stephen Reynolds of the Department of Government and International Studies, University of Notre Dame, the Chairman said that Dr Reynolds was the guest speaker at that Special Meeting of the Oversight Committee.
- 4.1.3 He said that with the assistance of the National Democratic Institute, Dr Reynolds had been engaged by the Committee to advise Task Force “B” on its consideration of the Recommendations of the Constitution Reform Commission on Electoral Systems.
- 4.1.4 Dr Reynolds was an expert on electoral systems and had written widely on that issue and elections generally.
- 4.1.5 He had won for himself many Fellowships, Grants and Awards. Among his awards was the University of California, San Diego “Excellency in Teaching Award” for 1994-1995.
- 4.1.6 His professional responsibilities had placed him on several Ph.D Committees and as reviewer for a number of journals.
- 4.1.7 Dr Reynolds has held consultancies in Constitutional Design since 1991 in Africa, the Middle East, Asia and Europe.
- 4.1.8 The Chairman informed the meeting that Dr Reynolds would present them with his preliminary findings on possible electoral reform for Guyana, and, time permitting he would answer questions from Members of the Committee.
- 4.2 **Presentation by Dr Andrew Stephen Reynolds on Electoral Systems for General Elections in Guyana**
- 4.2.1 Dr Reynolds informed the meeting that at the request of the Oversight Committee and arrangements made by the National Democratic Institute he was in Guyana to provide expert consultation on the question of possible electoral system reform for general elections in Guyana. That he felt was a great honour.

- 4.2.2 Since his arrival on 8th March, 2000 he had had a series of consultations with relevant committees, political parties, representatives of the donor community and members of civil society in Guyana.
- 4.2.3 Dr Reynolds also informed the meeting that his working brief was laid out chiefly in the Oversight Committee's "Terms of Reference for Expert on Electoral Systems for General Elections" which were based on two broad Constitution Reform Commission's Recommendations 9.11.3 (1) and 9.11.3 (2) agreed to by the Special Select Committee and subsequently accepted by the National Assembly.
- 4.2.4 He continued by observing that the other two important considerations of his terms of reference were to look at options that can be implemented for general elections to be held no later than 17th January, 2001, while being cognizant of the fact that a second stage of reform might be appropriate after that date. If a "two-step" process were deemed to be appropriate then step 1 should facilitate step 2.
- 4.2.5 Dr Reynolds observed that under the existing time-scale (with elections to be held approximately ten months from the presentation of his Report) it was unrealistic to conduct a comprehensive boundary delimitation exercise for the purpose of crafting new parliamentary constituencies.
- 4.2.6 However, it had been suggested to him that it would be useful to present options which might involve re-districting as part of a second stage of electoral systems reform being introduced for subsequent elections after 2001.
- 4.3 **Electoral System Options**
- 4.3.1 In his presentation of his preliminary findings on the question of possible electoral system reform for elections, Dr Reynolds informed Members that within identifiable parameters three main options had emerged:
- Option 1:** The Status Quo
Option 2: Regionally Based List PR
Option 3: A Mixed Member Proportional System
- 4.3.2 He related the advantages and disadvantages of each option.

4.4 **Party Lists in PR Elections**

4.4.1 With respect to the proportional representation list for presentation to the electorate, Dr Reynolds gave three options and explained their operations:

Option 1: Closed Lists

Option 2: Opened Lists

Option 3: A Mixed of Closed and Alphabetical Lists

4.5 **Mechanisms for the Promotion of Gender Diversity**

4.5.1 With regard to the provision for gender representations in the electoral system, Dr Reynolds gave two options in relation to the Regionally based List PR electoral system, but which would be applied to the current system or the list element of any future MMP system:

Option 1: Women Fill 33% of the Ranked Positions on Regional Lists

Option 2: Women Fill 50% of the Ranked Positions on Regional Lists.

4.6 **Electoral System Allocation Formula**

4.6.1 Dr Reynolds did not recommend any change in the currently used Hare largest remainder seat allocation PR method, although he mentioned that there were at least three other alternatives.

4.7 **Considerations for Regional and Local Government**

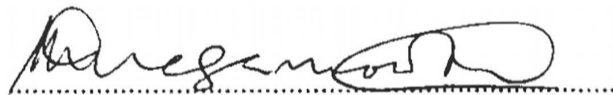
4.7.1 He advocated a different type of electoral system at the regional or local government level to that at the national level. As at the regional or local level there might be need for a heightened degree of geographical representation and accountability, emphasis might be placed on single member constituencies.

4.7.2 Dr Reynolds thanked all individuals whom he met and indulged him with delightful hospitality, treated him with frankness, candor, and nuance when offering information pertaining to the important question which enlightened him greatly and allowed him to craft the interim report.

- 4.8 **Method of Dealing with the Preliminary Report**
- 4.8.1 It was agreed that the Preliminary report would be referred to Task Force “B” for consideration thence to the Oversight Committee in the usual manner. Matters for clarification would be directed to Dr Reynolds.
- 4.8.2 Dr Reynolds said that although he was leaving the country on the next day, he could be contacted in the U.S.A. by e-mail for further consultations after which he would produce a final report.
- 4.9 Dr Reynolds circulated a copy of his document titled **“Interim Report on Electoral Systems for General Elections in Guyana”**. (See Appendix).
- 4.10 After his presentation, Dr Reynolds responded appropriately to questions asked.
Those who asked questions were:
 Mr Mazoor Nadir
 Mr Vincent Alexander
 Dr Roger Luncheon
 Dr Leslie Ramsammy
 Mr Aubrey Collins.
- 4.11 The Chairman thanked Dr Reynolds for the presentation of his preliminary report.

ADJOURNMENT

The meeting was adjourned at 6.05 p.m. to Wednesday, 15th March, 2000 at 4.30 p.m.



Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information
CHAIRMAN -
Oversight Committee on Constitutional Reform

OVERSIGHT COMMITTEE ON CONSTITUTIONAL REFORM

**MINUTES OF THE 7th MEETING
OF THE OVERSIGHT COMMITTEE
HELD IN THE PARLIAMENT CHAMBER,
PUBLIC BUILDINGS, GEORGETOWN,
ON WEDNESDAY, 15TH MARCH, 2000
at 5.05 P.M.**

ATTENDANCE

MEMBERS OF THE COMMITTEE (7)

CHAIRMAN (1) - People's Progressive Party/Civic

The Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information - Head, Project Implementation

Other Members -

From the People's Progressive Party/Civic (2)

Dr. Roger F. Luncheon,
Head of the Presidential Secretariat

Dr. Leslie S. Ramsammy, M.P.

From the People's National Congress (2)

Mr. W. Haslyn Parris, C.C.H.,
Coordinator, Planning and Monitoring

Mr. Vincent Alexander (Absent)

From The United Force (1)

Mr. Manzoor Nadir, M.P.

From the Working People's Alliance (1)

Dr. Rupert Roopnaraine, M.P.

By Invitation Other Members of Task Force D

Mr E. Lance Carberry, M.P.
Mr William Sampson
Mr. Randolph Kirton
Ms Roxane George - Legal Advisory Person

Officers (3)

Mr. Maurice B. Henry,
Executive Secretary

Mr. Oscar E. Moore,
Administrative Assistant

Ms Debra H. Cadogan
Administrative Assistant

ITEM 1 CALL TO ORDER

1.1 The Chairman called the meeting to order at 5.05 p.m.

ITEM 2 AGENDA

2.1 Members adopted the Agenda.

ITEM 3 ANNOUNCEMENTS

3.1 **Welcome**

3.1.1 The Chairman extended a warm welcome to Members of the Committee and Officials.

3.2 **Appointment of Financial Administrator**

3.2.1 The Chairman informed Members that Mr. Wayne Fordyce had been appointed to the position of Financial Administrator with effect from 15th March, 2000.

3.2.2 He said from Mr. Fordyce's Curriculum Vitae which had been circulated, it would be observed that his academic background and working experience had made him suitable for the position.

3.2 Second Visit of Electoral Systems Expert

- 3.2.1 The Chairman said that the Director of NDI/Guyana has informed the Coordinator that Professor Andrew Stephen Reynolds would pay a second visit to Guyana from 6th to 11th April in connection with his electoral proposals.
- 3.2.2 Dr. Roopnaraine sought clarification on Professor Reynolds' return, since he felt that the two reports were extremely clear and did not necessitate another visit.
- 3.2.3 In the discussions that ensued it was observed that prior to his departure, Professor Reynolds had indicated his availability for discussion/clarification on his proposals.
- 3.2.4 Professor Reynolds had left a draft report and subsequently had sent an update of that report which was not the Final Report. Since Local Government was not fully addressed in his reports this might be done when he returned.
- 3.2.5 Mr. Alexander indicated that Task Force "B" had asked Professor Reynolds to look at Local Government. Although a specific request was not made, the Task Force would avail itself and would be grateful for any assistance rendered by Professor Reynolds.

3.3 Documents Circulated on 25th Instant with the Agenda

- 3.3.1 The following documents were circulated:-
 - (i) Notes on meeting with Draftspersons held on Tuesday, 21st March, 2000
 - (ii) Detailed Terms of Reference for Draftspersons
 - (iii) Report on Drafting Briefs of Task Force "A2".

3.4 Documents Circulated on 27th Instant

- 3.4.1 The following documents were also circulated:-
 - (i) Minutes of 7th meeting held on 15th March, 2000. Copies of these Minutes had been made available to Members of Task Forces, "C", "D" and "E"
 - (ii) Reports on Drafting Briefs of Task Forces "A1" and "C".

3.5 Documents Circulated at that Meeting

- 3.5.1 The following documents were circulated:-

- (i) Curricula Vitae of Task Force “E” Members (Draftspersons)
- (ii) Report on Drafting Brief on Ethnic Relations Commission.

3.6 Excuses

- 3.6.1 The Chairman informed Members that Dr. Luncheon had asked to be excused from meetings of the Committee up to 31st March, 2000.

ITEM 4 CONFIRMATION OF MINUTES

- 4.1 The Committee took note of the Minutes of 7th Meeting held on 15th March, 2000 but deferred its confirmation to a later date.

ITEM 5 BUSINESS

5.1 Legislation For Elections Commission

- 5.1.1 Mr Alexander reported that Task Force B had under consideration a draft of the Constitution (Amendment) Bill 2000 - *Elections Commission* - as prepared by the Chief Parliamentary Counsel and that it was not ready for submission to the OSC.
- 5.1.2 The Coordinator reminded the Committee that the Constitution (Amendment) Bill 2000 - *Elections Commission* - was a matter to be fast-tracked, and any delay in finalising the draft would put the target date for the Bill’s submission to the National Assembly in jeopardy.
- 5.1.3 The likely effect of the 2000 budget timetable on the early passage of the Bill was raised. It was explained that the Minister of Agriculture and Parliamentary Affairs could arrange, in agreement with Leaders of Parliamentary Parties, the business of the Assembly to take into account proceedings on the Constitution (Amendment) Bill 2000 - *Elections Commission* - at an opportune time.

5.2 Drafting Brief for Ethnic Relations Commission

- 5.2.1 Dr. Ramsammy, Overseer of Task Force D, presented a first draft of the Drafting Brief on Ethnic Relations Commission and informed the Committee that members of Task Force D still had under consideration comments on the draft.
- 5.2.2 It was noted that Ethnic Relations Commission was another matter that required fast-tracking. The question as to how to proceed with the incomplete Drafting Brief was raised.

- (iii) If again that failed, then perhaps a simple majority vote.
- 5.2.2.4 She concluded that the above mechanism or others might be considered.
- 5.2.2.5 Dr. Roopnaraine supported Ms George's assertion of removing the process from the executive to the parliamentary realm with a qualifying vote of two thirds. That was in line with the thinking of the Constitutional Reform Commission which, however, did not wish to subject officials like the Chancellor and Chief Justice to any vulgar and ugly debate. He undertook to support any proposal for the appointment of the Chancellor and Chief Justice by the President subject to the ratification of a majority vote of two-thirds of the Members of the National Assembly.
- 5.2.2.6 Dr. Luncheon in his contribution alluded to Dr. Roopnaraine's reference to his position which deplored the politicisation of the process of appointment of the Chancellor and Chief Justice, and reiterated that that position was formidable. Although he had no alternative proposal to put forward, he presumed that the submission of "*meaningful consultation*" had implied whatever constituted the "*consultation*" originally prescribed it must have been insufficient for the appointment of the two judicial offices. He doubted whether the proponents of the parliamentary approach had taken into account all the possible occurrences when such appointments were taken into the public domain. He did not subscribe to the view that if one did not like what one had anything else was better.
- 5.2.2.7 At this point Dr. Roopnaraine made mention of the provision in his Task Force's drafting brief on the appointment of the Chairman of the Public Procurement Commission. That drafting brief, he said, proposed that the appointment of the Chairman be made by the President after "consultation and agreement" with the Leader of the Opposition.
- 5.2.2.8 He suggested that that proposal could be applied to the appointment of the two judicial officials. An agreement with the Leader of the Opposition would mean in effect two-thirds and, additionally, it had the merit of keeping the process away from the potentially and uncontrollably ugly and vulgar public domain.
- 5.2.2.9 Mr. Carberry contended that there could be no serious objection against a methodology that allowed for public scrutiny of the appointments of the Chancellor and Chief Justice because such appointments must be transparent and vocal. It was appreciated that there was need for finding a non-contentious way to deal with it but that was not the same as saying that it should not be public.

- 5.2.2.10 In a further submission Ms George suggested that a Parliamentary Committee could be appointed to deal with the nomination of persons named and come to a consensus at that level as a nucleus of the larger Assembly and, thereafter, have Parliament ratify the decision without a debate - a process of rubber stamping.
- 5.2.2.11 Dr. Ramsammy's position was that whatever mechanism was accepted, it must not be a device that could suffocate the process.
- 5.2.2.12 Mr. Kirton supported Dr. Roopnaraine's submission on the thinking of the Constitution Reform Commission on the issue and made the following observations on the CRC's proceedings:
- (i) the CRC emphasised the need to avoid "gridlock" in the process of nomination of suitable candidates;
 - (ii) candidates should enjoy the confidence of a wide spectrum of society;
 - (iii) candidates from within the system -
 - (a) would have certain qualifications
 - (b) would have a certain seniority thus making the choice automatic, unless candidates are chosen from outside the system.
- He asserted later that retaining the *status quo* would in no way de-politicise the process.
- 5.2.2.13 The following options were then summarised by the Chairman who suggested that they be submitted to Parliament for a decision on one of the options:
- (i) Retention of the *status quo*;
 - (ii) Application of the process of meaningful consultation;
 - (iii) In consultation and agreement with the Leader of the Opposition;
 - (iv) By a two-thirds majority of the National Assembly and/or with approval or recommendation of a Parliamentary Select Committee;

- 5.2.2.14 Dr. Roopnaraine opposed the submission of options to Parliament for a decision. His exhortation for not pursuing this course of action was that already the CRC had submitted the issue to Parliament for a decision and that Parliament in turn had referred it to the Special Select Committee. That Committee did not deal with it but passed it back to Parliament which adopted the Report of the Special Select Committee. He likened this to “passing the buck”. The Oversight Committee which had been appointed to mold the Recommendations into drafts of constitutional articles should go back to the Parliament with considered drafts.
- 5.2.2.15 Ms George explained a draftsman’s nightmare to produce drafts for more than one, and in the particular instance, four different interpretations. Taking the timeframe into account it would be better to send to the draftsman a definitive brief.
- 5.2.2.16 The Chairman clarified the position he took by explaining that he saw the options he had outlined as some of the definitions of “*consensual mechanism*” that could have been found among others. Being faced with a variety of interpretations he had suggested that reliance be placed on the residual powers to decide ultimately, which one, if any, had defined in the minds of the people’s representatives the process of “*consensual mechanism*”.
- 5.2.2.17 He then asked that the options be evaluated for a selection of one for the draftsman. He was inclined towards the idea that “*consensual mechanism*” was a higher stage of consultation that went beyond “*meaningful consultation*”.
- 5.2.2.18 Mr. Parris in joining the discussion stated up front that he would be relying on his memory with respect to the proceedings of the CRC. As he recalled the maintenance of the *status quo* was out and that “*meaningful consultation*” was not the same as “*consensual mechanism*”. The process of consensual mechanism was not to generate an occasion for character assassination. Therefore, provide all the necessary information required for a nomination and simply have a parliamentary decision based on a two-thirds majority without a debate.
- 5.2.2.19 He said that from the foregoing two things were clear -
- (i) that it would not be within the purview of the President by himself with or without consultation to decide the finality of the appointment,
 - (ii) that even if the President had in fact caused a nomination of a person that he had indicated that he had wanted, the Parliament would be that place to decide with finality because there and only there resided the width of representation of parties.

- 5.2.2.20 Therefore the issue to be settled was what mechanism should Parliament use to pronounce on that consensus in the context of a very serious caveat put forward by Dr. Luncheon: not to have the mechanism destroying people.
- 5.2.2.21 The Chairman at this stage corrected his construct of Dr. Luncheon's contribution as advocating the retention of the *status quo*. He explained that the intention of Dr. Luncheon's intervention was to advise the Committee that it was free to accept any and all options provided that they were intrinsically an improvement of what existed.
- 5.2.2.22 He noted that combining the contributions of Dr. Luncheon and Mr. Parris would result in a process that would prevent the acrimony and odium that could flow from an open debate in the nomination of candidates for the offices of Chancellor and Chief Justice. That would mean an appointment by Parliament without a debate and the consensual mechanism would be a mechanism of a two-thirds majority of votes of the Parliament.
- 5.2.2.23 Mr. Nadir expressed his disfavour of a system that would allow Parliament to "just rubber stamp" a process of identifying the Chancellor and Chief Justice. He saw "*consensual*" meaning a discussion between the President and Leader of the Opposition to the exclusion from the initial process of other party leaders in Parliament. To him "*consensual mechanism*" did not mean the two largest political parties.
- 5.2.2.24 The Chairman advised him that an earlier submission on the South African model had been made in his absence.
- 5.2.2.25 Mr. Parris using Mr. Nadir's intervention and the Chairman's correction of Mr. Nadir's impression, asserted that the Committee had arrived unconsciously at a consensus on what was the *consensual mechanism* sought. He formulated it as follows:
- (i) the persons to be considered for appointment to the offices of Chancellor and Chief Justice must be arrived at through the use of a mechanism of consultation between the President and leaders of parties in Parliament (once the concept of "meaningful consultation" was determined).
 - (ii) the result of that consultation would be placed before Parliament for a vote without a debate.
- 5.2.2.26 The Committee accepted this formulation.

5.2.2.27 Thereafter, the Overseer of Task Force D was requested to have his Task Force prepare the drafting brief on the appointment of the Chancellor and Chief Justice by a process of consensual mechanism based on the discussion of and clarification given by the Committee.

5.3 **5.3 Recommendation 9.6.3.12 - Meaningful Consultation**

5.3.1 The Committee received the following written submissions from:

5.3.1.1 (i) **People's National Congress**

1. Define/determine the issue on which there should be Consultation;
2. Determine the decision to be arrived at through the consultation process;
3. Exchange views on the pro's/con's of the issue;
4. Establish that there has been a "meeting of minds" on the issue which has made the consultation necessary.

5.3.1.2 (ii) **Legal Advisory Person - Task Force D**

5.3.1.3 Meaningful consultation in this paragraph means a conscientious effort by both parties to the consultation to arrive at a consensus.

5.3.1.4 Consultation should be interpreted so as to harmonise the concept with other provisions and to make the constitution workable, bearing in mind the principle of the independence of the judiciary.

5.3.1.5 Consultation must be effective, meaningful purposive and consensus-oriented, leaving no room for complaints of arbitrariness or unfair play.

5.3.1.6 The opinion of the persons or body recommending appointees as to fitness and suitability of a candidate for judicial office should be accepted by the President in the absence of some reasons, which should be recorded by the President/Executive and will be justiciable.

5.3.1.7 The consultation process is mandatory and any appointment or confirmation of judges in the superior court which is made without adequate consultation will be invalid.

- 5.3.1.8 The appointment of acting judges is contrary to the principle of independence of the judiciary where permanent vacancies exist since acting judges have no security of tenure.
- 5.3.1.9 (iii) **Coordinator, Planning and Monitoring**
- 5.3.1.10 An issue or matter would be deemed to have been the subject of *meaningful consultation* only if the following six (6) conditions have all been satisfied:
- (1) The participants to be engaged in meaningful consultation have been clearly identified, so that there is no uncertainty as to whether any person or institution is intended to be a participant in the process of consultation.
 - (2) The issue or matter that is to be the subject of consultation has been clearly specified, and the target date for a decision has been indicated.
 - (3) Each Participant identified in (1) above has been notified of the issue or matter, and of the target date, as described in (2) above.
 - (4) Each participant identified in (1) above has been provided with an adequate opportunity to express a considered opinion on the issue or matter specified as in (2) above, the adequacy of the opportunity and the maturity of the opinion being subject to the time-bound imperatives of the decision to be made on the issue or matter specified as in (2) above.
 - (5) The person responsible for seeking consultation has ensured that (1), (2), (3) and (4) above have all been complied with.
 - (6) An accurate written record is made, kept, and circulated to participants, by the person responsible for seeking consultation.
- 5.3.2 Mr. Carberry withdrew the submission of the PNC. He explained that he discerned from reading the submission by the Coordinator that the document had distilled the ideas included in the PNC's submission.
- 5.3.3 Dr. Roopnaraine expressed the view that Ms George's submission was purely philosophical while the Coordinator's being practical gave specific and measurable criteria. The Parris' mechanism was perfectly applicable to attain the objective expressed in Ms George's submission.

- 5.3.4 In her elucidation of her submission, Ms George brought before the Committee, Court decisions on issues of “consultation” which pointed in the direction of the definition of “*meaningful consultation*”, and the mechanism appeared to be a record of what had taken place at a meeting. The absence of such record would be evidence of “non-consultation” or that there had been no “*meaningful consultation*”. The mechanism or procedure outlined by the Coordinator was exactly what the Court would require and in the absence of that or any other type of evidence, the Court would rule that there had not been “*meaningful consultation*”.
- 5.3.5 Ms George urged the Committee to consider the adoption of the international trend and provide for the expression “*meaningful consultation*” in the relevant articles of the Constitution.
- 5.3.6 The question as to whether the Coordinator’s submission could be included as a definition in the Constitution was discussed. A suggestion that it be included in the Interpretation Section of the Constitution was accepted.
- 5.3.7 The Committee accepted the suggestion of the Coordinator that “*meaningful consultation*” must not be construed to mean “agreement”.
- 5.3.8 The Chairman explained that the absence of the members of Task Force C was due to a misunderstanding that the matter fell within the purview of Task Force D. He requested that the Executive Secretary send the suggestions that were made to the members of Task Force C and Legal Advisory Person for their guidance. They should be asked in light of the submissions made to arrive at a mechanism for defining “*meaningful consultation*” within the Constitution - both in relation to the acts of the President and in relation to all other acts under the Constitution.
- 5.4 **Recommendation 9.9.3.3 -Appointment of Registrar, Assistant Registrar and Officers of the High Court**
- 5.4.1 Ms George related that in her research on the matter she had found that in the Report of the Constitution Review Commission of the Republic of Trinidad and Tobago a change from the name “Judicial Service Commission” to “Judicial and Legal Services Commission”. In addition to appointing Judges, that Commission also appointed legally trained persons such as the Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General and Chief State Solicitor, who has the equivalency of Guyana’s State Solicitor. The trend in the CARICOM Countries has been towards this arrangement and because all legal officials were not judicial officials the name “Judicial and Legal Services Commission” was adopted.

- 5.4.2 The Bar Association felt that the Court required a number of officers to strengthen the Judicial System and that the Registrar should be relieved of the Administrative functions to take on more of the judicial functions as was being done in many countries and had been done in Guyana in the past.
- 5.4.3 Mr. Kirton suggested that the description “Officers of the High Court” in the recommendation should have been clearly defined, as all Attorneys-at-Law were considered “Officers of the Court”.
- 5.4.4 He drew Members’ attention to the access of public officers to the Public Service Appellate Tribunal and enquired what would be the relationship of judicial officials with the Tribunal.
- 5.4.5 The discussion that followed Ms George’s presentation focused on those administrative functions of the Registrar as Accounting Officer under the Financial Administration and Audit Act, and whether those functions could continue to be attached to that office once it was severed from the public service.
- 5.4.6 Ms George explained that Trinidad and Tobago had overcome that problem by appointing a Court Manager with responsibility for all administrative functions of the judicial system. In the case of Guyana it would not pose a problem if it remained with the Registrar. The current office holder was carrying the responsibilities of Registrar and Court Manager.
- 5.4.7 The Committee looked at examples given of office holders who were not public officers but who were appointed Accounting Officers and agreed that the Registrar would not be an exceptional case.
- 5.4.8 The Committee agreed that Task Force D should proceed to draft the brief on Recommendation 9.9.3.3 on the requirements of the Constitutional changes, and to indicate in the brief whether Parliament would be required to enact any law to bring about any consequential administrative changes.
- 5.5 **Recommendation 9.9.3.9 - Part-time Judges**
- 5.5.1 Ms George reported that the issue had not yet been clarified. She advised the Committee that a number of issues had been emerging on acting appointment of judges, appointment of part-time judges and appointment of temporary judges which tended to suggest that where vacancies existed for permanent appointments, acting appointment had appeared to fly in the face of the independence of the judiciary and would be challenged as had been done in a case in Pakistan.

- 5.5.2 She requested that additional time be given for further research to be done in relation to cases in those emerging constitutional cases, especially in Commonwealth Countries, to avoid the mistake of including outmoded provisions in the Constitution.
- 5.5.3 The Chairman advised Ms George to proceed with the research as there might have been very strong intention of the Constitution Reform Commission to constitutionalise the appointment of part-time judges. However, if the issue cannot be resolved, the Oversight Committee might have to refer to Parliament with a language on which Parliament could pronounce.
- 5.6 **Report on Work Programmes of Task Forces**
- 5.6.1 ***Task Force "A1"***
- 5.6.2 Mr. Nadir reported that Task Force "A1" had completed all recommendations and was reviewing drafting briefs for the Final Report to be submitted to the Oversight Committee.
- 5.7 ***Task Force "A2"***
- 5.7.1 Dr. Roopnaraine reported that Task Force "A2" had completed drafting briefs for all recommendations. He said that the Report of Task Force "A2" was ready for submission to the Oversight Committee pending a final meeting with members of the Task Force.
- 5.8 ***Task Force "B"***
- 5.8.1 Dr. Luncheon reported that Task Force "B" had completed recommendations on the Elections Commission. He said that they were considering the Electoral Systems in light of Options offered by the Electoral Expert, Professor Andrew Reynolds. Recommendations on Local Government would be completed with the help of Mr. Cecil Dhurjon, S.C. Legal Advisory Person when the Task Force would have met on Sunday, 19th March, 2000.
- 5.9 ***Task Force "C"***
- 5.9.1 The Chairman reported that Task Force "C" had completed all recommendations. The Task Force would, however, need to fundamentally revise its drafting briefs.

ITEM 6 ANY OTHER BUSINESS

6.1 Deadline for Submission of Reports of Task Forces

6.1.1 The Chairman reminded Members that the deadline for submission of Reports of Task Forces was 28th March, 2000.

6.2 Holiday Greetings

6.2.1 The Chairman extended to Members greetings for a happy Eid-ul-Azah and Phagwah which would be celebrated on 17th and 20th March, 2000, respectively.

ADJOURNMENT

The meeting was adjourned at 7.05 p.m. **sine die**.



Hon. Moses V. Nagamootoo, J.P., M.P.,
CHAIRMAN - Oversight Committee.

OVERSIGHT COMMITTEE ON CONSTITUTIONAL REFORM

**MINUTES OF THE 8th MEETING
OF THE OVERSIGHT COMMITTEE
HELD IN THE PARLIAMENT CHAMBER,
PUBLIC BUILDINGS, GEORGETOWN,
ON TUESDAY, 28TH MARCH, 2000
at 5.00 P.M.**

ATTENDANCE

MEMBERS OF THE COMMITTEE (7)

CHAIRMAN (1) - People's Progressive Party/Civic

The Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information - Head, Project Implementation

Other Members

From the People's Progressive Party/Civic (2)

Dr. Roger F. Luncheon,
Head of the Presidential Secretariat(Excused)

Dr. Leslie S. Ramsammy, M.P.

From the People's National Congress (2)

Mr. W. Haslyn Parris, C.C.H.,
Coordinator, Planning and Monitoring

Mr. Vincent Alexander

From The United Force (1)

Mr. Manzoor Nadir, M.P.

From the Working People's Alliance (1)

Dr. Rupert Roopnaraine, M.P.

By Invitation Other Members of Task Force “C”

Mr. C. M. Llewellyn John
Mr. Harrichand Mahadco
Mr. Cecil Dhurjon, AA, SC - Legal Draftsperson and also Leader of Task Force “E”

Officers (3)

Mr. Maurice B. Henry,
Executive Secretary

Mr. Oscar E. Moore,
Administrative Assistant

Ms Debra H. Cadogan
Administrative Assistant

ITEM 1 CALL O ORDER

- 1.1 The Chairman called the meeting to order at 5.00 p.m.

ITEM 2 AGENDA

- 2.1 Members adopted the Agenda.
- 2.2 Members noted that Item 3 the Minutes for confirmation was for 15th March and not 15th February, 2000.

ITEM 3 ANNOUNCEMENTS

3.1 Welcome

- 3.1.1 The Chairman extended a warm welcome to Members of the Committee and Officials. Special welcome was extended to Mr. John Hcfferan, Director - NDI (Guyana) and Ms Nicole Mlade, Programme Officer of the National Democratic Institute.
- 3.1.2 The Chairman also welcomed Mr. C. M. Llewellyn John, Mr. Harrichand Mahadeo, two members of Task Force “C” and Mr. Cecil Dhurjon, AA, SC, the Legal Advisory Person.

3.2.3 The Chairman observed that Mr. Fordyce was present at that meeting and on behalf of Members of the Oversight Committee and his own, he extended a warm welcome to Mr. Fordyce.

3.3 **Presence of Other Members of Task Forces “A1” and “D”**

3.3.1 The Chairman mentioned that the other members of Task Forces “A1” and “D” were invited to attend that meeting. The Committee would continue to look at the two Task Forces issues for which clarification was sought. He welcomed members of Task Force “D” since only they were present.

3.4 **Excuses**

3.4.1 The Chairman said that Mrs Deborah Backer, a member of Task Force “A1” had indicated that she would be at another meeting, but would try to come as soon as the meeting concluded.

ITEM 4 CONFIRMATION OF MINUTES

4.1 The Minutes of 5th and 6th Meetings held on 3rd and 13th March, 2000, respectively, were confirmed without corrections.

4.2. There were no matters arising out of the Minutes.

ITEM 5 BUSINESS

5.1 **Task Forces’ Clarifications**

5.1.1 **Task Force “A1”**

- (a) **Recommendation 9.2.3.2 (10) - Rights of Children**
- (b) **Recommendation 9.2.3.2 (18) - Hate Speech**
- (c) **Recommendation 9.2.3.2 (19) - Right to Demonstrate in accordance with the law.**

5.1.2 Mr. Nadir reported that Task Force “A1” had revisited these recommendations in light of discussions at the Oversight Committee’s Plenary and had provided drafting briefs for them.

5.1.3 He said that there were two more recommendations that needed clarification but would prefer to deal with them when Task Force “A1” Report would have been circulated.

5.2 **Task Force “D”**

5.2.1 **Recommendation 9.9.3.5 - Appointment of Chancellor and Chief Justice**

5.2.2 **Application of Consensual Mechanism**

5.2.2.1 Ms. George who led the discussion on the concept of “*consensual mechanism*” referred to the CRC’s Recommendation to substitute the phrase “*meaningful consultation*” for the word “*consultation*” and opined that the Commission must have had in mind a more stringent process when they considered the use of the phrase “*consensual mechanism*” (*in the appointment of the Chancellor and Chief Justice*). What would be the definition to be attached to “*consensual mechanism*” would be would require a political decision. She made reference to the following two jurisdictions in which “*consensual mechanism*” was found -

(1) Malawi: Article 111 (1)

The Chief Justice shall be appointed by the President and confirmed by the National Assembly by a majority of two thirds of the members present and voting.

(2) South Africa: Article 174 (3)

The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the President and Deputy President of the Constitutional Court, and after consulting the Judicial Service Commission, appoints the Chief Justice and Deputy Chief Justice.

5.2.2.2 It appeared to her that “*consensual mechanism*” was other than the *status quo*, and also a shift from the executive to the legislative or parliamentary realm.

5.2.2.3 She suggested a mechanism which might be described as a three-round parliamentary process:

- (i) A requirement of a two-thirds majority to approve the appointments;
- (ii) If voting in the first round were unsuccessful, then a second round after the lapse of a specified period of time for another vote to secure a two-thirds majority.

5.2.3 It was suggested that no action should be taken on the incomplete draft by the OSC, but the completed Drafting Brief should be submitted to the Draftspersons subject to any amendments emanating from the OSC.

5.2.4 Mr Nadir was permitted to make the following comments on the incomplete drafting brief:

1. That the Ethnic Relations Commission should not include members nominated from other Commissions;
2. That the Chairman and Deputy Chairman of the Commission should be appointed by a system of “consensual mechanism” and not elected by members of the Commission.

5.2.5 In response to a query concerning what details should be included in the Constitution with respect to rules, procedures, etc., the Chief Parliamentary Counsel explained that there were certain set patterns in drafting that would avoid cluttering the Constitution with too many details.

5.2.6 However, it was pointed out that the Constitution Reform Commission required certain provisions to be included in the Constitution.

5.2.7 The response to the first comment was that there were five other Commissions relating to Fundamental Rights and with overlapping functions. It was felt that the work of the Ethnic Relations Commission would be enhanced by the presence of members of the other Commissions on it.

5.2.8 The second comment drew the response that precedent existed for the Chairman and Deputy Chairman to be elected by members of a Commission.

5.3 **Status of Task Force “E”**

5.3.1 The Coordinator, Planning and Monitoring, informed the Committee that the position regarding Task Force “E” was that instead of engaging five draftspersons, four were engaged, with the addition of two assistant draftspersons.

5.3.2 He gave their names with summary of their Curriculum Vitae as follows:

3. **Keith Stanislaus Massiah OR, SC**
Former
High Court Judge
Justice of Appeal
Chancellor of the Judiciary
Attorney-General and Minister of Legal Affairs

4. **Oswell Legall**
Currently: High Court Judge
Former
Solicitor General, St. Lucia
Acting Attorney General, Tortola, British West Indies
Senior Crown Counsel
5. **Cecil Dhurjon AA, SC**
Currently: Chief Parliamentary Counsel
6. **Zehar Singh Negi**
Currently: Expert in legislative drafting deputed by the Government of India to the Ministry of Legal Affairs, Government of Guyana under the ITEC Programme since 1998.
7. **Alison Roxane McLean George**
Currently:
Assistant Director of Public Prosecutions - Chambers of the Director of Public Prosecutions
Senior Associate Lecturer, Dept. Of Political Science & Law, University of Guyana.
8. **Alexis Downes-Amsterdam**
Currently:
Principal Parliamentary Counsel, Legal Drafting Division, Attorney General's Chambers
Part-time Lecturer, Dept. Of Political Science & Law, University of Guyana.

5.3.3 Full descriptions of their Curricula Vitae were also circulated.

5.3.4 The Committee was informed that at the meeting held on Tuesday, 21st March, 2000 and chaired by the Hon. Minister of Agriculture and Parliamentary Affairs, the following matters were discussed/decided with the draftspersons excluding Ms Downes-Amsterdam:

1. The need to keep to the OSC's Time-bound Plan
2. Allocation of drafting briefs among draftspersons: to be decided by the draftspersons
3. An Overseer for Task Force E:

Mr. Dhurjon, as Chief Parliamentary Counsel, was identified and confirmed

as the Overseer. Drafting briefs would be fed to him through the Secretariat, and he would return drafted clauses to the Executive Secretary at the Secretariat.

4. Fast-tracking of the recommendations on the Elections Commission: Mr. Dhurjon asserted that he had completed the drafting.
 5. Election System: Explanations of Dr. Reynold's role and his presentation on options for Guyana were provided by Mr. Parris.
 6. Draftspersons to identify processes of amendments for relevant articles e.g. referendum.
 7. Ms George's position on the team of draftspersons: to assist with drafting, utilising her excellent skill in researching.
 8. Engagement to be by contract between UNDP and individuals.
 9. Mr. Negi's position as one already contracted by an international organisation to be clarified by the Hon. Reepu Daman Persaud.
 10. The need to engage a sixth draftsperson/assistant draftsperson.
- 5.3.5 Another meeting scheduled for Wednesday, 29th March, 2000 would examine modalities of dealing with drafting briefs.

5.4 Simple Language as the Characteristic of the Constitution


- 5.4.1 Enquiry was made as to whether the "simple language" approach in writing the Constitution was abandoned and whether a gender-neutral language would be applied to the whole Constitution or only with respect to the amendments to be carried out, as dictated by the Recommendations.
- 5.4.2 An assurance was given that the simple language approach would be discussed at the meeting with the Draftspersons on the following day and that the gender-neutral language would be applied to the whole Constitution.

5.5 Reviewing Method of Work

- 5.5.1 The method of dealing with drafting briefs from the Task Forces was reviewed. It was agreed that as the reports on the drafting briefs were being received in a bunch and as the Time-bound Plan would be jeopardised, copies of the drafting briefs would be sent to the Draftspersons prior to approval by the OSC with the understanding that the briefs would be subject to amendments by the Oversight Committee.

ADJOURNMENT

At 6.20 p.m. the meeting was adjourned **sine die**.


.....
Hon. Moses V. Nagamootoo, JP, MP,
Minister of Information,
CHAIRMAN - Oversight Committee.

OVERSIGHT COMMITTEE ON CONSTITUTIONAL REFORM

**MINUTES OF THE 9th MEETING
OF THE OVERSIGHT COMMITTEE
HELD IN THE PARLIAMENT CHAMBER,
PUBLIC BUILDINGS, GEORGETOWN,
ON FRIDAY, 31st MARCH, 2000
at 3.30 P.M.**

ATTENDANCE

MEMBERS OF THE COMMITTEE (7)

CHAIRMAN (1) - People's Progressive Party/Civic

The Hon. Moses V. Nagamootoo, J.P., M.P.,
Minister of Information - Head, Project Implementation

Other Members -

From the People's Progressive Party/Civic (2)

Dr. Roger F. Luncheon,
Head of the Presidential Secretariat

Dr. Leslie S. Ramsammy, M.P. (Excused)

From the People's National Congress (2)

Mr. W. Haslyn Parris, C.C.H.,
Coordinator, Planning and Monitoring

Mr. Vincent Alexander

From The United Force (1)

Mr. Manzoor Nadir, M.P.

From the Working People's Alliance (1)

Dr. Rupert Roopnaraine, M.P. (Excused)

Officers (3)

Mr. Maurice B. Henry,
Executive Secretary

Mr. Oscar E. Moore,
Administrative Assistant

Ms Debra H. Cadogan
Administrative Assistant

ITEM 1 CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 3.30 p.m.

ITEM 2 AGENDA

2.1 ITEM 4 BUSINESS

2.2 Commencement of Review of Reports on Drafting Briefs:

2.3 Task Force "A1" Drafting Brief

2.4 Mr. Nadir informed the Committee that he had received the notice and agenda for the meeting very late and, therefore, he and his Task Force Members were unprepared to deal with the Drafting Briefs for Task Force A1.

2.5 Thereafter on a motion moved by him the above sub-item was deleted from the Agenda and deferred to a subsequent meeting.

2.6 The Agenda was then approved as amended.

ITEM 3 ANNOUNCEMENTS

3.1 Welcome

3.1.1 The Chairman extended a warm welcome to Members of the Committee and Officials.

3.1.2 He explained to Members that the need for the meeting arose from the fact that three members of the Oversight Committee, including himself, would be engaged in the debate on the Budget for the year 2000 and then the consideration of Estimates of Expenditure by the National Assembly.

3.1.3 The Chairman expressed his gratitude to Members for responding to the late invitation.

3.2 **Circulation of Documents**

3.2.1 The following documents were circulated on 30th March, 2000:

- (i) Notes on Second Meeting with members of Task Force “E” (Draftspersons)
- (ii) List of Assignment of Drafting Briefs
- (iii) Memo - PR Calculation dated 30th March, 2000 from Professor Andrew Stephen Reynolds through NDI/Guyana.

3.2.2 The following documents were circulated on 31st March, 2000.

- (i) Agenda dated 31st March, 2000.
- (ii) Minutes of 8th Meeting held on Tuesday, 28th March, 2000.

3.3 **Excuses**

3.3.1 The Chairman informed the Committee that the following persons had asked to be excused:

- (i) Dr. Roopnaraine had asked to be excused from the 31st March until 4th April, 2000;
- (ii) Dr. Ramsammy had asked to be excused from that meeting; and
- (iii) Mr. Moore had asked to be excused owing to illness.

ITEM 4 CONFIRMATION OF MINUTES

4.1. **The Minutes of 7th Meeting held on 15th March, 2000**

4.1.1 The Chairman reminded Members that when the Minutes of the 7th Meeting held on 15th March, 2000 came up for confirmation at the last meeting, Dr. Roopnaraine expressed the opinion that Dr. Luncheon might not have agreed with the manner in which his contribution was recorded at paragraph 5.2.2.6 had he been present at the meeting. On that submission alone the confirmation of the Minutes was suspended to await the attendance of Dr. Luncheon at a subsequent meeting.

4.1.2 In his response to the question as to whether his contribution was accurately recorded, Dr. Luncheon said that the Minutes represented a faithful and accurate reproduction of his contribution. However, he would indicate at some time to the Secretariat any grammatical correction he might wish to make.

4.1.3 Thereafter the Minutes of the 7th Meeting held on 15th March, 2000 were confirmed on a motion moved by Dr. Luncheon and seconded by Mr. Nadir.

4.2 The Minutes of 8th Meeting held on 28th March, 2000

4.2.1 The confirmation of the Minutes of the 8th Meeting was deferred as they were circulated only on the day of the meeting.

ITEM 5 BUSINESS

5.1 Commencement of Review of Reports on Drafting Briefs:

5.1.2 Task Force "A2" Drafting Brief:

5.1.3 Owing to the absence of the Overseer, the review of the Report of the Drafting Briefs of Task Force "A2" was deferred.

5.2 Proposals for future OSC Meetings during 2000 Budget Debate

5.2.1 The Committee addressed the problem of holding plenary sessions during the 2000 Budget Debate and consideration of the Estimates and Expenditure, and decided that:

(i) meetings would be held on Wednesday mornings, from 9.30 a.m. to 11.30 a.m. and any other mornings following or on Saturdays, as the necessity arose; the next meeting will be held on Wednesday, 5th April, 2000.

(ii) an alternative area within the Public Buildings would be identified and used.

5.3 Report on 2nd Meeting with Draftspersons held on Wednesday, 29th March, 2000.

5.3.1 The Coordinator, Planning and Monitoring, presented the Notes on the 2nd Meeting with Draftspersons held on Wednesday, 29th March, 2000.

5.3.2 Mr. Nadir referred to Section 2 on page 2 of the Report and asked whether another drafting team would be employed to convert the drafting from "traditional" to "simple-language".

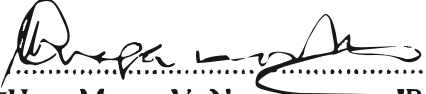
- 5.3.3 The Coordinator explained that the draftspersons were not aware of the simple-language concept and thus would be unable to apply it. They were, however, given the time-frame within which to complete the drafting of articles. Perhaps if the Oversight Committee was not satisfied with the traditional language of the drafted articles then the “simple-language” expert might be engaged.
- 5.3.4 A discussion also arose on what constituted “accessibility” as required by Recommendation 9.12.4 (2).
- 5.3.5 Following the discussions, it was suggested that the Committee should await the drafted articles from Task Force “E” and then determine whether the language was simple and readily accessible to enable citizens to know their rights and obligations.
- 5.3.6 In response to the question as to whether the meeting had discussed the gender-neutral language of the Constitution, the Coordinator explained that the matter was discussed although it was not recorded in the Notes and the Draftspersons undertook to give effect to the recommendation on it.
- 5.3.7 The Coordinator explained that the Notes reflected the discussions that took place at the Meeting of Task Force “E”.

ITEM 6 ANY OTHER BUSINESS

- 6.1 **Letter Received from Guyana Association of Women’s Lawyers (GAWL)**
- 6.2 The Committee agreed to defer this item to a subsequent meeting.
- 6.3 **Return Visit of Electoral Systems Expert**
 - 6.3.1 The Committee considered the diverse views expressed on the usefulness of Professor Andrew Stephen Reynolds’ return visit to Guyana during the period 6th - 11th April, 2000, and agreed that Task Force “B” should consider the matter over the weekend and, thereafter, an appropriate reply would be transmitted through the Director, NDI/Guyana to Professor Reynolds.
 - 6.4 The Coordinator cautioned the Overseers of Task Force “B” that their submission was due on 15th April, 2000. To reschedule the visit would mean that either the Report of the Task Force would be submitted without Professor Reynolds’ inputs or it would be submitted after the due date. The 15th April, 2000 was a critical date according to the Time-bound Plan.

ADJOURNMENT

At 4.45 p.m. the meeting was adjourned to Wednesday, 5th April, 2000 at 9.30 a.m.



.....
Hon. Moses V. Nagamootoo, JP, MP,
Minister of Information,
CHAIRMAN - Oversight Committee.

APPENDIX B

Interim Report on Electoral Systems for General Elections in Guyana

Professor Andrew Reynolds

Presented to the Oversight Committee on Constitutional Reform, Georgetown, Guyana, March 13, 2000

1. Introduction

In March 2000 I was contracted by the Oversight Committee (OSC), in an arrangement facilitated by the National Democratic Institute for International Affairs (NDI), to provide expert consultation on the question of possible electoral system reform for elections in Guyana. After being fully briefed prior to my arrival, I had a series of consultations with relevant committees, political parties, representatives of the donor community, and members of civil society in Guyana between March 8 and March 13, 2000. I wish to sincerely thank all the individuals who I met with who indulged me with delightful hospitality, and treated me to frankness, candor, and nuance when offering the information pertaining to this important question which enlightened me greatly and allowed me to craft the following interim report. As this process develops to what we all hope will be a positive final outcome, I look forward to future consultations in Guyana, not only with the representatives of political society, but with the broader Guyanese public as a whole.

My working brief was laid out chiefly in the OSC's "Terms of Reference for Expert on Electoral Systems for General Elections," which were based on the two broad recommendations made by the Constitutional Reform Commission which in turn were agreed to by the Special Select Committee, and were subsequently accepted by the National Assembly:

- 1.1 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 (see Constitutional Review Commission Recommendation, 9.11.3 [1]).

1.2 The electoral system should include an element of geographical representation; and the constitutional provisions on the electoral system, including electoral lists, should be informed by the inclusion of requirements for gender, as well as geographical representativeness (CRC Recommendation 9.11.3 [2]).

My terms of reference were also informed by two other important considerations:

1.3 To take into account the requirement of implementation in time for general elections to be held no later than January 17, 2001; and,

1.4 That constitutional reform is seen as an evolving process to be held under continuous review by a select committee of parliament¹ and that any electoral system reforms made at this stage should facilitate later reforms if it is the case that the implementation of an optimum electoral system will require a longer period of crafting and consultation than the current January 2001 election deadline allows. In sum, my brief was to look at options that can be implemented for the forthcoming elections while be cognizant of the fact that a second stage of reform might well be appropriate after that date. If a “two-step” process was deemed to be appropriate then step 1 should facilitate step 2.

In regard to consideration 1.3 two practicalities informed my thinking when writing this report:

1.3.1 Under the existing time-scale (with elections to be held approximately ten months from the presentation of this report) it is unrealistic to conduct a comprehensive boundary delimitation exercise for the purpose of crafting new parliamentary constituencies.

¹ See the “Report of the Special Select Committee on the Report of the Constitutional Reform Commission (Resolution No.28 of 1999).”

1.3.2 Adjustments to the current system should be relatively easy to understand and implement (ToR, February 9, 2000).

However, in respect of consideration 1.4 above, it has been suggested to me that it would be useful to present options which might involve redistricting as part of a second stage of electoral system reform to be introduced for subsequent elections after 2001.

2. Electoral System Options

It is important to state here that the Commission's key recommendation to seek an electoral system which is appropriate to the needs of the Guyanese people, maintains proportionality between votes cast for parties and seats won, and includes substantive elements of geographical representativeness and gender diversity is not a fruitless task. Such electoral systems do exist and, I believe, can be crafted to suit the requirements of the Guyana. The family of PR electoral systems is extended with the current Guyanese 'closed national list PR' system being one variation on the theme. Some countries combine both single member constituencies (First Past the Post [FPTP]) with PR lists while maintaining overall proportionality (these are known as Mixed Member Proportional [MMP] systems) while other nations use preference voting with numbers in relatively small multi-member constituencies (the Single Transferable Vote [STV]). Even more common are List PR systems which allocate seats to parties at a regional level.²

Within the parameters previously identified there appear to be three main electoral system options available. In the passages which follow I will describe those options, outline how they might work in practice, briefly identify their advantages and disadvantages, and eventually run simulations to demonstrate the translation of votes into seats. I presume a parliament of 65 members.

² For further information on all these systems see Reynolds and Reilly, et al, 1997. "The International IDEA Handbook of Electoral System Design" (Stockholm, International Institute for Democracy and Electoral Assistance).

2.1 Overall Electoral System Choices

2.1.2 Option 1: The Status Quo

- > 53 directly elected MPs drawn from national party lists
- > 10 indirectly elected MPs chosen by the Regional Democratic Councils (RDC)
- > 2 indirectly elected MPs chosen by the NCLDO

The advantage of the existing system is that it is a familiar one to the Guyanese electorate and administration. However, it does not fulfill the desire for geographical representativeness and accountability articulated in the Constitutional Review Commission and Select Committee reports. The national allocation of seats under a closed list system does not facilitate a formal bond between a representative and his or her constituents. The indirectly elected seats pose the potential of anomalies between a party's vote share and seat share. Thus, while the current system is clearly a PR system, it is neither perfectly proportional nor geographically representative.

2.1.2 Option 2: Regionally based List PR

- > 53 directly elected MPs drawn from party lists in regional constituencies based on the existing ten administrative regions of Guyana.

Option 2a: seat allocation based on number of listed electors with every region guaranteed at least two seats.

Option 2b: seat allocation based on number of electors with every region guaranteed at least three seats.

Table 1: Regional Seat allocation with 2-member and 3-member minimums.

<i>Region</i>	<i>97 Electoral Roll</i>	<i>Seats – 2 minimum</i>	<i>Seats – 3 minimum</i>
1	12,377	2	3
2	27,500	3	3
3	62,495	7	6
4	200,295	22	19
5	32,031	3	3
6	79,133	8	7

7	10,726	2	3
8	4,864	2	3
9	8,628	2	3
10	23,366	2	3
Total	461,415	53	53

NB: Based on the most recent electoral roll available (1997). Shifts in population distribution may alter seat allocation to regions.

> The commission may wish to also consider splitting the largest region – region 4 - into two or three multi-member PR constituencies. However, in the light of the previously mentioned constraints this may be viewed as an attractive option which may only be feasible as part of “stage two” of electoral system reforms which might take place after the next elections.

> 12 directly elected MPs drawn from national party lists with seats allocated to parties to ensure overall proportionality between votes cast and seats won at the national level.

Under this system parties would present lists of candidates in each region and be awarded seats in proportion to the share of the votes they polled in each region. The 12 directly elected ‘national party list MPs’ would be allocated after the regional allocations in such a way as to ensure the overall proportionality of the system. These are in effect ‘top-up’ seats which would correct for any disproportionality arising out of the regional seat allocations (which would be a result of the numerical ‘over-representation’ of the smaller regions of the country).

A simple hypothetical example serves to illustrate how these ‘top-up’ seats ensure proportionality.

<i>Party</i>	<i>Vote %</i>	<i>Regional seats</i>	<i>National seats</i>	<i>Total seats won</i>	<i>Seat %</i>
A	56	32	4	36	55.4
B	30	17	3	20	30.7
C	14	4	5	9	13.8
	100	53	12	65	

The advantages of such a reform (with either a minimum of two or three seats per region and with either the division or retention of region 4) are many. First, it would tighten the bonds of accountability between a member of parliament and their representatives.

While the regional constituencies are multi-member and geographically large, voters

would be presented with regional candidates. Constituents would be able to more clearly identify *their* MPs in parliament. Second, guaranteeing the interior regions a minimum of two or three seats would help ensure a diversity of party representation within those regions and that those geographically large areas had adequate voice in the national parliament. Third, the 12 national top-up seats would ensure the PR requirement of the system, enabling small parties to gain representation if they missed out on the regional level and guaranteeing larger parties that they would ultimately receive a 'fair' share of the overall parliament. Fourth, this proposal (if implemented for elections in 2001) would be a logical first step in the direction of a MMP system (combining both single member constituencies and PR lists – see option 3 below) and be in line with any subsequent desires to develop local and regional government. Fifth, the proposal would entail almost no restructuring of the current electoral administration systems (outside what may be deemed necessary regardless of electoral system type). Sixth, the method of vote and construction of ballot paper could remain the same (a single 'X' beside a party/symbol of choice). Seventh, votes could still be counted at polling stations rather than being brought to centralized counting centers.

The disadvantages are, first, that District 4 (if not split) would remain too large to facilitate a substantive geographical connection between voters and their MP, and second, that a degree of party and voter education would be required before introducing the new system.

2.1.3 Option 3: A Mixed Member Proportional System³

- > 40 directly elected MPs from FPTP single member constituencies.
- > 25 directly elected MPs drawn from national party lists with seats allocated to parties to ensure overall proportionality between votes cast and seats won at the national level

Table 2: Distribution of FPTP and list PR seats under option 3.

³ Clause 160: 1&2 of the existing constitution appears to already allow for the use of a mixed system of proportional representation lists and FPTP constituencies.

<i>Region</i>	<i>FPTP seats</i>	<i>List PR seats</i>
1	2	
2	2	
3	5	
4	15	
5	2	
6	6	
7	2	
8	2	
9	2	
10	2	
<i>National</i>		25
Total		65

NB: based on 40 FPTP seats, existing regional boundaries, and a minimum of 2 FPTP seats per region.

As noted earlier, option 3 is offered for consideration as stage two of electoral reform, which might be implemented subsequent to the elections of 2001. Under this system voters would most likely have two votes (although the system can be operated on a single vote cast in the single member constituency races). One vote would be for the single member constituency, the other for the national allocation of seats. Candidates would win single member constituencies by winning more votes than anyone else (a plurality) the list PR seats would be allocated to parties on the basis of the second national vote and would compensate for any disproportionality coming out of the FPTP elections. Table 3 illustrates how this works in practice.

Table 3: An example of a MMP system

<i>Party</i>	<i>Vote %</i>	<i>FPTP seats won</i>	<i>List PR allocation</i>	<i>Total seats won</i>	<i>Seat %</i>
A	55	28	8	36	55.4
B	35	11	12	23	35.4
C	8	1	4	5	7.7
D	2	0	1	1	1.5
	100	40	25	65	

The advantages of such an MMP system are as follows. First, voters would have an individual member of parliament that they could identify as their representative, thus accountability would be heightened. Constituencies would range in size from around 2,500 electors to 13,000 electors.⁴ Second, overall parliamentary proportionality would be ensured by the list PR 'top-up' seats. Third, if a two vote system was used, voters would be able to support a candidate of one party in the constituency race and a different party at the national level. The disadvantages are that; first, it would be a significant change in the system requiring a degree of voter education; second, the different and impact of the 'constituency vote' and 'PR vote' is not always clear to the voter; third, the FPTP constituencies might still be geographically large; and fourth, MPs would be elected in different ways and have different incentives and responsibilities placed upon them.

3.1 Party lists in PR elections.

The Constitutional Reform Commission's recommendation on lists (which was subsequently ratified by the Special Select Committee) was as follows:

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 (CRC 9.11.3[4]).

Lists can be either *open*, *closed*, or *free* in terms of the ability of electors to vote for a preferred candidate as well as for a party. The majority of list PR systems are *closed*, meaning that the order of candidates elected by that list is fixed by the party itself, and voters are not able to express a preference for a particular candidate. Lists are ranked ordered and if a party wins 30 seats the first thirty candidates on its list are elected. In *open* list systems voters can indicate not just their favoured party, but their favoured

⁴ If every region was guaranteed a minimum of two FPTP seats.

candidate within that party. In most of these systems the vote for a candidate as well as a party is optional and, because most voters plump for parties rather than candidates, the candidate choice option of the ballot paper often has little effect. In *free* list systems voters only vote for candidates rather than parties, although seats are awarded to parties on the basis of the aggregation of the votes of all their individual candidates.

Two clear options on lists present themselves to Guyana:

3.1.1 Option 1: Closed lists

> Parties rank order their candidates in lists which are published before the election. Lists may also be posted at polling stations. If Party A wins 30 seats the first 30 candidates on its list are elected. If a candidate is unable to take up their seat the next candidate on the list fills the position – the same is true if a MP leaves parliament.

3.1.2 Option 2: Open lists

> Parties rank order their candidates in lists which are printed on the ballot paper. The voter may either put an 'X' by the party symbol accepting the rank ordering printed, or may put their mark by the name of an individual candidate. If any candidate receives more than 10% of the total votes of their party in the given region they are placed at the head of the list with the remaining names moving down one slot. If more than two candidates from the same party receive more than 10% of their parties votes they are placed at the top in order of their individual vote. If a party wins 10 seats the first 10 candidates on its list are elected – after individual votes are taken into account for the purposes of the list order.

3.1.3 Option 3: A mix of Closed and alphabetical lists

> The “Regionally based List PR” electoral system option (2.1.2 Option 2) outlined above in potentially allows for the use of different types of lists. In such a case the 53

regionally allocated seats would be elected by closed (ranked) lists presented by parties in each region. The 12 national 'top-up' seats could be filled from party lists which are published not by rank but alphabetically by name (as is the current system).

Clearly the more information voters receive on who the candidates are that will represent them in parliament tightens bonds of accountability and increases the democratic representativeness of any system. The more 'open' a list is the more power the more influence the voter may have and thus they may feel more investment and connectedness to the political situation.

4.1 Mechanisms for the promotion of gender diversity

There is little doubt that a strong, dynamic and efficient legislature rests on the talents of all sections of society and clearly that includes both men and women. While the representation of women has been on the rise in many countries (and reached a high point for Guyana in 1992) there are mechanisms which can be applied which would create more gender neutrality in the crafting of party lists and would provide the space for women to compete on a level playing field with men in political life. At the electoral system level the chief options to encourage gender diversity are to require political parties to include both men and women on their candidate lists up to a certain percentage.⁵

The following options relate to the "Regionally based List PR" electoral system option (2.1.2 Option 2) but could as easily be applied to the current system or the list element of any future MMP system.

⁵ For details on the current state of play in this area see Reynolds. 1999 "Women in the Legislatures and Executives of the World: Knocking at the Highest Glass Ceiling," *World Politics* June 1999.

4.1.1 Option 1: Women fill 33% of the ranked positions on regional lists.

> Of the list of candidates presented in a region one-third would be women. For example, if a party had a list of nine candidates three would be women and at a minimum one would be within the first three ranked names on the list, a second within the second three names, and a third within the last three names. If the list of candidates would be three in size then at least one would be a woman.

4.1.2 Option 2: Women fill 50% of the ranked positions on regional lists.

> As above, only based on 50%.

5.1 Electoral system allocation formula

Guyana currently uses the Hare largest remainder seat allocation PR method. There are at least three other alternatives which could make a marginal difference to seat allocation (see Reynolds and Reilly 1997: 145-149). However, there seems to be little reason to change a technical mathematical element of the election law which has not proved troublesome in the past and would be unlikely to effect party seat shares in the future.

6.1 Considerations for Regional and Local Government

While this report focuses on elections for national legislative elections, I have also been asked to consider electoral system options for regional and local government elections. I hope to expand upon this question further in my final report. However, I can note that there may be good reasons to utilize a somewhat different type of electoral system at the regional or local government level as the needs of that tier of government are in many ways distinct from the criteria one uses when crafting systems for national legislatures. For one thing local and regional governments may require a heightened degree of geographical representation and accountability and thus one may want to see more of an emphasis placed on single member constituencies (even if they are within an overall

proportional system). Furthermore, one may wish to encourage independents and non-party representatives at the local government level who may be excluded by PR lists.

Second (updated) Report on Electoral Systems for General Elections in Guyana

Professor Andrew Reynolds

Presented to the Oversight Committee on Constitutional Reform, Georgetown, Guyana, March 24, 2000

1. Introduction

In March 2000 I was contracted by the Oversight Committee (OSC), in an arrangement facilitated by the National Democratic Institute for International Affairs (NDI), to provide expert consultation on the question of possible electoral system reform for elections in Guyana. After being fully briefed prior to my arrival, I had a series of consultations with relevant committees, political parties, representatives of the donor community, and members of civil society in Guyana between March 8 and March 13, 2000. I wish to sincerely thank all the individuals who I met with who indulged me with delightful hospitality, and treated me to frankness, candor, and nuance when offering the information pertaining to this important question which enlightened me greatly and allowed me to craft the following report. As this process develops to what we all hope will be a positive final outcome, I look forward to future consultations in Guyana, not only with the representatives of political society, but with the broader Guyanese public as a whole. This second report (presented approximately ten days after the interim report presented in Georgetown) includes the following additions: (i) responses to questions asked by the oversight committee on March 13, (ii) a new option 4.1.3 on gender diversity, and (iii) simulations of seat distributions under options 2.1.2a and 2.1.2b.

My working brief was laid out chiefly in the OSC's "Terms of Reference for Expert on Electoral Systems for General Elections," which were based on the two broad recommendations made by the Constitutional Reform Commission which in turn were agreed to by the Special Select Committee, and were subsequently accepted by the National Assembly:

- 1.1 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 (see Constitutional Review Commission Recommendation, 9.11.3 [1]).

1.2 The electoral system should include an element of geographical representation; and the constitutional provisions on the electoral system, including electoral lists, should be informed by the inclusion of requirements for gender, as well as geographical representativeness (CRC Recommendation 9.11.3 [2]).

My terms of reference were also informed by two other important considerations:

1.3 To take into account the requirement of implementation in time for general elections to be held no later than January 17, 2001; and,

1.4 That constitutional reform is seen as an evolving process to be held under continuous review by a select committee of parliament¹ and that any electoral system reforms made at this stage should facilitate later reforms if it is the case that the implementation of an optimum electoral system will require a longer period of crafting and consultation than the current January 2001 election deadline allows. In sum, my brief was to look at options that can be implemented for the forthcoming elections while be cognizant of the fact that a second stage of reform might well be appropriate after that date. If a “two-step” process was deemed to be appropriate then step 1 should facilitate step 2.

In regard to consideration 1.3 two practicalities informed my thinking when writing this report:

1.3.1 Under the existing time-scale (with elections to be held approximately ten months from the presentation of this report) it is unrealistic to conduct a comprehensive boundary delimitation exercise for the purpose of crafting new parliamentary constituencies.

¹ See the “Report of the Special Select Committee on the Report of the Constitutional Reform Commission (Resolution No.28 of 1999)

1.3.2 Adjustments to the current system should be relatively easy to understand and implement (ToR, February 9, 2000).

However, in respect of consideration 1.4 above, it has been suggested to me that it would be useful to present options which might involve redistricting as part of a second stage of electoral system reform to be introduced for subsequent elections after 2001.

2. Electoral System Options

It is important to state here that the Commission's key recommendation to seek an electoral system which is appropriate to the needs of the Guyanese people, maintains proportionality between votes cast for parties and seats won, and includes substantive elements of geographical representativeness and gender diversity is not a fruitless task. Such electoral systems do exist and, I believe, can be crafted to suit the requirements of the Guyana. The family of PR electoral systems is extended with the current Guyanese 'closed national list PR' system being one variation on the theme. Some countries combine both single member constituencies (First Past the Post [FPTP]) with PR lists while maintaining overall proportionality (these are known as Mixed Member Proportional [MMP] systems) while other nations use preference voting with numbers in relatively small multi-member constituencies (the Single Transferable Vote [STV]). Even more common are List PR systems which allocate seats to parties at a regional level.²

Within the parameters previously identified there appear to be three main electoral system options available. In the passages which follow I will describe those options, outline how they might work in practice, briefly identify their advantages and disadvantages, and eventually run simulations to demonstrate the translation of votes into seats. I presume a parliament of 65 members.

2.1 Overall Electoral System Choices

2.1.1 Option 1: The Status Quo

- > 53 directly elected MPs drawn from national party lists
- > 10 indirectly elected MPs chosen by the Regional Democratic Councils (RDC)
- > 2 indirectly elected MPs chosen by the NCLDO

The advantage of the existing system is that it is a familiar one to the Guyanese electorate and administration. However, it does not fulfill the desire for geographical representativeness and accountability articulated in the Constitutional Review Commission and Select Committee reports. The national allocation of seats under a closed list system does not facilitate a formal bond between a representative and his or her constituents. The indirectly elected seats pose the potential of anomalies between a party's vote share and seat share. Thus, while the current system is clearly a PR system, it is neither perfectly proportional nor geographically representative.

2.1.2 Option 2: Regionally based List PR

- > 53 directly elected MPs drawn from party lists in regional constituencies based on the existing ten administrative regions of Guyana.

Option 2a: seat allocation based on number of listed electors with every region guaranteed at least two seats.

Option 2b: seat allocation based on number of electors with every region guaranteed at least three seats.

Table 1: Regional Seat allocation with 2-member and 3-member minimums.

<i>Region</i>	<i>97 Electoral Roll</i>	<i>Seats -- 2 minimum</i>	<i>Seats -- 3 minimum</i>
1	12,377	2	3
2	27,500	3	3
3	62,495	7	6
4	200,295	22	19
5	32,031	3	3
6	79,133	8	7

² For further information on all these systems see Reynolds and Reilly, et al, 1997. "The International IDEA Handbook of Electoral System Design" (Stockholm, International Institute for Democracy and Electoral Assistance).

7	10,726	2	3
8	4,864	2	3
9	8,628	2	3
10	23,366	2	3
Total	461,415	53	53

NB: Based on the most recent electoral roll available (1997). Shifts in population distribution may alter seat allocation to regions.

> The commission may wish to also consider splitting the largest region – region 4 - into two or three multi-member PR constituencies. However, in the light of the previously mentioned constraints this may be viewed as an attractive option which may only be feasible as part of “stage two” of electoral system reforms which might take place after the next elections.

> 12 directly elected MPs drawn from national party lists with seats allocated to parties to ensure overall proportionality between votes cast and seats won at the national level.

Under this system parties would present lists of candidates in each region and be awarded seats in proportion to the share of the votes they polled in each region. The 12 directly elected ‘national party list MPs’ would be allocated after the regional allocations in such a way as to ensure the overall proportionality of the system. These are in effect ‘top-up’ seats which would correct for any disproportionality arising out of the regional seat allocations (which would be a result of the numerical ‘over-representation’ of the smaller regions of the country).

A simple hypothetical example serves to illustrate how these ‘top-up’ seats ensure proportionality.

<i>Party</i>	<i>Vote %</i>	<i>Regional seats</i>	<i>National seats</i>	<i>Total seats won</i>	<i>Seat %</i>
A	56	32	4	36	55.4
B	30	17	3	20	30.7
C	14	4	5	9	13.8
	100	53	12	65	

The advantages of such a reform (with either a minimum of two or three seats per region and with either the division or retention of region 4) are many. First, it would tighten the bonds of accountability between a member of parliament and their representatives. While the regional constituencies are multi-member and geographically large, voters would be presented with regional candidates. Constituents would be able to more clearly identify *their* MPs in parliament.

Second, guaranteeing the interior regions a minimum of two or three seats would help ensure a diversity of party representation within those regions and that those geographically large areas had adequate voice in the national parliament. Third, the 12 national top-up seats would ensure the PR requirement of the system, enabling small parties to gain representation if they missed out on the regional level and guaranteeing larger parties that they would ultimately receive a 'fair' share of the overall parliament. Indeed, the simulations of options 2.1.2a and 2.1.2b in the annex to this paper illustrate how proportionality would be not merely maintained, but enhanced, through either reform option. Fourth, this proposal (if implemented for elections in 2001) would be a logical first step in the direction of a MMP system (combining both single member constituencies and PR lists – see option 3 below) and be in line with any subsequent desires to develop local and regional government. Fifth, the proposal would entail almost no restructuring of the current electoral administration systems (outside what may be deemed necessary regardless of electoral system type). Sixth, the method of vote and construction of ballot paper could remain the same (a single 'X' beside a party/symbol of choice). Seventh, votes could still be counted at polling stations rather than being brought to centralized counting centers.

The disadvantages are, first, that District 4 (if not split) would remain too large to facilitate a substantive geographical connection between voters and their MP, and second, that a degree of party and voter education would be required before introducing the new system.

2.1.2.1 Related issue: Presidential selection

As option 2.1.2 would change to some degree the way lists are presented the actual election of the president might need to be more clearly specified in legislation. The following options seem logical:

2.1.2.1.a The presidential candidate is nominated by a party (their name may, or may not, appear on the ballot paper) and the candidate of the party which wins a plurality or majority of the popular vote is elected president (i.e., effectively the status quo).

2.1.2.1.b The president is elected by the legislature.

2.1.2.1.c The president is the first candidate on the national 'top-up' list (see above).

2.1.3 Option 3: A Mixed Member Proportional System³

> 40 directly elected MPs from FPTP single member constituencies.

> 25 directly elected MPs drawn from national party lists with seats allocated to parties to ensure overall proportionality between votes cast and seats won at the national level

Table 2: Distribution of FPTP and list PR seats under option 3.

<i>Region</i>	<i>FPTP seats</i>	<i>List PR seats</i>
1	2	
2	2	
3	5	
4	15	
5	2	
6	6	
7	2	
8	2	
9	2	
10	2	
<i>National</i>		25
Total		65

NB: based on 40 FPTP seats, existing regional boundaries, and a minimum of 2 FPTP seats per region.

As noted earlier, option 3 is offered for consideration as stage two of electoral reform, which might be implemented subsequent to the elections of 2001. Under this system voters would most likely have two votes (although the system can be operated on a single vote cast in the single member constituency races). One vote would be for the single member constituency, the other for the national allocation of seats. Candidates would win single member constituencies by winning more votes than anyone else (a plurality) the list PR seats would be allocated to parties on the basis of the second national vote and would compensate for any disproportionality coming out of the FPTP elections. Table 3 illustrates how this works in practice.

³ Clause 160: 1&2 of the existing constitution appears to already allow for the use of a mixed system of proportional representation lists and FPTP constituencies.

Table 3: An example of a MMP system

<i>Party</i>	<i>Vote %</i>	<i>FPTP seats won</i>	<i>List PR allocation</i>	<i>Total seats won</i>	<i>Seat %</i>
A	55	28	8	36	55.4
B	35	11	12	23	35.4
C	8	1	4	5	7.7
D	2	0	1	1	1.5
	100	40	25	65	

The advantages of such an MMP system are as follows. First, voters would have an individual member of parliament that they could identify as their representative, thus accountability would be heightened. Constituencies would range in size from around 2,500 electors to 13,000 electors.⁴ Second, overall parliamentary proportionality would be ensured by the list PR 'top-up' seats. Third, if a two vote system was used, voters would be able to support a candidate of one party in the constituency race and a different party at the national level. The disadvantages are that; first, it would be a significant change in the system requiring a degree of voter education; second, the different and impact of the 'constituency vote' and 'PR vote' is not always clear to the voter; third, the FPTP constituencies might still be geographically large; and fourth, MPs would be elected in different ways and have different incentives and responsibilities placed upon them.

2.1.3.1 Related issue of legislative capacity:

The issue of legislative capacity is key almost regardless of electoral system (i.e., MPs need sufficient resources to adequately carry out their research and representative tasks however they are elected) but it is also true to say that the introduction of geographic single member constituencies would entail resources being made available for MPs to adequately service those geographical constituencies.

3.1 Party lists in PR elections.

The Constitutional Reform Commission's recommendation on lists (which was subsequently ratified by the Special Select Committee) was as follows:

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 (CRC 9.11.3[4]).

Lists can be either *open*, *closed*, or *free* in terms of the ability of electors to vote for a preferred candidate as well as for a party. The majority of list PR systems are *closed*, meaning that the order of candidates elected by that list is fixed by the party itself, and voters are not able to express a preference for a particular candidate. Lists are ranked ordered and if a party wins 30 seats the first thirty candidates on its list are elected. In *open* list systems voters can indicate not just their favoured party, but their favoured candidate within that party. In most of these systems the vote for a candidate as well as a party is optional and, because most voters plump for parties rather than candidates, the candidate choice option of the ballot paper often has little effect. In *free* list systems voters only vote for candidates rather than parties, although seats are awarded to parties on the basis of the aggregation of the votes of all their individual candidates.

Two clear options on lists present themselves to Guyana:

3.1.1 Option 1: Closed lists

> Parties rank order their candidates in lists which are published before the election. Lists may also be posted at polling stations. If Party A wins 30 seats the first 30 candidates on its list are elected. If a candidate is unable to take up their seat the next candidate on the list fills the position – the same is true if a MP leaves parliament.

⁴ If every region was guaranteed a minimum of two FPTP seats.

3.1.2 Option 2: Open lists

- > Parties rank order their candidates in lists which are printed on the ballot paper. The voter may either put an 'X' by the party symbol accepting the rank ordering printed, or may put their mark by the name of an individual candidate. If any candidate receives more than 10% of the total votes of their party in the given region they are placed at the head of the list with the remaining names moving down one slot. If more than two candidates from the same party receive more than 10% of their parties votes they are placed at the top in order of their individual vote. If a party wins 10 seats the first 10 candidates on its list are elected – after individual votes are taken into account for the purposes of the list order.

3.1.3 Option 3: A mix of Closed and alphabetical lists

- > The “Regionally based List PR” electoral system option (2.1.2 Option 2) outlined above in potentially allows for the use of different types of lists. In such a case the 53 regionally allocated seats would be elected by closed (ranked) lists presented by parties in each region. The 12 national ‘top-up’ seats could be filled from party lists which are published not by rank but alphabetically by name (as is the current system).

Clearly the more information voters receive on who the candidates are that will represent them in parliament tightens bonds of accountability and increases the democratic representativeness of any system. The more ‘open’ a list is the more power the more influence the voter may have and thus they may feel more investment and connectedness to the political situation.

4.1 Mechanisms for the promotion of gender diversity

There is little doubt that a strong, dynamic and efficient legislature rests on the talents of all sections of society and clearly that includes both men and women. While the representation of women has been on the rise in many countries (and reached a high point for Guyana in 1992) there are mechanisms which can be applied which would create more gender neutrality in the crafting of party lists and would provide the space for

women to compete on a level playing field with men in political life. At the electoral system level the chief options to encourage gender diversity are to require political parties to include both men and women on their candidate lists up to a certain percentage.⁵

The following options relate to the “Regionally based List PR” electoral system option (2.1.2 Option 2) but could as easily be applied to the current system or the list element of any future MMP system.

4.1.1 Option 1: Women fill 33% of the ranked positions on regional lists.

> Of the list of candidates presented in a region one-third would be women. For example, if a party had a list of nine candidates three would be women and at a minimum one would be within the first three ranked names on the list, a second within the second three names, and a third within the last three names. If the list of candidates would be three in size then at least one would be a woman.

4.1.2 Option 2: Women fill 50% of the ranked positions on regional lists.

> As above, only based on 50%.

4.1.3 Option 3: Mandated proportion of women in legislature (15%, 33%, 50%)

> Under this scenario legislature would ensure that a given proportion of the MPs were women. Parties would win seats on the basis of their ranked lists of candidates but seats would be filled with reference to the gender diversity threshold. i.e., after the initial allocation of seats (and assessment of how many women had been elected) seats would be filled by the next available woman on a party list if the threshold had not been exceeded under the regular list system. This would not effect the number of seats won by each party – merely which candidates actually filled those seats.

⁵ For details on the current state of play in this area see Reynolds. 1999 “Women in the Legislatures and Executives of the World: Knocking at the Highest Glass Ceiling,” *World Politics* June 1999.

5.1 Electoral system allocation formula

Guyana currently uses the Hare largest remainder seat allocation PR method. There are at least three other alternatives which could make a marginal difference to seat allocation (see Reynolds and Reilly 1997: 145-149). However, there seems to be little reason to change a technical mathematical element of the election law which has not proved troublesome in the past and would be unlikely to effect party seat shares in the future.

6.1 Considerations for Regional and Local Government

While this report focuses on elections for national legislative elections, I have also been asked to consider electoral system options for regional and local government elections. I hope to expand upon this question further in my final report. However, I can note that there may be good reasons to utilize a somewhat different type of electoral system at the regional or local government level as the needs of that tier of government are in many ways distinct from the criteria one uses when crafting systems for national legislatures. For one thing local and regional governments may require a heightened degree of geographical representation and accountability and thus one may want to see more of an emphasis placed on single member constituencies (even if they are within an overall proportional system). Furthermore, one may wish to encourage independents and non-party representatives at the local government level who may be excluded by PR lists.

Annex 1: Simulations of 1997 General elections under options 2.1.2a and 2.1.2b

	Option 2.1.2a (2 member minimum)						Option 2.1.2b (3 member minimum)					
District	# seats	PPP	PNC	TUF	AFG	GDP	# seats	PPP	PNC	TUF	AFG	GDP
1	2	1	1	0	0	0	3	2	1	0	0	0
2	3	2	1	0	0	0	3	2	1	0	0	0
3	7	5	2	0	0	0	6	4	2	0	0	0
4	22	10	12	0	0	0	19	9	10	0	0	0
5	3	2	1	0	0	0	3	2	1	0	0	0
6	8	6	2	0	0	0	7	5	2	0	0	0
7	2	1	1	0	0	0	3	1	2	0	0	0
8	2	0	1	0	1	0	3	1	1	0	1	0
9	2	1	0	1	0	0	3	1	1	1	0	0
10	2	0	2	0	0	0	3	1	2	0	0	0
	53	28	23	1	1	0	53	28	23	1	1	0
Top-up	12	8	3	0	0	1	12	8	3	0	0	1
Total	65	36	26	1	1	1	65	36	26	1	1	1
97 Result ^a	65	34	25	2	2	0	65	34	25	2	2	0

^a 53 nationally allocated PR seats, 12 indirectly elected regional seats. These results continue to be subject to judicial review.

Annex 2: Simulations of 1992 General elections under options 2.1.2a and 2.1.2b

	Option 2.1.2a (2 member minimum)							Option 2.1.2b (3 member minimum)					
District	# seats	PPP	PNC	WPA	TUF	OTH		# seats	PPP	PNC	WPA	TUF	OTH
1	2	1	1	0	0	0		3	1	2	0	0	0
2	3	2	1	0	0	0		3	2	1	0	0	0
3	7	5	2	0	0	0		6	4	2	0	0	0
4	22	9	12	1	0	0		19	8	10	1	0	0
5	3	2	1	0	0	0		3	2	1	0	0	0
6	8	6	2	0	0	0		7	6	1	0	0	0
7	2	1	1	0	0	0		3	1	2	0	0	0
8	2	1	1	0	0	0		3	1	1	1	0	0
9	2	1	1	0	0	0		3	1	1	0	1	0
10	2	0	2	0	0	0		3	0	3	0	0	0
	53	28	24	1	0	0		53	26	24	2 ^b	1	0
Top-up	12	7	4	0	1	0		12+1 ^b	9	4	0	0	0
Total	65	35	28	1	1	0		66^b	35	28	2	1	0
Actual Result ^a	92	65	36	26	2	1		65	36	26	2	1	0

NB:

^a 53 nationally allocated PR seats, 12 indirectly elected regional seats.

^b In this simulation one extra “overhang”⁶ seat has been included. In the straightforward national allocation of PR seats the WPA would have been entitled to a single seat. However they managed to win two seats in the districts. In this unusual occurrence the WPA would retain their second seat and parliament would be increased by a single MP. The ‘top-up’ seats still ensure as close to overall proportionality as is possible.

⁶ The term used in Germany.

Annex 3- Disproportionality

Election Result	Index of Disproportionality
1997 Actual result	3.1
1997 Option 2.1.2a simulation	1.0
1997 Option 2.1.2b simulation	1.0
1992 Actual result	2.3
1992 Option 2.1.2a simulation	0.6
1992 Option 2.1.2b simulation	1.0

NB: Least Squares index of disproportionality.



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Rec. 20-03-2000
[Signature]

Working to strengthen
and expand
democracy worldwide

Memo
To: The Oversight Committee
From: Professor Andrew Reynolds
Date: March 30, 2000
Re: Question concerning PR calculation

In anticipation of my arrival next week, I thought it might be helpful to offer the following explanation in writing.

The allocation of seats to each region works as follows (I am using the 97 electoral roll here but if the number of electors has changed within each region the seat allocations could well be slightly different).

Note that this is based on a 3 seat minimum calculation.

There are 53 seats to allocate to the 10 regions.

We begin by working out which regions will have the minimum of three seats. This is done by dividing the total number of electors (461,415) by the number of seats to be allocated (53). This gives us a quota of 8,706. Each region which has three or less of these quotas gets the minimum three seats - i.e., regions 1,2,5,7,8,9 and 10. That means we have allocated 21 of the 53 seats - and there are only three regions 3,4, and 6 - to share in the other 32 seats. So we then share those 32 seats proportionately between these three regions.

Region 3 has 18.3% of the total electors in those three regions (3,4,&6) and thus is entitled to 5.9 of the remaining 32 seats.

Region 4 has 58.6% of the electors = 18.7 of the remaining 32 seats.

Region 6 has 23.1% = 7.4% of the remaining 32 seats.

If we add up the "full quotas" i.e., 5+18+7 we get to allocate 30 of the 32 seats. Then the final two seats are given to regions on the basis of the "largest remainders" - thus region 3 (with 0.9 remainder) and region 4 (with 0.7 remainder) get the other two seats. This means that:

Region 3 = 6 seats
Region 4 = 19 seats
Region 6 = 7 seats

with all other regions receiving 3 seats.

I look forward to meeting with you on Friday, April 7th. At that time I hope to be able to clarify any other questions you might have regarding the three proposed options as well as expand on options for regional and local government elections.

OVERSIGHT COMMITTEE ON CONSTITUTIONAL REFORM

Parliament Office
Public Buildings
Georgetown
April 3, 2000

Mr. John W. Heffernan
Director NDI/Guyana
34 North Road & King Streets
Lacytown

Dear Mr Heffernan,

Re: Return Visit of Electoral Systems Expert

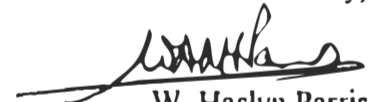
Please refer to our telephone conversation today on this matter.

Dr Luncheon, one of the two co-leaders of the Task Force dealing with this aspect of Constitutional Reform, has apprised me of the arrangement for him to brief you today about the difficulty which his Party has with the proposed timing of 6 April to 11 April, 2000 for the visit of Professor Reynolds. On the basis of his representations about those concerns, it has been agreed that the visit should be rescheduled.

Also, at my suggestion, Dr Luncheon has provided me with a list of some of the main clarifications that his Party requires, particularly with respect to Option 2. The attachment to this letter is a copy of that list. It would be very useful for written answers to be provided by Professor Reynolds to these queries, as an input to the discussions that are to be continued shortly on his proposals for a revised electoral formula.

We would therefore be very grateful if you would convey the request for written clarification / comments as soon as possible on the issues listed in the attachment to this letter; and also convey our regrets for any inconvenience which the decision to ask for a postponement of his visit may cause. Please convey to Professor Reynolds our appreciation of the work he has so far done to assist us in this complex matter. Kindest regards,

Yours sincerely,



W. Haslyn Parris
Coordinator, Planning & Monitoring
Oversight Committee on Constitutional Reform.

cc. Hon M. Nagamootoo - Chairman, Oversight Committee
Mr. Maurice Henry - Executive Secretary, Oversight Committee
Dr. Roger Luncheon - Head of the Presidential Secretariat

Questions on the Electoral System

How can emphasis to be given to geographic representation in a National Assembly be introduced in a graduated way over time?

How does the proposed electoral system promote national representation of regional (small) parties?

How can the merits, in Guyana, of supporting a single national list be retained even with greater geographic representation?

How would the national support for a party be expressed if its supporters, at a constituency level, can only vote for their regional (geographic) candidate?

In an electoral system where a party's geographic and national support can be expressed separately, what have been the results?

If electoral support for a party's geographic and national lists can be different, how can geographic representation be used so as not to promote that feature?

In societies where strong multicultural and multiracial formations exist, how can the merits of national list be maintained in a commitment to geographic representation?

Were a separate vote for a national list possible in a constituency, how would proportionality be maintained if a party's support for its national list exceeded the total support for its many regional lists?

Responses to Oversight Committee questions on Electoral Systems of April 3, 2000.

Professor Andrew Reynolds

Tuesday, April 4, 2000

TO: Dr. Roger Luncheon and Mr. Vincent Alexander, members of the Elections Task Force

Thank you for your questions which I am glad to try and answer. For clarity I will respond to the questions in three groups, first, questions which I take to specifically relate to the proposed Option 2;¹ second, those questions which suggest the exploration of electoral systems options beyond my report of March 24, 2000; and third, questions concerning the longer term evolution of party politics in Guyana. I apologize for the brevity of some of my answers but I wanted to respond in time for your Saturday April 8th meeting.

Questions and answers

Questions on the proposed option 2

How does the proposed electoral system promote national representation of regional small parties?

Under Option 2 regionally concentrated small parties might be expected to win list seat(s) in the regions in which they were comparatively strong. If they built up a reservoir of support across the whole country they would likely win one or more 'top-seats' from the national list as well. It is possible that a party winning around 5% of the popular vote might share in both regionally allocated seats and nationally allocated seats. However, the key to how small parties gain representation is their national vote total. Under any PR formulation a party winning approximately 1.5% of the national vote will win a single seat in a 65 member parliament. If that party were to win a seat in the regions then they would not be entitled to extra national seats. However if a party won approximately 3% of the national vote they might well win one regional seat and be entitled to one national 'top-up' seat – under Option 2.

¹ See Reynolds, Second (updated) Report on Electoral Systems for General Elections in Guyana, March 24, 2000

6.00 pm
[Signature]
7/4/2000

How would the national support for a party be expressed if its supporters, at a constituency level, can only vote for their regional (geographic) candidate?

Under the current formulation of Option 2 there would be one vote for party lists presented at the regional level. This vote would then be aggregated across all ten regions to give a party's share of the national vote. Thus voters would be voting on the basis of the national electoral choice but would be presented with, and elect, candidates from regionally based lists.

An alternative to this formulation of Option 2 (or indeed any option which mixes both regional representation and national lists) would be to give the voter two votes (as in Venezuela, Germany, Hungary, etc). Under this system the voter would cast one vote for the regional lists and one for the national list. The national list vote would then determine overall parliamentary seat shares.

If electoral support for a party's geographic and national lists can be different, how can geographic representation be used so as not to promote that feature?

[and...] in an electoral system where a party's geographic and national support can be expressed separately, what have been the results?

There is indeed a degree of 'split-ticket' voting when such an option is available. For example, in Germany a small party can win only 4% of the district vote but 6% of the national vote – conversely larger parties may win a few percentage points less in the national race than their total district vote. The only way to stop such an occurrence is to not provide the space for split-ticket voting – e.g., either there is one vote for regional lists which determine the national allocation of seats (as in Option 2) or there is one national list vote and no regional representation (as exists within the 53 directly elected seats of the current Guyana parliament).

Were a separate vote for a national list possible in a constituency, how would proportionality be maintained if a party's support for its national list exceeded the total support for its many regional lists?

See above. Under such two-vote compensatory systems the national list vote is the determinant of the overall parliamentary proportionality. e.g., if a party won 40% of all the regional list votes, but 50% of the national list votes, it would win 50% of the parliamentary seats.

Other options

How can the merits, in Guyana, of supporting a single national list be retained even with greater geographic representation?

If there was a desire to maintain a larger segment of the seats being allocated from national lists one might merely scale back the number of regional seats and increase the national list seats. There could still be a single vote and the national seats would compensate for any disproportionality that emanated from the regional allocation of seats.

In light of the concerns that these questions allude to, let me offer a new fourth option to be considered along with the other three main options in my March 24 document.

(New) Option 4:

Option 4: Mixed district and national List PR

> *25 directly elected MPs drawn from party lists in regional constituencies based on the existing ten administrative regions of Guyana.*

Option 4a: seat allocation based on number of listed electors with every region guaranteed at least one seats.

Option 4b: seat allocation based on number of electors with every region guaranteed at least two seats.

Table 1. Regional Seat allocation with 1-member and 2-member minimums.

<i>Region</i>	<i>97 Electoral Roll</i>	<i>Seats -- 1 minimum</i>	<i>Seats -- 2 minimum</i>
1	12,377	1	2
2	27,500	1	2
3	62,495	3	2
4	200,295	11	6
5	32,031	1	2
6	79,133	4	3
7	10,726	1	2
8	4,864	1	2
9	8,628	1	2
10	23,366	1	2
Total	461,415	25	25

NB: Based on the most recent electoral roll available (1997). Shifts in population distribution may alter seat allocation to regions.

- > 40 directly elected MPs drawn from national party lists with seats allocated to parties to ensure overall proportionality between votes cast and seats won at the national level.

Under this system parties would present lists of candidates in each region and be awarded seats in proportion to the share of the votes they polled in each region. The 40 directly elected 'national party list MPs' would be allocated after the regional allocations in such a way as to ensure the overall proportionality of the system. These are in effect 'top-up' seats which would correct for any disproportionality arising out of the regional seat allocations. As with Option 2 this system could be operated with one or two votes.

Such a proposal, in my view, would increase geographical representation over and above the current electoral system and, while not as geographically based as Option 2 it would enhance the level of connectiveness between district representatives and their constituents.

Related questions

How can emphasis to be given to geographic representation in a National Assembly be introduced in a graduated way over time?

Logically one might wish to start with a small number of regionally allocated seats and decentralize further over time. Voters would become familiar with lists presented in the regions and with the two-vote option if that was chosen, before the system became more heavily focused on the districts. Option 4 or 2 could be introduced for elections in 2001 while options 2 or 3 could be considered subsequent to the forthcoming elections.

In societies where strong multicultural and multiracial formations exist, how can the merits of a national list be maintained in a commitment to geographic representation?

I am happy to answer this in greater detail when time allows. Suffice to say that nationally based list PR systems usually facilitate party caucus diversity and heterogeneity. As district representation is introduced it makes it somewhat more difficult for a party to 'balance' its lists, but nevertheless balancing can be achieved even though district/constituency systems.

Annex 1: Simulations of 1997 General elections under options 4a and 4b

	Option 4a (1 member minimum)							Option 4b (2 member minimum)					
District	# seats	PPP	PNC	TUF	AFG	GDP		# seats	PPP	PNC	TUF	AFG	GDP
1	1	1	0	0	0	0		2	1	1	0	0	0
2	1	1	0	0	0	0		2	1	1	0	0	0
3	3	2	1	0	0	0		2	1	1	0	0	0
4	11	5	5	0	1	0		6	3	3	0	0	0
5	1	1	0	0	0	0		2	1	1	0	0	0
6	4	3	1	0	0	0		3	2	1	0	0	0
7	1	0	1	0	0	0		2	1	1	0	0	0
8	1	0	1	0	0	0		2	0	1	0	1	0
9	1	1	0	0	0	0		2	1	0	1	0	0
10	1	0	1	0	0	0		2	0	2	0	0	0
<i>Regional seats</i>	<i>25</i>	<i>14</i>	<i>10</i>	<i>0</i>	<i>1</i>	<i>0</i>		<i>25</i>	<i>11</i>	<i>12</i>	<i>1</i>	<i>1</i>	<i>0</i>
National top-up	40	22	16	1	0	1		40	25	14	0	0	1
Total	65	36	26	1	1	1		65	36	26	1	1	1
97 Result ^a	65	34	25	2	2	0		65	34	25	2	2	0

^a 53 nationally allocated PR seats. 12 indirectly elected regional seats. These results continue to be subject to judicial review.