

# CONSTITUTIONAL REFORM

## SEEKING A DEMOCRATIC PATH: CONSTITUTIONAL REFORM IN GUYANA

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### I. HISTORICAL BACKGROUND

Guyana is situated on the north-eastern coast of South America, bounded on the north by the Atlantic Ocean, on the south and south-west by Brazil, on the east by Suriname, and on the west by Venezuela. It occupies 215,000 sq. km. or 83,000 sq. miles. Even though it is located in South America, it is regarded as an integral part of the English-speaking Caribbean because of its similar colonial history and culture. Guyana is a member of the Caribbean Community (CARICOM) whose headquarters are in Guyana.

About eighty-five percent of the population live on the thin coastal strip below sea level consisting of about 7.5 percent of the country or 1,750 sq. miles. Most economic activity, consisting of sugar, rice, and bauxite production, is concentrated on the coast. Forestry and mining, which are also important areas of economic activity, are located in the interior regions. These regions are populated mainly by miners, indigenous peoples, and persons providing services and engaged in small business activity.

The population is estimated to be about 750,000. Due to a high emigration rate, it is estimated that about 400,000 Guyanese live in North America, the United Kingdom, and the Caribbean. The population is made up of East Indian Guyanese (48.3 percent), African Guyanese (32.7 percent), Guyanese of mixed heritage (12.2 percent), indigenous Guyanese (6.3 percent) and others (0.5 percent).<sup>1</sup>

After Guyana's "discovery" by Columbus, the three counties of Guyana (Essequibo, Demerara, and Berbice) were colonised by the Dutch as separate colonies from the early seventeenth century, and settlements were established

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<sup>1</sup> Guyana Bureau of Statistics, 1991.

from 1613. After failing to enslave the indigenous population, the Dutch brought slaves from Caribbean islands and later directly from Africa through the slave trade.<sup>2</sup> The three colonies were ceded to the British through conquest in 1803<sup>3</sup> and were eventually united as the colony of British Guiana in 1831.

After the abolition of slavery in 1833, East Indians from India, together with small numbers of Chinese and Portuguese, were imported as indentured labourers to replace the Africans who had left the sugar plantations and were seeking to negotiate wages which the planters were unwilling to pay. The East Indian indentured labourers were willing to work for less than the Africans were demanding<sup>4</sup> and this sowed the seeds of an enduring ethnic discord and insecurity which have continued to color Guyana's economic, political, social, and constitutional development.

## II. CONSTITUTIONAL BACKGROUND

The British inherited Dutch institutions of governance which were the Court of Policy, the College of Electors, the College of Financial Representatives, and the Combined Court, and were obliged to continue them by Article 1 of the Capitulation Treaty. These continued until 1891 when the Constitution was amended to enlarge the Court of Policy, abolish the College of Electors, directly elect a section of the Court of Policy, and create the right of the Governor to dissolve the Court of Policy.<sup>5</sup>

The Crown Colony Constitution was enacted in 1928.<sup>6</sup> The Court of Policy and the Combined Court were abolished and were replaced by the Legislative Council and the Executive Council. This constitutional formula of a legislature and a cabinet, with a majority of members nominated by the British-appointed governor, constituted the type of Crown Colony government favoured by Great Britain.

New constitutional arrangements in 1953 followed the formation of the People's Progressive Party (PPP) in 1950 which began to agitate for the end of colonial rule and the independence of British Guiana. The PPP was a national movement uniting the major race groups. The changes provided for

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<sup>2</sup> See ALVIN THOMPSON, *COLONIALISM AND UNDERDEVELOPMENT IN GUYANA, 1580-1803* (1987).

<sup>3</sup> Treaty of 1803 Capitulation.

<sup>4</sup> See WALTER RODNEY, *HISTORY OF THE GUYANESE WORKING PEOPLE, 1881-1905* (1981).

<sup>5</sup> Ordinance No. 1 of 1891 (British Guiana).

<sup>6</sup> British Guiana Act (1928); British Guiana (Constitution) Order in Council (1928).

universal adult suffrage, a bicameral legislature with a House of Assembly, a State Council, and an Executive Council.<sup>7</sup>

A further advance was made in 1961 by the enactment of a Constitution giving British Guiana "self governing" status. A Legislative Council and a wholly nominated Senate were established. The powers of the governor were reduced to responsibility for defense, external affairs, and the royal prerogative.<sup>8</sup> This was the last constitutional advance prior to independence except for the change of the voting system from first-past-the-post to proportional representation in 1964.<sup>9</sup>

#### *A. The Independence Constitution*

On the attainment of its independence from Great Britain in 1966,<sup>10</sup> Guyana, then British Guiana, inherited the typical post-colonial Constitution which former colonies had been adopting as part of their independence package with one major exception.<sup>11</sup> These Constitutions, known as the Westminster Model, were accepted by the entire Commonwealth Caribbean at the time of their independence in the 1960s. The Constitutions of Jamaica, Barbados, and Trinidad and Tobago have remained essentially unchanged up to the present time save that of Trinidad and Tobago, which was amended to sever its formal ties with the British sovereign when it became a republic. Trinidad's non-executive head of state formerly known as a "Governor General" was a representative of the British sovereign and was replaced with a president. Guyana became a republic in 1970.<sup>12</sup> At the same time, appeals to the Privy Council from decisions of the local courts were abolished. This was later to have devastating consequences for the rule of law. Decisions of a subverted judiciary which failed to protect constitutional rights and liberties could not be taken beyond the Guyana Court of Appeal to the Privy Council.<sup>13</sup>

The Westminster Model Constitutions of the Commonwealth Caribbean consisted of certain common features, namely, a prime minister as head of

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<sup>7</sup> British Guiana (Constitution) Order in Council (1953).

<sup>8</sup> British Guiana (Constitution) Order in Council (1961).

<sup>9</sup> See MOHAMED SHAHABUDEEN, *CONSTITUTIONAL DEVELOPMENT IN GUYANA, 1621-1978* (1978).

<sup>10</sup> Guyana Independence Order (1966).

<sup>11</sup> Republic Act Ch. 1:01 (1966) (Guyana).

<sup>12</sup> *Id.*

<sup>13</sup> See RUDOLPH JAMES & HAROLD LUTCHMAN, *LAW AND THE POLITICAL ENVIRONMENT IN GUYANA* (1984).

government, separation of powers between the executive, legislature and judiciary, fundamental rights, independent public service, judicial service and elections commissions, and the power to make laws for peace, order, and good government.<sup>14</sup>

The exception in the Guyana Constitution related to the voting system. Guyana had always posed a special problem for the West. The colonial Constitution was suspended in 1953 after the PPP had won the first general elections held in that year under universal adult suffrage. In the atmosphere of the Cold War, the British felt uncomfortable with the PPP's advocacy of left wing causes combined with its overwhelming victory at the elections its winning of eighteen of the twenty-four seats in the Legislative Council and its unifying of the major race groups, Indian and African. After 133 days in office, the Constitution was suspended, the government was removed from office, and many of its leaders imprisoned.<sup>15</sup>

Elections were again held in 1957 by which time a section of the PPP's leadership had walked out and formed the People's National Congress (PNC). The PPP won nine out of fourteen seats, with the PNC winning three and two smaller parties winning one each. The PPP secured forty-seven percent of the votes with the PNC securing twenty-five percent. The PPP formed the government and remained in office until the next elections in 1961 which it again won by obtaining twenty seats as against the PNC's eleven and four for the United Force (UF), a new political party. The PPP gained forty-two percent of the votes, the PNC forty-one percent and the UF sixteen percent.<sup>16</sup>

By 1961, the Cold War had intensified considerably and the United States had become concerned that Guyana, which had maintained a left wing posture under the PPP, might be influenced by Cuba. The Kennedy Administration felt that an independent Guyana under the PPP might not remain friendly to the West despite assurances. The Kennedy Administration persuaded the British intelligence agencies to carry out a joint destabilization campaign against the PPP government to either weaken or destroy it and then implement a voting system of proportional representation instead of first-past-the-post, which would ensure that a coalition between the PNC and the UF would take office. The PPP had always won a higher percentage of seats than votes under first-past-the-post. Thus, for opportunistic reasons related to the Cold War, Guyana

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<sup>14</sup> See MARGARET DEMERIEUX, *FUNDAMENTAL RIGHTS IN COMMONWEALTH CONSTITUTIONS* (1992).

<sup>15</sup> See CHEDDI JAGAN, *THE WEST ON TRIAL* (1997).

<sup>16</sup> See SALLAHUDDIN, *GUYANA: THE STRUGGLE FOR LIBERATION, 1945-1992* (1994).

became the only country in the British Commonwealth on which the proportional system of elections was imposed.<sup>17</sup> All of the Commonwealth Caribbean countries still operate under the first-past-the-post system.

*B. Developments Between 1966 and 1980*

Three general elections were held during this period: in 1968, 1973, and 1980. They were all marked by allegations of extensive rigging. The 1968 elections were characterised by padded voters' lists, extensive proxy voting, ballot box tampering, and the stealing of almost all of the overseas votes. The PNC, which had won forty-one percent of the votes in the 1961 general elections and forty percent in 1964, had formed a coalition government with the UF. In 1964, the PNC had fifty-seven percent of total votes, then won an absolute majority at the 1968 elections, gaining 55.6 percent.

The 1973 and 1980 elections were equally fraudulent and were criticised by credible international agencies and individuals.<sup>18</sup> In the 1973 elections, the PNC obtained seventy percent of the votes by massive rigging of the elections and, being a two-thirds majority, had the votes in the National Assembly to amend most articles of the Constitution without the support of any other political party.<sup>19</sup> Between 1973 and 1978, the PNC government, which had come to power in coalition with the UF in 1964 and on its own rigged strength in 1968, made several constitutional amendments, including the reduction of the voting age to eighteen and removal of the requirement of prompt and adequate compensation in the compulsory acquisition of property.<sup>20</sup>

By the end of the 1970s, important developments had taken place in Guyana which influenced the process of constitutional developments thereafter. These were: the rigging of the elections of 1973; nationalisation of eighty percent of the economy followed by continuing economic decline; the development of closer relations with socialist countries; the announcement of the doctrine of party paramountcy whereby the PNC assumed authority over state institutions; increased authoritarian rule; subversion of constitutional bodies including the judiciary; destruction of press freedom; suppression of opposition political activity; and violence against the political opposition

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<sup>17</sup> Election Regulations, No. 24 (1964).

<sup>18</sup> ANDREW MORRISON, *JUSTICE: THE STRUGGLE FOR DEMOCRACY IN GUYANA, 1952-1992* (1998).

<sup>19</sup> GUY. CONST. (Independence), art. 73(1).

<sup>20</sup> See JAMES & LUTCHMAN, *supra* note 13.

including assassinations.<sup>21</sup> Two infamous incidents from this era were the Jonestown massacre in 1978 and the assassination of Walter Rodney, the internationally recognized historian and political activist in 1979. These two events symbolised the destruction of constitutional norms and values by the end of the 1970s.

### *C. The Constitution (Amendment) Bill of 1978*

Amidst the growing political, economic, and social turmoil of the late 1970s, the government published the Constitution (Amendment) Bill in April 1978.<sup>22</sup> Its primary purpose was to amend Article 73 of the Constitution, repealing the provision requiring a referendum to amend certain articles of the Constitution. Article 73 provided that any amendment to it had to be approved at a referendum.<sup>23</sup> Thus, the Constitution (Amendment) Bill had to be approved at a referendum. Its objective was to enable the governing party, the PNC, to use its two-third majority in the National Assembly to amend the Constitution without the need for a referendum.

The arguments advanced for a new Constitution were: the Independence Constitution was a compromise between the "socialist" PNC and the "capitalist" UF and did not reflect the aspirations of the people;<sup>24</sup> the Westminster Model was unsuitable; a new Constitution was needed to enshrine Guyana's new socialist path; and the right to property was emphasized while there was little emphasis on the obligations of the individual to the state.<sup>25</sup>

The bill generated intense opposition from both political parties and civil society based essentially on suspicion of the government's intentions. The opposition asserted that there was no need for a new Constitution and the existing Constitution was not an obstacle to the implementation of social reforms especially since the government had the power, given its two-third majority to amend most articles of the Constitution. The opposition also argued that the proposal for constitutional reform was a device to postpone the elections due by October 1978, and that the referendum on the bill would be rigged.<sup>26</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> Extraordinary Official Gazette, Apr. 1, 1978.

<sup>23</sup> See GUYANA CONST. (Independence), art. 73(1), ch. 1:01.

<sup>24</sup> Mohamed Shahabuddeen, GUYANA CHRON., Apr. 10, 1978.

<sup>25</sup> See JAMES & LUTCHMAN, *supra* note 13.

<sup>26</sup> See JAMES & LUTCHMAN, *supra* notes 13; JAGAN, *supra* note 15.

The referendum on the Constitution (Amendment) Bill was held on July 10, 1978. Opposition political parties declared a boycott but the government claimed a sixty-six percent turnout with ninety-seven percent voting in favor of the bill. The Committee of Concerned Citizens, who monitored the polling, estimated a turnout of between ten and fifteen percent.<sup>27</sup>

#### *D. The Constituent Assembly*

The Constituent Assembly was established on July 21, 1978, by a motion passed by the National Assembly. The Motion provided:

that this National Assembly resolve itself into a Committee consisting of all the members of the Assembly (including the Speaker) to be known as a Constituent Assembly for the purpose of preparing a new Constitution for the Republic of Guyana. . . .<sup>28</sup>

The Constituent Assembly was empowered to "co-opt permanent advisory delegations representing other groups of persons in the society . . . to assist the Constituent Assembly in its deliberations in the preparation of the new Constitution."<sup>29</sup> The groups identified were: two representatives each of the Christian religion, Hindu religion, Muslim religion and the Guyana Co-operative Union; three representatives each of the Trades Union Congress and the Guyana Association of Local Authorities; and one representative each of the Guyana Assembly of Youth and the Council for the Affairs and Status of Women. The total number of persons designated was sixteen, all supporters of the PNC, and the same number of PPP members of the National Assembly. The opposition PPP had announced that it would boycott the Constituent Assembly.

The Constituent Assembly received 139 submissions; ninety-seven came from individuals and forty-two from organizations. A sub-committee was established to consider the submissions and prepare a draft of the new Constitution. The draft proposed by the sub-committee was the draft submitted by the governing PNC. Not one of the 139 submissions found a place in the proposed draft even though some constructive proposals were made by supporters of the PNC, such as the Trades Union Congress which

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<sup>27</sup> See SALLAHUDDIN, *supra* note 16.

<sup>28</sup> Constituent Assembly Report of Feb. 1 (1980).

<sup>29</sup> *Id.*

proposed a departure from the "winner take all" system in order to accommodate a government representing both the majority and minority parties.

### *E. The 1980 Constitution*

The main features of the 1980 Constitution, often referred to as the "Burnham Constitution" after Prime Minister and later President Burnham, were the establishment of an executive presidency and a statement of Directive Principles.<sup>30</sup> These provisions were much criticized on the ground that the president had been given too much power and that he had been placed beyond the law. In relation to the Directive Principles, entitled "Principles and Bases of the Political, Economic and Social System," it was argued that while some of the principles might be admirable, they were unenforceable, unrealisable, unrealistic, and they undemocratically imposed the ideology of socialism on all the people of Guyana.<sup>31</sup>

Article 89 of the Constitution provides that "There shall be a President of the Co-operative Republic of Guyana who shall be Head of State, the supreme executive authority, and Commander-in-Chief of the armed forces of the Republic." Article 106(2) of the Constitution provides that "The Cabinet shall aid and advise the President in the general direction and control of the Government of Guyana and shall be collectively responsible therefor to Parliament." In comparison, the Independence Constitution provided for the cabinet at Article 35. It states: "There shall be a Cabinet for Guyana, which shall consist of the Prime Minister and other Ministers and shall have the general direction and control of the Government of Guyana and shall be collectively responsible therefor to Parliament."

In the 1980 Constitution the President was conferred immunities by Article 182(2) which states:

Whilst any person holds or performs the functions of the office of President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him for anything done or omitted to be done in his private capacity.

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<sup>30</sup> GUY. CONST. (Constitution of the Co-operative Republic of Guyana Act, 1980).

<sup>31</sup> See JAMES & LUTCHMAN, *supra* note 13.



The combined effect of these provisions created an executive presidency, enshrined it with "supreme executive authority," removed the power of the cabinet for the "general direction and control of the government," gave that power to the president, made the cabinet advisory and granted immunity to the president for private acts. As Professors James and Lutchman said: "There are perhaps very few heads of state and government who possess more or equal power, and protection from legal and other constitutional processes, as the Guyanese executive President under the socialist constitution."<sup>32</sup>

The Principles and Bases of the Political, Economic, and Social System are contained in Articles 9 to 38. The system is declaratory of the guiding principles and objectives of the state that were not legally enforceable although a provision was made for that possibility if appropriate legislation was passed.<sup>33</sup>

The system provisions confirm that sovereignty belongs to the people; establish the right to form political parties and their freedom of action; and recognize the right of trade unions to participate in the management and decision-making processes of the state. The provisions also confirm that local government, by freely elected representatives, is an integral part of the democratic organisation of the state; they declare that the objective of the state is to extend socialist democracy, and set out the goal of economic development as satisfying material, cultural, and intellectual requirements and developing socialist relations. In addition, they create an economic revolution based on socialist relations of production, establish co-operativism as the dynamic principle of socialist transformation, restrict private enterprise to satisfying social needs within the framework of national policy, and specify that land is for social use and must go to the tiller. The provisions guarantee the right to own personal property and the right to inheritance, and provide for the right to work, leisure, medical attention, social care, housing, education, and equality for women and children born out of wedlock. They establish the duty to provide for the environment, to prevent crime and to protect private property and to defend the state. Finally, they provide for a national culture and the protection of the environment and abolished discriminatory distinctions.

Declaratory and non-justiciable principles of any kind had not been included in any of the constitutions of the Commonwealth Caribbean. These constitutions, including the Guyana Independence Constitution, contained justiciable provisions relating to government, its organs and bodies, and their

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<sup>32</sup> *Id.*

<sup>33</sup> GUY. CONST., ch. II, art. 39.

rules and functions. Fundamental rights and other provisions protecting the rights are enforceable. However, the PNC, following the examples of several countries,<sup>34</sup> departed from this tradition and borrowed extensively from the Democratic Republic of Korea, the People's Republic of China, the German Democratic Republic, the Socialist Federal Republic of Yugoslavia, the Union of Soviet Socialist Republics, and the United Nations Universal Declaration of Human Rights.

The view of many Guyanese was captured in the conclusion by Professors James and Lutchman who said:

In the Guyanese context, where many basic rights which are guaranteed in the constitution are repeatedly breached, critics are likely to view statements of objectives, directive principles and social rights and obligations in the constitution as clichés and empty words. Likewise, their significance is likely to be falsified by even those who argue their essentiality as constitutional precepts. The absence of confidence in these declarations is compounded by uncertainties concerning enforceability. Whilst the Drafting Committee in both Papua New Guinea and Nigeria canvassed opinions and spent much time and energy on structures to secure the realisation of these objectives, that of Guyana approached this subject in a most uninformed and cavalier fashion.<sup>35</sup>

#### *F. The Restoration of Democracy in 1992*

The elections due in 1978 were postponed to enable the process of constitutional reform to be completed. The elections were eventually held in 1980 after the Constitution was enacted into law, and they were as controversial as the previous elections. President Burnham died suddenly in 1985 while undergoing surgery and was succeeded by President Hoyte who proceeded with elections which were again due in 1985. The controversy continued, not only about elections, but about the powers conferred on the president by the new Constitution. Constitutional reform was a major platform for all

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<sup>34</sup> See, e.g., India-Directive Principles of State Policy, at <http://reference.allrefer.com/country-guide-study/india/india148.html>; PAK. CONST. pt. II, ch. 2.

<sup>35</sup> See JAMES & LUTCHMAN, *supra* note 13.

opposition parties in the 1985 and 1992 elections. In recognizing the difficulties, the Report of the Constitution Reform Commission of 1992 stated:

The odium generated by the Constitution had dogged it since it was promulgated and there have been repeated calls for it to be repealed or, at a minimum, extensively amended, particularly with respect to the provisions on the powers of the Presidency. These calls have been sometimes reinforced by extraparlimentary agitation.<sup>36</sup>

The Hoyte Government recognized the demands for constitutional reform and in 1991 sponsored a motion for the appointment of a select committee for the purpose. The motion was withdrawn after it failed to gain the support of the opposition PPP.<sup>37</sup> Elections were held again in 1992 after a postponement of two years as a result of opposition complaints about the list of electors and other preparations. For the first time, elections in Guyana were officially observed by overseas organizations, including the Organization of American States and the Carter Center. The elections, which were deemed to be free and fair by all foreign and local observers, were won by the PPP and resulted in a change in government for the first time since 1964. After its assumption of office, the new government directed its attention to constitutional reform and on December 1, 1994, passed a resolution appointing a special select committee to review the Constitution and make proposals for its reform and to complete its work before the next elections were due. The committee travelled over many parts of Guyana and received submissions, but could not complete its work in time. As a result, the work of the committee lapsed with the dissolution of the National Assembly in 1997 for the purpose of conducting the elections.

### *G. The Herdmanston Accord*

After twenty-eight years in power, through rigged elections, the PNC lost the 1992 elections after it was forced by the United States and other countries to agree to minimum reforms and allow international observers. The PPP/CIVIC Alliance (PPP/C) won the elections, and Cheddi Jagan, the long-

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<sup>36</sup> REPORT OF THE CONSTITUTIONAL REFORM COMMISSION TO THE NATIONAL ASSEMBLY OF GUYANA on July 17, 1992 [hereinafter CONSTITUTIONAL REFORM COMMISSION REPORT].

<sup>37</sup> *Id.*

time leader of the PPP who was elected President, died in March 1997. His widow, Mrs. Janet Jagan, was nominated as the presidential candidate for the PPP/C for the December 1997 elections, which the PPP/C won with the largest ever majority with fifty-five percent of the votes.

The elections were followed by civil unrest organized by the opposition for a period of four weeks, which resulted in ethnic tension and violence.<sup>38</sup> A CARICOM Mission comprised of former Barbados Attorney General and Foreign Minister, Sir Henry Forde, Q.C., then Vice Chancellor of the University of the West Indies, Sir Alistair McIntyre, and former Commonwealth Secretary General Sir Shridath Ramphal, was invited to Guyana and brokered the Herdmanston Accord.<sup>39</sup> Clause 4(i) of the Accord provided as follows:

A Constitution Reform Commission will be established by law, with a wide mandate and a broad-based membership drawn from representatives of political parties, the Labour Movement, religious organisations, the private sector, the youth and other social partners. The Terms of Reference of the Commission and its membership will be determined by the National Assembly after a process of consultations with the political parties. It will be mandated to consult with civil society at large.<sup>40</sup>

Sub-clause (iii) stated:

Among the matters to be addressed by the Constitutional Reform Commission will be measures and arrangements for the improvement of race relations in Guyana, including the contribution which equal opportunities legislation and concepts drawn from the CARICOM Charter of Civil Society can contribute to the cause of justice, equity and progress in Guyana.<sup>41</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> The accord was named after the building in which the document was negotiated and signed.

<sup>40</sup> The Herdmanston Accord (Jan. 17, 1998), at [http://www.caricom.org/pressreleases/pres06\\_98.htm](http://www.caricom.org/pressreleases/pres06_98.htm).

<sup>41</sup> *Id.*

The Herdmanston Accord also provided for an audit of the elections (which found no significant difference in the announced results), a moratorium on demonstrations (which continued, nevertheless, and resulted in the signing of a new agreement called the St. Lucia Statement<sup>42</sup>), dialogue between the PPP/C and the PNC, and the creation of a new environment.

Clause 4(ii) of the Herdmanston Accord provided that the Constitution reform process be concluded within eighteen months of the date of its signing, January 17, 1998. However, the process did not commence until January 22, 1999, and had until July 17, 1999, to complete its work if it intended to keep the deadline provided by the Herdmanston Accord.

### III. THE CONSTITUTION REFORM COMMISSION ACT

The Constitution Reform Commission Act was passed in the National Assembly and assented to on January 13, 1999. It established a Constitution Reform Commission (Commission) with a chair and vice-chair elected from among its members and a Secretariat headed by a Secretary appointed by the Commission. It was to be constituted as follows: five members nominated by the PPP/C; three members nominated by the PNC; one member nominated by the United Force;<sup>43</sup> one member nominated by the Alliance for Guyana;<sup>44</sup> a farmers' representative; a private sector representative; an indigenous people's representative; a women's organizations' representative; a youth organizations' representative; a Guyana Bar Association representative; a Hindu religious organizations' representative; a Muslim religious organizations' representative; a Christian religious organizations' representative; and a Labour Movement representative.

The Act provided that in conducting its review of the Constitution, the Commission shall take into account the following: the full protection of the fundamental rights and freedoms of all Guyanese; the rights of indigenous people; the rights of children; eliminating discrimination in all its forms; improving race relations and promoting ethnic security and equal opportunity; measures to ensure that the views of minorities in the decision-making process and in the conduct of government are given due consideration; implementing reforms relating to elections; measures to secure and protect economic, social

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<sup>42</sup> The agreement was signed on July 2, 1998, at the CARICOM Heads of Government meeting in St. Lucia.

<sup>43</sup> A political party with two representatives in the National Assembly.

<sup>44</sup> A political party with two representatives in the National Assembly.

and cultural rights of all Guyanese; measures to maintain and strengthen the independence of the judiciary; measures aimed at safeguarding public funds and at maintaining and enhancing integrity in public life; the functioning of the National Assembly and any measures which can enhance its capacity and effectiveness as a deliberative body; the functioning of the local government system and measures to improve its capacity and effectiveness; and the representations made to the Special Select Committee on Constitutional Reform established in accordance with the resolution of the National Assembly passed on December 1, 1994.<sup>45</sup>

#### A. *The Commission*

The Commission was constituted on January 22, 1999, and held its first meeting on January 25, 1999.<sup>46</sup> Apart from the chairman, assistant to the chairman, secretary and deputy secretary, the Secretariat consisted of five heads: Documentation and Research, Public Education and Information, Logistics, Financial Administration and Project Monitoring, and Document Replication and Distribution. There were eight supervisors assisted by many other staff. The partial effect of the Constitutional Reform Act was to limit the Commission to recommendations endorsed by a large majority or consensus.

The Commission held eighty-five public hearings at locations across the country, receiving 4,601 proposals through the public hearings. It received information by extracting written and oral submissions from the previous Select Committee, inviting the public to send written submissions, extracting submissions from articles published in newspapers, establishing special public hearings as a result of special requests from persons and organisations, taking individual Commissioners' views and submissions, and providing internet information to stimulate responses from Guyanese residing overseas. It received evidence from seven foreign experts and assistance from seven Guyanese experts. Its members divided themselves into several groups to consider various aspects of the Constitution which, as provided for in the Herdmanston Accord and other documents, formed the mandatory issues for consideration provided.

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<sup>45</sup> Constitution Reform Commission Act § 6.

<sup>46</sup> See CONSTITUTIONAL REFORM COMMISSION REPORT, *supra* note 36. The author was the Chairman of this Commission.

### *B. The Recommendations of the Constitution Reform Commission*

The Commission made recommendations in relation to twenty-three areas: the Preamble to the Constitution, fundamental rights and freedoms of the individual, indigenous rights, rights of the child, gender rights, the presidency, parliament, local Government, the judiciary elections commission, the electoral system, the Constitution as a document, land and the environment, right to education, the economy, the right and the duty to work, finance, national security, commissions, religion, race relations, the state and the Constitution, and Constitution Reform for the Future. In making its recommendations under each heading, the Commission considered and set out the rationale for the recommendations. Some of the recommendations are as follows.

#### *1. The Preamble to the Constitution*

The Preamble should be written in simple and unpretentious language and take account of the fact that Guyana is a pluralistic society in a world of globalization dominated by information technology. It should include the idea of cooperation, reference to indigenous peoples, protection of the environment, the rule of law, the Deity, and youth.

#### *2. Fundamental Rights and Freedoms of the Individual*

It was recommended that this section of the Constitution be expanded to include:

- the right to protection against discrimination on the grounds of sexual orientation, race, sex, religion, gender, ethnicity, marital status, physical and/or mental disability, political opinion, color, or age;
- the right to protection for arrested and detained persons;
- the right to just administrative action;
- the right to protection of indigenous culture, way of life, and language;
- the right of citizens to an environment that is not harmful to their health or well-being;

- the right of citizens to participate through their co-operatives, trade unions, and socioeconomic organisations in the State's management and decision-making processes;
- the right to inheritance;
- the right to work;
- equality of rights and status of children born out of wedlock;
- the inalienable rights of children;
- the entitlement of all children to parental financial maintenance and shelter;
- the entitlement of all children to compulsory free primary education, and free education up to and including secondary level;
- the entitlement of all children to free primary health care;
- the right of all children to be protected from exploitative labour practices, punishment, and abusive practices;
- the provisions for women's equality to be made justiciable;
- compensation for deprivation of property to be prompt and adequate;
- protection of freedom of conscience to include protection against vilification of one's religion;
- protection of freedom of expression should include protection from hate speech;
- protection of the right of assembly should include the right to demonstrate lawfully;
- the right of trade unions to conclude collective labour agreements that shall be legally binding; and
- the right of trade unions to strike subject to reasonable limitations.

### 3. *Indigenous Rights*

It was recommended that there should be reference to the indigenous people in the Preamble of the Constitution and that their rights to the protection of their culture and way of life, including language, should be placed in the fundamental rights section. The Commission also recommended that an Indigenous Peoples' Commission be established to make recommendations for specific issues including: land rights; improvements in legislation affecting Amerindians; the Amerindian Act; the scope and authority of the Council of



Toushaüs; empowerment with regards to local government; economic and education policy; and cultural protection and preservation.

#### *4. Rights of the Child*

In addition to the recommendations set out under the fundamental rights section above, the Commission also recommended with respect to the rights of the child that the following be included: enforceable provisions for rights of children including the right to life, and equal treatment before the law; freedom of expression and protection from all forms of discrimination; all children born in Guyana to Guyanese parents shall be entitled to a name and shall be entitled to citizenship of Guyana; free primary health care; a Constitutional Commission for the Promotion and Protection of the Rights of the Child; and measures to protect children from the illicit use of narcotic drugs and psychotropic substances.

#### *5. Gender Rights*

The Commission recommended that the provisions for women's equality already in the Constitution should be made justiciable fundamental rights and that there should be provisions against sexual abuse, harassment, violence, and the non-payment of equal pay for work of equal value. Further recommendations included: establishing an enshrined general principle which encourages women's participation in public decision-making; including the requirement of gender representiveness in the constitutional provisions on the electoral lists; having gender neutral language in the Constitution; and establishing a Constitutional Commission for Women and Gender Equality.

#### *6. The Presidency*

The recommendations for the presidency included:

- a person shall hold the office of president for a maximum of two terms and those two terms shall be consecutive;
- the president shall be Guyanese by birth (soil or blood) and shall be continuously residing in Guyana for a specified period before elections;
- the cabinet shall be collectively responsible to Parliament for the control of the Government and shall, along with the

president, resign if it is defeated in the National Assembly on a motion of no confidence;

- the president shall be responsible to Parliament for those subjects and departments for which he or she is responsible, and the president also shall appoint a Minister or Parliamentary Secretary to be answerable to the National Assembly for such matters;
- the power to dissolve Parliament should be removed;
- the weighted majority necessary to impeach the president should be reduced;
- the appointment of a tribunal dealing with removal from office of certain persons shall be done on the basis of the advice tendered by the Judicial Service Commission; and
- the president's power to abolish any public office, and the president's power to remove any public officer in the public interest, should be deleted.

### *7. Parliament*

The Constitution should provide for the establishment of four sector committees which shall have the responsibility for the scrutiny of all areas of government policy and administration. The committees should be for natural resources, economic services, foreign relations, and social services. The chair and deputy chair shall come from opposite sides of the House.

### *8. Local Government*

The local government recommendations proposed include:

- references to "socialism" should be removed;
- the National Congress of Local Democratic Organs and the Supreme Congress of the People should be abolished;
- the Constitution should enunciate the autonomy of local government bodies;
- the Constitution should specify that regional democratic councils, neighbourhood democratic councils, and municipalities are mandatory.
- the lower tier of local government should be represented in the tier immediately above;

- the Constitution should provide for the electoral system at the level of local government below the regions to be built upon the pillars of representativeness, proportionality, and accountability to the electorate;
- the Constitution should provide for the electoral system at the level of local government below the regions, to provide for the involvement of individuals and voluntary groups in addition to political parties;
- the Constitution should provide the criteria for the garnering and allocation of resources by local authorities; and
- the Constitution should provide for the functions of the Auditor General to include the auditing of the accounts of local government bodies.

### 9. *The Judiciary*

The recommendations for the judiciary were:

- the judicial system should be independent and free from official influence and control;
- the appointment and promotion of judges should be removed as far as possible from all party control;
- the judicial system should be administratively autonomous and should be funded by a block vote from the Consolidated Fund;
- provision must be made so that the Judicial Service Commission, not the Public Service Commission, is responsible for the appointment of the Registrar and other professional officers of the Supreme Court staff;
- appointment of all judges should be in accordance with the advice of the Judicial Service Commission;
- the Chancellor and the Chief Justice should be appointed through a consensual mechanism;
- Parliament should consider providing a time within which judges should give their decisions and persistent failure to do so should constitute misbehavior;
- provision should be made for Guyana to accede to the Caribbean Court of Justice;
- provision should be made for part-time judges;

- retirement age for judges should be sixty-five years old and for justices of the court of appeal should be sixty-eight, with no provision for extension;
- there should be a more detailed description of "misbehaviour" in the Constitution; and
- emoluments and pensions should be raised so that it would not be necessary for retired judges to practice.

#### *10. Elections Commission*

The Elections Commission recommendations include:

- making the necessary reforms to ensure the acceptance of election results by all concerned;
- amending the Constitution to limit the role of political parties in the conduct of elections through the Elections Commission to policy-making and monitoring;
- selecting a full-time chairman through a consensual mechanism as provided for by the Constitution;
- making the Commission responsible for elections, national registration, and boundary demarcation, where this is related to the conduct of elections; and
- creating a permanent Secretariat of the Commission to ensure efficiency, continuity, and the development of institutional memory and capacity.

#### *11. Electoral System*

The Commission recommended that:

- the electoral system should remain that of proportional representation;
- the electoral system should include an element of geographical representation;
- limits should be placed on the numbers of non-elected ministers and Parliamentary Secretaries eligible to sit in Parliament;
- only Guyanese citizens resident in Guyana should be permitted to vote in elections; and

- the opposition leader should be appointed by members of Parliament who do not support the government;

### *12. The Constitution as a Document*

It was recommended that the Constitution should be rendered gender neutral. The Constitution should also be simple and readily accessible. The provisions treating the disadvantaged and people with disabilities should be highlighted; and for the addition of fundamental rights a two-thirds majority of the National Assembly shall be required. A referendum shall be necessary for the removal of a fundamental right.

### *13. Land and the Environment*

It was proposed that Parliament should recognize:

- that the well-being of the nation depends upon preserving clean air, pure waters, fertile soils, and a rich diversity of plants, animals, and ecosystems;
- the right of every one to an environment that is not harmful to their health or well-being;
- the right to have an environment that is protected for the benefit of present and future generations through legislative and other measures; and
- ancestral rights and indentureship rights in relation to land with a view to putting appropriate mechanisms in place.

### *14. Right to Education*

The Commission recommended that the Constitution should include an obligation for the State with respect to education having regard to cultural diversities and the need for an appropriate curriculum. It also recommended that every person should have a right to a private education. Every private school must provide for minorities, including children with disabilities. Additionally, every person shall have a right to access nursery, primary, and secondary education irrespective of their economic status.

### 15. *The Economy*

In the recommendations for this section the Commission suggested the inclusion of the following principles:

- the principal political objective of the political system of the state is to establish an inclusionary democracy by providing increased opportunities for the participation of citizens and their organizations in the management and decision-making processes of the state, with particular emphasis on those areas of decision-making that directly affect their well-being;
- the goal of economic development includes the objective of creating an economy capable of achieving and maintaining the status of sustainable competitive advantage in the context of a global competitive environment by fostering entrepreneurship, individual and group initiative and creativity, and strategic alliances with domestic and global business partners in the private sector;
- the goal of economic development includes the objective of laying the material basis for the largest possible satisfaction of the people's growing material, cultural, and intellectual requirements, as well as the dynamically stable development of their personality, creativity, entrepreneurial skills, and co-operative relations in a plural society, and the state has the responsibility to intervene to mitigate any deleterious effects of competition on individuals or groups of individuals;
- the state will foster the development of such relevant forms of cooperation and of business entities as are seen to be supportive of the goals of economic development; and
- privately-owned economic enterprises are recognized and will be facilitated in accordance with their conformity with the aims and objectives of the Constitution.

### 16. *The Right and the Duty to Work*

It was recommended that this section should include those recommendations relating to the economy:

- protecting the public service from political interference;

- binding the public service to loyalty to the lawful policies of the government of the day;
- constitutional protection of the right to strike;
- the right to demonstrate peacefully;
- and the protection of pension rights.

### *17. Finance*

The Commission's recommendations were directed to the strengthening of the independence of the Auditor General. It recommended: providing for Parliamentary oversight of the functioning of the office of the Auditor General by exempting the Auditor General as an adviser of the government; requiring the Auditor General to submit reports to the Parliament rather than to the Minister of Finance; removing any qualification to the independence of the Auditor General; and establishing a Constitutional Public Tender Commission.

### *18. National Security*

The Constitution should provide that: the defense and security forces be insulated from party political control or influence; their allegiance must be to the nation and the Constitution; and the concern with respect to ethnic imbalance must be addressed. A general purpose clause should be included in the Constitution which provides for defense and security policy and the subordination of the defence and security forces to national defense and security policy and to the Constitution and the nation. The recommendations included the establishment of a Commission to make recommendations to Parliament on the structure, procedure, and composition of the security forces which will ensure that they continue to enjoy the confidence of all people of Guyana.

### *19. Commissions*

The Report listed thirty-seven commissions, some of which are already in existence as constitutional commissions. It recommended the formation of other constitutional commissions such as the Human Rights Commission, Indigenous Peoples' Commission, Commission on Women and Gender, Commission on the Rights of the Child, Public Tender Commission, and Ethnic Relations Commission.

## 20. *Religion*

In relation to religion it was recommended that a provision should be made in the Constitution to have religious beliefs and practices protected against vilification by having this protection as a fundamental right.

## 21. *Race Relations*

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

- there should be clauses in the Constitution prohibiting all individuals and institutions, and specifically political parties, from indulging in any actions or being proselytisers of any ideas, programmes, or employment practices in which there are elements of racial or ethnic divisiveness;
- the right to freedom of speech, thought or association should not be used as justification or protection from penalties for so doing;
- any party in breach of this prohibition should be disbarred from contesting any election, as shall any individual or organization purporting to so speak or act on behalf of a political party;
- where any individual or organization claiming to speak or act on behalf of a political party is found to have been in breach of the prohibition, the political party on whose behalf the action was taken shall be debarred as above set out, unless it publicly disassociates itself from the individual or organization and expressly disassociates from the sentiments he, she or it has expressed;
- the establishment of an Ethnic Relations Commission comprising representatives of religious bodies, the Labour Movement, the business sector, youth and women to establish and publish criteria to be used for deciding whether any individual or institution is in breach of the prohibitions above, to specify penalties including disbarment, to commission studies to monitor the progress of race relations and to recommend to the National Assembly further measures to achieve the objective of improving race relations.



## *22. The State and the Constitution*

It was recommended that the name of the country should be changed from the Co-operative Republic of Guyana to the Republic of Guyana and that the Constitution should provide that Guyana is an indivisible, secular, democratic, and sovereign state. It was also recommended that the flag and coat of arms should be described and the National Pledge should be also included.

## *23. Constitution Reform for the Future*

It was recommended that there should be a Parliamentary Standing Committee for Constitutional Reform, the function of which will be to keep the operations under continuous review and make periodic reports to the National Assembly, including proposals, where appropriate, for reform.

### *C. The Oversight Committee*

The Constitution Reform Commission concluded its work upon the delivery of its Report to the National Assembly on July 17, 1999. The next stage was the preparation of the legislation to give effect to the recommendations for the amendment of the Constitution. The National Assembly elected the Oversight Committee comprised of members and non-members which undertook this task.<sup>47</sup> As a result the following legislation was passed:

- Constitution (Amendment) (No. 1) Act No. 2 of 2000;
- Constitution (Amendment) (No. 2) Act No. 11 of 2000;
- Constitution (Amendment) (No. 3) Act No. 14 of 2000;
- Constitution (Amendment) (No. 4) Act No. 17 of 2000;
- Constitution (Amendment) (No. 1) Act No. 3 of 2001;
- Constitution (Amendment) (No. 2) Act No. 4 of 2001;
- Constitution (Amendment) (No. 3) Act No. 5 of 2001;
- Constitution (Amendment) (No. 4) Act No. 6 of 2001;
- Constitution (Amendment) (No. 5) Act No. 7 of 2001;
- Constitution (Amendment) (No. 6) Act No. 8 of 2001.

The amendments did not encompass or include all the recommendations of the Constitution Reform Commission, and some did not succeed. For example,

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<sup>47</sup> Guy. Natl. Assem. Res. 19, 8th Parl., 2d Sess. (May 15, 2003).

the Commission recommended that the president should be limited to two consecutive terms.<sup>48</sup> However, the final amendment did not provide for the two terms to be consecutive.<sup>49</sup> In another case, popular opposition prevented the passage of an amendment protecting persons of different sexual orientation from discrimination. In yet another case, the change of the country's name has not been effected because it would require a referendum.<sup>50</sup>

After a great deal of ongoing political disagreement on several issues, some progress has been made recently. The parliamentary commissions and the service commissions have recently been established and have begun to function. Of the five rights commissions recommended, only one, the Ethnic Relations Commission, has been established. The process for the establishment of the other rights commissions are in progress.

#### IV. CONCLUSION: CONSTITUTIONAL REFORM AND POLITICAL STABILITY

All of the proposals for constitutional engineering which have been made since 1960, including the current effort, apart from the self-governing Constitution of 1961 and the Independence Constitution of 1966, had as their basis the intention of resolving various political crises which have been a part of the political landscape since 1962. As the Report of the Constitution Reform Commission to the National Assembly of July 17, 1999 said:

The proposed constitution is intended to contribute to deriving an immediate solution to the political crisis which gave rise to the Herdmanston Accord.<sup>51</sup>

Several proposals for coalition governments between the two main political parties, the PPP and the PNC were made in the period between 1961 and 1966 by the PPP. None of these were accepted. In 1977, the PPP proposed a Patriotic Front government comprised of the PPP and the PNC. Again it was rejected by the PNC.<sup>52</sup> Throughout this period and up to the general elections of 1992, Constitution reform was at the top of the agenda of most opposition parties. After the PNC lost the elections of 1992, it supported constitutional

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<sup>48</sup> CONSTITUTIONAL REFORM COMMISSION REPORT, *supra* note 36, para. 9.6.3.1.

<sup>49</sup> GUY. CONST. amend. IV, § 2.

<sup>50</sup> GUY. CONST. art. 164.

<sup>51</sup> CONSTITUTIONAL REFORM COMMISSION REPORT, *supra* note 36, para 8.2.

<sup>52</sup> See JAGAN, *supra* note 15.

reform. At this time the basis of the constitutional reform was the reduction of the powers of the president, the strengthening of the independence of constitutional bodies, such as the National Assembly, the Judiciary, and the service commissions, and the expansion of individual rights.

The introduction of free and fair elections did not bring an atmosphere of anticipated political stability. As a result, the debate for further constitutional reform to force or, at least, encourage a degree of shared governance as a potential method of reducing political instability has continued.

After the Report of the Constitution Reform Commission was submitted, the pace of the reform process slowed due to legislative drafting and other factors. In the meantime, the general elections of March 2001 took place, and this generated another period of political upheaval, which was eventually brought to an end by a dialogue between the president and the leader of the opposition. After some progress, the dialogue was called off because of opposition claims that the government had not fulfilled its commitments, which the government strenuously denied.<sup>53</sup> The opposition boycotted the National Assembly for one year, most of 2002, during which time the process of implementing the constitutional reform proposals came to an end. In early 2003, a communique was signed between the new leader of the opposition (the late Desmond Hoyte died in 2002 and Mr. Robert Corbin was elected in early 2003), and progress was resumed.<sup>54</sup> Much has been accomplished so far even though a great deal remains to be done. Unfortunately, the process is once again being held hostage by political disputes. Amidst sharp political differences which do not relate to the reform process, the leader of the opposition has described the engagement with the president as "precarious," once again on the ground of slow progress, which the government has denied.<sup>55</sup>

Most observers agree that the main cause for the recurrent political crises in Guyana since the split in the PPP in 1955 is ethnic insecurity complicated by the legacy of authoritarian rule between 1968 and 1992. However, with the full implementation of the constitutional reform proposals and the functioning of the National Assembly, the commissions and other bodies and institutions at their optimum will go a long way to reducing political instability and generating better conditions for economic and social development.

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<sup>53</sup> Letter from the Leader of the Opposition to the President (Mar. 14, 2002) (on file with author); Reply from President (Mar. 15, 2002) (on file with author).

<sup>54</sup> Communique, May 6, 2003 (on file with author).

<sup>55</sup> STABROEK NEWS, Feb. 14, 2004.

