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**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS  
24 AUGUST 1995**

## **CONSTITUTIONAL ASSEMBLY**

### **DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE**

**24 AUGUST 1995**

#### **PART I**

#### **NATIONAL EXECUTIVE**

Outstanding issues within the third draft chapter on the National Executive were considered and the following agreed to:

**1 Executive power (section 1)**

1.1 It was agreed that a decision regarding the use of the term "President" or "State President" should be held in abeyance.

1.2 It was noted that uncertainty still existed regarding whether the formulation should read "State President" or "State President and Cabinet". It was noted that this also arose in sections 6(3) and 12.

**2 Head of State and Government (section 2)**

It was agreed that this be held in abeyance.

**3 Election of State President (section 3)**

It was agreed that this should be held in abeyance. It was noted that further debate was required regarding which Judge should preside over the election of the State President.

**4 Assumption of office (section 4)**

No changes were made to this section.

**5 Term and vacation of office and filling of casual vacancies (section 5)**

It was agreed that debate on the maximum term of office a President may serve needed to be taken further on the basis that:

- i) the maximum was two full terms;

- ii) that "full" not be equated with "fixed" and;
- ii) that the Advisers would examine the implications of a Presidential term falling out of kilter with the term of office of the legislature and the consequent gap if a President was removed from office.

## **6 Powers and functions (section 6)**

- 6.1 It was agreed that "in consultation with other members of the Cabinet", correctly reflects the manner in which the President would exercise powers.
- 6.2 It was agreed that the word "accredit" should be deleted from section 6(3)(f).
- 6.3 It was agreed that a decision concerning section 6(3)(g) would be held in abeyance until the reports from Theme Committees 1 and 5 concerning international agreements had been tabled.
- 6.4 It was agreed that section (h) should be deleted as the power of the President "to [reprise and] pardon offenders and to remit fines, penalties and forfeitures" should be decided in consultation with other members of the Cabinet. It was agreed that by omitting it from this section it would fall under section 6.2 and therefore "in consultation" would apply.
- 6.5 It was agreed that section 6(3)(k) would be left in abeyance until Presidential prerogatives had been discussed further.

## **7 Confirmation of executive acts of State President (section 7)**

It was agreed that reference to a seal in section 7(3) should be deleted, as it referred to a custom and not a constitutional entitlement.

## **8 Remuneration (section 8)**

- 8.1 It was agreed that section 8(1) should remain as is.
- 8.2 It was agreed that section 8(2) should be deleted as it was covered in section 16 which was amended to cover the conduct of the Minister, Deputy Minister and President.

## **9 Deputy State President(s)/Prime Minister (section 9)**

- 9.1 It was agreed that this issue would be held in abeyance.

9.2 It was agreed that the Advisers would append a footnote to the draft text setting out the position of each party in summary form.

9.3 It was noted that some parties still had to express themselves more fully in this regard.

**10 Acting State President (section 10)**

10.1 It was agreed that this issue would be held in abeyance until section 9 dealing with Deputy State President(s)/Prime Minister had been finalised.

**11 Removal of State President or Deputy State President (section 11)**

11.1 It was agreed that this issue would be held in abeyance.

11.2 It was agreed that the Advisers would append a footnote to the draft text providing for the removal of the President or Deputy State President from office by a vote of no confidence. It was agreed that the formulation would provide generally for consequences of such a motion.

**12 Cabinet (section 12)**

It was agreed that this issue would be held in abeyance.

**13 Appointment and dismissal of Ministers and Deputy Ministers (section 13)**

It was agreed that this issue would be held in abeyance.

**14 Oath or solemn affirmation (section 14)**

No changes were made to this section.

**15 Accountability of Ministers and Cabinet (section 15)**

It was agreed that the DP would present a formulation setting out their position in this regard.

**16 Conduct of Ministers and Deputy Ministers (section 16)**

16.1 It was agreed that this section would be amended to include the President.

16.2 It was agreed that section 16(a) would be amended to read:

***to take up any other paid work.***

16.3 It was agreed that the Technical Advisors would research the meaning of the term "public office" and the possible different implications for the President and other members of the Cabinet.

**17 Remuneration (section 17)**

No changes were made to this section.

**18 Temporary assignment of Minister's powers and functions to another Minister (section 18)**

It was agreed that the Advisers would look again at the language used in this clause.

**19 Transfer of Ministers powers and functions to another Minister (section 19)**

No changes were made to this section.

**20 Votes of no confidence (section 20)**

It was agreed that another formulation of section 20(1) should be included in the footnotes.

21 It was agreed that the draft formulations on the National Executive would be tabled again in the Subcommittee when parties have finalised their positions further.

## CONSTITUTIONAL ASSEMBLY

### DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE

24 AUGUST 1995

#### PART II

The following outstanding issues within the fourth draft chapter on the National Assembly were considered:

**1 Duration of the National Assembly (section 5)**

1.1 It was agreed that the word "continue" would be retained in section 5(1).

1.2 It was agreed that the implications for the National Assembly of an election result being declared invalid would be omitted from the constitution, as this could be adequately dealt with in an Electoral Act.

**2 Qualifications of members of National Assembly (section 7)**

2.1 It was agreed that section 7(2)(c) should be replaced with the formulation contained in footnote 19. It was agreed that the phrase "or if such person has received a pardon", should be deleted.

2.2 It was agreed that section 7(2)(e) would be replaced with the formulation contained in footnote 21. The Advisors would investigate the full implications of deleting the subsection dealing with pensions.

**3 Vacation of seats**

It was agreed that the Advisors should investigate whether section 8(d) should be retained or could be left to the rules of Parliament.

**4 Decisions (section 13)**

It was agreed that section 13(1) should be replaced with the formulation contained in footnote 35.

**5 Assent to Bills (section 21)**

- 5.1 It was agreed that the reformulation of section 21(2) contained in footnote 43 captured the principle agreed to but required reformulation.
- 5.2 This issue would be revisited following debate in the Constitutional Assembly.

