

CHAPTER 1:14

CONSTITUTION REFORM COMMISSION ACT

ARRANGEMENT OF SECTIONS

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AN ACT to establish a Constitution Reform Commission and to provide for its membership and terms of reference in accordance with the Caricom Agreement dated 17th January, 1998 and the St. Lucia Statement dated 2nd July, 1998 and for other purposes connected therewith.

Enacted by the Parliament of Guyana:-

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| <u>A.D. 1999</u> | | | |
| Short title | 1. | This Act may be cited as the Constitution Reform Commission Act 1999. | |
| Interpretation. | 2. | (1) In this Act – “Caricom” means the Caribbean Community established by the Treaty of Chaguaramas 1973; | |
| | | “Caricom Agreement” means the Agreement in the First Schedule entitled Caribbean Community Mission to Guyana dated 17 th January 1998; | |
| | | “St. Lucia Statement” means the statement in the Second Schedule entitled the St. Lucia Statement dated 2 nd July, 1998. | |
| | (2) | This Act shall be read and construed in accordance with the letter and spirit of the Caricom Agreement and the St. Lucia Statement that are inter-related and mutually reinforcing. | |
| | 3. | (1) There is hereby established a body to be known as the Constitution Reform Commission (in this Act referred to as “the Commission”) generally in accordance with paragraph 9 (i) of the Caricom Agreement. | Establishment of the Constitution Reform Commission |
| | (2) | There shall be a Commission Secretariat, headed by the Secretary to the Commission, appointed by the Commission, responsible and reporting to the Commission. | |
| | (3) | There shall be a budget for the Commission to enable the Commission to adequately discharge its functions. | |
| | 4. | The Commission shall consist of the following members – | Membership of the Commission |
| | (a) | five members nominated by the People’s Progressive Party/Civic; | |
| | (b) | three members nominated by the People’s National Congress; | |
| | (c) | one member nominated by the United Force; | |
| | (d) | one member nominated by the Alliance for Guyana; | |
| | (e) | a farmers’ representative; | |

- (f) a private sector's representative;
- (g) an indigenous people's representative;
- (h) a women's organisations' representative;
- (i) a youth organisations' representative;
- (j) a Guyana Bar Association's representative;
- (k) a Hindu religious organisations' representative;
- (l) a Muslim religious organisations' representative;
- (m) a Christian religious organisations' representative;
- (n) a Labour Movement's representative.

Filing of
vacancies

5. (1) Where a member of the commission refuses or is no longer willing or able to discharge his functions under this Act, or is removed in accordance with the provisions of subsections (2), another person may be appointed in his stead, after being nominated in like manner by the entity of which his predecessor was the representative.

(2) A member nominated by the entity as its representative on the Commission shall cease to be the member from the date that entity informs the Commission in writing that the member no longer represents the views of that entity.

Terms of
Reference and
powers of the
Commission.

6. (1) The Commission shall review the Constitution of Guyana, to provide for the current and future rights, duties, liabilities and obligations, of the Guyanese people; and for that purpose shall receive, consider and evaluate submissions for the alternation of the Constitution, and report its recommendations to the Special Select Committee for transmission to the National Assembly.

(2) In conducting the review of the Constitution, the Commission shall in consonance with paragraphs 4 (iii) of the Caricom Agreement and 3(d) of the St. Lucia Statement take into account the following -

- (a) the full protection of the fundamental rights and freedoms of all Guyanese under the law and the Caricom Charter of Civil Society;
- (b) the rights of the indigenous people of Guyana;
- (c) the rights of children;
- (d) eliminating discrimination in all its forms;
- (e) improving race relations and promoting ethnic security and equal opportunity;

- (f) measures to ensure that the views of minorities in the decision-making process and in the conduct of Government are given due consideration;
- (g) implementing reforms relating to elections and the Elections Commission taking into consideration its composition, the method of electing its chairman and members and its jurisdiction over national registration and the electoral process;
- (h) measures to secure and protect economic, social and cultural rights of all Guyanese;
- (i) measures to maintain and strengthen the independence of the judiciary;
- (j) measures aimed at safeguarding public funds and at maintaining and enhancing integrity in public life under the law and by other proper means;
- (k) the functioning of the National Assembly and any measure which can enhance its capacity and effectiveness as a deliberative body;
- (l) the functioning of the local government system and measures to improve its capacity and effectiveness;
- (m) the representations which have been made to the Special Select Committee on Constitutional Reform established in accordance with the Resolution of the National Assembly passed on December 1, 1994.

(3) The Commission shall consult, within the widest possible geographical area, with as many persons, groups, communities, organizations and institutions as possible including, but not restricted to, religious and cultural organizations, political parties, youth organisations, high schools and university students, women's organizations, private sector organizations, professional bodies and the media.

(4) The Commission shall have the power to conduct any inquiry or investigation within its terms of reference in such a manner and at such time and place as it thinks expedient with power to adjourn from time to time and place to place as it thinks fit.

(5) Upon the conclusion of its deliberations the Commission shall prepare a report, inclusive of the proposals of any minority, giving details of the recommendations and the reasons therefore in a clear and comprehensive manner to enable the Constitution to be drafted therefrom.

(6) The Report shall be presented to the National Assembly not later than July 17, 1999.

7. The privileges and immunities of the Commission and the members of the Commission shall be the same as those of the National Assembly, respectively.

8. The Commission may appoint committees of the Commission comprising members of the Commission or non-members as the Commission may think fit and may assign to such

Committees such functions relating to the terms of reference of the Commission as the Commission may determine.

Post-reform
general election.

9. Pursuant to paragraph 4(ii) of the Caricom Agreement the process for implementing the alternation of the Constitution as recommended by the Commission and approved by the National Assembly shall be conducted in sufficient time to allow for post-reform general election to be held within eighteen months after the presentation of the Report of the Commission to the National Assembly.

Due constitution of
the Commission.

10. (1) The Commission shall fully constituted when all of its members referred to in section 4 are appointed by the President and have complied with subsection (2).

(2) Each member of the Commission shall, before entering upon his duties under this Act, take and subscribe before the President the oath I the Form set out I the Schedule to the Constitution or make and subscribe an affirmation.

Chairman,
Vice-Chairman.

11. (1) When the Commission first meets, and before it proceeds to dispatch any other business, it shall elect one of its members to be the Chairman and another to be the Vice-Chairman.

(2) The Vice-Chairman shall preside over the Commission whenever the Chairman is absent.

(3) Every member of the Commission including the Chairman and the Vice-Chairman shall have one vote; and there shall be no second or casting vote.

Procedure.

12. (1) Thirteen member of the Commission shall constitute a quorum.

(2) Only members of the Commission shall have the right to vote.

(3) A decision of the Commission shall be by consensus, unless a member asks that a vote be taken by secret ballot or show of hands; and a valid decision requires the support of twelve members of the Commission where all twenty members are present, and that of a simple majority plus two, where there is a quorum but the members present are less than twenty.

(4) All meetings and deliberations of the Commission shall be open to the public.

(5) Subject to the provisions of this Act the Commission shall regulate its own procedure and may make rules therefore.

13. (1) The Commission shall within the first month from its first meeting –

(a) publicise its methodology, and time - frames for accomplishing the stages of the task assigned to it; and

(b) prepare and present a budget to meet adequately its needs in the discharge of its functions.

Methodology,
time frames and
budget.

14. The Commission may engage the services of experts to assist in its work, and to advise it at any of its meetings or deliberations.

Experts.

15. The Special Select Committee established by resolution of the National Assembly to determine the terms of reference and composition of the Commission shall remain constituted

Special Select
Committee of the
National
Assembly

and shall, on behalf of the National Assembly, be responsible to facilitate the due and efficient functioning of the Commission and shall have authority to receive the Report of the omission for transmission to the National Assembly.

FIRST SCHEDULE

CARIBBEAN COMMUNITY MISSION TO GUYANA

Measures for Resolving Current Problems

The deliberations and consultations undertaken by the Caribbean Community (CARICOM) Mission have confirmed an urgent need for the de-escalation of conflict emphasized in the Mission's initial Statement. The Mission concluded that resolution of current problems in Guyana must begin, and that this can only happen through a political process to which all contribute. The Mission has recommended to the Leaders of the two parties the Menu of Measures set out below. It considers that, if agreed by the two main political parties as an integrated package, these measures can contribute significantly to the resolution of existing problems.

The Menu of Measures has taken into account the contributions of all political parties and of civil groups. The Mission is of the view that these measures will commend themselves to the society as a whole and invites all members of the society to give their full support to them.

In this context, the Leaders of the PPP/Civic and the PNC have agreed as follows:

1. **An Audit**

- (i) Without prejudice to any judicial process arising from the 15 December 1997 elections, an independent inquiry (the audit) will be carried out in two stages, namely:
 - (a) in the first stage, an urgent review of the due process of the count of and after 15 December 1997 (including the role of the Elections Commission) to be completed within three months of 17 January 1998 with a view to ascertainment of the votes cast for the respective political parties; and
 - (b) in the second stage, an audit of systematic aspects of the electoral process, including the post-balloting phase.
- (ii) The audit will be carried out under CARICOM auspices by a team proposed by the Chairman of CARICOM, after consultation with the Leaders of the political parties which participated in the 15 December 1997 elections, and agreed to by the Leaders of the PPP/Civic and the PNC. The Terms of Reference for the conduct of the audit are annexed hereto.
- (iii) The PPP/Civic and the PNC will cooperate in the enactment of any enabling legislation that may be required for the effective conduct of the audit.

- (iv) The Parties to this Accord will accept the findings of the first stage of the audit as binding upon them: and the enabling legislations will provide for such findings to be admissible for the purposes of any Election Petition in respect of any matter of fact to which they relate.

2. **A Moratorium**

An immediate moratorium on public demonstrations and marches will be declared and implemented. The ban on these activities will be simultaneously lifted. These arrangements will subsist for a minimum period of three months from 17 January, 1998.

3. **Dialogue**

The PPP/Civic and the PNC will activate arrangements for sustained dialogue between them with a view to fostering greater harmony and confidence and resolving issues on which agreement can be reached.

4. **Constitution Reform**

- (i) A Constitution Reform Commission will be established by law, with a wide mandate and a broad-based membership drawn from representatives of political parties, the Labour Movement, religious organizations, 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 political parties. It will be mandated to consult with civil society at large.
- (ii) The Commission will also be mandated to conclude its deliberations and present its reports to the National Assembly within eighteen months of 17 January 1998. The process for implementing the changes recommended by the Commission and approved by the National Assembly to be concluded in sufficient time to allow for post-reform general election which will be held within eighteen months after the presentation of the report of the Commission to the National Assembly.
- (iii) Among the matters to be addressed by the Constitutional Reform Commission will be measures and arrangements for the improvement of race relations in Guyana, including the contribution which equal opportunities legislation and concepts drawn from the CARICOM Charter of Civil Society can contribute to the cause of Justice, equity, and progress in Guyana.

5. **Creating a New Environment**

The political Leaders of the PPP/Civic and the PNC will issue a joint statement confirming their commitment to the agreed process of dispute statement and their resolve to avoid the use by or on behalf of their respective Parties of language which is accusatory and which might have an inflammatory effect in the current political context.

6. **Implementation**

For the purposes of the implementation of these measures, the PPP/Civic and the PNC will each appoint a senior representative with plenipotentiary powers for ensuring the smooth and uninterrupted translation of these agreed undertakings and arrangements into practice in a matter which supports the return of Guyana to normalcy.

7. **CARICOM Continuing Role**

The parties also accept that the Chairman and Bureau of CARICOM will retain a continuing interest in the implementation of the measures, and remain at the disposal of both Parties in that regard.

The Menu of Measures set out in paragraphs 1 to 7 above is agreed this 17th day of January 1998 by.

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(Sgd)
Janet Jagan
PEOPLE'S PROGRESSIVE
PARTY/CIVIC

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(Sgd)
H.D. Hoyte
PEOPLE'S NATIONAL
CONGRESS

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(Sgd)
H. Forde
On behalf of the Chairman of the
CARIBBEAN COMMUNITY

ANNEX

**TERMS OF REFERENCE OF THE AUDIT PROVIDED FOR IN
THE PARAGRAPH 1 OF THE MENU OF MEASURES AGREED
BY THE LEADERS OF THE PPP/CIVIC AND PNC
DATED 17 JANUARY 1998**

As provided for in the agreed Menu of Measures an independent audit will be carried out in relation to the 1997 General Elections. The first stage of the audit will be an urgent review of the due process of the count on and after 15 December 1997, including a review of the role of the Elections Commission. It must be completed within three months of 17 January 1998. This first stage of the Audit will have as its primary purpose an examination of the processes of the count from the close of poll to the declaration of the final results of the election by the Elections Commission, the validity and authenticity of all relevant documents, and the ascertainment of the votes that were duly cast for the respective political parties.

Those conducting the independent audit will have authority to enquire in to all matters they consider pertinent to the conduct of their enquiry and will expect the facilitation of their efforts by the members and staff of the Elections Commission to the extent and in the manner they consider appropriate. The audit will encompass all electoral Regions but will give priority to Region 4 and 6.

The second stage of the audit will extend beyond matters enquired into in the first stage to include systemic aspects of the electoral process. It will include enquiry in to the post-balloting phase of the elections but will not be confined to that phase. Notwithstanding anything in the first phase of the audit, the scope of the second phase will include both an enquiry into the electoral arrangements as planned and is actually carried out, as well as proposals for any modifications for future elections.

SECOND SCHEDULE

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CONFIDENTIAL

GUYANA
THE ST. LUCIA STATEMENT

1. In signing the 'Herdmanston Accord' on 17 January 1998, the Leaders of Guyana's two main political Parties stated that they were doing so 'specially mindful of the willingness of (their) CARICOM colleagues to remain engaged with Guyana in this endeavour'. It is in this spirit that as colleagues we have taken the opportunity of our St. Lucia Summit, on the occasion of the 25th Anniversary of CARICOM, to initiate a dialogue with them on the 'Herdmanston Accord'.
2. We are also fully resolved that it is pre-eminently our task – to be in the front line of all efforts to assist Guyana as part of our own family.
3. Our conversations with President Janet and Mr. Hoyte have convinced us all of the necessity to return Guyana to the agreed path of the 'Herdmanston Accord' – within the time-frame agreed in the Accord. Convinced that there is no time to lose in securing this, we have resolved together to place our collective commitment behind the undertakings, arrangements and measures in paragraphs (a) to (j) below to which President Janet and Mr. Hoyte, representing the PPP/Civic and the PNC respectively, have agreed between themselves and with CARICOM, namely -
 - (a) All parties to the 'Herdmanston Accord' reaffirm their commitment to the Accord, and to the implementation of its provisions as initially contemplated.
 - (b) Both stages of the Electoral Audit as provided for in paragraph 1 of the 'Herdmanston Accord' have been presented to the political Parties in Guyana. All the parties to the Accord have agreed to accept the findings of the first stage of the Audit – as set out in paragraph 1 (i)(a) of the Accord – as binding upon them; but it is recognized that this does not preclude the pursuit of elections petitions which have been filed in the court by both parties.
 - (c) The next substantive step to which the parties are committed under the Accord is that of Constitutional reform on the basis and within the framework provided for in paragraph 4 of the Accord. We recall that provision specifically and reaffirm our determination to pursue it in spirit and letter.
 - (d) Mindful that among the matters to be addressed by the Constitution 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 and contribute to the cause of justice, equity and progress in Guyana' –

It is accepted that the parties will take steps for the early implementation of specific measures to achieve these objectives in advance of constitution reform itself.

- (e) We are all agreed that it is feasible to complete the work of the Constitution Reform Commission and to have the Report submitted to the National Assembly by 16 July 1999

as originally contemplated, thereby maintaining the timetable I paragraph 4 (ii) of the Accord, and we commit ourselves to achieving it.

- (f) To enable this timetable to be met, the parties have agreed that they will settle as soon as possible, by law in the manner required by the 'Herdmanston Accord', the terms of reference and the naming of the Constitution Reform Commission mindful that CARICOM is resolved to assist them in every way required, but more specifically by arranging for the provision of constitutional experts and facilitators.
- (g) The parties have also agreed that the necessary enabling legislation should be enacted in time to allow the Opposition to take their seats I the National Assembly by 15 July 1998. Mr. Hoyte has indicated his intention that, without prejudice to the outcome of the election petitions referred to above, the PNC will assume their seats I the National Assembly by that date, and President Janet has indicated her agreement to secure the enactment of the necessary enabling legislation.
- (h) Mrs. Jagan have also agreed to make all normal parliamentary arrangements to facilitate the due functioning of the opposition I the National Assembly, including exploring in consultation with all Parties in the Assembly the establishment of the Parliamentary Management Committee for the better organization and functioning of parliament as established in a number of parliamentary democracies.
- (i) Building on this historic process of the meeting of Guyana's political leaders with CARICOM Leaders in St. Lucia and the demonstration that through dialogue lies the path to the resolution of Guyana's problems, the parties have agreed to redouble their efforts for dialogue as provided in paragraphs 3 and 6 of the 'Herdmanston Accord'. Further, the two leaders have given CARICOM Heads of Government their assurance that they will themselves meet on a periodic basis to facilitate the achievement of all the process to which they committed their parties by the 'Herdmanston Accord'.
- (j) The tow leaders have recognized the value of high level Facilitator acceptable to them whose functions will be developed in conjunction with them. Therefore, they have accepted the offer of CARICOM to provide such a Facilitator who will be appointed as a matter of urgency to further assist in the due implementation of these several agreements.

4. In the context of the conversations in St. Lucia CARICOM leaders are satisfied that there will be an end to illegal protest on the streets of Guyana as dialogue and parliamentary processes take their rightful and more prominent place in Guyana's governance. We are strengthened in this by the assurance that the rule of law will be upheld and that as a consequence violence in the political life of the country will cease. None of us wish strife dissent in any of our countries; but none of us will accept disorder and threats to life and property as aw way of political life.

5. CARICOM remains committed to the peaceful settlement of differences and disputes within our region and States. These goals are fully supported by both President Janet and Mr. Hoyte. We are therefore heartened by their assurance that this is the path along which they will work to achieve national unity and cohesiveness for the betterment of Guyana and all its peoples, we are certain that all Guyanese will lend their tangible support to this.

6. We express sour genuine appreciation of the statesmanship shown by our colleagues in Guyana in making this historic Agreement possible and once again pledge the commitment of the Caribbean Community to remaining engaged with Guyana I the implementation of the 'Herdmanston Accord' and this Agreement and to be at the disposal of the Parties for this purpose.

MADE THIS AND DAY OF JULY 1998, and accepted by;

.....
 (sgd)
 Kenneth D. Anthony
 THE CARIBBEAN COMMUNITY
 CHAIRMAN

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 (Sgd)
 Janet Jagan
 PEOPLE'S PROGRESSIVE PARTY/CIVIC

.....
 (Sgd)
 H.D. Hoyte
 PEOPLE'S NATIONAL CONGRESS

THIRD SCHEDULE

S 14

SPECIAL SELECT COMMITTEE

Members of the People's Progressive Party/Civic (8)

The Hon. Reepu Daman Persaud, O. R., J.P., M.P.,*
 Minister of Agriculture and Parliamentary Affairs

The Hon. Clement J. Rohee, M.P.,
 Minister of Foreign Affairs

The Hon. Charles R. Ramson, S.C., M.P.,
 Attorney General and
 Minister of Legal Affairs

Mr. Feroze Mohamed, M.P.,
 (Government Chief Whip)

Mr. Bernard C. De Santos, S.C., M.P.,

Mr. Khemraj Ramjattan, M.P.,

Ms. Pauline Sukhai, M. P.,

Mr. Winslow M. Zephyr, M. P.,
 Deputy Speaker of the National Assembly

Members from the People's national Congress (4)

Mrs. Clarissa S. Riehl, M. P.

Mr. Lance Carberry, M.P.

Mrs. Deborah J. Backer, M.P.

Mr. Raphael G.C. Trotman, M.P.

Member from the United Force (1)

Mr. Manzoor Nadir, M. P.

Member from the Alliance for Guyana (1)

Dr. Rupert Roopnaraine, M.P.

*Chairman