

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/31

CONSTITUTIONAL COMMITTEE

COMMITTEE OF MEETING HELD ON 7 AUGUST 1979: 8.35 p.m.

Present: G. LEYMANG (Chairman), W. LINI (from 11.15), G. PREVOT, M. CARLOT, J. NAUPA, T. REUBEN, A. MALERE, M. BERNAST (for L. VATOU), T. TUNGU, J.M. LEYE, G. KALSAKAU, RINGAO, F. TIM.AKATA, M. TACETAMATA, V. BOULEKONE, K. MATAS, G. PAKOA, J. NATUMAN, G. CRONSTEADT (from 11.10), G. KALKOA (afternoon only), L. DINI (morning only, represented by J. LALOYER in afternoon), S. REGENVANU (morning only - represented by M. KALCHICHI in afternoon), D. SOPE.

Invited: Professor YASH GHAI

Observer : B. NARAKOBI

Minutes : A. STANDLEY

1. The Committee began the meeting by examining document H1- Citizenship. Prof. GHAI introduced Article 1, explaining that it dealt with the question of who should be granted automatic citizenship on independence as proposed in Article 1, any New Hebridean would be given New Hebridean citizenship. What required definition, he said, was the term "New Hebridean". Referring to a Tabwemassana proposal, Prof. Ghai said one possibility was to use the definition contained in the protocol, though this was perhaps a little wide. The Christian Council, in paper H3, defined "New Hebrideans" as a person with at least two grandparents who were members of an indigenous tribe or community.
2. K.MATAS suggested that the Committee could either adopt a strong stand - and define a New Hebridean as a person with 4 grandparents belonging to an indigenous tribe or community - or a weaker one - in which a possible definition would be "anyone with New 'Hebridean blood'".
K. Matas went on to say that the Vanuaaku Pati believed that certain categories of persons should be given citizenship automatically, and others should have to make an application in order to obtain it.
- 3.A. MALERE raised the question of persons of New Hebridean origin who had gone to Live in New Caledonia, or even been born there, and who had acquired French Nationality. Those persons were still, he said, really New Hebridean and should be entitled to New Hebridean nationality.
4. A discussion followed on the question of grandparents between M. CARLOT, L.DINI and M. TACETAMATA: it was pointed out that some communities in the New Hebrides were matrilineal, whereas others were patrilineal. One could not, therefore, always give the same importance to grandfathers and grandmothers.
5. M. BERNAST wished to know what the status be of New Hebrideans adopted by Europeans as children and who had acquired the nationality of their foster-parents. K.Matas felt that, as

they had four New Hebridean grandparents, these adopted children would have New Hebridean nationality as well as their foreign nationality until they reached adulthood, when they would have to choose one or the other.

6. Following a discussion on rights of inheritance and property, Prof. Ghai pointed out that citizenship did not concern family and village rights such as these, but national ones such as the right to vote, to employment etc.

Prof. Ghai then proposed, on the basis of the discussion in the Committee, a new Article 1 (see first Article 1 proposal of document H1 (2)).

7. This proposal was approved by the Committee. Article 2 of H1 was then examined. Prof. GHAI explained that, as drafted in H1, article 2 gave the right to citizenship to foreigners resident in the New Hebrides for over 6 years who applied to the Government.

8. A discussion followed on this - it was felt by the Committee that this category of persons should not have an automatic right to citizenship as they should, rather, apply to the Government who would examine each application on its own merits.

It was also felt that, to avoid the risk of foreigners acquiring New Hebridean citizenship for reasons of convenience, and to ensure that the national citizens were firmly committed to it, no dual nationality would be allowed.

9. The period of residence required by foreigners before they could apply for New Hebridean citizenship was discussed and most speakers were in favour of increasing the residence requirements - S. REGENVANU proposed 10 years, G. PAKOA 7, J. NAUPA 18, A. MALERE felt 6 years was sufficient. S. REGENVANU added that foreign-born spouses of New Hebridean citizens should also meet this residency requirement, in order to guard against the danger of any abuses.

10. K. MATAS summed up by saying that all persons not falling within the New Article 1, would be required to apply for citizenship and the Government would examine each application on its own merits. He went on to raise the possibility of loss stringent requirements being applied to long term residents - for example, persons living in the New Hebrides more than 18 years.

11. Prof. GHAI considered that the question of dual nationality could easily be resolved: foreigners wishing to acquire New Hebridean nationality (and vice versa) would be given three months, from the date of acquisition of New Hebridean nationality, to give proof that they had renounced their original nationality. If such proof was not given the New Hebridean nationality would lapse automatically.

On the question of residency requirements for persons wishing to become naturalised New Hebridean citizens, he felt 18 years would be a little long, and proposed 10 years.

Prof. GHAI then proposed a new article 2 (see Article 3 of H1 (2)).

12. G. PREVOT and M. CARLOT raised the question of persons having New Hebridean ancestry, but being nationals of another country - according to Prof. Ghai's last proposal, they pointed out, these persons would have to go through the process of applying for citizenship (which would not be granted automatically).

13. Prof. GHAI felt one solution to this problem would be allow such persons to apply for New Hebridean nationality within 3 or 6 months of independence. If such an application was made, the Government would be obliged to grant New Hebridean citizenship to the applicant, provided he renounced his other nationality.

14. Break 11.45 a.m. - 2.15 p.m

15. The Committee examined Article 3 of H1. A number of members, including F. TIMAKATA, T. REUBEN and W. BONGMATUR spoke about children born of mixed marriages or about illegitimate children born to a New Hebridean mother. W. BONGMATUR was concerned about the inheritance and other rights of those children. Prof. GHAI explained that citizenship was not about such rights - he added that it was usual in most countries, in cases where the identity of a child's father was unknown, for the child to take the nationality of its mother.

16. The Committee approved Articles 3, 4 and 5 after a short discussion. K. MATAS pointed out, with respect to Article 5, that it would be hard on foreign - born spouses of New Hebrideans who would have to wait perhaps 10 years (or whatever residency requirement was finally fixed) before being able to acquire New Hebridean nationality.

17. When discussing Article 6 of H1, Prof. GHAI proposed that it be replaced by a general statement allowing Parliament to make further provisions concerning the acquisition, deprivation and renunciation of citizenship. This was approved.

18. The Committee then moved on to document H1 (2), Prof. GHAI suggested that, to avoid confusion, article 6 in H1 (2), be renumbered Article 7; this was approved. After a short discussion, during which G. KALSAKAU said that, though he agreed with the Committee's opposition to dual nationality, many persons would be saddened by Article 7, the Committee approved Article 7.

19. Prof. GHAI then introduced Article 1 of H1 (2), He explained that the first proposal was identical to that made in the morning. The second was simply a neater form of the first, he said, but it was up to the Committee to decide which it found best.

20. After a long discussion, it was decided that a decision on Article 1 would be taken the following day. Prof. GHAI then introduced Articles 2 and 3 of H1 (2) very briefly.

21. The meeting was closed at 5.40 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/32

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 8 AUGUST 1979: 8.30 a.m.

Present: W. LINI (Chairman), G. KALKOA, J. NAUPA, L. KALPOKAS, T. REUBEN, M. BERNAST (for L. VATOU), J.M. LEYE, T. TUNGU, Ad. MALERE (for L. MALERE), M. KALCHICHI (for S. REGEN-VANU), RINGAO, M. TACETAMATA, F. TIMAKATA, G. CRONSTEADT, K. MATAS, J. NATUMAN, B. SOPE, G. MOLISA, G. PAKOA (afternoon only).

Observers: B. NARAKOBI, G. RONDEA (alternate for B. SOPE)

Invited : Professor YASH GHAI

Minutes : A. STANDLEY

9.00 -10.00 : Land

10.00 - 5.00 : Executive

1. The Chairman outlined the day's programme:

8.30 - 9.00: Citizenship

He then turned to the request made by the Efate Chiefly- Council (Faturisu) that an Efate Chief be allowed to join the Committee. The Chairman explained that the Steering Committee was opposed to this request for three reasons:

- a) It would set a precedent and cause the Chiefly Councils of other islands to make similar requests, thereby swelling the numbers of members in the Committee.
- b) Efate Custom was already represented through its Mal Fatu Mauri member - F. TIMAKATA
- c) It was felt that the Faturisu's request was perhaps the result of manipulation by a political party.

2. After some discussion, it was decided to inform the Efate Chiefs' Council that, as a number of members of the Constitutional Committee were absent; no decision could be taken for the time being on their request.

3. The Committee then turned to Citizenship, document H1 (2). The Chairman pointed out that Article 1 had already received the approval of the Committee.

4. K. MATAS, to make Article 1 more comprehensible, proposed the following new draft:

The following persons are automatic citizens on Independence day:

- a) A person who is or had four grandparents who belong to a tribe or community indigenous to the New Hebrides
- b) A person who is of New Hebridean ancestry and is no citizenship, nationality or status of an optant".

This new draft was accepted as Article 1.

5. Professor GHAI then introduced Articles 2 and 3 of paper H1 (2). K. MATAS felt that as persons falling in Article 2 were entitled to automatic citizenship, this section should be included in Article 1. Professor GHAI pointed out the difference between Article 1 and Article 2 - in the

latter, persons were being given the choice of taking New Hebridean nationality or of keeping their original nationality, whereas in the former, persons were given New Hebridean citizenship automatically on Independence Day.

6.G. KALKOA suggested that persons covered by Article 2 should not be given automatic citizenship upon submitting an application or their applications should be considered by a citizenship Committee.

7. Professor GHAI reminded the Committee that it had decided, at its previous meeting, to give New Hebridean citizenship to children with at least one New Hebridean parent - Article 2 of H11 (2) was consistent with this principle. Replying to G. MOLISA. Professor GHAI went on to clarify the difference, in procedure between Articles 1 and 2.

8. G. CRONSTEADT considered that persons covered by Article 2 should not be obliged to submit an application in order to obtain citizenship. They were, he said, full members of New Hebridean society, and participated in the nation's development so he felt that they should be given automatic citizenship as in Article 1.

9.K. MATAS suggested that as Article 2 had been drafted as a result of comments made by Messrs. Prevot and Carlot - both of whom were now absent, a decision on Article 2 should be delayed until their return. Professor GHAI felt that such a course of action would lead to unnecessary delays and that Prevot and Carlot had already clearly explained their views to the Committee.

10.K. MATAS proposed that persons of New Hebridean ancestry, holding foreign nationality, should be entitled to obtain New Hebridean citizenship by application upon providing proof of renunciation of their original nationality. Professor GHAI said this could lead to problems as certain countries only allowed their nationals to renounce their nationality if they could prove that they had already obtained another nationality - this so as to avoid the risk of persons becoming stateless.

11.K. MATAS proposed that, after the departure of Professor GHAI, B. NARAKOBI be allowed to act as adviser to the Committee. M. KALCHICHI seconded this proposal.

12. Break 10.10 - 10.30.

13. The Committee resumed its discussion of Article 2, concentrating on the three months period for application for New Hebridean citizenships and for renunciation of foreign nationality. K. MATAS proposed that it be increased to 1 year. T. TUNGU suggested that it be kept at 3 months for residents of the New Hebrides, and increased to 1 year for overseas residents.

14. The Committee finally approved an amendment proposed by the Chairman, that the period be "3 months or such longer period as Parliament may prescribe".

15. The Committee approved Article 2 with the Chairman's amendment.

16. The Committee approved Article 3, fixing at 10 years the period of residence required before foreigners could apply for naturalization,

17. Professor GHAI then introduced paper J1 "Land", going through the three paragraphs. He concluded by saying that, on the question of compensation, certain countries, including Solomon Islands and Papua New Guinea, had felt that the Metropolitan power(s) should compensate foreign land owners who lost the ownership of freehold land.

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* rather than the National Government

18. Lunch break 11.40 a.m. - 2.00 p.m.

19. After lunch, the Committee decided that D. NARAKOBI should be entitled to speak and to give advice to it.

The Committee continued with the examination of J1 "Land". A number of members spoke on behalf of their political groups.

20. G. CRONSTEADT spoke of the issue of compensation and on the need to clarify whether Parliament would have absolute power to have land laws, or whether it would be obliged to consult regional bodies,

21. M. BERNAST insisted that, if compensation was paid to owners of alienated land that was returned to its customary owners, the Metropolitan powers, and not the New Hebrides Government, should provide the funds required.

22. J.M. LEYE agreed, saying that the Metropolitan power to which belonged the first purchaser of custom land, should pay the compensation to the current owner. He insisted that all land be returned to its rightful custom owners.

23. K. MATAS, for Vanuaaku Pati, felt that there were close connections between Citizenship and Land so he felt that a difference should be made between citizens of indigenous origin and those of foreign origin with respect to land-owning rights - He wished it to be placed on record that, though Vanuaaku Pati accepted that a consensus had been reached in Article 2 of paper H1 (2) in the morning, it nonetheless held reservations on this issue and would wish to rediscuss it at a later date.

24. B. SOPE proposed the following new Article 1 for J1:

"All land in the Republic of the New Hebrides belongs to the indigenous New Hebrideans".

This, he felt, was a clearer statement of Melanesian views than the original draft in J1.

25. Professor GHAI, summing up the comments made, felt general agreement existed on a number of points:

- land should be returned to customary owners
- compensation in respect of the return of alienated land should be paid by the Metropolitan powers and not the New Hebrides Government;
- different land-owning rights for different categories of citizens.;

Professor GHAI proposed a new draft for paper J1 (see J1 (2)). He then discussed the issue of compensation in greater detail, explaining how this had been dealt with in Solomon Islands and Papua New Guinea - in these countries, the Metropolitan powers had agreed to pay compensation, but had deducted the amount from their aid appropriation. He felt that this was a matter that would perhaps require discussion in September.

26. M. BERNAST, on behalf of Tabwemassana, spoke against the nationalisation of land - land, he said, should be returned to its custom owners. Speaking about compensation, he said Britain had already indicated to the Representative Assembly that any compensation paid would be deducted from the aid given to the New Hebrides. France, M. Bernast went on, had agreed to pay compensation, but only by stages. For these reasons, he concluded, the Ad Hoc Land Reform Committee had ceased discussing the question of compensation and its only stand was that it should not be up to the New Hebrides to pay.

27.B. NARAKOBI said it was up to the New Hebrides to decide what stand it wished to adopt over land o it was important, however, that precautions be taken against lend-hungry foreigners who wished to buy up New Hebrides land. It was decided that the Committee would take a final decision on Professor GHAI's new draft the following day. In the meantime the question of the Executive would be examined.

28. Professor GHAI went through paper C5 "Executive" in detail, and then discussed the Nakamal compromise proposal in C6.

The Chairman outlined the main political groupings' views on the separation or combination of Head of State and Head of Government. He emphasized the importance of reaching a consensus on the issue.

29. M. BERNAST, on behalf of both Nakamal and Tabwemassana, urged the Vanuaaka and Federal Parties to accept the C6 proposal: Nakamal, he said, was willing to make a number of important sacrifices in its attempt to reach a compromise.

30.K. MATAS was not certain that it would be possible to reach a compromise the Head of State would either be separate from the Head of Government, or not. The Committee would therefore have to choose one of two alternatives.

31.B. NARAKOBI suggested that it would be useful to examine two issues separately in C5:
-the separation, or combination, of Head of State and Head of Government
-Executive power.

32. The meeting was closed at 5.25 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/33

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 9 AUGUST 1979: 8.30 a.m.

Present: G. LEYMANG (Chairman), W. LINI, G. KALKOA, A. MALERE, M. CARLOT, D. KALPOKAS, J. NAUPA., T. REUBEN, G. PREVOT, J. LALOYER. (for L. DINI), G. KALSAKAU, J.M. LEYE, T. TUNGU, M. BERNAST (for L. VATOU), W. TULANGI. (for J. QUARANI), J. NATUMAN, G. CRONSTEADT, M. TACETAMATA, RINGAO, W. BONGMATUR, F. TIMAKATA, M KALCHICHI (for S. REGENVANU), K. MATAS, B. SOPE, G. MOLISA.

Invited: Professor YASH GHAI, B. NARAKOBI.

Observers : C. RONDEA (alternate for B. SOPE), A. SANDY (alternate for G. MOLISA)

Minutes:A. STANDLEY

1. The Committee continued its discussion of the Executive, begun the previous day.

2. After M. KALCHICHI had summarised, the Christian Council's views on the Executive (contained in their submission No. 1) and impressed upon the Committee the need to make haste and to realize that mistakes could not be avoided. M. BERNAST spoke on document C6 on behalf of Nakamal Movement and Tabwmassana. He explained that there two parties, still stood firmly by the compromise proposal contained in C6.

3. Following request from Professor GHAI, G. CRONSTEADT explained that the Federal Party favoured a President with more than ceremonial powers: he should be able to act in times of crisis. The President, he continued, should appoint the Head of Government, who should be answerable to Parliament. He ended by saying that, on the whole, the Federal Party found paper C5 satisfactory

4. K. MATAS felt that it was unlikely that a compromise could be made a choice would have to be made between one of two alternatives. Some, he said, feared that a combined Head of State/Head of Government could become dictatorial, - whereas others felt that a separation of the two could lead to division and conflict. The Vanuaaku Pati, he explained, had, in 1977, favoured a separate Head of State - it now felt, however, that it would be preferable to combine Head of State and Head of Government. He concluded by remarking that the Committee was going back on the consensus reached in favour of a single Head of State/Head of Government.

5. G. KALSAKAU believed it was important not to confuse different systems : if the New Hebrides wished to have a Parliamentary system, then it should accept it in its entirety, and not attempt to combine it with others.

6. Replying to B. SOPE, M. BERNAST explained how the proposal in C6 was still a compromise, and not just a third proposal (in addition to the Vanuaaku Pati's and the Federal Party's). He said Nakamal's first position was that the Head of State should be separate from the Head of Government, and the Government separate from Parliament. The Vanuaaku Pati wished to combine Head of State and Head of Government, and to have a close relationship between the Government and Parliament. Nakamal's now proposal, to separate Head of State and Head of Government, but to bring the Government into a much closer relationship with Parliament, was therefore a compromise.

7.W.LINI commented in general terms on the situation, remarking that a state of unity had been reached. He felt that the New Hebrides Unique characteristics made it essential that something specifically suited to the New Hebridean context be devised.

France and Britain had divided the New Hebrides, he said, and the nation's political parties were continuing to spread division. It was therefore essential to promote unity by preparing a Constitution that reflected New Hebridean thinking - steps in this direction had already been taken by the Committee when examining the issues of Justice, Land, Citizenship, Languages. W.LINI felt France and Britain were laughing at the sight of the in-fighting between the New Hebrides political parties. In this way, the country would never achieve a real independence. He urged all parties to realise the need for a Constitution for the whole country - and not for individual parties - that would be practical and accepted by the people.

He concluded by saying the issues of the Head of State and Regionalisation were key issues that had to be resolved before September. If necessary, a referendum would have to be held to obtain the views of the people on these two questions.

8. G. MOLISA felt that all were agreed that the New Hebrides should be a democratic state. Democracy, she said, was an imported system in traditional New Hebridean society, women, although forming half the population, held no power. She feared that, given the lack of recognized, official women's organizations, women would be excluded from playing an active role even in a democratic system. She wondered how a separate Head of State would be chosen and from what group in society.

9.M. KALCHICHI and Professor GHAI agreed with these comments. The latter felt that the question of the participation of women had not been given sufficient attention.

10.J. NAUPA felt the issue of the Head of State should be left aside a consensus in favour of a combined Head of State / Head of Government had been reached in July. Replying to this and to G. MOLISA's last remark, J.M. LEYE said his party proposed, that the Head of State be elected by the National Assembly and the Regional Assemblies. He repeated his belief that the role of the Constitutional Committee was to formulate proposals - its task was not to approve a Constitution: that right belonged to the people, by referendum.

11. F. TIMAKATA spoke in favour of unity and custom in the New Hebrides, he said, could allow for either the separation or the combination of the offices of Head of State and Head of Government. In order to find a way out of the state of division, one party would have to put aside its preference and allow a consensus to emerge.

12.M. CARLOT pointed out that little discussion had taken place on the compromise proposal outlined in paper C6 - each party was, rather, trying to defend its own stand, thus preventing any sense of unity from emerging. He approved of G. KALSAKAU's comment that if a Parliamentary system was adopted, it should be adopted in its entirety.

13.Prof. GHAI considered that it could now be taken for granted that all favoured a Parliamentary system he said both the combination of Head of State and Head of Government, and the separation of the two, were feasible and workable.

He went on to discuss possible crisis provisions in the Constitution:

a) detailed provisions as to who should assume power, and the limits of this power, had the disadvantage of inflexibility - one could not be certain that these detailed provisions would be able to deal effectively with extraordinary crises

b) giving power in times of crisis to the Head of State had the advantage of flexibility, but the disadvantage of allowing him the possibility of interfering to too great an extent;

c) a third possibility, discussed by the Committee, was some kind of "crisis council".

Prof. GHAI felt that the rule of the President, in a Parliamentary system, as the guardian of the Constitution, was often exaggerated. In practical turns, institutions such as the Ombudsman, and Fundamental Rights provision were often more effective than the President, who frequently had little ability to control events.

Commenting on the Federal Party's proposal, he felt that to have the President appoint the Prime Minister would be to give him great power. If, on the other hand, the President's powers were clearly defined in the Constitution, the danger of conflict between President and Prime Minister would be considerably reduced.

Prof. GHAI concluded by saying he found the C6 proposal attractive though he felt that it would be just as well not to combine the Speaker and Head of State. He thought C6 could be a good basis for agreement, provided Head of State and Speaker were separate, and the Head of State's powers limited and clearly defined.

14. D.KALPOKAS emphasized the importance of reaching a consensus - he was opposed to the holding of a referendum as this would mean there would be a "winner" and a "loser". K. MATAS felt it would be hard to compromise and reach a consensus one group would have to give way.

15. It was decided that K. MATAS, G.KALKOA, F. TIMAKATA, G. CRONSTEADT, M. BERNAST, M. KALCHICHI and G. PREVOT would, after lunch, discuss the possibility of reaching a consensus.

16. Lunch break 11.40 - 2.40 p.m.

17. The meeting resumed after lunch, with K. MIVIAS announcing that Wine, consensus had emerged. During the meeting between representatives of the main political groups. Tabwenassana, he said, had proposed a separate Head of State and Head of Government, the former being ceremonial; the Government would be answerable to Parliament. Federal Party proposed that the Head of State be elected by the National Assembly and the Regional Councils, and that he would appoint the Prime Minister. The Prime Minister and Government would be answerable to Parliament. Inc Vanuaaku

Pati, lastly, was still in favour of a combined Head of State / Head of Government.

18. M. BERNAST detailed the Tabwemassana proposal as follows:

- 1) Head of State and Head of Government to be separate
- 2) Head of State to be elected by Parliament from among its members or from outside
- 3) Head of Government to be elected by Parliament from among its members
- 4) Head of Government to choose his Ministers from within Parliament; Ministers would remain Members of Parliament.
- 5) Government to be answerable to Parliament
- 6) Head of State to have a ceremonial role only (as in paper C5)
- 7) Parliament to be able to remove the Head of State by a 2/3 majority for misconduct, incapacity, abuse of power or violation of the Constitution
- 8) No votes of no confidence to be allowed during the first 6 months of a Government's term of office, and no Parliament to pass more than 2 votes of no confidence during its term.

19. Prof. GHAI felt this proposal was an excellent one and likely to satisfy all groups, he considered that the Federal Party's proposal could lead to instability if a President was elected, who was not of the same political persuasion as the majority in Parliament - a situation could arise where the President's choice of Government was unacceptable to Parliament who would overthrow him.

Prof. GHAI therefore suggested, saying that Prof. ZORGBIBE had also urged him to say so before leaving, that the Tabwenassana proposal could meet with the approval of the Committee.

20.F. TIMAKATA spoke on behalf of the Mal Fatu Mauri, favouring a Head of State separate from the Read of Government. However, as it was felt that power could only be vested in one person, Mal Fatu Mauri considered that the head of State should only have a ceremonial role to play. Further, as Parliament was to be supreme, it should elect both head of State and Head of Government, with the latter appointing his Ministers from within the Assembly - the Ministers reharsing Members of Parliament. F. TIMAKATA felt that a way for the people to show their respect for custom, and a suitable sips of unity through custom, would be for a Chief to be Head of State.

21.J. M LEYE spoke about the Federal Party proposal, explaining how the Teed of State would be elected by the Regional and National Assemblies - this, he said, give the people a greater voice in the election of the Head of State.

22. B. NARAKOBI a few details about the situation in Papua New Guinea, where the first Head of State (Governor-General) had resigned, dissatisfied with his ceremonial role, The current incumbent, however, was perfectly satisfied ; it was therefore, to a certain extent, a matter of personalities. He concluded by saying that the members of the Committee would have to have the strengh of their convictions in creating the country's institutions.

23. Replying to a comment from A. MALERE, Prof. GHAI said he felt that his role of adviser leant that he had to give his opinions on the options available. He apologized, however, if he had hurt anyone's feelings.

24. The Chairman summed up the discussions, saying he felt that a consensus had almost been reached. M. CARLOT disagreed he felt that the Federal Party's proposal that the Head of State be elected by Parliament and the Regional Councils could give him; too much power, as he would claim to have a mandate from the districts or islands.

25.K.MATAS felt that a statement was being reached. He pointed out that, with all the proposals that had been made, it was likely that the Head of State and the head of Government would be elected from the sane political party - no party, he said, was afraid of this.

Acting on behalf of Vanuaaku Pati, K. MATAS informed the Committee that the Pati was willing to accept a separate Head of State. He explained that this was not a real consensus that had been reached - it was rather a case of Vanuaaku Pati giving way on this point so as to allow the Committee to make progress. At a later date, he said, if ever a Constitutional Review Committee was created, the Vanuaaku Pati would wish to re-examine the utility of a separate Head of State.

In giving way on this point, K. M continued, the Vanuaaku Pati wished to pose two conditions:

- the Head of State should have a ceremonial role only,
- his role should be clearly defined in the Constitution.

He concluded by saying that the Vanuaaku Pati had no firm views as to from what body or group the Head of State should be elected.

26.Replying to the Chairman, K. MATAS said the Vanuaaku Pati could agree to Chief being Head of State, though there was the possibility that the people would lose respect for a Chief if he became Head of State. However, the need to honour chiefs and custom was recognized.

27. F. TIKAMATA said that, as far as Mal Fatu Mauri was concerned, it would be up to Parliament to decide who it wished to have as Head of State - Parliament should therefore have the right to elect someone from outside its members if it so wished.

28.The Chairman asked the Federal Party, Nakamal and the Vanuaaku Pati to indicate if the

Tabwemassana proposal would be acceptable.

29.K. MATAS said the Vanuaalu Pati could agree to it in principle, though there were reservations about a, minor technical point o if the Read of State was chosen from within Parliament, would a. by-election have to be held to fill the seat he had vacated.

30.G.PREVOT, for the Federal Party, said he had no objections to a Parliamentary system - The unity of the country, he said, was represented by

The Head of State - would a Chief's customary authority not be diminished if he was removed by Parliament. He continued by saying the Federal Party felt the Head of State's powers should be as in paper C5, with the addition of powers in times of crisis.

G. PREVOT concluded by saying that the Federal Party was opened to the proposal that the Head of Government be chosen from among the members of Parliament.

31. M. CARLOT, for Nakamal, said he agreed to a separation between Head of State and Head of Government.

32. K. MATAS before the end of the meeting, said that certain groups should be more serious in their negotiations and should show a little more responsibility. He felt that the Committee, the following day, should discuss in detail the modalities of the election of the Head of State.

33. The meeting was closed at 6.40 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/34

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 10 AUGUST 1979 8.30 a.m.

Present: G. LEYMANG (Chairman), W. LINI, G. KALKOA, G. PREVOT, T. REUBEN, J. NAUPA, M. CARLOT, A. MALERE, J. LALOYER (for L. DINI), G. PAKOA, K. MATAS, G. MOLISA, M. KALCHIICHI, B. SOPE, G. KALSAKAU, J. NATUMAN, W. BONGMATUR, M. TACETAMATA, T. TUNGU, J.M. LEYE, M. BERNAST (for L. VATOU), G. CRONSTEADT (morning only).

Invited : Professor YASH GHAI, B. NARAKOBI

Minutes: A. STANDLEY

1.G.PREVOT opened the discussions by declaring that the Federal Party could not accept paper A6 as the provisions relating to decentralisation/ regionalisation were insufficiently detailed. The Party had, he said, in order to give greater power to the people in the islands, made its position clear in paper A8.

2.K. MATAS commented that the Federal Party and the Vanuaaku Pati's positions were far away from each other. He felt papers A8 and A2 were too detailed, but that A6 was acceptable even though it was perhaps a little too general.

3. B. NARAKOBI remarked that no one disagreed with the principle of local autonomy - this, he said, corresponded to the reality of Melanesian society: a society that was often fragmented. The actual structure of decentralisation, he continued, would have to be worked out according to the nation's political needs.

B. Narakobi went on to discuss regional government in Papua New Guinea, explaining that it was a system that was expensive and slow to set up. He felt that making provisions in the Constitution would not be sufficient to ensure the implementation of decentralisation; if future Governments were not committed to it, they would do little to further decentralisation.

4. M.BERNAST introduced the Nakamal/Tabwemassana proposal contained in A5 - he felt it was essential that local government start at the village level and then work up to the district level. There was little use, he said, in trying to put a roof on a house with no foundations or walls.

5.J. M. LEYE defended the Federal Party's stand: for too long, he said, Vila and Santo had lived off the wealth of the other islands of the New Hebrides. It was time for the people of the islands to be given the opportunity to exercise their rights; many areas, he added, were waiting to have community councils, yet the Government was doing nothing about it.

6.W.BONGMATUR spoke out local government, emphasizing the importance of starting at the village level - people in the islands, he said, were tired of having to pass through the District Headquarters, where there were long delays and blockages.

7. Describing the situation on Santo, T. REUBEN; and M.TACETAMATA explained that the majority of the population wished to wait for new elections and a strong central government, able to put an end to division, before discussing the possibility of a Regional Council.

8.W. LINI commented that a minority group was playing a dictatorial role in the Committee by refusing to try to reach a consensus on the issue of decentralisation. This group, he said, was being manipulated by European interests that wished to dictate the course of action to be taken by future governments.

Whereas the Vanuaaku Pati was genuinely concerned about the future, he said, the Federal Party seemed to be concerned about power only. W. Lini felt that the Federal Party proposal in A8 was unpractical - it would be impossible to explain it to the people and for them to accept it. It would thus be hopeless to try to implement it. Furthermore, although the Federal Party's intention was to put an end to the situation where certain islands lived off the wealth of others, the AB proposal would make no improvements.

He ended by asking why a minority group should be able to act in a dictatorial fashion within the Committee, and urged all groups to accept the A6 paper, with or without the Tabwemassana amendments.

9. B.SOPE agreed, proposing that it be left for the next elected Parliament to discuss this issue at greater length. He stressed the importance of not using decentralisation as a political tool - France and Britain had done this with local and community councils, thus leading to their decline.

10. A long discussion followed on decentralisation, with J.M. LEYE, A. MALERE and G. KALSAKAU defending the Federal Party's proposals, M. CARLOT spoke in favour of A5 and suggested that a Commission consisting of representatives from all groups, whether inside Parliament or not, discuss decentralisation at greater length after the approval of the Constitution.

He pointed out that all were agreed on the need for decentralisation - but a system that was well-suited to the New Hebrides and that would create a strong nation was needed and it was therefore necessary for there to be more discussions on this issue. A system that was adapted to the country and accepted by the people would run smoothly, he said. Such a system could be based on existing local or island institutions and should take account of the nation's diversity and financial resources.

11.K. MATAS felt that there was still a great gap between the Federal Party and the Vanuaaku Pati on this issue - he urged the Federal Party to try to adopt a position closer to A6.

12.Prof. GHAI said he had never been to Constitutional talks where such a wide measure of agreement existed on the principle of decentralisation - it was paradoxical that no agreement could be reached over the Constitutional provisions relating to it.

He felt that, for reasons of flexibility, it would be unwise to go into too much detail in the Constitution over decentralisation. All groups in the Committee, other than the Federal Party, had agreed to the A6 proposals - he therefore asked whether the Federal Party could not also agree to A6.

13.Break 11.00 - 2.15 p.m.

14..Prof, GHAI began the afternoon session by summarizing the morning discussions. He said. he felt there was total agreement on the principle of decentralisation - whereas, however, the Federal Party sought a rapid devolution of power to the Districts/Regions, who would then devolve power to the villages/islands as they wished, the other parties preferred to build from the bottom and create village institutions first. Prof. Ghai went on to say that the Constitutional Committee had reached agreement on more difficult questions of principle: it would therefore be the same if no consensus could be allowed to emerge on what was essentially a matter of mo-

dalities. He urged the Committee to consider the main points made by M. Carlot in the morning on the need for further discussion on the form of decentralisation to adopt - a form that should take into account the country's diversity, financial resources and existing local institutions.

15. G. PREVOT considered that the morning's discussions had been purely political, and not all logical. The proposal in paper A5 he said, contained nothing new - only a repetition of existing laws that had led to no decentralisation; he could therefore not agree to a marriage of papers A5 and A8 for the time being as he wished to have more time to study the various proposals.

16. M. BERNAST felt that whereas paper A6 guaranteed power to all group in the New Hebrides, A8 was designed to concentrate power within the hands of a single group.

17. K. MATAS pointed out that the contents of A8 could be found within papers A5 and A6. He felt that agreement could be reached on this issue the following week.

18. J. NAUPA and T. REUBEN both felt further discussion was pointless and that it would be more useful to record that the Federal Party supported paper A8, and all the other groups in the Committee A6.

19. A. MALERE said he did not reject A6 - he simply believed that A8 was the proposal that would most surely give power to the islands. Paper A5, he felt, would have been suitable in 1960 - but since then, the situation had evolved and new proposals, as contained in A8, were now called for.

20. W. LINI proposed that the question of decentralisation be left aside, it being recorded that all groups, with the exception of the Federal Party, agreed to A6. He expressed his disappointment at the Federal Party's attitude throughout the meetings of the Committee - at no time, he said, had that Party shown the slightest willingness to compromise: they were just hungry for power. To continue the discussion on decentralisation, W. Lini concluded, would be to delay progress on the Constitution and therefore to delay independence - this was, in fact, the Federal Party's aim. He was saddened by this and found it a bad omen in few months only before independence.

21. After a further discussion, J. M. LEYE said he could accept paper A6, but without the amendments proposed by Tabwemassana (see PV/30, point 16). A. MALERE repeated that, though he rejected A5, he could accept A6 - he felt, however, that it was insufficient as a proposal; he would give a definite reply on a possible marriage of A6 and A8 the following week. K. MATAS agreed that, though the discussions were useful, in the event of a stalemate it would be wiser to move to another subject and to return to decentralisation the following week.

22. After M. BERNAST, replying to J. M. LEYE, had agreed to withdraw his amendments to A6, Prof. GHAI proposed a redraft of A6 (see paper A6(2)).

23. V. BONGMATUR approved the new proposal, saying the Mal Fatu Mauri believed in giving all people in the islands their rights and in reactivating the 29 Local Councils that had once been in existence. Chief RINGAO said the people in the South wanted a government.

24. It was decided that the Committee would discuss Prof. GHAI's new proposal the following day, once it had been circulated to all members.

25. The meeting was closed at 5.15 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/35

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 11 AUGUST 1979 : 8.20 a.m.

Present : G. LEYMANG (Chairman), W. LINI, J. NAUPA, T. REUBEN, G. PREVOT, A. MALERE (until 10.30), J. LALOYER (for L. DINI), M. BERNAST (for L. VATOU), K. MATAS, F. TIMAKATA, W. BONG-MATUR, M. TACETAMATA, S. REGENVANU, G. MOLISA, G. PAKOA, G. KALSAKAU, T. TUNGU (until 11.00), J.M. LEYE.

Invited: Professor YASH GHAI.

Observers : M. KALCHICHI (alternate for S. REGENVANU).

Minutes: A. STANDLEY

1. The Committee examined paper R3 (2) "Leadership Code" prepared by Prof. Ghai. After a short discussion, during which G. KALSAKAU said the Code should apply to women and to all Government employees, R3 (2) was approved.

2. Paper C7 "Executive" was discussed next. F. TIMAKATA felt that the Head of State would not necessarily be known as President - Prof. GHAI agreed, saying he thought it would be a good idea for a traditional name to be found before the September Constitutional Conference.

3. Following a comment by M. BERNAST, Prof. GHAI suggested that Art. 6 of C7 be amended to read:

"The executive power of the people of the Republic is vested in the Prime Minister. The Prime Minister shall exercise this power according to the advice of the Council of Ministers, unless otherwise provided by the Constitution or a law. (Paragraph 2 remained unchanged)".

This was approved by the Committee.

4. G. PREVOT said C7 did not reflect the Federal Party's views at all - it wanted the President to be a unifying factor and an arbitrator as well as having some executive power. C7, he said, was in fact an Assembly system.

5. Prof. GHAI apologized if he had misunderstood the Committee's views on this matter he had thought it had been agreed that the President was to have a ceremonial role only. Paper C7 had followed closely the powers given to the President in paper C5 and was consistent with the principle of a ceremonial Head of State. He ended by saying that the words "and is the arbitrator of institutions" could be added to the end of article 1 of C7.

6. J.M. LEYE, commenting on article 2, said the Federal Party wished the President to be elected by the Regional Councils and Parliament - this was consistent with the wish expressed by Chief Ringao the previous day that the South wished to have a Government. J. NAUPA said the word "Government" did not necessarily imply a Regional or Federal system and it could as easily refer to a District Agent.

7. Replying to J.M. LEYE, Prof. GHAI said article 2 of C7 had been put in brackets because the

method of election of the President was unresolved.

8. After some discussion, it was decided the words "or incapacity" would be added after "gross misconduct" in article 3 and that the Chapter would be divided into two - articles 1 to 5 (inclusive) would become a separate Chapter entitled "The President", and articles 6 to 12 (inclusive) would form the Chapter entitled "The Executive".

9. During the course of the discussion on article 2 of C7, W. LINI felt it would be better to reach an agreement rather than leaving the matter open. He thought that a President elected by Regional Councils and Parliament would be tempted to assume great authority, even if the Constitution limited his role to a ceremonial one.

10. It was decided that, before taking a decision on article 2 of C7, paper A6 (2) would be discussed.

11. J.M. LEYE stated that the Federal Party wanted power to be given to the Provincial Councils - detailed provisions should be made in the Constitution, he felt, to ensure that future Governments would be obliged to give effect to Provincial Administration.

12. Whilst no one disagreed with the Federal Party's support of decentralization, W. LINI said, future Governments should not be restricted by excessively detailed Constitutional provisions: future Governments should be free to follow whatever system of decentralization was found to be best.

13. G. KALSAKAU felt it was important not to delay too long over setting up provincial councils - centralized Government was, he said, drawing young people from the islands to Vila and Santo in search of work. Government should therefore be decentralized quickly to give these people the opportunity of working in Government whilst remaining on their islands.

14. Replying to the Federal Party, F. TIMAKATA said that a Chief, elected Head of State and then removed by Parliament in accordance with article 3 of C7, would not lose any customary authority on account of his removal. It would rather be like replacing a Chairman in a Committee.

15. A discussion followed on the election of the Head of State by Provincial Councils and Parliament. W. LINI and M. BERNAST pointed out that if it was decided to elect the Head of State in this way, the first election would only take place once Provincial Councils had been created - there would thus be no Head of State for, perhaps, a number of years. M. BERNAST proposed that the first Head of State be elected by Parliament, and subsequent Heads of State by Parliament and Provincial Councils.

16. Replying to this last suggestion, J.M. LEYE referred to article 9 of paper AS, which proposed that Regional Councils be established upon the approval of the Constitution. This led to a short discussion on the coming into effect of the Constitution. Prof. GHAI explained that it would only come into force on Independence Day - however, the Committee could, he said, agree to start on certain preparatory work before Independence.

17. The Chairman proposed that the Committee approve that a consensus existed in favour of A6 (2), and in favour of C7 (with the exception of article 2).

18. S. REGENVANU proposed that the first Head of State be elected by Parliament. Subsequent Heads of State would be proposed by the National Council of Chiefs and appointed by Parliament. S. REGENVANU explained that, as the National Council of Chiefs would have a regional structure, such a method of election would enable custom, the Regions and Parliament to

participate together.

19.K. MATAS reminded the Committee that the Vanuaaku Pati had agreed to a separate Head of State on one condition that he be ceremonial, and have no executive power. This meant, he continued, that Parliament, the Supreme organ of the State, should, alone, have the power to appoint and remove the Head of State.

If this one condition was not met, K. Matas concluded, the Vanuaaku Pati would withdraw its agreement that there be separate Heads of State and Government.

20.The Chairman concluded that no agreement had been reached on article 2 of C7.

21.The Committee then examined G6 "Fundamental Rights", with Prof. GHAI giving a short introduction as he explained that the detailed provisions on the protection of the law, and the qualification of the freedom of conscience and worship had been inserted at the request of the Christian Council.

22.Following comments made by K. MATAS and F. TIMAKATA, Prof. GHAI agreed that it would be useful to simplify the language in which was written the Constitution - he hoped it would be possible for a small subcommittee, assisted by the consultants, to deal with this.

23.G. MOLISA spoke about the position of women in New Hebridean society and about the importance of giving a women an equal role in a democratic society. She pointed out that, when discussing the Leadership Code, certain committee members had been quick to propose that the Code apply to women as well as men - rights, as well as restrictions, she went on, should apply equally to both non and women.

She asked Prof. Ghai whether provision could be made for the Prime Minister, or some authority, to appoint additional women Parliament if only a few women were elected to members in the normal way.

24.Prof. GHAI regretted that there had not been more time for a discussion on the position of women - he felt that women were disadvantaged and formed a political and economic minority. He went on to explain the system used in Ghana for the first 10 years after independence, where the Constitution had provided for the appointment of additional women to Parliament.

25.After some discussion on the qualification of the freedom of worship, the Committee approved paper G6.

26.J.M. LEYE informed the Committee that he agreed with paper A6 (2) - the only point on which there was disagreement, he said, was article 2 of C7. It was decided to examine F1 "Revision of the Constitution".

27.Prof. YASH GHAI introduced the paper, saying articles 1 and 2 had been agreed to by the Committee - article 3 had been left, however, as no firm decision had been taken concerning the Regions. He added that J. Naupa had also proposed that the Revision of the Constitution should be included in the Chapter on Parliament.

28.M. BERNAST repeated the proposal made by M. CARLOT at a previous meeting that only a revision affecting the official languages be put to the people by referendum - all other revisions would be made by a 2/3 majority of Parliament. This proposal, he said, had been approved by Vanuaaku Pati, Nakamal and Tabwemassana.

29.K. MATAS agreed, saying that whereas the people could vote in a referendum on a proposal

as clear-cut as whether or not to abolish one of the official languages, for example, it would be very difficult to put, for then to vote on, complex proposals concerning electoral systems or decentralization.

30.M. KALCHICHI said the Christian Council felt there should be no referendums - then were expensive and could be used to trick the people. However, 3 or 4 years after independence, a Constitutional Review Committee should be set up by Parliament to decide whether the Constitution was working well.

31.J.M. LEYE said he could agree to paper F1 if paper A5 was approved s he said he felt that A5 was more binding on the Government than A6, which left Parliament with the power to decide whether or not to implement a policy of decentralization.

32.W. LINI declared that he would agree to F1 - he felt that it might turn out to be extremely unpractical, but he was willing to try to see how it worked.

33.A number of speakers expressed their surprise at J.M. Leye's statement that he approved of A5 - they had been under the impression that all had agreed to A6 (2). G. PREVOT said that more time for reflexion was required and that he did not wish to be rushed into approving A6 (2).

34.Following a summary by the Chairman, who said that he felt a consensus had been reached on C7 (except article 2), A6 (2) (except article 2) and F1, G. KALSAKAU said everyone approved A6 (2) apart from its article 4. It was not clear, he said, when the Commission appointed under article 4 would be appointed and when it would make its recommendations.

35.W. LINI. remarked that he felt the Federal Party was refusing to try to complete the draft Constitution: he said it was not by chance that G. Cronsteadt had left for Santo the previous afternoon - it was a deliberate measure taken to prevent the Committee from making real progress. The Federal Party was, he ended, attempting to destroy all consensuses that had been reached.

36.After further discussion, the Chairman concluded that no consensus appeared to have lasted on A6 (2) or F1, although agreement had been reached on C7 (apart from article 2).

37.Before the closure of the meeting, K. MATAS reminded the Committee that important issues, such as the Preamble, Transitional Provisions and Emergency Provisions remained to be discussed.

38.W. LINI, G. KALSAKAU and W. BONGMATUR thanked Prof. Ghai, on behalf of Vanuaaku Pati, Federal Party and Mal Fatu Mauri for his work with the Committee. The Chairman, on behalf of the whole Committee, thanked Professor Ghai who was leaving that afternoon.

39. The meeting was closed at 1.45 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/36

CONSTITUTIONAL MEETING

MINUTES OF MEETING HELD ON 20 AUGUST 1979: 2.30 p.m.

Present: G. LEYMANG (Chairman), W. LINI, G. PREVOT, A. MALERE, D. KALPOKAS, N. J. LALOYER (for L. DINI), G. KALSAKAU, G. CRONSTEADT, T. TUNGU, M. BERNAST (for L. VATOU), W. TULANGI (for J. QUARANI), V. BOULEKONE, K. MATAS, G. PAKOA, M. KALCHICHI (for S. REGENVANU).

Invited: B. NARAKOBI

Minutes: A. STANDLEY

1. The following documents were distributed to members: PV/33, PV/34, PV/35, C8, D1 (7), E2, H4, R1 (2), R4, R5, R6, blue list of agreements reached by the Committee.
2. The Chairman informed members that the Committee would meet on 20, 21 and 22 August. He drew their attention to the list of points on which an agreement had been reached and proposed that the discussion continue on unresolved points, beginning with decentralization.
3. G. PREVOT spoke, saying no specific discussion had taken place on the Federal Party's proposals contained in paper A8, the purpose of these proposals was, he explained, to allow the people in the islands to participate in national development and government. He felt that the Tabwemassana/Nakamal proposal, A5, contained nothing new - it merely restated existing laws - he therefore believed that paper A5 should be discussed in detail and drew particular attention to its article 9.
4. V. BOULEKONE repeated his belief that attempts at local government should start at the village, and not the regional level. Was there any sense, he asked, in replacing Community Councils - which had themselves replaced Local Councils - with Regional Councils. He felt that islands in the New Hebrides would not understand the need for the immediate creation of Regional Councils.
5. W. TULANGI explained that the A8 proposals followed custom: they were an expression of the identity of people as belonging to a particular island. A Regional Council, he went on, would therefore be a meeting place of persons attending as man Tanna, or man Efate, or man Banks - this, he felt, was fully in accordance with custom. Local Councils or Community Councils were, however, creations of Europeans and destroyed the identity of islands.
6. Replying to M. BERNAST who suggested that, if Regional Councils already existed in custom there was no need for reference to be made to them in the Constitution, J. M. LEYE said that the Federal Party proposals would ensure that custom was respected within the framework of a single country.
7. G. PAKOA commented that the excessive centralization of the Condominium government was largely due to the fact that France and Britain were not responsible to a New Hebridean electorate - they could therefore do as they wished. With independence, and an elected Government, all would change and Parliament, if it was the wish of the representatives of the people,

would make legislation to provide for decentralization.

G. Pakoa ended by remarking that the A5 proposals would lead to a conflict between the Regions and the central government as it appeared that Parliament would be obliged to share its law-making power with the Regions.

8. K. MATAS remarked that no group within the Committee was opposed to the Federal Party's A8 proposals. The issue was whether a detailed discussion on decentralisation should take place before or after independence; if before, then the A8 proposals were insufficiently detailed; if after, then they were too long.

9.G. KALSAKAU emphasized the need to develop the islands and to create jobs there. Replying to a comment from D. KALPOKAS, he explained he meant private sector employment, and not Government - if the islands were developed, centers such as Luganville, Isangel, Lakatoro/Norsup would expand and create job opportunities outside Port-Vila.

10. Commenting that the existing system of district administration denied the islands to have any say in the direction of their affairs, J.M. LEYE said he stood firmly by the A8 proposals.

11.W. LINI remarked that if people returned from Vila to their islands on a massive scale, the town would collapse. To think in terms of a system of Government in which only men Efate was allowed to work on Efate, or only men Tanna on Tanna, was extremely impractical and divisive, he said.

W. Lini returned to K. Matas' comment that the issue was whether to discuss decentralisation in detail before or after independence. If before, elections and independence would be delayed - the Vanuaaku Pati could not accept this.

He urged the Federal Party to accept paper A6 (2) - all the other groups in the Committee had done so and it was only reasonable, given that the Vanuaaku Pati had made concessions on other issues, that the Federal Party should modify its stand.

W. Lini concluded by suggesting that A6 (2) could be more acceptable to the Federal Party if Article 4 provided for the Commission on Decentralisation to be established within 6 months of the elections rather than independence - this could easily be agreed to, he said.

12.M. KALCHICHI indicated that the New Hebrides Christian Council believed in establishing a strong central government, whilst providing for decentralisation.

13.G. KALSAKAU emphasized the importance of reaching an agreement on this issue - failure to do so could lead to a repetition of the 1977 troubles and the New Hebrides were in no position to cope with such a situation. The people of the New Hebrides, he ended, wanted regionalisation - it was in accordance with custom.

14. The Chairman proposed that, as a compromise solution, an attempt be made to combine papers A6 (2) and A8 by keeping the four articles of A6 (2) (in article 2, the second alternative would be kept) and adding, as new articles 5 and 6, articles 8 and 9 of A8.

15.K.MATAS remarked that the Vanuaaku Pati had agreed to A6 (2) as a compromise - its read preference was A6 as this gave Parliament greater freedom of action than A6 (2), which even specified the number of provinces. He therefore suggested that the discussion should be on combining A6 and A8.

16.V. BOULEKONE also felt that the A8 proposals were acceptable, but that they should be the basis for an Organic Law, to be discussed by Parliament, rather than for a chapter of the Constitution. Paper A6 (2), he said, took into account the views of all political parties and provided for a through study of decentralization by a Commission - the Constitutional Committee had already agreed to a similar provision concerning the electoral law. V.

Boulekone therefore considered that the Federal Party should have no difficulty in approving A6 (2). He ended by saying that, at the 11 August meeting, J. M. Leye had agreed to paper A5, provided that F1 was approved - yet A6 (2) covered A5 completely.

17.G. PREVOT explained that the Federal Party agreed to A5 with F1 as this gave sufficient guarantees for decentralisation.

18.G. CRONSTEADT repeated the importance of the issue and the danger of possible trouble if no satisfactory agreement was reached. He felt a gulf still existed between the Vanuaaku Pati and the Federal Party on this issue as the idea of Regional Councils already existed in Custom, why could they not be created politically.

He added that he was not satisfied with the creation of a Commission to study decentralisation: this had been done in the past and yielded no results. He urged the Committee to examine A8 and the details of decentralization.

19.V. BOULEKONE disagreed with the claim that Regional Councils fitted in with Custom - he said it could be claimed that Local Councils or Community Councils, being island institutions, were in accordance with custom; Regional Councils, however, by forcing an island to work almost exclusively with only one or two other islands, were not.

20.B. NARAKOBI examined paper A8, saying that the issue of decentralisation was not only technical, but also fundamentally political. He felt A8 was acceptable though he had reservations over its articles 5 and 6, especially the latter which could lead to considerable conflict between the regions and the central government.

21.W. BONGMATUR spoke at length on the need for political leaders to examine in depth the real needs of the people in the islands. He pointed out that it was too easy for Government to promote forms of development which tended to increase the gap between the rich and the poor.

He therefore urged political leaders to consult the Chiefs over the needs of the people, and not to create structures that were cumbersome and expensive, and that destroyed New Hebridean culture and custom.

22. Referring to the Chairman's proposal, K. MATAS pointed out that accepting article 9 of A8 would mean that decisions would have to be taken before the approval of the Constitution on the number and powers of the Regions. He did not feel this could realistically be done within a month or two; it was, anyhow, for Parliament, and not for the Constitutional Committee to decide on this matter.

23. The Chairman proposed that, as no agreement had been reached on this issue, a sub-committee, consisting of V. Boulekone, M. Bernast, J.M. Leye, G. Prevot, G. Cronsteadt, W. Bongmatur, K. Matas, B. Sope and two other members, meet the following morning to have further discussions. If still no agreement was reached, the Constitutional Committee would then discuss the powers of Head of State and Head of Government.

24.K. MATAS commented that it was up to the Federal Party to make concessions on the issue of decentralization and to accept A6 (2) - the Vanuaaku Pati having compromised on the Lead of State/Head of Government issue. He did not feel, therefore, that such a sub-committee would serve a useful purpose.

25.W. LINI wished to know what the Federal Party really feared. He felt the Federal Party was acting in a dictatorial manner by refusing to make concessions. Commenting on A8, he said article 6 would lead to much conflict and trouble. He ended by agreeing with K.Matas that the sub-committee would be of li.

26.G. KALSAKAU replied that the danger of violence and disorder, fostered by political parties, was real and that the New Hebrides were not prepared for it.

27.V. BOULEKONE agreed with K. Matas and W. Lini on the futility of creating a sub-committee as proposed by the Chairman. He felt it was up to the Federal Party to accept A6 (2) e he pointed out that the Federal Party would lose nothing by doing so.

28. After a further discussion during which G.KALSAKAU and W. BONGMATUR said they agreed with the idea of the sub-committee, with the latter also adding that the Committee should give serious thought to visiting the islands, the Chairman closed the meeting by requesting the sub-committee to meet the following day.

29. The meeting was closed at 5.45 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/37

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 21 AUGUST 1979:2.45 p.m.

Present: G. LEYMANG (Chairman), W. LINI, G. KALKOA, D. KALPOKAS, A. MALERE, J. NAUPA, M. CARLOT, L. DINI, T. REUBEN, G. KALSAKAU, W. BONGMATUR, RINGAO, T. TIPOLOAMATA (for F. TIMAKATA), J. M. LEYE, M. BERNAST (for L. VATOU), V. BOULEKONE, T. TUNGU, G. CRONSTEADT, J. NATUMAN, G. RONDEA (for B. SOPE), J. MATAS, W. TULANGI (for J. QUARANI), S. REGENVANU.

Observers: M. KALCHICHI (alternate for S. REGENVANU)

Invited: B. NARAKOBI

Minutes: A. STANDLEY

1. Papers A9 "Decentralisation" and R5 (2) "Emergency Powers" were distributed to members.

2. The Chairman informed the Committee that the British Resident Commissioner wished to speak to it the following day on the issue of Citizenship. He informed the Committee that, after the meeting held in the morning between various political leaders, paper A9 had been prepared by B. Narakobi.

3. B. NARAKOBI explained that A9 was a combination of A6 (2) and A8: the first four articles were almost identical to A6 (2), and articles 5 and 6 corresponded to articles 8 and 9 of A8. He added that, in A9, there existed a slight contradiction between articles 4 and 6.

4. A discussion followed, centred on article 4 - J. M. LEYE, for the Federal Party, proposed that the Commission be appointed within 6 months of the election of the next Parliament, and not within 6 months of the official approval of the Constitution. He argued that, as drafted in A9, article 4 would unnecessarily delay the Commission's work: why wait, he said, for independence when the Commission could in fact begin its work much earlier.

5. A discussion on the enactment of the Constitution ensued, with B. NARAKOBI saying that, legally, the Constitution would be enacted either by referendum or by Parliament. In the latter case, Parliament would debate the draft Constitution in detail.

6. K. MATAS and W. LINI felt the reference to 6 months in article 4 was undesirable for two reasons - Firstly, it was a political detail inserted simply to satisfy one party - after independence the reference would be irrelevant and would make no more sense in the Constitution - Secondly, they argued that the Constitution would only come into effect on Independence Day - it would therefore not make provision for the creation of a Commission before its coming into effect. They therefore felt that if mention was to be made of a six-month period, it should be for within six months after Independence".

7. V. BOULEKONE agreed with J.M. Leye's proposal that the Commission be established within

6 months of elections - it was, he said, a form of guarantee that the Commission would be brought into existence without too much delay.

8. Article 6 of A9 was discussed at some length. W. LINI considered it to contradict with Article 4 - he therefore proposed it be deleted. G. CRONSTEADT recognized the contradiction and suggested that it be amended to read "Regional Councils shall be established before Independence". M. CARLOT agreed with W. LINI that article 6 should be deleted: the Commission in article 4 should be appointed within 6 months of the elections and would then be free to make its recommendations to Parliament.

9. W. LINI, V. BOULEKONE and S. REGENVANU all spoke in favour of ensuring that the Constitution should not be filled with details inserted to satisfy individual parties. The Constitution, they said, should be a general document for the nation, and they hoped that, in the future, it would not be possible to say that certain articles had been included simply for a particular party.

10. Replying to the proposal that the mention of 6 months in article 4 be deleted, J.M. LEYE said that, in that case, the Federal Party would revert to paper A8. If no agreement could be reached, a referendum on this issue would be held. He remarked that he could accept the deletion of article 6, but not the removal of the reference to 6 months in article 4.

11. Following further discussion, B. NARAKOBI went through A9, proposing that, in article 1, the word Parliament "be inserted before" shall enact". Articles 2, 3 and 5, he said, could remain unchanged. In article 4, the words "official approval of the Constitution" could be replaced by "election of Parliament". Article 6, he suggested, could either be deleted or else amended to read "Regional Councils shall be established following the adoption of the report of the Commission. he explained that it was understood that if the Commissions report was rejected by Parliament, Regional Councils would not be established.

B. Narakobi concluded by commenting that, with respect to article 4, provision for the Commission to be set up within 6 months of the election of Parliament had no Constitutional force, as the Constitution would only come into effect on Independence Day, which could perhaps be more than 6 months after the elections. He said, therefore, that such a provision would be more in the nature of an agreement between all political parties that the Commission would be created within 6 months of the elections - it could not, however, be constitutionally binding.

12. After further discussion, the Committee approved paper A9 with the following amendments:

Article 4 - replace "official approval of the Constitution" with "election of Parliament".

Article 6 - replace by "the regional councils shall be established following the adoption of the report of the Commission".

13. The meeting was closed at 5.20 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/38

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 22 AUGUST 1979:8.15 a.m.

Present : G. LEYMANG (Chairman), W. LINI, G. KALKOA (morning only)
G. PREVOT (afternoon only), M. CARLOT, D. KALPOKAS, T. REUBEN, J. NAUPA, K. MATAS, J. NATUMAN, B. SOPE, G. GRONSTEADT, M. BERNAST (for L. VATOU), J.M. LEYE, G. KALSAKAU, W. BONGMATUR, S. REGENVANU, V. BOULEKONE, RINGAO, T. TIPOLOAMATA, W. TULANGI (for J. QUARANI)

Observers: M. KALCHICHI (alternate for S. REGENVANU).

Invited: B. NAROKOBI

Minutes : A. STANDLEY

1. Document J1 (3) "Land", prepared by Tabwemassana, was distributed to members.

2. The Committee discussed articles 1 of J1 (2) and J1 (3). M. Bernast explained that article 1 of J1 (3) had been drafted in strong terms deliberately. Tabwemassana, he said, insisted on the return of all land to its customary owners. He went on to criticize the differentiation made in J1 (2) between customary and non-customary land, his party, he explained, considered all land in the New Hebrides to be customary land.

3. J.M. LEYE also criticized J1 (2) on the grounds that it could allow for state ownership of land – he was opposed to this, believing that all land should belong to its custom owners.

4. G. KALSAKAU felt that article 1 of J1 (2) was clear, it stated that all land belonged to the native New Hebrideans – in a New Hebridean custom this meant the custom owners.

5. A long discussion followed on whether the article 1 of J1(2) or J1(3) was preferable, M. BERNAST and T. REUBEN favoured a reference to "customary owners" to ensure that land would be returned to them, and not to the State.

6. At 9.00 a.m. the British Resident Commissioner, A. Stuart, came to speak to the Committee on the question of citizenship. He explained that although the provisions on citizenship adopted by the Committee were different from those requested, the British Government had decided to accept them. Mr. Stuart pointed out that this was a considerable concession by the British Government – it had not been made out of weakness but rather to promote agreement and help the New Hebrides move towards a constitution approved by all.

He ended by urging the Committee to make use of its last remaining meetings to prepare a peaceful future for the New Hebrides, He felt that if complete agreements were not reached on certain issues, it would be tempting for future Governments to disregard them it was thus extremely desirable that the Constitution should be agreed by consensus.

Mr Stuart left the meeting at 9.15 a.m.

7. The Committee resumed its discussion on land.

8. B. NAROKOBI explained that by amending article 1 of J1 (2) by changing the reference from "indigenous New Hebrideans" to "indigenous customary owners", as proposed by T. REUBEN, the article would no longer be a philosophical statement, but have a more definite legal meaning. In Vila, for example, all land would have to be returned to its customary owners.

9. A number of speakers, including J. NAUPA and S. REGENVANU approved of the general terms in which J1 (2) was formulated. J. NAUPA felt that all the points contained in J1 (3) were in fact to be found in J1 (2).

10. K. MATAS raised the question of the future land law that would need to be prepared – he felt that references to "customary owners" could perhaps be best included in this law. However, he said that he could accept the J1 (2) article 1, as amended by T. Reuben.

11. M. CARLOT developed the idea of the future land law: he felt the Constitution should only state in general terms that the land should be returned to the people – the land law would then make the necessary detailed provisions, treating the urban, village, plantation and bush areas in the same way. M. CARLOT considered that J1 (3) was too detailed: it included provisions that would be better included in the land law. J. NAUPA agreed, saying the question of compensation should also be dealt with in the land law rather than in the Constitution.

12. V. BOULEKONE urged the Committee members to realise the importance of the land question and the need to avoid the temptation to rush through it. He said the peace and unity of the New Hebrides were at stake and that caution should be exercised.

13. W. LINI agreed with Article 1 of 31 (2) as amended by T. REUBEN he felt that it would be opportune to insert the reference to customary ownership in the Constitution – to do so at a later date elsewhere would be difficult.

It was important, he said, to try to define a clear approach to the land problem, especially the ownership of urban land by New Hebrideans, at an early date. He felt that, otherwise, there would be a danger of the problem continuing endlessly.

W. LINI ended by saying that land was the root of custom – to deny customary owners their land would be to deny custom.

14. M. BERNAST concurred with this on behalf of Tabwemassana – his party, he said, favoured a special land status for the urban zones.

15. After further discussion, B. SOPE pointed out that the land Chapter in the Constitution would deal with all land in the country, not just customary or alienated land. A major problem, he said, was the ownership of land on one island by New Hebrideans from another island.

16. B. NAROKOBI discussed the meaning of J1 (2) article 1 as amended by T. REUBEN – if all land was to be returned to customary owners on Independence Day, the Government would have to identify who the customary owners were. He spoke of the need for Government to protect the people against foreign speculators who, through purchases, leases or mortgages, would try to obtain land.

17. Following a question from B. BOULEKONE, the committee discussed land transactions between New Hebrideans. G. KALSAKAU felt that the sale of custom land to another New Hebridean was acceptable in custom as long as a fair price was paid. He added that, in his view, the Constitutional Chapter on land should simply contain article 1 of J1 (2) with a second article to provide for the payment of compensation by France and Britain to owners of alienated land.

that was returned to the customary owners.

18.M. CARLOT repeated his belief that the details of the provisions relating to land should be included in an Organic Land Law to be made by Parliament. Whilst the population might be happy with the statement that land should be returned to the customary owners, the government would be left with the enormous problem of identifying who were the real customary owners. G. KALKOA agreed with M. CARLOT that an Organic Law should define how compensation should be paid and how the land problem should be resolved.

19.Further discussion followed, with the Chairman proposing that the Chapter on land should only contain a statement to the effect that all land in the New Hebrides belonged to its customary owners, and a provisions for an Organic Law to contain all details relating to land.

20.B. NAROKOBI, before the lunch break, proposed a new draft for the land Chapter (see paper J2).

21.Break 11.40a.m. – 14.30p.m.

22.Paper J2 was distributed to members, with the provisional list of sub-committees.

23.A discussion soon followed on the status of persons of mixed blood. V. BOULEKONE proposed that, in the french text “indigene” be used rather than “autochtone” – he felt the former term allowed for persons with mixed blood to own land, whereas the latter would not.

24.Although it was pointed out by several speakers that custom in the New Hebrides was either matrilineal or patrilineal, depending an the particular region, the Committee agreed that custom recognized the customary right to land of persons of mixed blood, and that the Constitution should provide accordingly.

25.M. CARLOT felt that to use terms such as “autochton” or “indigenous” was confusing; he suggested that reference be made to “customary owners” with a provision for the ownership of land by the Government for reasons of public interest etc.

26.B. SOPE was worried by this suggestion on the grounds that foreigners could become accepted as custom members of a New Hebridean community and thus acquire land rights. M. CARLOT replied that it would, ultimately, be up to the community concerned to decide whether it wished to accept such foreigners within its midst.

27.Commenting on article 1 of J2, W. LINI felt its effect would be to make all future Organic Land Laws powerless, as all land would have be dealt with in custom. Parliament would thus effectively lose the power to make land legislation. W. LINI therefore proposed that the Committee adopt article 1 of J1 (2).

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/39

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 3 SEPTEMBER 1979: 10.00 a.m.

Present: W. LINI (Chairman), G. KALKOA, D. KALPOKAS, T. REUBEN, J. NAUPA, M. CARLOT, L. DINI, G. PREVOT (afternoon only), A. MALERE (afternoon only), G. CRONSTEADT (afternoon only), J.M. LEYE (afternoon only), G. KALSAKAU (afternoon only), J. KALOTITI (for T. TUNGU ; afternoon only), RINGAO, W. BONGMATUR, M. KALCHICHI (for S. REGENVANU), J. NATUMAN, V. BOULEKONE, G. MOLISA, A. SANDY (for G. PA.KOA), K. MATAS, M. BERNAST (for L. VATOU), T.TIPOLOAMATA (for F. TIMAKATA).

Observer: C. BICE (alternate for W.LINI).

Minutes:A. STANDLEY.

1. Documents PV/36, PV/37, PV/38, G7 ("Preamble"), J3 ("Land"), A9 (2) ("Decentralisation"), R4 (2) ("National Council of Chiefs"), were distributed to members.

2. After some discussion, the Committee decided that, given the absence of the Federal Party members, the meeting would reconvene at 2.00 p.m. and would then proceed, regardless of whether any members were absent or not. The Committee also decided that, as time was short before the scheduled Constitutional Conference, the agreements, or consensuses, already reached would not be re-examined ; if any group felt that it did not agree with the decisions of the Committee, it could raise the issue at the Conference.

3. Break 10.30 - 14.15.

4. The Chairman began the afternoon session by proposing that the outstanding questions be examined by the Committee, beginning with Land, and then the Head of State. All consensuses that had been reached by the Committee, he said, would stand and would not be reexamined until the Constitutional Conference, if necessary.

5. The Committee began its examination of the land issue, working with documents J1 (3), J2, J3. M. BERNAST said Tabwemassana could accept J3, with the addition of two further articles: one to state that an Organic Law would declare a special status for the urban areas, based on the views of the customary owners concerned, and another to define that the English word "indigenous" would be used with the same meaning as the French "indigene".

6. Following a comment from J. NAUPA, M. BERNAST explained that paper J1 (2) was unacceptable as it did not specify that all land would be returned to its customary owners. Furthermore, he said, article 4 of J1 (2), which provided for nationalization of land, was contrary to Tabwemassana's position on land.

7. J. NAUPA commented on the need to realize that the Constitutional Committee should not attempt to do the work that Parliament would undertake whilst preparing its Organic Law on land. The Constitutional Chapter on land, he went on, would not only apply to alienated land,

but to all land.

8. Taking up this point, M. BERNAST said that Tabwemassana held that there was no difference between customary and non-customary land, all land being, in fact, custom-owned. G. PREVOT explained that the Federal Party differentiated between 3 categories of land unalienated customary land, alienated land, and urban land.

9. M. CARLOT suggested that either J2, with its article 6 deleted, or J1 (2), with its article 4 deleted, would be quite acceptable.

10. A discussion followed in which it was proposed that the Committee should try to base its discussions on one paper only. V. BOULEKONE suggested J3, with the addition, after "customary owners" in article 2, of the words "and their descendants". This, he said, would ensure that children of mixed blood possessing full custom rights to land, would not have these rights denied by the Constitution. He went on to say that, for the same reason, the term "indigene" should be used instead of "autochtone" in the French text.

11. Replying to V. BOULEKONE, M. BERNAST explained that Tabwemassana wished a special status to be declared for the urban areas to protect New Hebrideans who had fairly bought and built on plots of land in Luganville and Port-Vila. He continued by saying that if no agreement could be reached by the Committee on the status of the urban areas, the matter should be left aside until the Constitutional Conference, when the President of Tabwemassana, who was one of the customary owners of the land on which Luganville was built, would be present.

12. After further discussion, the Committee decided to use document J2 as its working paper.

13. Following a proposal from the Chairman, the Committee approved the addition of the words "and their descendants" after "owners" in article 1 of J2,

14. The discussion resumed on the difference between "indigene" and "autochtone" in the French text, with V. BOULEKONE strongly supporting the former. A. MALERE pointed out that "indigene" meant any person born in the New Hebrides, regardless of his race. G. PREVOT, on behalf of the Federal Party, disapproved of the term "indigene". He proposed that the article should state that customary land should not be alienated except in accordance with customary law, and that foreigners should not have the right to own land.

15. Speaking on behalf of the Christian Council, M. KALCHICHI requested that the Churches, as many of them owned land and were managed by foreign Boards of Trustees, be consulted on the land issue.

16. Commenting on article 2, K. MATAS and M. BERNAST proposed that "indigenous citizens" be replaced by the same phrase as in article 1 - i.e. "indigenous customary owners".

17. M. CARLOT raised the issue of a New Hebridean purchasing land on an island other than his home island. Would such a person, he asked, have full customary rights to his land. D. KALPOKAS replied that if the land was bought fairly according to customary rules, the purchaser and his heirs would be entitled to full customary rights. However, he went on, a person who failed to integrate into his new island community would run the risk of rejection and, possibly, expulsion. M. CARLOT pursued his point, and suggested that article 2 of J2 should not state that only "indigenous customary owners" had the right to perpetual ownership of land, but, simply, "indigenous owners". He said the Committee could decide either to allow each area of the New Hebrides to determine whether persons from other islands could have customary rights to land,

or to make a definitive statement in the Constitution.

18.J.M. LEYE repeated the comment he had made at previous meetings of the Committee that he felt the Constitution should only deal with alienated land ; custom land he said, was under the authority of Chiefs only.

19.V. BOULEKONE commented that he was extremely worried about the, chances of completing the Constitution by the Conference date. He felt that there was still much misunderstanding as to what the Committee was supposed to discuss with respect to land, and referred to J.M. LEYE's remark. V. Boulekone also felt that the Chiefs had difficulty in understanding a number of the issues under discussion. He concluded by saying it was most unlikely that undiscussed matters, and issues on which there existed disagreement, would be resolved during a 2 or 3 day Constitutional Conference.

20.W. BONGMATUR replied that he appreciated that the Committee had decided not to go back on any of the agreements already reached; he said, however, that it should be aware of the possible consequences of the decisions made concerning the role of Chiefs. The rights of Chiefs, he continued, had not been clearly stated in the draft chapter on the National Council of Chiefs: the Chiefs had, rather, been reduced to an advisory body and would find it difficult, as a consequence, to continue to play a leading role in the villages.

21.Referring back to the discussion on article 2, G. KALSAKAU felt that the expression "native" was sufficient rather than "indigenous". He commented that it was possible to complete the Constitution in the time for the Conference.

22.T. REUBEN proposed a new draft for article 2 : "Only indigenous New Hebrideans who have acquired their rights of ownership through a respected principle of customary land tenure system operating in the Republic may have perpetual ownership of land".

23.Before closing the meeting, the Chairman commented that he felt the Constitution would provide a sufficiently open framework within which the Chiefs and Churches would be able to develop, Chiefs, he said, did not derive their authority from the law, but from their conduct within the villages and from being accepted as leaders.

24.The meeting was closed at 5.35 p.m.