

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/40

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 4 SEPTEMBER 1979:8.45 a.m.

Present : G. LEYMANG (Chairman), W. LINI, G. KALKOA, G. PREVOT, D. KALPOKAS, L. DINI (morning only), J. NAUPA, M. CARLOT, T. REUBEN, RINGAO, W. BONGMATUR, T. TIPOLOAMATA; (for F. TIMAKATA), M. KALCHICHI (for S. REGENVANU), J. NATUMAN, A. SANDY (for G. PAKOA), G. KALSAKAU, J.M. LEYE, M. BERNAST (for L. VATOU), V. BOULEKONE, J. KALOTITI (for T. TUNGU), K. MATAS, N. NIKE (for B. SOPE morning only), A.MA LERE (afternoon only).

Observers: C. BICE (alternate for W. LINI), M. TANGARASI (alternate for L. DINI).

Minutes A. STANDLEY

1.The Committee continued its discussions on lased, with W. LINI summarizing the previous day's proceedings.

2.V. BOULEKONE spoke in favour of using paper J3 as the basis for discussions ; he feared that to adopt J2 would restrict Parliament's freedom when preparing the national land law. M. BERNAST agreed.

3.T. REUBEN felt the Committee should not go back on the decision taken the previous day to use J2 as the basic document. J. NAUPA preferred J1 (2), favouring its more general approach which, he felt, gave Parliament free choice when making its land law.

4.J.M. LEYE cemented that for the Committee to discuss unalienated land without proper prior consultation of the Chiefs, amounted to forcing the customary authorities to accept the decisions of the Committee.

5. D. KALPOKAS and G. KALKOA proposed that the chapter on land should contain general principles only- they felt, therefore, that J3 was more suitable than J2, being less detailed and drafted in a clearer way.

6. W. LINI thought J3 could be approved, with the addition of "and their descendants" to the end of article 2, and with the inclusion of the proposal made at the end of the previous meeting by T. Reuben. W. BONGMATUR agreed that J3 was acceptable, provided that it allowed for consultation with Chiefs at a later date, when the land law was being prepared. He said that there had been too little consultation with the Chiefs so far over the land issue.

7. T. TIPOLOAMATA raised a certain number of problems that could arise if it was decided that, all land should be returned to customary owners. He explained the important role played by chiefs in allocating and distributing land, and emphasized that Chiefs would have a major part to play in dealing with the land issue. M. CARLOT agreed, pointing out that the Chiefs held authority in the villages, and that they would have to determine who the customary owners of land were.

8.J.M. LEYE commented That the decision taken by the Committee on the National Council of Chiefs meant that Chiefs could only play on advisory role, without any real power. He said he found it difficult to trust Parliament to respect advice given by Chiefs.

9.V. BOULEKONE spoke again in favour of J3 - he explained that its article 1 ensured that the persons responsible for preparing the future land law would refer to custom when codifying the land tenure system.

10.K. MATAS made a number of observations on J3 ; he felt that it could be improved by adding a number of articles drawn from J2 and made the following proposals:

- Article 5 of J3 should be replaced by article 0 of J2 as the latter had more significance in law;
- Article 4 of J2 should be added to J3 to provide for the settlement of disputes, and an additional paragraph inserted to cover disputes over customary (as opposed to alienated) land;
- Article 10 of J2 should be added to J3.

11. M. BERNAST requested that an article, providing for a special status for urban zones, also be included.

12.After these proposals, the Chairman asked that the Committee turn to the Head of State issue until the redrafted version of J3 was available. He added that the proposals contained in chapter 14 of the Federal Party Constitution would be examined first by the Steering Committee.

13.The Committee then turned to the Head of State issue, with the Chairman explaining that, at previous meetings, no agreement had been reached on the powers of the Head of State.

14.On behalf of the Federal Party, G. PREVOT gave an account of the provisions relating to the Head of State contained in Chapter 7 of the Federal Party Constitution, The Head of State, he explained, would be elected by Parliament and the Regional Councils. He would choose the Prime Minister who would, with his Ministers, be responsible to Parliament, The Head of State would also approve laws, accredit ambassadors etc.

15.V. BOULEKONE said that although, from what G. Prevot had explained, he thought it would be possible to agree to these proposals, he felt strongly that the Committee should have more time for consideration before discussing in detail.

16.T. REUBEN commented that the Federal Party's proposals were not in line with the decisions already taken by the Committee on the subjects.

17.K. MATAS reminded the Committee that, when accepting separate Reads of State and Government, the Vanuaaku Pail had insisted that the Head of State be elected by Parliament, and that he play a ceremonial role only. He suggested that the Committee base its discussions on paper C7.

18. M. KALCHICHI agreed. The Christian Council, she said, considered that the head of State should have no real power - otherwise, she explained, conflict could arise between the Head of State and the Head of Government.

19.After further discussion, during which J.M. LEYE remarked that the Committee never gave careful thought or attention to the proposals tabled by the Federal Party, the Chairman asked

the meeting to break. The Steering Committee, he explained, would meet to discuss the Federal Party proposals as well as those made by the Mal Fatu Mauri concerning the National Council of Chiefs. In the afternoon, he said, the Constitutional Committee would discuss articles 1 - 5 of paper C7 - which had not been agreed upon.

20. Break 11.30 - 14.15

21. The meeting resumed after lunch with the distribution of paper J4 "Land", being J3 with the additions proposed by K. Matas and M. Bernast in the morning.

22. After a short discussion, articles 1, 2, 3 and 4 of J4 were approved. It was also decided to invert articles 1 and 2.

During the examination of article 5, J. M. LEYE enquired who was to pay for compensation. M. BERNAST and V. BOULEKONE explained that for the Constitution of the New Hebrides to insist that France and Britain pay compensation would be legally meaningless. They said that other pressures could be exerted upon France and Britain to make them pay compensation. D. KALPOKAS added that this could be discussed at the Constitutional Conference.

23. The Committee approved articles 5 and 6.

24. The Committee then examined article 7 for the rest of the meeting with K. MATAS opening the discussion by remarking that this article appeared to conflict with articles 1 and 2. He wondered what the precise meaning of "special status" was.

M. BERNAST explained that the intention of article 7 was simply to allow Parliament, if it wished, to give a special status to the urban zones it did not, however, oblige Parliament to do so. V. BOULEKONE added that this article took into account the fact that different land conditions prevailed in urban areas than in rural zones. Article 7, he said, would enable Parliament to allow New Hebrideans to retain land they had purchased honestly in the towns.

25. A number of speakers, including J. NAUPA, G. KALKOA, M. CARLOT and T. REUBEN, felt that article 7 should be deleted. Urban and rural zones should, they argued, be treated in the same way; furthermore, Parliament could, even without article 7, make whatever provisions it wished concerning land under article 4.

26. Following further comments, and to avoid too great a differentiation between rural and urban zones, K. MATAS proposed that article 4 be amended to read:

"Parliament shall determine the means by which articles 1, 2 and 3 shall be implemented as the National Land Law. An organic law may provide for exceptions in special zones". Article 7, he said, would then be deleted.

27. G. KALSAKAU and M. TANGARASI considered that specific protection should be given to the owners of urban land. They therefore favoured the maintenance of article 7. M. CARLOT replied by repeating his belief that Parliament, under article 4, could take whatever measures it felt appropriate in respect of urban land.

28. Answering T. REUBEN, V. BOULEKONE explained the reasons for Tabwemassana's insistence on a special status for the urban areas. It was based, he said, on the need to protect persons who had bought plots of alienated land in Luganville or Port-Vila. If they were not protected, the original customary owners of the land concerned could, under article 2 of J4, claim the land

back. The social and economic consequences, and the loss of investors' confidence, would be disastrous. It was therefore essential, V. Boulekone continued, to guarantee the rights of the occupants of land. M. BERNAST explained that all unsold, or uncleared, alienated land within the urban zones would be returned to the original custom owners. The only land that would be protected would be plots of alienated land bought in all good faith.

29. W. LINI proposed that article 7 be made more flexible by amending it to read:

"Parliament may by organic law prescribe the manner by which the status of all land in the urban and rural areas may be regulated".

30. M. BERNAST objected to this draft as being too wide - it could allow Parliament to declare a special status for plantations and other land and thus open the door for nationalisation of land.

31. M. CARLOT wished to know what the consequences of deleting article 7 would be - he felt that Parliament, under article 4, would still be free to make special provisions for urban land.

32. Disagreement continued over whether article 7 should be deleted or not, with A. MALERE, G. KALSAKAU and M. TANGARASI proposing that it be kept, and T. REUBEN, J. NAUPA and M. CARLOT supporting its deletion.

33. V. BOULEKONE proposed an amended article 7:

"Parliament may, by organic law, declare special statuses in respect of urban land, and in respect of rural land to be used for communal purposes".

He argued that to delete article 7 would not leave Parliament with a free hand - it would rather mean that the Constitution would bind Parliament to too great, and extent, and make it impossible for special provisions to be made in respect of urban land.

34. J. M. LEYE raised the question of compensation by asking who would pay compensation to customary owners of alienated urban land that had been sub-divided and sold as plots. T. REUBEN felt that the Europeans who had alienated the land originally and then sold it, should bear the costs of compensating the customary owners.

35. J. M. LEYE felt worried about compensation: he believed that it was not impossible that the New Hebrides would end up paying compensation that France and Britain should really be paying. He wondered whether New Hebrideans who had purchased urban land from Europeans could not be made, after independence, to repurchase the land from its customary owner.

36. V. BOULEKONE replied that all were agreed that the purchasers of urban land should not be made to compensate the customary owners in the piece of France and Britain. He said that, without article 7, it would be impossible for these persons to remain in full possession of the land they had bought.

37. K. MATAS remarked that no consensus had been reached on article 7. He pointed out that this article seemed to defend the interests of Europeans and other persons from overseas by preventing customary owners from developing the land they possessed in urban zones. Instead, it favoured foreign investors who wanted guaranteed enjoyment of urban land. Whereas land in the New Hebrides had originally been bought for stick to baccho, it was now being sold by the Constitution.

38. M CARLOT reiterated his opposition to article 7 on the grounds that it would restrict Parliament and allow for nationalisation of urban land. He argued that if it was decided to include article 7, a number of supplementary articles would need to be added to define what the special statuses would be. He concluded by saying that the Land Chapter made no men-Lien of expropriation for reasons of public interest - this, he said, was because this point, together with the status of the towns and other related issues, would be covered by the Organic Land Law.

39. Closing the meeting, the Chairman proposed that the Committee consider the following three possibilities overnight:

- 1./ Maintain article 7 as in J4
- 2./ Amend J4 to:

“Parliament may, by organic law, declare special statuses in respect of urban land, and in respect of rural land to be used for communal and public purposes”.

40. The meeting was closed at 5.05 p.m

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/41

CONSTITUTIONAL COMMITTEE

Minutes of meeting held on september 1979:8.45 A.M.

Present: G. LEYMANG (Chairman), W. LINI, M. CARLOT, KALPOKAS D., A. MALERE, G. PREVOT, J. NAUPA., G. KALKOA, J. NATUMAN, G. KALSAKAU, J.M. LEYE, M. TANGARASI (for L. DINI), T. TIPOLOAMATA (for F. TIMAKATA), W. BONGMATUR, RINGAO, M. KALCHICHI (for REGENVANU), M. BERNAST (for L. VATOU), K. MATAS, V. BOULEKONE, G. PAKOA, J. KALOTITI.

Minutes: A. STANDLEY.

1. Paper J4 (2) 'Land', and a sample of Konstitusen Nius were distributed.

2. The Chairman opened the meeting by announcing that Professors ZORGBIBE and GHAI, with representatives of the French and British Ministries of Foreign Affairs, were due to arrive in the New Hebrides on 10 September. He went on to request members to read through the following papers with care: CO, E2, H4, R1 (2), D1 (7), R3 (2) and A9 (2) - Once these had been formally approved, he explained, the Ministry of Social Service's Information Officer would be able to prepare a complete issue of Konstitusen Nius.

The Chairman then requested the Committee to resume its discussions on Land, reminding members that articles 1 to 6 had been approved the previous day.

3. M. BERNAST said that, although he preferred article 7 as in J4, he could agree to the J4 (2) version.

4. M. TANGARASI, J.M. LEYE and A. MALERE favoured the J4 draft. M. TANGARASI explained that as drafted in J4, article 7 left Parliament with a free hand to decide whatever it thought was best suited for the urban areas. J. M. LEYE preferred the J4 draft of article 7 as it made no reference to rural land - he repeated strongly his stand that the Committee could only discuss alienated land, and not custom land. He could therefore not accept an article that made provision concerning customary rural land, as did the J4 (2) draft of article 7. A. MALERE argued that the special status of towns should be recognized, as well as the need to allow all persons to settle in towns, whether those persons were New Hebridean or not.

5. W. LINI objected to the J4 draft of article 7 as it could allow already privileged persons, especially Europeans, to benefit from the protection given to urban land-owners, and would therefore prevent the customary owners of the land concerned from being able to develop it themselves. He felt J4 (2) was clearer, as it indicated that the rural land could only be given a special status if used for communal or public purposes.

M. CARLOT said he could agree to the J4 (2) draft as long as equal treatment was given to rural and urban land.

6. J. NATUMAN proposed that, if no agreement could be reached on this article, the Committee agree to make do with article 4 only. He felt that it would not be unconstitutional for Parliament, whilst making its land law, to give a special status to urban areas. V. BOULEKONE rejected this strongly, saying that, without such an article as article 7, Parliament would be completely bound by the provisions of articles 1, 2 and 3. It was therefore essential that towns

be mentioned specifically.

7. J.M. LEYE commented that the people in the islands were very worried by the idea of a single National Land Law. How, they asked, would this law respect each island's own customary law, and upon what would it be based. J. M. LEYE felt strongly that the National Land Law should start from the bottom, and not seek to impose a uniform system upon all the islands.

8. M. TANGARISI and V. BOULEKONE repeated their belief that article 7 was necessary to allow Parliament to provide for a satisfactory solution to the urban land problem. Everyone agreed, they said, that owners of urban land should, by arrangement with the customary owners, be able to retain the property they had bought only with article 7 would this be possible.

9. M. CARLOT pointed out that article 7 needed to be examined in the light of articles 1 and 2, which prevented non-indigenous citizens from owning land. He said that, in a democratic country, all citizens would, have the right to own land; however, the Committee, as had been done in other Pacific countries, had decided to limit the ownership of land to indigenous citizens. M. CARLOT also remarked that article 7 of J4 could deny land rights to the customary owners of urban zones.

10. V. BOULEKONE felt that no consensus was being reached on this issue. He explained that he believed that, in the urban zones, customary owners should be compensated for the land they had lost. M. BERNAST repeated that, without article 7, Parliament would be obliged to treat all land, whether urban or rural, strictly in accordance with articles 1, 2 and 3. He pointed out to J.M. LEYE that, in accordance with article 1, the National Land Law would be based upon customary land law.

11. W. LINI emphasized the need to treat everyone, whether they be urban land owners or rural land owners, equally. He therefore felt that not to mention rural land in article 7 would be a mistake.

12. M. CARLOT considered that the customary owners of urban land would never agree to a different treatment from that given to customary rural land owners, he therefore felt he could accept the J4 (2) version of article 7. He said that Parliament, when making the Land Law, would discuss both rural and urban land. Whether or not to grant a special status to urban areas would be its decision.

13. W. BONGMATUR felt that a number of factors, including Citizenship, Custom, Government and Business, were involved in the issue of urban land. He believed it was up to the Committee to direct the future work of Parliament and to examine the question of the payment of compensation.

14. K. MATAS proposed that article 7 of J4 (2) be divided up as it contained three different issues:

1° Urban land.

2° Land to be used for communal purposes - including the resettlement of people from over populated islands.

3° Land to be used for reasons of public utility - i.e. roads, wharves, airfields etc. He therefore suggested that, to take care of issues 2 and 3, articles 5 and 7 of J2 be added to J4 as articles 9 and 10, and that article 7 be left as in J4.

15. J. KALOTITI spoke of the different issues involved in land, including the land itself, ownership and citizenship. He felt there should be sufficient guarantees of the payment of compensation by France and Britain, so that persons who had bought urban land could be secure.

16.G. KALSAKAU spoke in favour of the J4 (2) draft of article , saying that Parliament's organic law would ensure protection for persons living on urban land.

17.M. CARLOT requested those who favoured article 7 of J4 to define clearly the term "special status". This was particularly important, he said, if articles 9 and 10 were added as proposed by K. MATAS, D. KALPOKAS agreed on the need to define this term - he felt that not to do so, would allow Parliament to make any decision whatsoever on urban land.

18.M.TANGARASI emphasized the importance of recognizing the special case of 'towns. Commenting on articles 1, and 2, he pointed out that foreign businessmen would not be prevented from participating in the development of the New Hebrides although not able to own land, they could, with the agreement of the custom owners, take out long leases.

19.J.M. LEYE remarked that the customary owners of the Vila and the Luganville land did not share the same views. Whereas the former wished occupants of the town to rent the land from them, the latter wanted the unbuilt land to be returned to them and to be compensated for the built land.

20.D. KALPOKAS said that the meaning of articles 1, 2 and 3 was not clear to certain members - non-indigenous persons would be able to carry on business in the country, although they would not be able to own land in perpetuity.

21.The Chairman proposed that the Committee should choose either the J4 or the J4 (2) draft of article 7. If no agreement could be reached on this, he suggested that the proposal made by K. MATAS be approved, but with the deletion of article 7.

22.Lunch break 11.30 - 14.15.

23.Following a question from the Chairman, M. BERNAST said that, although he could accept the J4 (2) draft of article 7, he could not agree to the deletion of article 7. This decision, he explained, would have to be taken by the President of Tabwemassana, who would be in Vila the following week.

24.The Committee then decided to suspend its discussions in article 7, and to examine article 8.

25.M. TANGARASI, commenting on article 8, said he felt it repeated articles 1, 2 and 3. He also believed that it was contrary to the right held by each man to negotiate and determine the development and use of his land.

26.M. CARLOT agreed that article 8 was unnecessary and that it was not right for the Government to exercise such control over land use.

27.Following a proposal by the Chairman that article 8 be deleted, T. REUBEN, K. MATAS and J. NAUPA. spoke in favour of maintaining it, emphasizing its importance in allowing the Government to protect New Hebrideans when negotiating land deals.

28.J.M.LEYE feared article 8 could lead towards nationalization of land and towards the alienation of owners from their land if they lost the right to decide as to its development.

29.M. BERNAST explained that the Ad Hoc Land Reform Committee had also been worried by the possibility of New Hebrideans suffering through unscrupulous land deals. He proposed that the

the article state simply that all contracts concerning the development of rural land should obtain the prior approval of the Government.

30. M. TANGARASI and M. CARLOT felt article 8 was concerned with business rather than land, and would therefore be more suited to an Investment Code. M. CARLOT feared that a Government could use article 8 to block the development of certain areas.

31. Whilst supporting the notion that Government should be able to control land contracts, W. BONGMATUR emphasized the need to take everyone's view into consideration.

32. V. BOULEKONE spoke of his experience in advising persons who had signed contracts that turned out to be prejudicial to their interests. It was essential, he said, for Government to have means of advising, and controlling land contracts.

33. Replying to a proposal by the Chairman that article 8 be deleted from the Land Chapter and left to an Investment Code or business regulation, K. MATAS said the advantage of keeping it in the Constitution was that it clearly stated the protection given the New Hebrideans, and would help to enforce their economic rights. He emphasized the importance of protecting land - the New Hebride's major resource - from exploitation.

34. M. CARLOT was sceptical about the protection that article 8 would give the people. The possibility of a government using article 8 to further its own ends was real, he said, Sufficient guarantees of ownership were already provided by articles 1 and 2, he felt.

35. K. MATAS and G. KALKOA proposed that, if article 8 was felt to be too strong, it be diluted. D. KALPOKAS and W. LINI favoured the inclusion of article 8 in the Constitution - not to do so, they argued, would make it very difficult for the Government, later, to assert its right to protect the people against crooked deals, and to enforce articles 1 and 2.

36. Following further discussion, T. REUBEN proposed a new draft for article 8 (see paper J4 (3)). A. MALERE repeated his belief that article 8 was superfluous, being covered by articles 1, 2 and 3.

37. M. TANGARASI feared that, if the Government did refuse to approve a land contract, the land owner would be unable to appeal. G. KALSAKAU and T. REUBEN replied that the Government would not refuse to approve a contract that was obviously in the land owner's best interests.

38. T. TIPOLOAMATA commented on the fact that the Committee seemed incapable of reaching agreements. Much needed to be done, he said, and the country was waiting, yet the Committee continued with endless discussions. He felt that if the meetings had been held according to custom, much quicker results would have been yielded.

39. After further discussion, K. MATAS and M. TANGARASI made further proposals for article 8 (see J4 (3)). The Committee then accepted the Chairman's suggestion to adjourn the meeting until the following day when the proposals made in the afternoon would be ready on paper.

40. Before closing the meeting, the Chairman requested members to read carefully through the blue papers he had listed in the morning, and through the Federal Party's proposals on the Head of State.

41. The meeting was closed at 4.45 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/42

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 6 SEPTEMBER 1979:8.30 a.m.

Present : G. LEYMANG (Chairman), W. LINI, G. KALKOA, D. KALPOKAS, M. CARLOT, A. MALERE, J. NAUPA, T. REUBEN, G. PREVOT, G. KALSAKAU, M. BERNAST (for L. VATOU), M. TANGARISI (for L. DINI), J. NATUMAN, M. KALCHICHI (for S. REGENVANU), T. TIPOLOAMATA (for P. TIMAKATA), RINGAO, W. BONGMATUR, J. KALOTITI (for T. TUNGU), K. MATAS.

Minutes:A. STANDLEY

1.Paper J4 (3), containing the new drafts for article 8, proposed by K. Matas, M. Tangarasi and T. Reuben, was distributed to members.

2.M. CARLOT argued that, although he had no objections to any of the J4 (3) proposals, he felt that they should be contained within a business law, or Investment Code, and not the Constitution. M. TANGARASI agreed, and suggested that article 8 be removed altogether from J4. He explained, however, that his article 8 draft had been designed to give a land owner chance to appeal against a decision taken by Government to refuse a land transaction from being made.

3.G. KALKOA proposed that the draft by T. Reuben be inserted in article 4 of J4.

4.K. MATAS replied to M. Carlot's comments saying that he feared that, if article 8 was deleted, the Government would be unable to protect New Hebrideans from unscrupulous land deals if an Organic Law, rather than the Constitution, gave the Government power to prevent certain transactions, this could be held as infringing an individual's basic right to free association and would therefore be unconstitutional.

5. A. MALERE and M. CARLOT considered that the Constitutional Chapter on land should not contain article 8 as proposed, as article 4 gave Parliament power to make a land law. Articles 1 to 3 of the Chapter, argued M. Carlot, protected the principle of Now Hebridean ownership of land - it was thus better to leave Parliament with the task of regulating the details of land use.

6.W. LINI was concerned that, if article 8 was deleted, the Government would, until the enactment of the land law, have no means of protecting the owners of land against unfair transactions. As it could be a number of years before such a law was made, it was essential that the Constitution provide protection against the unscrupulous investors and speculators that would appear on Independence.

7.T.REUBEN emphasized the need to protect the land and for Government to have some control over its use. He urged that article 8, as drafted by K. Matas, be adopted.

8.G. KALSAKAU favoured the Tangarasi draft, but with the words "indigenous citizen", at the end of the article, replaced by "the nation".

9.J. NAUPA appreciated M. Tangarasi's fears about Government abusing the power it held to further its own ends, but felt that the Tangarasi draft would be ineffective.

10.Further discussion followed over whether article 8 should be included in the Constitution or not, with W. LINI and T. REUBEN, in particular, in favour of its inclusion, and A. MALERE,

M. TANGARASI and M. CARLOT opposed to it.

11. Seeing that no agreement was being reached, D. KALPOKAS, proposed a new draft:

“Not with standing articles 1, 2 and 3, the Government may shall be consulted on any land dealings between indigenous citizens and non-indigenous citizens or foreigners”.

12. The Chairman proposed that, as a number of members were concerned about the need for protection of the land during the transitional period between Independence and the enactment of the Land Law, article 8 be included in the Transitional Provisions until such time as Parliament made the National Land Law.

13. M. TANGARASI repeated his belief that article 8 in J4 was too one-sided, favouring Government rather than the land owner. He suggested that if article 8 could not be deleted, it be replaced by the draft proposed by D. Kalpokas, with “shall be consulted...” rather than “.., may be consulted ...”

14. J. KALOTITI and W. BONGMATUR spoke of the worries felt by the Committee on the land issue including the problems of population pressure. d. Bongmatur said if some feared that article 8 of J4 gave Government too much power, the article could be deleted and Government given power to intervene in articles 1, 2 and 3.

15. Further discussion ensued on whether article 8 should be in the Constitution or not, with A. MALERE proposing that legal advice be sought as to whether or not article 8 was covered by article 4 of J4.

16. G. PREVOT commented that it was surprising that after 3 days of discussion on land, the Committee has still made no attempt to consider the Federal Party proposals. He suggested that, in J4, articles 1, 6 and 8 be deleted, that article 7 be amended, and that a new article be added as follows:

“An organic law shall complete the provisions of this chapter and shall provide for the conditions under which land may be used by foreigners”.

17. M. CARLOT repeated that article 8 of J4 gave too much power to the Government, and no chance to land owners to appeal against a government refusal. He suggested that either article 8 be deleted or that the Tangarasi draft be approved.

18. After further discussion, K. MATAS proposed the following new article 8 draft:

“Not with standing articles 1, 2 and li the Government shall be consulted on any land dealings between indigenous citizens on the one hand and non-indigenous citizens or foreigners on the other hand, and that Government authorization shall be given unless any such transaction is prejudicial to the interests of the customary owner or owners of the land, the indigenous citizen, the local community or the nation. Any party specified in this article may seek the ruling of the Supreme Court for his rights under this article”.

19. The Committee then agreed the proposal made by K. Matas, with the deletion of the last sentence (Any party ... this article).

20. The Committee also agreed that articles 5 and 7 of J2 would be added to J4.

21. The Committee then discussed the question of citizenship briefly, as it affected land ownership, with M. CARLOT commenting that the Committee was perfectly justified in restricting the

the ownership of land to indigenous New Hebrideans, but that the issue would need very careful study in relation to urban land.

22.G. KALSAKAU pointed out that the term "indigenous New Hebridean" had yet to be defined formally. K. MATAS agreed, saying it would be dangerous, in article 2 of J4, to replace "indigenous customary owners" with "New Hebridean citizens and indigenous customary owners ..."

23. Before the meeting broke for lunch, W. LINI proposed a new draft for article 7 of J4:

"Parliament may, by organic law, declare the towns of Vila and Luganville and such other areas, as public zones".

24. Lunch break 11.40 -14.15.

25. 11.40 - 14.30: Lunch break.

26. The meeting resumed with the examination of paper C7 "Executive". The Chairman reminded members that agreement had been reached at previous meetings on the following two points:

- Parliamentary system
- Separate Heads of State and Government. He referred members to paper C6 prepared by Nakamal and to the Federal Party Constitution, but requested that C7 be used as the basic working document.

27.V. BOULEKONE remarked that the Federal Party proposals would tempt the President to assume greater authority than if he had been elected by Parliament without the Regional Councils. He felt that the Federal Party proposal was a step towards a Presidential system. V. Boulekone concluded by saying that if it had been agreed that a Parliamentary system should be adopted, then the Head of State and the Head of Government should be elected by Parliament.

28.K. MATAS agreed, explaining that, within a Parliamentary system, the Head of State was elected by Parliament, and played a ceremonial role.

29.G. PREVOT considered that such a system corresponded to an Assembly system rather than a Parliamentary one. The Federal Party proposal was, he said, Parliamentary as the Government was responsible to Parliament. He continued by saying that the system proposed by K. Matas and V. Boulekone would be dangerous in times of crisis and would make the Head of State's position vulnerable, being removable by Parliament acting alone - with the Federal Party proposal, however, the appointment of the Head of State by Parliament and the Regional Councils would make his position more secure.

30.W. LINI agreed with V. Boulekone that to elect the Head of State by Parliament and the Regional Councils could lead to a Presidential system. He felt that the body most likely to yield a non-political head of state was the Chiefs, and proposed, if it was decided to have an Electoral College for the Presidential election, that it be composed of Parliament with the National Council of Chiefs.

31.A discussion followed on the proposals contained in chapter VII of the Federal Party Constitution. G. PAKOA, referring to article 44 of that Constitution, proposed that the appointment of the most senior officers and civil servants be by the Head of State acting on the advice of a special Committee. A number of speakers, including M. BERNAST and M. TANGARASI felt that

ambassadors should be chosen by the Head of Government and then formally appointed by the Head of State.

32. Following a request by the Chairman that the Committee base itself on document C7, a discussion took place on how much of C7 had been agreed at previous meetings. J. NAUPA, K. MATAS, V. BOULEKONE and M. BERNAST felt that the whole of C7 had been approved with the exception of article 2, and amendments to articles 3 and 6. G. PREVOT said that at no time had any of the blue papers, except G6, ever been formally approved and that it could therefore not be claimed that a consensus existed. He also commented that the Minutes had never been approved and that they were not complete.

33. After a spirited exchange between V. BOULEKONE and G. PREVOT, the Chairman requested the Committee to go through C7 article by article, explaining that the blue papers represented the fruit of long discussions.

34. Commenting on Article 1, T. REUBEN said that many people, after independence, would be confused by the terms "President" and "Prime Minister" and would not appreciate the difference between the two. W. BONGMATUR suggested that language times be found, K. MATAS felt that the term "President" had lost some of its prestige through over use; he proposed, as an alternative for the Head of State, the term "Chief of State". M. CARLOT felt that if the term "President" was not used, then the word "Republic" should also be deleted from the article.

35. After further discussion, the Committee decided to leave article 1 unchanged, with "President" still in brackets.

36. Explaining the Federal Party's proposal that the Head of State be elected by Parliament and the Regional Councils, G. PREVOT said that this would make the Head of State a more effective symbol of unity and more representative of the people. He went on to say that the Federal Party was opposed to the removal of the Head of State. He added that, as it was proposed that the Chiefs be represented in the Regional Councils, custom would be able to participate in the election of the Head of State.

37. M. BERNAST pointed out that such an Electoral College would make the election of the Head of State impossible until such time as Regional Councils were established. He felt that if the Head of State was not elected by Parliament, a Presidential system would be in force.

38. D. KALPOKAS thought that a Head of State elected by the Regional Councils and Parliament would claim to have a popular mandate, and would thus seek to claim greater power.

39. K. MATAS reminded the Committee of the two conditions posed by the Vanuaaku Pati when agreeing to a separation between the Head of State and the Head of Government:

- Head of State to be elected by Parliament
- Head of State to be ceremonial only.

The question was, he said, whether the Head of State should be elected by Parliament together with another body and, if so, what body: Regional Councils, National Council of Chiefs, etc.

40. Summarizing the discussions that had taken place, V. BOULEKONE said that the Vanuaaku Pati seemed to feel that if Parliament was to be joined by another body for the purposes of electing the Head of State, that body should be a national institution, and, therefore, the National Council of Chiefs. The Federal Party, however, wished Regional institutions to participate, and wanted the Head of State to have more than ceremonial powers.

41.W. BONGMATUR agreed with W. Lini's proposal that the National Council of Chiefs participate in the election of the Head of State. He said that an electoral college composed of Parliament and the National Council of Chiefs would be sufficiently representative of the unity of the nation.

42.G. PAKOA, replying to the Federal Party's fears that, under article 3 of C7, the Head of State could be removed too easily by Parliament said that the article provided sufficient protection for the Head of State:

- he was elected for five years,
- he could only be removed for gross misconduct or incapacity.

43.K. MATAS proposed that the Head of State be a Chief elected by the National Council of Chiefs. Parliament would, however, be able to remove him by a 2/3 majority vote and with the approval of the National Council of Chiefs.

44.M. TANGARASI made the following proposal for article 2:

"(The President) shall be elected by Parliament and the National Council of Chiefs by secret ballot from among persons who are or are qualified to be members of Parliament".

45. The meeting was closed at 5.10 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/43

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 8 SEPTEMBER 1979 :8.20 a.m.

Present G. LEYMANG (Chairman) W. LINI, A. MALERE, T. REUBEN, M. CARLOT, G. PREVOT, D. KALPOKAS, J. NAUPA, G. KALKOA, M. TANGARASI (for L. DINI), G. KALSAKAU, J.M. LEYE, G. CRONSTEADT, K. MATAS, J. NATUMAN, T. TIPOLOAMATA, (for F. TIMAKATA), RINGAO, M. KALCHICHI (for S. REGENVANU), M. BERNAST (for L. VATOU).

Invited: J.J. ROBERT, C. TURNER, J. PERES.

Minutes A. STANDLEY

1. At the request of the Chairman, Messrs. J.J. ROBERT, French Resident Commissioner, and C. TURNER, Chief Secretary at the British Residency, gave the Committee an account of the meeting between Messrs. DIJOURD and BLAKER, the French and British Ministers responsible for the New Hebrides, held in Paris on 4 September 1979.

The two Ministers, they said, had noted that the Constitutional Committee had made good progress but that differences over such major issues as Decentralisation, Head of State, Land, Electoral Law and Revision of the Constitution persisted. Unless agreements could be reached over these points by 17 September, the Ministers did not feel that it would be possible to hold the Constitutional Conference, as scheduled, from 17-19 September. If however by 17 September, an approved Constitution was ready with only minor disagreements remaining, the Ministers wished to be sent the different drafts proposed and would try to settle the disagreements at the Conference.

By an "approved Constitution" the two Ministers meant a draft that had been formally approved by the Council of Ministers.

In the event of the Constitutional Conference being postponed, the Ministers did not rule out the possibility of their coming to the New Hebrides, either jointly or separately. However, during such a visit, they would not accept to discuss either the Constitution or the date for the election.

The Ministers, finally, repeated their insistence on the need for the Constitution to be approved before elections could be held.

Messrs. ROBERT and TURNER ended by informing the Committee that, in order to give the Committee the greatest possible assistance, Legal advisers would be arriving in Vila the following week.

2. Messrs. ROBERT, TURNER and PERES then left the meeting, and the Committee resumed its discussion on the Head of State.

3. M. TANGARISI, K. MATAS and W. LINI outlined the proposals they had made at the previous meeting, for the Head of State to be appointed by an electoral college composed of Parliament sitting with the National Council of Chiefs, or by the National Council of Chiefs.

4. M.KALCHICHI summarized the views of the New Hebrides Christian Council, as contained in the NHCC submission No. 1; the Head of State, she said, should be nominated by the National Council of Chiefs.

5.G. PREVOT explained the Federal Party's proposal that the Head of State, as well as being the symbol of unity, should also be an arbiter. He should, for example, be active in trying to resolve conflicts between the Regions and the central government, or between Ministers within the Government. He should also act in times of crisis and ensure that the administration continued to operate effectively even if Parliament and the Government had collapsed. It was thus essential that the Head of State should not be removable.

G. PREVOT went on to point out that the Federal Party proposal would allow the Chiefs to participate in the election of the Head of State, as they would be represented within the Regional Councils.

6.T. TIPOLOAMATA and Chief RINGAO stated that Chiefs were the root of custom in the New Hebrides, and had, before the arrival of Europeans, been the governors of the country. They asserted, therefore, that the position of Head of State was one that belonged right fully to Chiefs.

7.G. KALSAKAU emphasized the importance of the Head of State. If, because they had yet to be established, Regional Councils could not participate in the election of the Head of State, the people should elect him by universal suffrage. G. PAKOA objected to this proposal on the grounds that it would no longer be a Parliamentary Head of State, but, rather, a Presidential one.

8.M. CARLOT felt that all were agreed on the fact that the Head of State should be a Chief. He said he favoured the election of the Head of State by an electoral college composed of Parliament and the National Council of Chiefs. This, he considered, would allow both custom and the democratically elected representatives of the people to participate.

9.After further discussion, all agreed that the Head of State should be a Chief, with W. LINI commenting that unity and stability within the country could only be achieved if a Chief was Head of State.

10.J.M. LEYE raised the problem of defining Chiefs. He considered that there existed in three categories

- "political" chiefs
- "missionary" chiefs
- "land" chiefs

The first, he explained, had achieved positions of leadership through their activity in politics. The second had been raised to the position of chiefs by the Missionaries. The third were the genuine custom chiefs; it was among them that should be chosen the Head of State. J.M. Leye concluded by saying

he favoured an Electoral College composed of Parliament with the District Councils of Chiefs.

11.M. CARLOT agreed with J.M. Leye over the need to exercise care whilst deciding who the real Chiefs were. It was a problem that Parliament would have to examine with attention when making the law to organize the National Council of Chiefs.

12.A brief discussion followed a comment from G. KALSAKAU that the Chiefs could form a Sen-

ate, or upper legislative house, with M. CARLOT reminding the Committee that a decision had already been taken in favour of a unicameral parliament.

13.G. CRONSTEADT agreed with the Head of State being a Chief, but pointed out that this would make it impossible for non-chiefs to be Head of State, and would therefore deny them a right they should possess.

14.J. NAUPA raised the possibility of the Chiefs choosing the Head of State, who could be either a Chief or a non-chief. M. TANGARASI approved, saying this would answer the fears felt by G. Cronsteadt.

15.M. KALCHICHI elaborated this point, saying she felt that in the new independent, democratic New Hebrides, the whole population should be able to participate in the life of the country, This included women who were the cornerstone of society but who, if the Head of State was a Chief, would never be able to be Head of State.

16.In the discussion that followed this remark, W. LINI commented on the meaning of the term "democracy". Whilst democracy was a fine principle, it was not always a realistic proposition; thus, if it was decided to pay tribute to custom by making a Chief of Head of State, it should be realized that a woman could not be Head of State. Women, however, could attain the highest positions in Government or Parliament. He ended by saying that he strongly supported the idea of a Chief as Head of State.

17.M. KALCHICHI replied that the meaning of democracy was that every one should be able to participate in the life of the country. She warned the Committee of the possible consequences of not allowing women the role to which they were entitled.

18.G. KALSAKAU agreed with K. Kalchichi and proposed that the Head of State be chosen by the Chiefs, but that chiefs and non-chiefs be eligible for election.

19.Closing the meeting, the Chairman resumed that the majority of the Committee favoured the proposal that a Chief be Head of State, though some members suggested that the Head of State, whilst chosen by the Chiefs, be either a chief or a non-chief.

20. The meeting was closed at 11 a.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/44

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 10 SEPTEMBER 1979: 8.30 a.m.

Present: G. LEYMANG (Chairman), M. CARLOT, G. PREVOT, N. LINI, D. KALPOKAS, J. NAUPA, T. REUBEN, A. MALERE, G. KALKOA (afternoon only), T. TANGARASI (for L. DINI), T. TIPOLOAMATA (for F. TIMAKATA), RINGAO, M. KALCHICHI (for S. REGENVANU), K. MATAS, G. MOLISA, L. VATOU, J. NATUNAMAN, J.M. LEYE, V. BOULEKONTE, G. KALSAKAU, J. KALOTITI (for T. TUNGU - morning only), T. TUNGU (afternoon only).

Observers: M. BERNAST (alternate for L. VATOU)

Minutes: A. STANDLEY

1. Minutes PV/39 and PV/40 were distributed to members.

2. The Chairman requested the Committee to continue its discussions on the Head of State, and summarized the previous meeting's proceedings. He said a consensus had almost been reached on the proposal that the Head of State be a Chief, and reminded the Committee of the important points made by G. Cronsteadt and M. Kalchichi that if the Head of State was to be a Chief, all non-chiefs and all women would be excluded.

3. As a solution to the problem mentioned by G. Cronsteadt and M. Kalchichi at the previous meeting, M. TANGARASI made the following proposal for article 2 of C7.

"The President shall be elected by the National Council of Chiefs and appointed to his office by the Prime Minister".

4. M. KALCHICHI commented that it was unfortunate that there were no official representatives of women's organizations on the Committee. On behalf of women's rights, she insisted that women be eligible for the office of Head of State. She felt that, by denying women this right, the Constitution would, in itself, be unconstitutional.

5. M. CARLOT considered that an answer to this problem lay in a definition of the Head of State's powers. If the Head of State was to have wide executive powers, he said, it was obvious that his office should be open to men and, women, chiefs and non-chiefs. If however, his role was to be ceremonial, then it could be restricted to certain categories of the population; only chiefs he considered, could adequately represent the unity of the nation.

6. V. BOULEKONE felt that, although women could never rise to the position of chiefs in New Hebridean custom, they nonetheless held real power. It would, he said, be perfectly possible for a woman to be Head of Government, or a Minister. He warned, however, of the possible dangers of placing a woman at the head of the state. This would be upsetting thousands of years of history in the New Hebrides so could the Constitutional Committee decide to effect such a drastic change, he asked.

7. W. LINI approved of the comments made by M. Carlot and agreed that, although all agreed that both men and women should be able to head the Government, the same was not necessarily so for the office of Head of State.

He went on to say that the Head of State was a symbol of unity and tradition in the New Hebrides - he should therefore be chosen in accordance with the reality of the situation existing within the country.

8. Following these remarks, the Chairman asked the Committee to indicate whether agreement existed on the following three points

1/. Head of State to be a Chief

2/. Head of State to be elected by Parliament

3/. Head of State to have ceremonial powers only.

9. V. BOULEKONE commented on M. Kalchichi's remarks, saying he found them convincing and the Constitution, he felt, should not prevent anyone from participating in the life of the nation.

10. J.M. LEYE pointed that he had proposed, many weeks previously, that the Head of State be a Chief. However, due to the remarks he had heard, and because he felt that to grant ceremonial powers only to a Chief who was Head of State, would be debasing, he suggested that the Head of State be either a Chief or a non-Chief.

11. Referring back to M. TANGARASI's proposal made at the beginning of the meeting, G. KALSAKAU proposed that Parliament, rather than the Prime Minister, appoint the Head of State.

12. T. REUBEN felt the discussions were going over old ground and here making no progress. He did not feel that the Committee should try to alter existing custom to too great an extent. The Committee, he said, was largely in favour of a Chief being Head of State - in custom, this excluded the possibility of a woman being Head of State: that was the reality of the New Hebrides. However, if, in later years, because of social evolution, this was found to be unsatisfactory, the Constitution could be amended.

13. D. KALPOKAS commented on the difference between the Head of State and the Head of Government - the nature of these two offices was very different, he said. whereas the Head of Government headed the democratically elected representatives of the people - and should therefore be either a man or a woman - the Head of State was a symbol, and not an elected representative.

D. Kalpokas ended by favouring the proposal that the Head of State be a Chief.

14. Replying to the remark made by J.M. Leye on the ceremonial powers of the Head of State, M. CARLOT explained that he in fact enjoyed certain specific powers, such as accrediting ambassadors, enacting laws, granting reprieves etc. It could not be argued, therefore, that the Head of State was purely decorative.

15. T. TIPOLOAMATA said the Committee could decide to allow Chiefs or non-Chiefs to be Head of State. This did not mean, however, he continued, that custom would disappear - although its power was being undermined by the Churches and Government, custom remained powerful, and problems could arise in the future. Replying to a question from V. Boulekone, T. Tipoloamata explained that although women could never be chiefs in custom, they were still ordained with considerable powers, especially within the family.

16. A. MALERE supported the proposal that a Chief be Head of State, saying that this corre-

sponded to the New Hebridean notion of democracy persons belonging to certain fixed positions within the social hierarchy. The idea of democracy as allowing everyone free and equal participation was, he said, an imported notion.

17.K.MATAS remarked that no one was opposed to the idea of a woman being Head of State in the future - the problem was how to provide accordingly in the Constitution. This, he said, was the cause of the discussion on democracy and custom.

He said that if the Committee wished to follow pure principles of democracy, custom would have to be omitted from the Constitution. That, explained K. Matas, was why the Vanuaaku Pati had originally proposed a combined Head of State/Head of Government to avoid having "constitutionalized custom".

The Constitution, he ended, could be amended in the future if need be - but, for the time being, it should reflect the reality of the New Hebrides.

18.L. VATOU said he supported article 2 of C7 - this would allow Parliament a free choice when electing the Head of State.

19.Replying to a request from the Chairman, J.M.LEYE explained that the Federal Party did not propose that the Head of State be given full powers.

20.The Committee then re-examined the proposal made at the beginning of the meeting by M. Tangarasi, with W. LINI feeling that it would be preferable for Parliament to choose the Head of State from within the National Council of Chiefs. The Tangarasi proposal, he said, could lead to conflict between the National Council of Chiefs and Parliament.

21.J.M. LEYE requested that the Federal Party position - as expressed in Chapter VII of the Federal Party Constitution, be considered. He said that the District Chiefs should participate in the election of the Head of State, V. BOULEKONE and M. CARLOT disagreed on the grounds that the National Council of Chiefs represented all Chiefs in the country.

22.M. TANGARASI made a new proposal for article 2, saying that Parliament should elect the Head of State from a list of names proposed by the National Council of Chiefs.

23.The Chairman closed the morning session by requesting W. Lini, V. Boulekone and M. Tangarasi to meet to try to formulate a common proposal for article 2 of C7.

24.Break 11.30 - 14.15.

25.Minutes PV/41, PV/42, PV/43 and paper C7 (2) were distributed to members.

26.The Chairman explained that C7 (2) was the result of the meeting between W. Lini, M. Tangarasi and V. Boulekone.

27.A. MALERE and L. VATOU proposed that, rather than 3, the National Council of Chiefs should propose 4 candidates to Parliament. This would, they said, allow 1 candidate per district.

28.G. KALSAKAU and T. REUBEN suggested that the number of candidates be left open. D. KALPOKAS pointed out that this would allow the National Council of Chiefs to nominate one person only.

29.J.M. LEYE felt the District Councils of Chiefs, rather than the National Council of Chiefs, should make the nominations. With the Federal Party's proposal on Regionalization (18), he

said, Chiefs would have been able to participate in the Presidential election through their membership of the Regional Councils. The Committee, however, had paid no attention to paper A8.

30.T. TIPOLOAMATA spoke of the fact that, with C7 (2), the two non-elected chiefs would lose face. If the election was held within the National Council of Chiefs, however, this danger would not arise.

31. Reacting to this comment, W. LINI suggested that it would perhaps be better, in that case, for Parliament to elect the Head of State from within the National Council of Chiefs, without receiving nomination. He also felt it would be better for the election to be by consensus rather than by vote so as to avoid the danger of a nominee losing face.

32.L. VATOU commented on the role being given to Chiefs - he feared that they were being pushed aside whereas they should be given a clear and specific role, and be able to enjoy their power. He ended by saying his preference was for article 2 of C7.

33.J.M. LEYE emphasized the importance of making a correct decision on this issue. He believed it would be better to allow either a Chief or a non-chief to be Head of State; this person, however, should be elected by Parliament with the District Councils of Chiefs. This was not, he explained, a criticism of the Mal Fatu Mauri, but simply a consequence of the fact that certain districts and chiefs were not represented within the current national institution.

34.V. BOULEKONE criticized this attitude, saying a consensus had already been reached in favour of a National Council of Chiefs. He wished to know why Parliament should be made to work with regional institutions, when provision had been made for a representative national institution. He also wished the Federal Party to state clearly whether it accepted the agreement on the National Council of Chiefs.

35.J.M. LEYE replied that, in the future, he would be able to accept a national chiefly body. For the time being, however, and for the purposes of the election of the Head of State, he could not accept the Kai Fatu Mauri.

36.D. KALPOKAS remarked that the Mal Fatu Mauri was due for re-election in December 1979. Furthermore, he said, who could be sure whether District Councils of Chiefs would continue to exist.

37. Replying to W. Lini's proposal above, T. TIPOLOAMATA said it was acceptable if the Chiefs could meet in the National Council of Chiefs and decide on the names to be proposed to Parliament.

38.M. CARLOT made a general comment on the reluctance shown by the Committee to take decisions. The Committee, he said, should have the strength of its convictions, be willing to take decisions and be prepared to defend them before the public.

39. Following a request made by the Chairman that all approve C7 (2), G. PREVOT explained that the Federal Party wished the Head of State to be elected by Parliament and the Regional Councils. Only in this way could he enjoy sufficient stability to act effectively in times of crisis, D. KALPOKAS and T. REUBEN felt that article 3 of C7 provided the Head of State with sufficient guarantees against removability. V. BOULEKONE found G. Prevot's arguments unconvincing.

40.M. TANGARASI, in order to resolve the question of who should act in times of crisis, proposed

that an article 13 be added to C7:

“In the event of a political stalemate, or if Parliament is unable to form a Government or function for any reason, the President shall dissolve Parliament and call upon a former Member or any other person to form a caretaker government, and shall call for elections. Parliament may provide for a Committee to assist the President in the exercise of this right”.

41. After short discussion, during which G. PREVOT pointed out that the Federal Party had never proposed that the President should have the power to dissolve Parliament, the Chairman proposed that M. Tangarasi's proposal be discussed later, with Emergency Powers.

42. After further discussion on the Head of State, the Chairman concluded that no consensus had been reached on the method of election of the Head of State. The Chairman then requested all members to confirm whether they agreed to the Head of State being a Chief. J.M. LEYE replied that he was confused as he had, he explained, been the first to suggest that the Head of State be a Chief. Then, following comments from members that this would, by excluding women and non-chiefs, be undemocratic, he had withdrawn his proposal and suggested that the Head of State be a Chief or a non-chief. He was now being asked whether he agreed to the Head of State being a Chief.

43. After further discussion, it was decided that no consensus existed on whether or not the Head of State should be a Chief, with G. PREVOT stating that the Head of State should be elected by Parliament with the Regional Councils.

44. D. KALPOKAS and M. CARLOT commented on the lack of flexibility shown by the Federal Party. Unless all participants in the Committee came with open minds and a willingness to compromise, they said, the Constitution would never be completed.

45. Following a restatement by G. PREVOT of the Federal Party's insistence on the election of the Head of State by Parliament and the Regional Councils, V. BOULEKONE spoke vigorously on the fundamental differences that existed between C7 (2) and the Federal Party's proposals as contained in articles 34 and 35 of their draft Constitution.

46. W. LINI felt that, given the Federal Party's unwillingness to compromise and insistence on their Constitution, the only solution was for it to be recorded that all, except G. PREVOT and J.M. LEYE, agreed to C7 (2).

47. J.M. LEYE replied by saying that many of the problems being encountered were due to the fact that the Committee had failed to give sufficient attention to the Federal Party's proposals on decentralisation (paper A8). If these had been approved, he explained, and chiefs given a place on Regional Councils, it would have been possible to involve chiefs in the election of the Head of State through the Regional Councils and Parliament. J.M. Leye concluded by commenting that he felt C7 (2) to be a mixture - neither democratic, nor monarchic.

48. G. KALSAKAU remarked that, whilst the Federal Party was under criticism for producing a draft Constitution, no objections had been made against the Christian Council's submissions.

49. L. VATOU stated that Tabwemassana favoured article 2 of paper C7.

50. Before the closure of the meeting K. MATAS made the following proposal: “The Presidential candidates are nominated by an electoral college composed of the National Council of Chiefs and the Chairmen and Vice-Chairmen of the District Councils of Chiefs. This electoral college shall submit the names of no more than 3 chiefly nominees who are members of the National

Council of Chiefs or who are members of one of the District Councils of Chiefs, to the Parliament who shall elect one of the nominees to become Head of State.”

The meeting was closed at 5.15 p.m.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/45

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 11 SEPTEMBER 1979 : 8.30 a.m.

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

Invited: Professor YASH GHAI, J. ARIBAUD

Minutes: A. STANDLEY

1. The Chairman opened the meeting by welcoming Messrs Ghai and Aribaud. He requested the Committee to continue with the issue of the Head of State, and summarized the previous day's discussions.

2. K. MATAS, on behalf of the Vanuaaku Pati, said he had no strong preference between article 2 of C7, or C7 (2), though the latter was perhaps preferable in that it specified that the Head of State would be a Chief.

3. The Federal Party, J.M. LEYE said, could accept article 2 of C7, provided that it be amended so as to allow the Regional Councils to participate in the election of the Head of State. He approved of C7 in that it did not specify that the Head of State must be a Chief of the Federal Party felt that it was undesirable for a Chief to be Head of State if he was to have ceremonial powers only. New Hebridean Chiefs, he said, were not the result of a democratic system, but rather of a monarchic one.

4. M. BERNAST said Tabwemassena favoured article 2 of C7. In order to reach a compromise and to make the article acceptable to the Federal Party, he proposed the addition of a second paragraph to article 2.

"Parliament may by an Organic Law annexed to the Constitution, enlarge the electoral college by including the National Council of Chiefs and the Chairmen of the village institutions".

As an alternative, he proposed that the second paragraph read:

"Parliament may by an Organic Law annexed to the Constitution, enlarge the electoral college".

5. W. LINI felt that only a Custom Chief could be Head of State and represent unity in the New Hebrides. He went on to criticize the Federal Party's unwillingness to compromise and wished it to make clear its position on Chiefs did they really wish Chiefs to maintain all their traditional powers and, if so, how did they conceive the relationship between the Government and the Chiefs, he asked.

6.J.M. LEYE explained that he did not wish to see the powers of Chiefs reduced. It was for this reason that he felt it would be preferable for the Head of State - if he was to have ceremonial powers only - not to be, necessarily, a chief. If the Committee wished to pay real respect to Chiefs, then a Chief should be Head of State and have full powers. J. M. Leye repeated that there was little point in trying to combine democracy and custom: the two were not the same as the latter was essentially monarchic. He ended by commenting that the Federal Party's proposals on the participation of Chiefs in Regional Councils were contained in paper A8.

7.W. LINI commented that the Federal Party's views were now clearer to him - he understood that the Federal Party wished Chiefs to be active, and have power, at every level: from the village, to the island, district, regional, up to the national level: W. Lini felt this would lead to a direct confrontation between the Chiefs and the elected representatives of the people. He ended by saying that the idea of giving greater power to the Chiefs had resulted in the Mal Fatu Mauri representatives making new proposals concerning the National Council of Chiefs (R4 (2)).

8.J. NAUPA felt the Federal Party was being obstructive -he did not consider that Chiefs would find it dishonorable for a chief, who was Head of State, to have ceremonial powers only. He suggested that if no agreement could be reached, a record be made of those in favour of C7 (2) or C7, and those against. T. REUBEN considered that Parliament, being supreme, should appoint the Head of State.

9.J.M. LEYE repeated his position: if the Head of State was to have ceremonial, or honorific, powers only, then it should not be specified that he be a chief. It should be left open.

10.T.TIPOLOAMATA said that both positions were acceptable, though he pointed out that if the question of whether the Head of State was to be a chief or not was left open, chiefs would, for reasons of face, be unable to stand as candidates.

11.Following further discussion, J.M LEYE said he was willing to accept article 2 of C7, provided that the Regional Councils could participate in the Presidential election, V. BOULEKONE thought an agreement could be reached based on the proposal made the previous day by K. Matas (C7 (3)) he therefore urged the Committee to give it closer attention.

12.J. ARIBAUD and Prof. GHAI explained that the essential role of a Head of State was three-fold:

- 1./ To prevent the establishment of an authoritarian regime led by the Prime Minister, and therefore to have a balancing effect ;
- 2./ To play a role in times of crisis and in exceptional circumstances;
- 3./ To represent the nation.

For this to be possible, the Head of State required a certain moral authority, derived from his mode of election. It was thus important that his authority should not be -too great, (in which case he would clash with the Government) by having too great an electoral base; it was equally important that his authority should not be too little (which would render him ineffective) by having too narrow an electoral base.

13.Following further discussion during which D. KALPOKAS feared that to elect the Head of State by Parliament and the Regional Councils would lead to conflict with the Prime Minister, W. LINI proposed that the Head of State be elected by Parliament and the Chairmen and Vice Chairmen of the Regional Councils from among the members of the National Council of Chiefs. G. PREVOT rejected this, stating that it should be possible for either a Chief or a non-chief to be Head of State. He said there was no danger of the Head of State assuming too much authority if elected by Parliament and the Regional Councils, as his powers would be clearly defined

in the Constitution.

14.V. BOULEKONE spoke strongly against the Regional Councils participating in the election of the Head of State. Such a proposal, he said, would lead to Parliament being overwhelmed, numerically, by the members of the Regional Councils. It was, furthermore, undemocratic and not in accordance with the agreement reached that Parliament should be supreme. J. NAUPA and T. REUBEN added that it was by no means certain when Regional Councils would be established.

15. Break 11.45 - 14.15.

16. After lunch, Prof. GHAI made a proposal (C7 (4) designed to bridge the gap between the various factions within the Committee.

17.V. BOULEKONE felt such a proposal would force the Government to accelerate the creation of Regional Councils he preferred article 2 of C7. W. LINI stood by his belief that the Head of State should be a Chief. A. MALERE repeated the Federal Party view, explaining that it would provide a more stable President, better suited to act effectively in times of crisis.

18. After hearing the views of other members, the Chairman proposed that article 2 of C7 be approved and adopted.

19.K. MATAS felt that if article 2 of C7 was to be accepted, it should mention specifically that a chief could not be Head of State - this so as to avoid the "pollution" of custom.

20.G. PREVOT and J.M. LEYE indicated their acceptance of article 2 of C7, provided that the Regional Councils, with Parliament, elect the Head of State.

21. A number of speakers, including T. TUNGU, D. KALPOKAS and T. TIPOLOAMATA approved of the proposal made by K. MATAS, with T. Tipoloamata saying 'that Chiefs, when met together, were all equal : there was no question of superior or inferior chiefs. Chiefs, he said, could not contest an election with non-chiefs as they were never appointed themselves through an election.

22.G. KALSAKAU, J.M. LEYE and M. KALCHICHIHI disagreed with the proposal made by K. Matas as being undemocratic: chiefs, they said, should be able to stand in the Presidential election if they so wished.

23. After further discussion, Prof. GHAI felt that there seemed to be growing support again for article 2 of C7. Worried by the Committee's lack of progress, he suggested that one solution would be for it to be recorded that all agreed to article 2 of C7, with the exception of the Federal Party which wished to see the inclusion of the Regional Councils in the Presidential electoral college.

24. M. TANGARASI believed the Federal Party should be given more time to study the 07 (4) proposal. He, himself, proposed that the last sentence of C7 (4) be amended to read:

"Any indigenous New Hebridean citizen who is a Chief shall be eligible for election as President."

25. The Chairman expressed his opposition to the proposal that it be recorded that all, except the Federal Party, were agreed on article 2 of C7. Such a course of action would, he said, lead

to France and Britain being obliged to impose their decision on the New Hebrides.

26. Following a suggestion from W. LINI that the Federal Party should be able to accept C7 (4), G. PREVOT repeated that the Federal Party would require time to examine that document.

27. Break 16.15 - 16.40.

28. Commenting on C7 (4), G. KALSAKAU and M. TANGARASI felt that the chairmen of the Regional Councils should be Chiefs. J.M. LEYE agreed to this, saying that whether the Head of State should be a chief or not be left open.

29. A lengthy discussion followed on the question of Regionalization with J.M. LEYE expressing his fear that future governments could refuse to implement the provisions of the Constitution. Returning to the C7 (4) proposal, he said he could agree providing that it be specified that the Chairmen of the Regional Councils would be chiefs.

30. A number of speakers commented that this point could be covered in the legislation relating to the establishment of Regional Councils.

31. After further discussion, Prof. GHAI remarked that it would be extremely difficult for him to draft a new proposal until the Committee decided clearly whether or not it wished the Head of State to be a Chief.

32. W. LINI felt that the proposal that the Chairman of the Regional Councils be Chiefs, whereas the Head of the State would not necessarily be a Chief, was inconsistent. Chiefs, he said, should be involved throughout all the strata of New Hebridean institutions - from the village up to the Office of Head of State.

33. Replying to a proposal by the Chairman that C7 (4) be approved, K. MATAS said he felt the Head of State should be a Chief. M. TANGARASI believed that not to specify that the Head of State would be a chief, could lead to a rejection of the Constitution by the Chiefs.

34. In order to involve the Regional Councils in the Presidential elections, and to try to reach a compromise with the Federal Party stand, K. MATAS proposed that the Presidential electoral college be Parliament, the Chairmen and Vice-Chairmen of the Regional Councils, the Chairmen and Vice-Chairmen of the Regional Councils of Chiefs and the Chairman and Vice Chairman of the National Council of Chiefs. Only Chiefs, he proposed, would be eligible for election as President.

35. At the close of the meeting, J. ARIBAUD commented that the Committee was far from clear as to which proposal it favoured. He remarked that most democratic countries in the world did not impose conditions of eligibility for election to the Presidency. He granted, however, that this was perhaps difficult to reconcile with the fact that, to be effective, the Head of State needed, in the New Hebrides/to be respected in custom and tradition.

36. Prof. GHAI felt that, although it would be more democratic not to impose conditions of eligibility, the Committee could, if it wished, do so. Commenting on the proposal made by K. Matas, Prof. Ghai said it would greatly increase the Presidential electoral college, thereby increasing the President's electoral base and, consequently, his authority.

37. Closing the meeting, the Chairman informed the Committee that only one further hour, the

following day, would be devoted to the issue of the Head of State; a decision would then have to be taken.

38. The meeting was closed at 18.15.

NEW HEBRIDES GOVERNMENT OF NATIONAL UNITY

PV/46

CONSTITUTIONAL COMMITTEE

MINUTES OF MEETING HELD ON 11 SEPTEMBER 1979: 8.15 a.m.

Present G. LEYMANG (Chairman) W. LINI, G. PREVOT, D. KALPOKAS, J. NAUPA, T. REUBEN, A. MALERE, M. CARLOT, G. KALKOA, M. TANGARASI (for L. DINI), G. KALSAKAU, J.M. LEYE, F. TIMAKATA, RINGAO, J. NATUMAN, M. KALCHICHI (for S. REGENVAMU), T. TUNGU, G. MOLISA, K. MATAS, L. VATOU.

Observers: M. BERNAST (alternate for L. VATOU), T. TIPOLOAMATA (alternate for F. TIMAKATA).

Invited: Professor YASH GHAI, J. ARIBAUD

Minutes A. STANDLEY

1. Paper C7 (5) was distributed to members.

2. Following a request from the Chairman, M. BERNAST declared that, on the issue of the Head of State Tabwemassana preferred article 2 of C7, but could accept the C7 (4) draft.

3. K. MATAS, for the Vanuaaku Pati, stood by C7 (5), or C7 (4), provided the latter was amended to specify that the Head of State would be a Chief.

4. The Federal Parti, J.M. LEYE informed the Committee agreed to C7 (4) with the following amendments:

- The word "indigenous" was discriminatory and should be deleted;
- The electoral college would consist of Parliament, and the Chairman and eight members of each Regional Council;
- Until the Regional Councils were established, the Head of State would be: elected by an electoral college composed of Parliament and 4 Chiefs from each District.

5. Following a strong appeal from Prof. GHAI requesting all parties to accept C7 (4) as originally drafted, the Federal Party and Vanuaaku Pati agreed to the original C7 (4) draft. M. BERNAST and M. CARLOT also indicated their approval of this draft.

6. The Chairman concluded that an agreement had been reached on C7 (4) and requested the Committee to turn to the discussion of article 7 of paper J4, "Land".

7. L. VATOU, explained Tabwemassana's insistence on the inclusion of an article providing for special status for urban land. This status, he said should be declared in a law and based upon the decision of the customary owners of the urban land in question. A special status for towns was necessary to avoid the possibility of urban land being taken away from persons that had bought it fairly. The question of the payment of compensation to customary owners would be covered by the law.

8. K. MATAS considered that compromises had been made by all parties, except Tabwemassana, on Land, he therefore requested Tabwemassana to withdraw article 7 from J4. Such a provision

could, in the future, become irrelevant. Furthermore there was no reason to make such a clear out distinction between urban and rural land. K. Matas ended by saying that, under article 4, Parliament would be able to regulate the use of Land throughout the counter. D. KALPOKAS and G. KALKOA agreed with these comments, saying the expression "special status" was unclear.

9.G. KALSAKAU emphasized the importance of the urban areas and the high value of the land therein.

10. G. PREVOT agreed with Tabwemassana as to the need for article 7. Referring back to the previous discussion he said the powers of the Head of State remained to be discussed.

11. After further discussion, M. BERNAST proposed a new article 7 draft.

"An organic law shall define in accordance with the decision of the customary owners, the land law applicable to urban zones."

12. Replying to a question from the Chairman, Prof. YASH GHAI said he required more time for reflection before being able to say with assurance whether article 7 was in fact covered by articles 1 - 4. He felt, however that article 7 could be omitted and if the Committee so wished, article 4 could be amended slightly. He ended by saying that paper J4 would need to be revised as certain articles required redrafting.

13. K. MATAS proposed that article 7 be deleted and suggested a new draft for article 4 of J4 (see 34 (4)).

14. After more discussion, during which a number of speakers, spoke for and against article 7 of J4, Prof. YASH GHAI proposed a new draft for article 4 (see J4 (4)) which, he explained, allowed Parliament freedom of action in making different provisions for urban and non-urban land. He continued by saying that Parliament should not be tied down by the Constitution in matters of detail. In most countries, he said, it was understood that Parliament had the right to make special provisions for different kinds of land.

However, if because of the nature of the land problem in the New Hebrides, the Committee wished the Constitution to state specifically that Parliament has this power, article 4 of J4 could be amended accordingly.

15. After a short discussion on the new article 4 draft proposed by Professor Ghai, the Chairman closed the morning session by requesting M. Bernast and representatives of other groups to concert themselves with Prof. Ghai to prepare a draft article 4 that would be accepted by all.

16. Break for lunch: 11.30 - 14.15.

17. Paper J4 (5) was distributed.

18. After a short discussion, the Committee approved J4 (5). The Chairman summarized the final, approved, form of the chapter on land: Art. 1= Art. 2 of J4; Art. 2= Art. 1 of J4; Art. 3= Art. 3 of J4; Art. 4= J4(5); Arts. 5 and 6= Arts 5 and 6 of J4; Art. 7= article agreed in points 18 to 20 of PV/42; Art. 8= Art. 5 of J2; Art. 9= Art. 7 of J2.

19. The Committee then examined the Revision of the Constitution (paper F1), with introductory explanations of the French and British traditions in this matter from Messrs. GHAI and ARIBAUD, K. MATAS then summarized the previous discussions that had taken place on this issue (PV/30 and PV/35).

20.M. BERNAST said Tabwemassana approved F1, but with a referendum to be held on in the case of a revision concerning languages.

21.W.LINI explained that the only question to be resolved within the Committee was whether referendums should be held for revisions concerning languages, decentralisation and the elected system, or for languages only.

22.Following a question from F.TIMAKATA, the Chairman reminded the Committee of the decision to have 3 working languages: English, French and Bislama.

23.F.TIMAKATA expressed his opposition to referendums as being expensive and unsuited to the New Hebrides.

24.Prof. Ghai explained that he, too, was not keen on referendums in developing countries it was often very difficult to present issues clearly to the people for them to vote in a referendum.

Furthermore, referendums were costly to organize. J. Aribaud did not share this opinion, feeling that it was possible for an issue to be put clearly to the people by a referendum.

25.G.PREVOT went through the Federal Party proposal contained in articles 91-93 of the draft; Federal Party Constitution. He made a personal proposal that an article 94 be added to forbid any revision of the Constitution that would affect the republican nature of the New Hebrides.

26.The Committee then discussed the majority required in Parliament for a revision proposal to be adopted. Prof. GHAI warned against the danger of providing for too high a majority - this, he said, could make it impossible ever to amend the Constitution and could tempt future Governments to overlook this particular provision of the Constitution.

27.Commenting on G. Prevot's proposal to entrench Republicanism forever in the Constitution. M. BERNAST said such a decision would be unconstitutional, Prof. GHAI replied that, though such a provision would be unusual, it would be legal.

28.The discussion continued on the majority required in Parliament for a Revision, with several members, including M. BERNAST, K. Matas, W. Lini and G. Prevot, agreeing that it be a two thirds majority with a quorum of three quarters of the members of Parliament present.

29.It was found, however, that such a system would allow 50%, as opposed to a majority, of the members of Parliament to approve a Revision. This being felt undemocratic, two proposals were made by Prof. Ghai.

-Maintain a 2/3 majority with a quorum of 3/4, but insert a further section to state that under no circumstances could a revision proposal be approved by less than a majority of the total membership of Parliament;

- Provide for revision proposals to be approved only by a 2/3 majority of the total membership of Parliament.

30.A discussion followed on this, with the Vanuaaku Pati representatives preferring the second proposal made by Prof. Ghai : A. Malere felt a 3/4 majority of the total membership of Parliament would be better. M. Carlot and M. Tangarasi shared the Vanuaaku Pati's views. The Federal Party, as stated in article of their Constitution, proposed a 3/4 majority of the members of Parliament.

31. On the question of languages J.M. Leye agreed that in article 92 of the Federal Party Con-

31. On the question of languages J.M. Leye agreed that in article 92 of the Federal Party Constitution, bislama be included alongside French and English.

32. The Chairman, before closing the meeting, requested Prof. Ghai to draft a new proposal based on P1 and the Federal Party Constitution, and taking into account the Afternoon's discussions on the majority required in Parliament for a Revision of the Constitution. Re said he thought a rapid agreement would be reached the following day.

33. The meeting was closed at 5.00 p.m.