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OD(79) 42

COPY NO.

29 NOVEMBER 1979

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

NEW HEBRIDES INDEPENDENCE

Memorandum by the Secretary of State for Foreign and Commonwealth Affairs

1. The New Hebrides is an Anglo-French Condominium in the South Pacific established by a Protocol of 1914. A conference to provide for the constitution of an independent New Hebrides took place in Vila, the capital, from 17 to 19 September 1979 under the joint chairmanship of Mr Blaker, Minister of State at the Foreign and Commonwealth Office, and M. Dijoud, the French Secretary of State for Overseas Departments and Territories. A constitution was agreed under which the New Hebrides would become independent in 1980. The Constitution has been formally adopted, and the decision to grant independence in 1980 confirmed, by an Exchange of Notes between Her Majesty's Government and the Government of France signed in Paris on 23 October 1979. The Exchange of Notes, to which the constitution is annexed, will be published in due course as a Command Paper; but as it will not be available in that form for some time, a copy of the original document is attached.

2. The date of independence will be decided after discussions with the New Hebrides Government, formed following a General Election held in the territory on 14 November 1979. General agreement may be reached that independence should occur on a date during April or May 1980. Discussions on aid provisions after independence are expected to take place between Her Majesty's Government and the New Hebrides Government in early 1980.

/ 3. The

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3. The New Hebrides, which has a population of about 112,000, will be a Republic with an elected President as Head of State. It will have a unicameral legislature, and a Cabinet responsible to it headed by a Prime Minister. The Constitution also provides for the protection of fundamental rights and freedoms of the individual, citizenship, the judicature and the public service. It is probable that the New Hebrides, where the Anglophone Vanuaaku Party has just emerged as clear winner in the elections, will seek membership of the Commonwealth; though no decision has yet been taken.

4. The New Hebrides economy and development will depend for the foreseeable future on outside help. In addition to Britain and France, it receives aid from the European Development Fund, Australia and New Zealand.

5. The New Hebrides Condominium is not part of Her Majesty's dominions. It is a territory in which Her Majesty exercises jurisdiction to the extent provided in the 1914 Protocol and related agreements with France concerning the New Hebrides. The Protocol and related agreements will be terminated and the territory will receive independence by virtue of the provisions of the Exchange of Notes of 23 October 1979.

6. Legislation is not necessary to grant independence to the New Hebrides. However, assuming the New Hebrides decide to apply for, and subsequently join, the Commonwealth, legislation will be required to provide for the consequential modification of certain UK enactments in order to place the country on the same footing as other members of the Commonwealth in UK law. The opportunity would also be taken to make provision in respect of any appeals to the Privy Council that may be pending at independence and which originated in the New Hebrides.

7. On the assumption that the New Hebrides will join the Commonwealth on independence, I invite my colleagues to agree that legislation to provide for the requirements in paragraph 6 of this memorandum should be introduced in Parliament in the current Session.

8. Unless I hear to the contrary by 10 December, I shall assume agreement.

Foreign and Commonwealth Office
29 November 1979

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BRITISH EMBASSY,
PARIS.

23 October 1979

The Minister for Foreign Affairs of the French Republic
Paris

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter of today which reads as follows:

"Your Excellency,

I have the honour to refer to the Constitutional Conference held in the New Hebrides on 18 and 19 September 1979 attended by representatives of our two Governments, the New Hebrides Government and other representatives of the people of the New Hebrides, at which it was decided that the New Hebrides should become a sovereign and independent State in 1980 under the Constitution set out in the Annex to this Note. It is the understanding of my Government that in order to give effect to this decision, subject to the enactment of the necessary legislation, an Agreement has been reached between our two Governments in the following terms:

- (A) With effect from a date in 1980 to be determined (hereinafter referred to as "Independence Day") the New Hebrides shall be a sovereign and independent State.
- (B) The Constitution set out in the Annex to this Note shall be the Constitution of the sovereign and independent State of the New Hebrides, which shall come into effect on Independence Day except that Articles 85, 91 and 94 shall come into effect forthwith.
- (C) With effect from Independence Day, the Protocol respecting the New Hebrides signed at London on 6 August 1914, together with all other agreements between the Governments of the United Kingdom of Great Britain and Northern Ireland and the Republic of France modifying or supplementing that Protocol, shall terminate.

If the foregoing also represents the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland as to the terms of the Agreement that our two Governments have reached, I have the honour to propose that this Note and your reply to that effect shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply."

In reply I have the honour to inform you that the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland which approves the suggestion of Your Excellency that your Note and the present reply constitute an agreement between the two Governments which shall enter into force this day.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

REGINALD HIBBERT

CONSTITUTION OF THE
REPUBLIC OF THE NEW HEBRIDES

PREAMBLE

WE the people of the New Hebrides,

PROUD of our struggle for freedom,

DETERMINED to safeguard the achievements of this struggle,

CHERISHING our ethnic, linguistic and cultural diversity,

MINDFUL at the same time of our common destiny,

HEREBY proclaim the establishment of the united and free Republic of the New Hebrides founded on traditional Melanesian values, faith in God, and Christian principles,

AND for this purpose give ourselves this Constitution.

CHAPTER 1

THE STATE AND SOVEREIGNTY

- Republic of the New Hebrides.
1. The Republic of the New Hebrides is a sovereign democratic state.
- Constitution Supreme Law.
2. The Constitution is the supreme law of the New Hebrides.
- National and official languages.
3. (1) The national language of the Republic is Bislama. The official languages are Bislama, English and French. The principal languages of education are English and French.
- (2) The Republic shall protect the different local languages which are part of the national heritage, and may declare one of them as a national language.
- National sovereignty, the electoral franchise and political parties.
4. (1) National sovereignty belongs to the New Hebridean people which they exercise through their elected representatives.
- (2) The franchise is universal, equal and secret. Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of the New Hebrides who is at least 18 years of age shall be entitled to vote.
- (3) Political parties may be formed freely and may contest elections. They shall respect the Constitution and the principles of democracy.

CHAPTER 2

FUNDAMENTAL RIGHTS AND DUTIES

PART 1 - Fundamental Rights

Fundamental rights and freedoms of the individual.

5. (1) The Republic of the New Hebrides recognises that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health :-
- (a) life;
 - (b) liberty;
 - (c) security of the person;
 - (d) protection of the law;
 - (e) freedom from inhuman treatment and forced labour;
 - (f) freedom of conscience and worship;
 - (g) freedom of expression;
 - (h) freedom of assembly and association;
 - (i) freedom of movement;
 - (j) protection for the privacy of the home and other property and from unjust deprivation of property;
 - (k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.

(2) Protection of the law shall include the following :-

- (a) everyone charged with an offence shall have a fair hearing, within a reasonable time, by an independent and impartial court and be afforded a lawyer if it is a serious offence;
- (b) everyone is presumed innocent until a court establishes his guilt according to law;
- (c) everyone charged shall be informed promptly in a language he understands of the offence with which he is being charged;
- (d) if an accused does not understand the language to be used in the proceedings he shall be provided with an interpreter throughout the proceedings;
- (e) a person shall not be tried in his absence without his consent unless he makes it impossible for the court to proceed in his presence;
- (f) no-one shall be convicted in respect of an act or omission which did not constitute an offence known to written or custom law at the time it was committed;
- (g) no-one shall be punished with a greater penalty than that which exists at the time of the commission of the offence;
- (h) no person who has been pardoned, or tried and convicted or acquitted, shall be tried again for the same offence or any other offence of which he could have been convicted at his trial.

Enforcement
of funda-
mental rights.

6. (1) Anyone who considers that any of the rights guaranteed to him by the Constitution has been, is being or is likely to be infringed may, independently of any other possible legal remedy, apply to the Supreme Court to enforce that right.

(2) The Supreme Court may make such orders, issue such writs and give such directions, including the payment of compensation, as it considers appropriate to enforce the right.

PART 2 - Fundamental Duties

Fundamental
duties.

7.

Every person has the following fundamental duties to himself and his descendants and to others :-

- (a) to respect and to act in the spirit of the Constitution;
- (b) to recognise that he can fully develop his abilities and advance his true interests only by active participation in the development of the national community;
- (c) to exercise the rights guaranteed or conferred by the Constitution and to use the opportunities made available to him under it to participate fully in the government of the Republic;
- (d) to protect the New Hebrides and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations;
- (e) to work according to his talents in socially useful employment and, if necessary, to create for himself legitimate opportunities for such employment;
- (f) to respect the rights and freedoms of others and to cooperate fully with others in the interests of interdependence and solidarity;
- (g) to contribute, as required by law, according to his means, to the revenues required for the advancement of the Republic and the attainment of national objectives;
- (h) in the case of a parent, to support, assist and educate all his children, legitimate and illegitimate, and in particular to give them a true understanding of their fundamental rights and duties and of the national objectives and of the culture and customs of the people of the New Hebrides;

Fundamental
duties non-
justiciable
but public
authorities
to encourage
compliance.

(i) in the case of a child, to respect his
parents.

8. Except as provided by law, the fundamental duties
are non-justiciable. Nevertheless it is the duty
of all public authorities to encourage compliance
with them so far as lies within their respective
powers.

CHAPTER 3

CITIZENSHIP

Automatic
citizens.

9.

On the day of Independence the following persons shall
automatically become citizens of the New Hebrides :-

- (a) a person who has or had 4 grandparents who belong
to a tribe or community indigenous to the
New Hebrides; and
(b) a person of New Hebridean ancestry who has no
citizenship, nationality or the status of an
optant.

Entitle-
ment to
citizenship.

10.

Every person who on the day of Independence is a person
of New Hebridean ancestry and has the nationality or
citizenship of a foreign state or the status of an
optant shall become a citizen of the New Hebrides
if he makes an application, or an application is made
on his behalf by his parent or lawful guardian, within
3 months of the day of Independence or such longer
period as Parliament may prescribe. The New Hebrides
citizenship of such a person shall automatically lapse
if he has not renounced his other citizenship or
nationality within 3 months of the granting of New
Hebridean citizenship or such longer period as Parliament
may prescribe, except that in the case of a person under
the age of 18 years the period of renunciation shall be
3 months after he has reached the age of 18 years.

Persons
born after
day of
Independ-
ence.

11.

Anyone born after the day of Independence, whether in
the New Hebrides or abroad, shall become a citizen of
the New Hebrides if at least one of his parents is a
citizen of the New Hebrides.

Natural-
isation.

12.

A national of a foreign state or a stateless person may
apply to be naturalised as a citizen of the New Hebrides
if he has lived continuously in the New Hebrides for at
least 10 years immediately before the date of the
application.

Parliament may proscribe further conditions of the eligibility to apply for naturalisation and shall provide for the machinery to review and decide on applications for naturalisation.

Avoidance of dual nationality. 13. The Republic of the New Hebrides does not recognise dual nationality. Any citizen of the New Hebrides who is or becomes a citizen of another state shall cease to be a citizen of the New Hebrides unless he renounces that other citizenship within 3 months of acquiring New Hebridean citizenship or that other citizenship, as the case may be, or such longer period as Parliament may prescribe, except that in the case of a person under the age of 18 years the period of renunciation shall be 3 months after he has reached the age of 18 years.

Further provision for citizenship. 14. Parliament may make provision for the acquisition of citizenship of the New Hebrides by persons not covered in the preceding Articles of this Chapter and may make provision for the deprivation and renunciation of citizenship of the New Hebrides.

CHAPTER 4

PARLIAMENT

Parliament. 15. The Legislature shall consist of a single chamber which shall be known as Parliament.

Power to make laws. 16. (1) Parliament may make laws for the peace, order and good government of the New Hebrides.
(2) Parliament shall make laws by passing bills introduced either by one or more members or by the Prime Minister or a Minister.
(3) When a bill has been passed by Parliament it shall be presented to the President of the Republic who shall assent to it within 2 weeks.
(4) If the President considers that the bill is inconsistent with a provision of the Constitution, he shall refer it to the Supreme Court for its opinion. The bill shall not be promulgated if the Supreme Court considers it inconsistent with a provision of the Constitution.

Election of members of Parliament. 17. (1) Parliament shall consist of members elected on the basis of universal franchise through an electoral system which includes an element of proportional representation so as to ensure fair representation of different political groups and opinions.
(2) Subject to such conditions or restrictions as may be prescribed by Parliament, every citizen of the New Hebrides who is at least 25 years of age shall be eligible to stand for election to Parliament.

Electoral Commission. 18. (1) The general responsibility for the registration of voters and the conduct of elections to Parliament, the National Council of Chiefs and the Regional Councils shall vest in an Electoral Commission.

- (2) A proposal for any law concerning the registration of voters or the election of members shall be referred to the Electoral Commission for advice before Parliament decides on it.
- (3) The Electoral Commission shall consist of the Speaker of Parliament, as Chairman, and two members appointed by the President of the Republic on the advice of the Judicial Service Commission from among persons who are not members of or candidates for election to Parliament, the National Council of Chiefs or Regional Councils.
- (4) A person shall cease to be a member of the Electoral Commission if circumstances arise that, if he were not a member, would disqualify him for appointment as such.
- (5) The Electoral Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.

Procedure of Parliament

19. (1) Parliament shall meet twice a year in ordinary session.
- (2) Parliament may meet in extraordinary session at the request of the majority of its members, the Speaker or the Prime Minister.
- (3) Unless otherwise provided in the Constitution, Parliament shall make its decisions by public vote by a simple majority of the members voting.
- (4) Unless otherwise provided in the Constitution, the quorum shall be two thirds of the members of Parliament. If there is no such quorum at the first sitting in any session Parliament shall meet three days later, and a simple majority of members shall then constitute a quorum.
- (5) Parliament shall make its own rules of procedure.

Speaker and Deputy Speakers.

20. (1) At its first sitting after any general election Parliament shall elect a Speaker and one or more Deputy Speakers.
- (2) The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order.
- (3) The functions of Speaker may be exercised by a Deputy Speaker.

- Committees. 21. Parliament may establish committees and appoint members to them.
- Proceedings to be public. 22. Unless otherwise provided proceedings of Parliament shall be held in public.
- Public Finance. 23. (1) Every year the Government shall present a bill for a budget to Parliament for its approval.
(2) No taxation shall be imposed or altered and no expenditure of public funds shall be incurred except by or under a law passed by Parliament.
(3) No motion for the levying or increase of taxation or for the expenditure of public funds shall be introduced unless it is supported by the Government.
(4) Parliament shall provide for the office of Auditor-General, who shall be appointed by the Public Service Commission on its own initiative.
(5) The function of the Auditor-General shall be to audit and report to Parliament and the Government on the public accounts of the New Hebrides.
(6) The Auditor-General shall not be subject to the direction or control of any other person or body in the exercise of his functions.
- Ratification of treaties. 24. Treaties negotiated by the Government shall be presented to Parliament for ratification when they:-
(a) concern international organisations, peace or trade;
(b) commit the expenditure of public funds;
(c) affect the status of people;
(d) require amendment of the laws of the New Hebrides; or
(e) provide for the transfer, exchange or annexing of territory.
- Privileges of members. 25. (1) No member of Parliament may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in Parliament in the exercise of his office.

- (2) No member may, during a session of Parliament or of one of its Committees, be arrested or prosecuted for any offence, except with the authorisation of Parliament in exceptional circumstances.

Life of Parliament.

26. (1) Parliament, unless sooner dissolved under paragraph (2) or (3), shall continue for 4 years from the date of its election.
- (2) Parliament may at any time decide, by resolution supported by the votes of an absolute majority of the members at a special sitting when at least three-fourths of the members are present, to dissolve Parliament. At least one week's notice of such a motion shall be given to the Speaker before the debate and the vote on it.
- (3) The President of the Republic may, on the advice of the Council of Ministers, dissolve Parliament.
- (4) General elections shall be held not earlier than 30 days and not later than 60 days after any dissolution.
- (5) There shall be no dissolution of Parliament within 12 months of the general elections following a dissolution under paragraph (2) or (3).

CHAPTER 5.

NATIONAL COUNCIL OF CHIEFS

- National Council of Chiefs. 27. (1) The National Council of Chiefs shall be composed of custom chiefs elected by their peers sitting in District Councils of Chiefs.
- (2) The Council shall make its own rules of procedure.
- (3) The Council shall hold at least one meeting a year. Further meetings may be held at the request of the Council, Parliament, or the Government.
- (4) During the first sitting following its election the Council shall elect its President.
- Functions of Council. 28. (1) The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations to Parliament or the Government for the preservation and promotion of New Hebridean culture and languages.
- (2) The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.
- Organisation of Council and role of Chiefs. 29. Parliament shall by law provide for the organisation of the National Council of Chiefs and in particular for the role of chiefs at the village, island and district level.
- Privileges of Members of Council. 30. (1) No member of the National Council of Chiefs may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in the Council in the exercise of his office.
- (2) No member may, during a session of the Council or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of the Council in exceptional circumstances.

CHAPTER 6

HEAD OF STATE

- President of the Republic. 31. The head of the Republic shall be known as the President and shall symbolise the unity of the nation.
- Election of President. 32. The President of the Republic shall be elected, in accordance with Schedule 1, by secret ballot by an electoral college consisting of Parliament and the Presidents of the Regional Councils.
- Qualifications for election as President. 33. Any indigenous New Hebridean citizen qualified to be elected to Parliament shall be eligible for election as President of the Republic.
- Term of office and removal of President. 34. (1) The term of office of the President of the Republic shall be 5 years.
- (2) The President of the Republic may be removed from office, only for gross misconduct or incapacity, by the electoral college provided for in Article 32 on a motion introduced by at least one-third of the members of the college and passed by at least two-thirds of its members when at least three-fourths of its members, including at least three-fourths of the Presidents of the Regional Councils, are present.
- (3) At least two weeks notice of the motion provided for in paragraph (2) shall be given to the Speaker.
- (4) If there is no quorum at the first sitting as provided in paragraph (2), the electoral college may meet and vote on the motion provided for in paragraph (2) a week later even if there is only a quorum of two-thirds of the members of the college.

Speaker
to act
as
President.

35.

When there is a vacancy in the office of the President of the Republic or the President is overseas or incapacitated, the Speaker of Parliament shall perform the functions of the President. In the event of a vacancy in the office of the President of the Republic, elections to that office shall be held within 3 weeks of the vacancy arising.

Presidential
powers of
pardon,
commutation
and reduction
of
sentences.

36.

The President of the Republic may pardon, commute or reduce a sentence imposed on a person convicted of an offence. Parliament may provide for a committee to advise the President in the exercise of this function.

CHAPTER 7

THE EXECUTIVE

Executive
Power.

37. (1) The executive power of the people of the Republic is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law.

(2) The Prime Minister shall keep the President of the Republic fully informed concerning the general conduct of the government of the Republic.

(3) The President of the Republic may refer to the Supreme Court any regulation which he considers to be inconsistent with the Constitution.

Council of
Ministers.

38. (1) There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers.

(2) The number of Ministers, including the Prime Minister, shall not exceed a quarter of the number of members of Parliament.

Election of
Prime Minister.

39. The Prime Minister shall be elected by Parliament from among its members by secret ballot in accordance with the rules in Schedule 2.

Appointment
and removal
of other Ministers.

40. (1) The Prime Minister shall appoint the other Ministers from among the members of Parliament and may designate one of them as Deputy Prime Minister.

(2) The Prime Minister shall assign responsibilities for the conduct of government to the Ministers.

(3) The Prime Minister may remove the Ministers from office.

Collective
responsibility
of Ministers and
Votes of no
confidence.

41. (1) The Council of Ministers shall be collectively responsible to Parliament.
- (2) Parliament may pass a motion of no confidence in the Prime Minister. At least one week's notice of such a motion shall be given to the Speaker and the motion must be signed by one sixth of the members of Parliament. If it is supported by an absolute majority of the members of Parliament, the Prime Minister and other Ministers shall cease to hold office forthwith but shall continue to exercise their functions until a new Prime Minister is elected.

Termination
of office of
Ministers.

42. The Council of Ministers shall cease to hold office whenever the Prime Minister resigns or dies but shall continue to exercise their functions until a new Prime Minister is elected. In the case of the death of the Prime Minister, the Deputy Prime Minister, or if there is no Deputy Prime Minister a Minister appointed by the President of the Republic, shall act as Prime Minister until a new Prime Minister is elected.

Other times
when a
Minister ceases
to hold office.

43. A Minister, including the Prime Minister, shall also cease to hold office :-
- (a) when, after a general election, Parliament meets to elect a new Prime Minister;
- (b) if he ceases to be a member of Parliament for any reason other than a dissolution of Parliament; or
- (c) if he is elected as President of the Republic or as Speaker of Parliament.

Ministers
to remain members
of Parliament.

44. Members of Parliament who are appointed Ministers shall retain their membership of Parliament.

CHAPTER 8

JUSTICE

The
Judiciary.

45. (1) The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law. If there is no rule of law applicable to a matter before it, a court shall determine the matter according to substantial justice and whenever possible in conformity with custom.
- (2) ~~With the exception of~~ ^{Except} the Chief Justice and other judges of the Supreme Court, members of the judiciary shall be appointed by the President of the Republic on the advice of the Judicial Service Commission.
- (3) All members of the judiciary shall hold office until they reach the age of retirement. They shall only be removed from office by the President of the Republic in the event of :-
- (a) conviction and sentence on a criminal charge; or
- (b) a determination by the Judicial Service Commission of gross misconduct, incapacity or professional incompetence.
- (4) The promotion and transfer of members of the judiciary may only be made by the President of the Republic on the advice of the Judicial Service Commission.

The Judicial
Service
Commission.

46. (1) The Judicial Service Commission shall consist of the Minister responsible for justice, as Chairman, the Chief Justice, the President of the Public Service Commission, a judge appointed for three years by the President of the Republic, and a representative of the National Council of Chiefs appointed by the Council.
- (2) The Judicial Service Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.

The Supreme
Court, the
Chief Justice
and other
judges.

47. (1) The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings, and such other jurisdiction and powers as may be conferred on it by the Constitution or by law.

- (2) The Supreme Court shall consist of a Chief Justice and three other judges.
- (3) The Chief Justice shall be appointed by the President of the Republic after consultation with the Prime Minister and the leader of the opposition.
- (4) The other judges shall be appointed by the President of the Republic, one being nominated by the Speaker of Parliament, one being nominated by the President of the National Council of Chiefs, and one being nominated by the Presidents of the Regional Councils.
- (5) A person shall not be qualified for appointment as Chief Justice or other judge of the Supreme Court unless he is qualified to practise as a lawyer in the New Hebrides.

Appeals from Supreme Court to Court of Appeal.

48.

Parliament shall provide for appeals from the original jurisdiction of the Supreme Court and may provide for appeals from such appellate jurisdiction as it may have to a Court of Appeal which shall be constituted by two or more judges of the Supreme Court sitting together.

Ascertainment of Rules of Custom.

49.

Parliament may provide for the manner of the ascertainment of relevant rules of custom, and may in particular provide for persons knowledgeable in custom to sit with the judges of the Supreme Court or the Court of Appeal and take part in its proceedings.

Village and island courts.

50.

Parliament shall provide for the establishment of village or island courts with jurisdiction over customary and other matters and shall provide for the role of chiefs in such courts.

Application to Supreme Court regarding infringements of Constitution.

51.

- (1) Anyone who considers that a provision of the Constitution has been infringed in relation to him may, without prejudice to any other legal remedy available to him, apply to the Supreme Court for redress.
- (2) The Supreme Court has jurisdiction to determine the matter and to make such order as it considers appropriate to enforce the provisions of the Constitution.

- (3) When a question concerning the interpretation of the Constitution arises before a subordinate court, and the court considers that the question concerns a fundamental point of law, the court shall submit the question to the Supreme Court for its determination.

Election disputes.

52.

The jurisdiction to hear and determine any question as to whether a person has been validly elected as a member of Parliament, the National Council of Chiefs, and a Regional Council or whether he has vacated his seat or has become disqualified to hold it shall vest in the Supreme Court.

Public Prosecutor.

53.

The function of prosecution shall vest in the Public Prosecutor, who shall be appointed by the President of the Republic on the advice of the Judicial Service Commission. He shall not be subject to the direction or control of any other person or body in the exercise of his functions.

Public Solicitor.

54.

Parliament shall provide for the office of the Public Solicitor, appointed by the President of the Republic on the advice of the Judicial Service Commission, whose function shall be to provide legal assistance to needy persons.

CHAPTER 9

ADMINISTRATION

PART 1 - The Public Service.

Public servants.

55. (1) Public servants owe their allegiance to the Constitution and to the people of the New Hebrides.
- (2) Only citizens of the New Hebrides shall be appointed to public office. The Public Service Commission shall determine other qualifications for appointment to the Public Service.
- (3) No appointment shall be made to a post that has not been created in accordance with a law.
- (4) The Prime Minister or the President of a Regional Council may, exceptionally, make provision for the recruitment of staff for a specified period to meet unforeseen needs.

In urgent cases, the Public Service Commission may, after consulting the Ministers responsible for finance and public administration, make such a decision instead of the Prime Minister.

- (5) For as long as their posts exist, public servants shall not be removed from their posts except in accordance with the Constitution.
- (6) Public servants shall be given increments in their salary in accordance with the law.
- (7) Public servants shall leave the Public Service upon reaching retirement age or upon being dismissed by the Public Service Commission. They shall not be demoted without consultation with the Public Service Commission.
- (8) The security of tenure of public servants provided for in paragraph (5) shall not prevent such compulsory early retirement as may be decided by law in order to ensure the renewal of holders of public offices.

Exclusion of security of tenure in relation to political advisors and transfer of public servants.

56. (1) The rule of security of tenure provided for in Article 55 (5) shall not apply to the personal political advisors of the Prime Minister and Ministers.

- (2) Senior public servants in Ministries may be transferred by the Prime Minister to other posts of equivalent rank.

Membership of Public Service Commission.

57. (1) The Public Service Commission shall be composed of five members appointed for three years by the President of the Republic after consultation with the Prime Minister.
- (2) The President of the Republic shall appoint every year, from among the members of the Commission, a Chairman who shall be responsible for organising its proceedings.
- (3) A person shall be disqualified for appointment as a member of the Commission if he is a member of Parliament, the National Council of Chiefs or a Regional Council or if he exercises a position of responsibility within a political party.
- (4) A person shall cease to be a member of the Commission if circumstances arise that, if he were not a member, would disqualify him for appointment as such.

Functions of Public Service Commission.

58. (1) The Public Service Commission shall be responsible for the appointment and promotion of public servants, and the selection of those to undergo training courses in the New Hebrides or overseas. For such purposes it may organise competitive examinations.
- (2) The Commission shall also be responsible for the discipline of public servants.
- (3) The Commission shall have no authority over the members of the judiciary, the armed forces, the police and the teaching services.
- (4) The Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.

PART 2 - The Ombudsman

Ombudsman.

59. (1) The Ombudsman shall be appointed, for five years, by the President of the Republic after consultation with the Prime Minister, the Speaker of Parliament, the leaders of the political parties represented in Parliament, the President of the National Council of Chiefs, the Presidents of the Regional Councils, and the Chairmen of the Public Service Commission and the Judicial Service Commission.
- (2) A person shall be disqualified for appointment as Ombudsman if he is a member of Parliament, the National Council of Chiefs or a Regional Council, if he holds any other public office, or if he exercises a position of responsibility within a political party.
- (3) A person shall cease to be Ombudsman if circumstances arise that, if he were not the Ombudsman, would disqualify him for appointment as such.

Enquiries by Ombudsman.

60. (1) The Ombudsman may enquire into the conduct of any person or body to which this Article applies :-
- (a) upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;
- (b) at the request of a Minister, a member of Parliament, of the National Council of Chiefs or of a Regional Council;
- or
- (c) of his own initiative.
- (2) This Article shall apply to all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.
- (3) The Ombudsman may request any Minister, public servant, administrator, authority concerned or any person likely to assist him, to furnish him with information and documents needed for his enquiry.

Findings of
Ombudsman
and reports.

- (4) The Ombudsman shall grant the person or body complained of an opportunity to reply to the complaints made against them.
- (5) The enquiries of the Ombudsman shall be conducted in private.
61. (1) Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the Prime Minister and the head of the public department or authority concerned.
- (2) Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings to the Prime Minister and to the head of the public authority or department directly concerned.
- (3) The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the Prime Minister and the person in charge of the relevant public service, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.
- (4) The Prime Minister or the person in charge of the relevant public service shall decide upon the findings of the Ombudsman within a reasonable time and the decision, with reasons, shall be given to the complainant forthwith. Any period limiting the time in which legal proceedings may be commenced shall not begin to run until the complainant has received the decision.
- (5) The Ombudsman shall present a general report to Parliament each year and may make such additional reports as he considers necessary concerning the discharge of his functions and action taken on his findings. He may draw the attention of Parliament to any defects which appear to him to exist in the administration.

Right of a
citizen to
services in
own language.

62. (1) A citizen of the New Hebrides may obtain, in the official language that he uses, the services which he may rightfully expect from the Republic's administration.
- (2) Where a citizen considers that there has been a breach of paragraph (1) he may make a complaint to the Ombudsman who shall conduct an enquiry in accordance with Articles 60 and 61.
- (3) The Ombudsman shall, each year, make a special report to Parliament concerning the observance of multilingualism and the measures likely to ensure its respect.
63. The Ombudsman shall not be subject to the direction or control of any other person or body in the exercise of his functions.

Ombudsman not
subject to
direction or
control.

CHAPTER 10.

LEADERSHIP CODE

Conduct of
leaders.

64. (1) Any person defined as a leader in Article 65 has a duty to conduct himself in such a way, both in his public and private life, so as not to :-
- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
 - (b) demean his office or position;
 - (c) allow his integrity to be called into question; or
 - (d) endanger or diminish respect for and confidence in the integrity of the Government of the New Hebrides.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by paragraph (1).

Definition of
a leader.

65. For the purpose of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be proscribed by law.

Parliament to
give effect to
this Chapter.

66. Parliament shall by law give effect to the principles of this Chapter.

CHAPTER 11.

EMERGENCY POWERS

- Emergency regulations. 67. The Council of Ministers may make regulations for dealing with a public emergency whenever :-
- (a) the Republic is at war; or
 - (b) the President of the Republic acting on the advice of the Council of Ministers declares a state of emergency by reason of natural calamity or to prevent a threat to or to restore public order.
- Period of and renewals of state of emergency. 68. (1) When Parliament is in session a state of emergency declared under Article 67 shall cease to have effect at the end of one week unless approved by a resolution of Parliament supported by two-thirds of its members.
- (2) When Parliament is not in session a state of emergency shall cease to have effect at the end of 2 weeks.
- (3) Where a resolution has been passed in accordance with paragraph (1) the state of emergency approved by it shall remain in force for the period authorised by the resolution except that no such resolution may authorise a state of emergency for more than 3 months at one time.
- (4) Parliament may meet whenever it decides during a state of emergency.
- (5) Parliament may not be dissolved under Article 26 (2) or (3) during a state of emergency. If the life of a Parliament ends in accordance with Article 26 (1) during a state of emergency the former members of that Parliament may meet for the purpose only of considering the state of emergency until the new Parliament first meets.
- (6) Parliament may at any time terminate a state of emergency by a resolution supported by an absolute majority of its members.

Effect of
emergency
regulations.

69. (1) Subject to paragraph (2) regulations made by the Council of Ministers in accordance with Article 67 shall have effect notwithstanding the provisions of Chapter 2, Part 1 except that no regulation shall :-
- (a) derogate from the right to life and the freedom from inhuman treatment and forced labour; and
 - (b) make provision for the detention of a person without trial for more than one month unless such person is an enemy alien.
- (2) Regulations made by the Council of Ministers in accordance with Article 67 shall be such as are reasonably necessary in the circumstances of the emergency to which they relate and as are justifiable in a democratic society.

Complaints to
Supreme Court
concerning
emergency
regulations.

70. Any citizen aggrieved by reason of regulations made by the Council of Ministers in accordance with Article 67 may complain to the Supreme Court which shall have jurisdiction to determine the validity of all or any of such regulations.

CHAPTER 12.

LAND.

- Land belongs to custom owners. 71. All land in the Republic belongs to the indigenous custom owners and their descendants.
- Basis of ownership and use. 72. The rules of custom shall form the basis of ownership and use of land in the Republic.
- Perpetual ownership. 73. Only indigenous citizens of the Republic who have acquired their land in accordance with a recognised system of land tenure shall have perpetual ownership of their land.
- National land law. 74. Parliament, after consultation with the National Council of Chiefs, shall provide for the implementation of Articles 71, 72 and 73 in a national land law and may make different provision for different categories of land, one of which shall be urban land.
- Compensation. 75. Parliament shall prescribe such criteria for the assessment of compensation and the manner of its payment as it deems appropriate to persons whose interests are adversely affected by legislation under this Chapter.
- Disputes. 76. (1) Where consequent on the provisions of this Chapter, there is a dispute concerning the ownership of alienated land the Government shall hold such land until the dispute is resolved.
- (2) The Government shall arrange for the appropriate customary institutions or procedures to resolve disputes concerning the ownership of custom land.
- Land transactions. 77. (1) Notwithstanding Articles 71, 72 and 73 land transactions between an indigenous citizen and either a non-indigenous citizen or a non-citizen shall only be permitted with the consent of the Government.

(2) The consent required under paragraph (1) shall be given unless the transaction is prejudicial to the interests of :-

- (a) the custom owner or owners of the land;
- (b) the indigonus citizen where he is not the custom owner;
- (c) the community in whose locality the land is situated;
- or
- (d) the Republic.

Government may own land. 78. Notwithstanding Articles 71 and 72 the Government may own land acquired by it in the public interest.

Redistribution of land. 79. (1) Notwithstanding Articles 71 and 72 the Government may buy land from custom owners for the purpose of transferring ownership of it to indigonus citizens or indigonus communities from over-populated islands.

(2) When redistributing land in accordance with paragraph (1), the Government shall give priority to ethnic, linguistic, customary and geographical ties.

CHAPTER 13.

DECENTRALISATION.

Legislation for decentralisation

80. The Republic of the New Hebrides, conscious of the importance of deconcentration to enable the people fully to participate in the government of their regions, shall enact legislation necessary to realize that ideal.

Regional Councils

81. (1) Each region may elect a regional council in accordance with a law which shall in particular provide for the representation of custom chiefs within such council.
- (2) As soon as a regional council is elected, it shall start negotiations with the Government in order to prepare proposals for legislation providing for the powers and administration of the region.
- (3) The proposals for legislation referred to in paragraph (2) shall be submitted to Parliament which shall adopt them by the votes of at least two-thirds of the members of Parliament.

CHAPTER 14.

AMENDMENT OF THE CONSTITUTION

- Bills for amendment of Constitution.** 82. A bill for an amendment of the Constitution may be introduced either by the Prime Minister or any other member of Parliament.
- Procedure for passing Constitutional amendments.** 83. A bill for an amendment of the Constitution shall not come into effect unless it is supported by the votes of no less than two-thirds of all the members of Parliament at a special sitting of Parliament at which three-quarters of the members are present. If there is no such quorum at the first sitting, Parliament may meet and make a decision by the same majority a week later even if only two-thirds of the members are present.
- Amendments requiring support of referendums.** 84. A bill for an amendment of a provision of the Constitution regarding the status of Bislama, English and French, the electoral system, the powers and organisation of Regional Councils or the parliamentary system, passed by Parliament under Article 83, shall not come into effect unless it has been supported in a national referendum.

CHAPTER 15.

TRANSITIONAL PROVISIONS

85. Notwithstanding Chapter 6 the first President of the Republic shall:-
- (a) be such person as shall have been elected prior to the day of Independence by an electoral college constituted for that purpose by the Representative Assembly sitting with the Presidents of the Regional Councils if then established;
- (b) assume office on the day of Independence and hold office in accordance with the provisions of the Constitution.
86. The persons who immediately before the day of Independence hold office as Chief Minister or any other Minister shall as from that day hold office as Prime Minister or other Minister, as the case may be, as if they had been elected or appointed thereto under Chapter 7.
87. (1) The persons who immediately before the day of Independence are members of the Representative Assembly shall on that day become members of Parliament and shall hold their seats in Parliament in accordance with the Constitution.
- (2) The person who immediately before the day of Independence holds the office of Chairman of the Representative Assembly shall as from that day act in the office of Speaker of Parliament until a person is elected to hold that office.
- (3) The standing orders of the Representative Assembly in force immediately before the day of Independence shall have effect as from that day as the standing orders of Parliament until modified or replaced under Article 19 (5) but shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.
- (4) Parliament shall, unless sooner dissolved, stand dissolved on the 14th November, 1983.

Existing
offices.

88. (1) Subject to the other provisions of the Constitution, a person who immediately before the day of Independence holds or acts in an office in the service of the Government of the New Hebrides shall, as from that day, hold or act in that office or the corresponding office established by or under the Constitution on the same terms and conditions as those on which he holds or acts in the office immediately before that day.
- (2) Paragraph (1) is without prejudice to the power of Parliament to provide for the compulsory retirement of non-citizen officers to promote localisation of offices.
- (3) Notwithstanding Article 55 (2), until a citizen of the New Hebrides is qualified for appointment to a public office a non-citizen may be appointed to that office but, except in the case of a judge of the Supreme Court, shall be appointed for a limited period.

Judges of the
Supreme Court.

89. Notwithstanding Chapter 8, any person who immediately before the day of Independence holds office as a judge of the pre-Independence Supreme Court or of a District Court shall as from that day act in the office of judge of the Supreme Court until a substantive appointment is made to that office in accordance with Chapter 8. The President of the Republic may appoint one of them to act as Chief Justice until a substantive appointment is made to that office.

Rights, Lia-
bilities and
Obligations.

90. (1) All rights, liabilities and obligations of the Government of the New Hebrides, whether arising out of contract or otherwise, shall, as from the day of Independence, be rights, liabilities and obligations of the Republic.
- (2) Nothing in paragraph (1) shall prevent the Government of the Republic renegotiating rights, liabilities or obligations assumed under that paragraph.

Electoral
System.

91. After the general elections next following the Exchange of Notes providing for the entry into force of this Article, the Representative Assembly shall set up a Committee with equal representation of all political groups to make recommendations on an electoral system based on Article 17 (1).

The recommendations of the Committee shall be included in a law enacted by Parliament by a two-thirds majority of its members at a special sitting of Parliament when at least three-fourths of the members are present. If there is no such quorum at the first sitting, Parliament may meet and make a decision by the same majority a week later even if only two-thirds of the members are present.

Legal
Proceedings.

92. All legal proceedings, whether civil or criminal, pending immediately before the day of Independence before any court in the New Hebrides shall be disposed of on and after that day in accordance with general or specific directions given by the Supreme Court subject to any law which may be enacted for that purpose.

Existing
Law.

93. (1) Until otherwise provided by Parliament, all Joint Regulations and subsidiary legislation made thereunder in force immediately before the day of Independence shall continue in operation on and after that day as if they had been made in pursuance of the Constitution and shall be construed with such adaptations as may be necessary to bring them into conformity with the Constitution.
- (2) Until otherwise provided by Parliament, the British and French laws in force or applied in the New Hebrides immediately before the day of Independence shall on and after that day continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of the New Hebrides and wherever possible taking due account of custom.
- (3) Customary law shall continue to have effect as part of the law of the Republic.

Regional
Councils
before
Independence.

94. (1) Regional Councils shall be elected in Tanna and Santo on the same day as the general elections to the Representative Assembly next following the Exchange of Notes providing for the entry into force of this Article.
- (2) The modalities of this election shall be established by an Exchange of Notes between the British and French Governments, which shall in particular provide for the representation of custom chiefs within such Regional Councils.
- (3) As soon as they are elected the Regional Councils of Tanna and Santo shall start negotiations with the Government in order to prepare proposals for legislation providing for their powers and their manner of administration. The law on decentralisation for Tanna and Santo shall be adopted by the Representative Assembly before Independence.
- (4) The Council of Ministers may provide for the election of regional councils in other constituencies before Independence in accordance with modalities established in an Exchange of Notes between the British and French Governments.

SCHEDULE 1

(Article 32)

ELECTION OF THE PRESIDENT OF THE REPUBLIC

1. The election of the President of the Republic shall take place within 3 weeks of the end of the term of office of the previous President.
2. (1) The electoral college may proceed to elect the President of the Republic at its first meeting if at least three fourths of its members are present.

(2) If there is no such quorum, the electoral college shall meet again 48 hours later and may lawfully proceed to elect the President if at least two thirds of its members are present.
3. The candidate who obtains the support of two thirds of the members of the electoral college shall be elected President of the Republic.

SCHEDULE 2

(Article 39)

ELECTION OF THE PRIME MINISTER

1. The candidate who obtains the support of an absolute majority of the members of Parliament shall be elected Prime Minister.
2. If no candidate is elected under the preceding paragraph, a second ballot shall be taken but the candidate obtaining the lowest number of votes in the first ballot shall be eliminated.
3. If on the second ballot no candidate obtains the support specified in paragraph 1, further ballots shall be held, each time eliminating the candidate with the lowest vote in the preceding ballot until one candidate receives the support specified in paragraph 1, or if only two candidates remain the support of a simple majority.