

## Notes on the constitutional provision for Leader of the Opposition

### Section 57(2)(d) of the Constitution

"The rules and orders of the National Assembly (NA) must provide for the recognition of the leader of the largest opposition party in the Assembly as Leader of the Opposition."

[See also section 178(1)(h): "There is a Judicial Service Commission consisting of ... six persons designated by the National Assembly from amongst its members, at least three of whom must be members of opposition parties represented in the Assembly."]

### NA rule 21

"The leader of the largest party in the Assembly that is not in government must be recognised as Leader of the Opposition."

[See also NA rule 60(a): "...the leader of the largest minority party .... shall not be restricted in regard to the length of time they may speak ...]

### Referral

The minutes of the meeting of the NA Rules Committee, dated 14 October 2005, indicate that the Joint Constitutional Review Committee should consider the "appropriateness" of the title "Leader of the Opposition".

### Concerns

- Title is at times misconstrued as Leader of the Official Opposition.
- Largest opposition party feels that their leader should enjoy the right of response to the President's State of the Nation Address.
- Smaller opposition parties feel that the title creates the impression that the Leader of the Opposition is also their leader.

## **Research**

From a legal perspective, I could not find comparable wording in other constitutions that could be useful to guide a constitutional amendment to address the concerns mentioned above.

The position of Leader of the Opposition is a Westminster creation that usually finds expression in parliamentary convention or rules (as oppose to a Constitution) and fits best into bi-party model of a legislature. In the USA, although not a Commonwealth State, the position is referred to as "Minority Leader of the United States House of Representatives", who serves as floor leader of the opposition party.

## **Conclusion**

- The constitutional text does not lend itself to be construed as bundling all opposition parties together subject to one Leader of the Opposition.
- The NA rules are the appropriate place, in terms of the Constitution, to define the position, privileges and any concerns about the status of the Leader of the Opposition.

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